GURDEEP SINGH @ DEEP

v.

THE STATE (DELHI ADMN.)

SEPTEMBER 17, 1999

[K.T. THOMAS AND A.P. MISRA, JJ.]

Terrorist and Disruptive Activities (Prevention) Act, 1987:

S.15.—Confessional statement—Whether voluntarily made—Determination of—Confession made before Superintendent of Police—No threat, inducement or promise in making confession—Confession recorded while in handcuffs, in the presence of a constable holding handcuffs and armed guards standing outside the room—Admissibility of—Held; confession voluntary and truthful—Prosecution can rely upon the confession without further corroboration—Conviction and sentence confirmed—Terrorist and disruptive Activities (Prevention) Rules, 1987—Rule 15—Penal Code—Ss. 302 and 324—The Explosive Substances Act, 1908—S.5—Indian Explosive Act, 1884—S. 9(b)(2).

S.15—Confession—Admissibility of—Difference between TADA Act and other criminal proceedings—Evidence Act, 1872—Ss.25 and 27.

S.15—Confession—Whether voluntarily made—Burden of proof—Held, initially lies on the prosecution to prove that the requirements under the Act and Rules were complied with—On discharge of initial burden, it shifts on the accused person to prove that it was not voluntarily made—Terrorist and Disruptive Activities (Prevention) Rules, 1987—Rule 15.

Criminal jurisprudence—Punishment—object of confessional statement—Need for encouragement through some incentive—Consideration by legislature—Suggested.

Words and Phrases:

"Voluntary"—Meaning of in the context of S.15 of the TADA Act and S.24 of the Evidence Act, 1872.

Appellant was prosecuted for offences under Ss.302 and 324 IPC, S.5

A of the Explosives Substances Act, 1908 and under S.9(b)(2) of Indian Explosive Act, 1884. The prosecution case was solely based on the confessional statement of accused made under S.15 of the Terrorist and Disruptive Activities (Prevention) Act, 1987, before the Superintendent of Police. The said confessional statement was duly corroborated by prosecution witnesses. Designated Court convicted and sentenced the accused for the offences B charged. Hence the present appeal.

On behalf of appellant it was contended that the confessional statement recorded while in handcuffs, in the presence of a police officer holding the handcuffs and armed guards standing outside the room cannot be construed C to be voluntary as threat perception was hanging over his head.

Dismissing the appeal, the Court

HELD: 1.1. Confessional statements of the accused is not only admissible but was voluntarily and truthfully made by him on which prosecution D could rely for his conviction without any further corroboration. [709-A]

1.2. Mere handcuffing of the appellant for another police man being present in the room with the chain of his handcuff, or armed guards present outside the room could not in fact or law be constituted to be such to hold that such confessional statement was not made voluntarily. Under the TADA E Act, a confession recorded before a police officer not below the rank of Superintendent of Police even under police custody is admissible but not under other criminal trials. Keeping the accused under police custody in what manner with what precautions is a matter for the police administration to decide. It is for them to decide what essential measures are to be taken in a given case for the purpose of security. What security, in which manner F are all in the realm of administrative exigencies and would depend on the class of accused, his antecedents and other information etc. Security is also necessary for the police personnel keeping him in custody or other personnel of the police administration including the public at large. Thus what measure has to be taken is for the police administration to decide and if they feel G greater security is required in a case of trial under the TADA Act, it is for them to decide accordingly. [708-A; 707-E-F-G]

2. The Legislature has conferred different standard of admissibility of a confessional statement made by an accused under the TADA Act, from those made in other criminal proceedings. While under s.15 of the TADA H Act a confessional statement by an accused is admissible even when made

to a police officer not below the rank of Superintendent of Police, in other criminal proceedings it is not admissible unless made to a Magistrate. S.25 of the Indian Evidence Act debars from evidence a confession of an accused to a police officer, except what is permitted under S.27. However, both in S.15 of the TADA Act and S.24 of the Indian Evidence Act, the confession has to be voluntary. S.24 of the Evidence Act interdicts a confession, if it appears to the Court to be the result of any inducement, threat or promise in certain conditions. The principle therein is that confession must be voluntary. S.15 of the TADA Act also requires the confession to be voluntary. Voluntary means that one who makes it out of his own free will inspired by the sound of his own conscience to speak nothing but the truth. So the crux of making statement voluntarily is, what is intentional, intended, unimpelled by other influences, acting on one's own will, through his own conscience. In the instant case, there was total absence of threat, inducement or promise by any other word or deed made to the appellant, in any other form; nor was it contended at any stage of the proceedings culminating into his conviction. [707-D-E; 705-C; 706-D; 707-A]

Sahib Singh v. *State of Haryana,* [1997] 7 SCC 231, relied on.

