SUPREME COURT OF INDIA

Sagayam

Vs.

State of Karnataka

(S S Ahmad and S R Babu JJ.)

26.04.2000

ORDER

RAJENDRA BABU, J.

1. The appellant before us had been charged for offences under Sections 3 and 5 of Terrorists and Disruptive Activities Act, 1987 and under Section 307 read with Section 34 of the Indian Penal Code, The case against the appellant and accused No. 2 (who was absconding whose case was separated) are rowdy elements and are so recorded in the concerned Police Stations. It is alleged that there are 17 cases registered against them the details of which are riot forthcoming. On the charge sheet being filed before the Jurisdictional Magistrate, he committed to the Court of the Principal Session Judge at Kolar. Later, the case had been treated as one arising under TADA and filed by the Designated Court.

2. The appellant pleaded not guilty to the charges. The prosecution examined as many as 9 witnesses and statement of the appellant under Section 313 Cr.P.C. is also recorded. The defence taken up by the appellant is that the case pleaded against them is totally concocted and the witnesses who are police personnel have given interested testimoney. Witnesses other than police officers did not support the case of the prosecution. The witnesses PWs 2 to 5 and 7 & 8 raided the premises of the appellant and conducted investigation at different stages. The Designated Court relying upon the evidence of 8 police officers and a confessional statement made under Exh. P-7 convicted the accused under Section 3 and 5 of the TADA and Section 307 IPC and convicted him to undergo sentence of 5 years under TADA and 10 years under Section 307 IPC. Against the said conviction and sentence passed against the appellant, this appeal is filed.

3. In order to constitute an act to be a 'terrorist act', the meaning assigned to that expression under Section 3(1) of the TADA has to be borne in mind and the expression "terrorist" has to be accordingly construed. Section 3 has come up for consideration before this Court on many occasions and the decisions rendered therein lay down that the person who does any act by using any of the substances enumerated in the aforesaid provision in any manner as specified therein cannot be said to commit a terrorist act unless the act is done with the intent to do:

1. To overawe the Government as by law established; or

2. To strike terror in the people or any sanction of the people; or

3. To alienate any section of the people; or

4. To adversely affect the harmony amongst different sections of the people.

4. The evidence upon which the Designated Court relied is that the appellant in order to spread the fear psychosis in the minds of the people stored lethal weapons in his house, besides committed the act of terror in the people or in the section of people by threatening many people like businessmen, auto rickshaw drivers and others and forcibly snatched away money, valuables from them. In reaching this conclusion the Trial Court relied upon Exh. P-7 made to a Police Officer. If the allegation made against the appellant does not establish any of the acts under Section 3(1) of the Act to which we have adverted to above and all the acts attributed to him should have been done with the intent to cause any of the above four acts; that such requirement would be satisfied only if the dominant intention of the doer is to cause the aforesaid effect. It is not enough that the act resulted in any of the four consequences. In Niranjan Singh Karam Singh Punjabi v. Jitendra Bhimraj Bijjaya , it is stated that when the allegation was that the accused was alleged to have killed two persons for gaining supremacy in the underworld, 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 constitute an offence under Section 3(1) of the Act. The consequence of such violence is bound to cause panic and fear but the intention of committing the crime cannot be said to be to strike terror in the people or any section of the people. In Hitendra Vishnu Thakur v. State of Maharashtra this Court noticed the distinction between the act done with the requisite intent and another act which had only ensued such consequences. In that decision, it is further noticed that a terrorist activity is not confined to unlawful activity or crime committed against the individual or individuals but it aims at bringing about terror in the minds of the people or section of people disturbing public order, public peace and tranquility, social and communal harmony, disturbing or destabilising public administration and threatening security and integrity of the country. Thus, the legal position is that whether the act was done to overawe the Government as by law established and to strike terror in people or any section of the people, etc. If we examine the statements made by the witnesses who are Police Officers in this light it is clear that it is only to the effect of recovering certain arms or materials which can be used as lethal weapons and vague allegations of extortion or robbery. Though statements have been made that the appellant used to extract money from public by wielding a knife so as to threaten people and is involved in many cases of other illegal activities by itself would not lead to the conclusion that he has committed acts arising under Section 3 of the Act. Mere storing of certain weapons such as cycle chain, chopper would not also lead to the conclusion that the accused has committed these offences.

5. The sheet anchor of the prosecution case is the confessional statement Exh. P-7. It is stated by P.W. 7, Sri M.V. Murthy, Superintendent of Police that he recorded confessional statement after observing due formalities and administering due warning as required in law that the statement made by him may be used against him, The statement has been recorded in the question and answer form and even before he affixed his signature to the said statement, due warning is stated to have been again administered to him that his statement may be used against him in evidence and even so he signed the same voluntarily. The confessional statement which is marked as Exh. P-7 indicates that he used to go to Mines and used to commit theft of gold and iron articles and he used to terrorise people with the help of his group of friends and used to forcibly collect money, gold jewels etc.

from the passers by and also from the businessmen; that he used to give threat to life along with his friends Janson, Raja Harry Aseer and his brother Thangam; that he also admitted that he used to store lethal weapons in his house such as 'Katti' (knife or sword), cycle chains which were used to get money and he used to get the weapons by threatening the workshop owners and used to collect cycle chains; that whenever any complaint was made against him, he used to destroy the property of the complainant and he used to harm the witnesses who would give evidence against him; that there are many cases against him and others in Andersonpet, Robertsonpet, Marikuppam and Championreefs' Police Stations. Taking this entire statement as a whole, the acts attributed to the appellant do not amount to any terrorist activity answering the test to which we have adverted to earlier. Therefore, the charge framed against him under the TADA Act falls to the ground much less could the Designated Court have relied upon the so called confessional statement recorded in terms of Section 15 of the TADA Act to Come to such a conclusion.

6. To justify conviction under this Section under Section 307 IPC, it is not essential that bodily injury capable of causing death should have been inflicted. An attempt in order to be criminal need not be the penultimate act fore boding death. It is sufficient in-law if there is present an intent coupled with some overt act in execution thereof, such act being proximate to the crime intended and if the attempt has gone so far that it would have been complete but for the extraneous intervention which frustrated its consummation. There are different stages in a crime. First intention to commit it; second preparation to commit it; third, an attempt to commit it. If at the third stage, the attempt falls, the crime is not complete but law punishes for attempting the same. An attempt to commit crime must be distinguished from an intent to commit it or preparation of its commission.

7. ASI Rajana PW 2 was deputed to search the house of the appellant along with two other members of his staff. When he went to the house of the appellant along with the other officers, the accused tried to assault them. He somehow escaped from the assault. Again accused is said to have tried to pierce with a sword but he escaped that assault and caught hold of him but then he threatened that he would kill. This is all the evidence that have been given by the ASI which would only mean that there was only a threat to assault the said Rajana but the overt acts attributed to him would not amount to attempt to murder, at best it can be one of attempt to assault but there is not even an injury upon the victim.

8. A charge of this nature when there is not even an injury upon the victim cannot lead to an inference that there was any attempt to kill when the incident took place. It is possible that the accused confronted the ASI Rajana but that by itself would not result in coming to the conclusion that it was an attempt to murder him.

9. The ingredients of none of the sections arising under the TADA or in the IPC have been established. We find the prosecution case does not hold water and cannot stand scrutiny much less a close one. Therefore, we set aside the conviction recorded against the appellant and acquit him of all the charges framed against him. If he is in jail serving sentence, he shall be set at liberty at once unless he is required in any other case.