MOHD. MAQBOOL TANTRAY

v.

STATE OF J & K

(Criminal Appeal No. 342 of 2009)

FEBRUARY 4, 2010*

[HARJIT SINGH BEDI AND A.K. PATNAIK, JJ.]

Terrorist and Disruptive Activities (Prevention) Act, 1987:

s.3(2)(ii) and s.364 r/w s.120-B RPC – Out of several persons prosecuted for abduction and murder of an MLA, only 3 brought to trial – Two acquitted – Only one convicted u/s 3(2)(ii) TADA and s.364/120-B RPC – Sentence of 14 years imprisonment u/s 3(2)(ii) of TADA and 5 years u/s 364/120-B RPC imposed – Plea that in view of the convict having shown his remorse while making the confession before the SSP, the sentence be reduced to the period already undergone – HELD: It is indeed true that a conviction under the TADA is a very serious matter and calls for a deterrent punishment – At the same time, the facts of each case cannot be ignored – In the instant case, all the co-accused of the appellant have either been acquitted or have not been brought to trial – Appellant has expressed his regrets for the circumstance which had ultimately led to the murder of the deceased – Trial court has given a positive finding that the appellant was only involved with the abduction part and had nothing to do with the murder of the MLA – Appellant has undergone more than 11½ years of sentence after facing protracted trial spread over almost 20 years – He had been released on bail for a period of 1 ½ years and during this period his conduct and behaviour had remained exemplary – In the circumstances, while dismissing the appeal, sentence reduced from 14 years to that already undergone – Sentence

*Judgment received on 13.4.2010

A – *Ranbir Penal Code – s.364 r/w s.120-B. [para 4, 5 and 7]*

Gurdeep Singh alias Deep vs. State (Delhi Admn.) 1999 **(2) Suppl. SCR 693 = (2000) 1 SCC 498, relied on.**

Case Law Reference:

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1999 (2) Suppl. SCR 693 Relied on Para 4

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 342 of 2009.

C From the Judgment & Order dated 11.2.2009 of the 3rd Additional Sessions Judge, Jammu (Designated Court under TADA) in File No. 20/Ch.

Mohan Jain, ASG, E.C. Agrawala, Amit Kumar Sharma, Nishant Katoch, Dinesh Thakur, Rohini Mukherjee, Prabhat D Kumar, Vibhav Mishra, T.V. Ratnam, Arvind Kumar Sharma, Jaspreet Aulakh, P.K, Dey, B. Krishna Prasad, Anis Suhrawardy, S. Mehdi Imaz, Tabreez Ahmed for the appearing parties.

E The following Order of the Court was delivered

ORDER

1. We have heard the learned counsel for the parties at length.

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2. The appellant Mohd. Maqbool Tantray along with 17 others was tried for offences punishable under Sections 302/392/364 etc. of the Ranbir Penal Code [for short 'the RPC'] and Section 3(1) of the Terrorist and Disruptive Activities G (Prevention) Act, 1987 [hereinafter referred to as 'the TADA'] for being involved in the abduction and murder of former MLA Mir Mustafa on the 25th March, 1990. Eleven of the accused were discharged on the statement made by the Public Prosecutor, three died during the pendency of the trial and one H absconded and three were brought to trial including the

appellant. In the trial three co-accused of the appellant herein were acquitted but the court relying on the evidence of various prosecution witnesses and in particular on the confessional statement given by the appellant to the SSP Mr. A.K. Suri, convicted him for offences punishable under Section 364 read with Section 120B of the RPC and sentenced him to undergo rigorous imprisonment for five years and to pay a fine of Rs. 1000/-, in default to undergo imprisonment for six months and under Section 3(2)(ii) of TADA to undergo rigorous imprisonment for 14 years and to pay a fine of Rs. 5000/-, in default of payment of fine to further undergo imprisonment for a period of one year, both the sentences to run concurrently. The present appeal has been filed impugning the judgment of the trial court as the appeal under TADA lies directly to the Supreme Court.

3. Mr. Agrawala, the learned counsel for the appellant has not argued the matter on merits but has pointed out that in view of the above facts more particularly that eleven out of 18 accused had been discharged and the two co-accused of the appellant herein had been acquitted vide the impugned judgment and the additional fact that the trial had continued for almost twenty years and that the appellant had also undergone almost 11½ years of the sentence and that he had made a confession before the SSP which showed his remorse it was appropriate that the sentence be reduced to that already undergone.

4. For the proposition that in a case of a confession made by a remorseful repentant convict some leniency in the sentence was called for the learned counsel has placed reliance on the judgment of this Court in *Gurdeep Singh alias Deep v. State (Delhi Admn.)* (2000) 1 SCC 498. The learned Solicitor General has, however, pointed out that the appellant was one of the prime movers in the incident which had led to the death of Mir Mustafa and as Section 2 of TADA provided for a life sentence, the appellant had already been dealt with in a lenient

A way and no further latitude should be shown to him.

5. It is indeed true that a conviction under the TADA is a very serious matter and calls for a deterrent punishment. At the same time, the facts of each case cannot be ignored. We see that all the co-accused of the appellant have either been B acquitted or have not been brought to trial. We also see from the record that the appellant has expressed his regrets for the circumstance which had ultimately led to the murder of Mir Mustafa. The trial court has given a positive finding that the appellant was only involved with the abduction part and had C nothing to do with the murder of the MLA. We also see from the record that appellant has undergone more than 11½ years of the sentence after facing protracted a trial spread over almost 20 years. We have also been told by Mr. Agrawal that he had been released on bail for a period of 1½ years and during this D period his conduct and behaviour had remained exemplary. We also notice that in *Gurdip Singh's* case (supra) this Court observed as under:

"25. Before concluding we would like to record our E conscientious feeling for the consideration by the legislature, if it deem fit ad proper. Punishment to an accused in criminal jurisprudence is not merely to punish the wrongdoer but also to strike a warning to those who are in the same sphere of crime or to those intending to F join in such crime. This punishment is also to reform such wrongdoers not to commit such offence in future. The long procedure and the arduous journey of the prosectuion to find the whole truth is achieved sometimes by turning on the accused as approvers. This is by giving incentive to an accused to speak the truth without fear of conviction. G Now turning to the confessional statement, since it comes from the core of the heart through repentance, where such accused is even ready to undertake the consequential punishment under the law, it is this area which needs some encouragement to such an accused through some respite

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may be by reducing the period of punishment, such incentive would transform more such incoming accused to confess and speak the truth. This may help to transform an accused to reach the truth and bring to an end successfully the prosecution of the case." A

6. We find that the aforesaid observations would apply to the present case as well. B

7. We, accordingly, while dismissing the appeal, reduce the sentence from 14 years to that already undergone.

8. The appeal stands disposed of accordingly.

R.P. Appeal disposed of.