Stroud's Judicial Dictionary, 5th Ed., at page 2633; *Words and Phrases—Permanent Edition,* Vol. 44, page 622 and *John B. Saunders,* 3rd Edn., Vol. 4 page 401, referred to.

3. Whenever an accused challenges that his confessional statement is not voluntary, the initial burden is on the prosecution and for that it has to prove that all requirements under S.15 and Rule 15 under TADA Act and Rules had been complied with. Once this is done, prosecution discharges its initial burden and then the burden shifts on the accused person. Then it is for him to prove through facts that the confessional statement was not made voluntarily. If such fact was pleaded and brought on record during trial the Court must test its veracity, whether such fact constitutes to be such as to make his confessional statement not voluntarily made. In the instant case, the prosecution has proved to the hilt the initial burden of compliance of both S.15 and Rule 15 under the TADA Act and Rules. [707-B-C-D]

4. Punishment to an accused in criminal jurisprudence is not merely to punish the wrong doer but also to strike warning to those who are in the same sphere of crime or to those intending to join in such crime. This punishment is also to reform such wrong doers not to commit such offence in future. The long procedure and the arduous journey of the prosecution

to find the whole truth is achieved some time by turning on accused as approvers. This is by giving incentive to an accused to speak the truth without fear of conviction. The confessional statement, since it comes from the core of 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, 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. [709-C-D-E-F]

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 604 of 1997.

From the Judgment and Order dated 22.7.96 of the Designated Court No. III, Karkardooma Court, Delhi in F.I.R. No. 451 of 1990.

P.P. Singh, (A.C.) for the Appellant.

V.N. Saraf, (A.S. Rawat) for Mrs. Sushma Suri for the Respondent.

The Judgment of the Court was delivered by

MISRA, J. The appellant-convict has filed this appeal against his conviction under Sections 302, 324 of the Indian Penal Code and Section 5(a)(b) of the Explosive Act, by the Designated Court No. III, Karkardooma Courts, Delhi which really is under Section 5 of the Explosive Substances Act, 1908. He has been sentenced under Section 302 to undergo life imprisonment and to pay a fine of Rs. 3 lakhs. Out of which one lakh each is to be paid to the nearest relatives of three deceased persons. In the case of default of this non-payment, he shall also undergo rigorous imprisonment (RI) for a further period of three years. He is also sentenced RI for a period of three years under Section 324 IPC with a fine of Rs. 20,000. Out of which Rs. 10,000 each is to be paid to the two injured persons. In the case of default he has further to undergo RI for a period of 6 months. He is also sentenced to undergo RI for two years under Section 9 (b)(2) of the Explosive Substances Act, 1908 which really is under the Indian Explosive Act 1884 with a fine of Rs. 5,000. In the case of default of this non-payment, he shall further undergo RI for two months.

In order to appreciate issues in the appeal we are hereby giving short

matrix of facts.

According to the prosecution case on 6th October, 1990 at about 6.10 p.m. a bomb exploded near Chilla Engulator 'T' Point killing three persons and injuring two persons at NOIDA Road near Samachar Apartments. The deceased persons were Prit Pal Singh, Jaspal Singh and Satish Bajaj. The information about bomb explosion soon thereafter was given by passerby who informed the nearest Police Control Room van and from where the message was flashed to the Police Control Room. Om Pal Tanwar, PW 3, received the said message on the said date at 6.07 p.m.. Thereafter, Inspector Jeet Singh Joon, PW 15, proceeded to the spot. He found two dead bodies lying on the spot. These bodies were split into pieces lying on the road and one three wheeler scooter (TSR) was found badly mutilated. One cycle was also found similarly. There were three injured persons lying near the said spot. They were removed to JPN Hospital. One of the injured, namely, Satish Bajaj succumbed to his injuries in the hospital. One of the deceased, namely, Prit Pal Singh was identified with the help of his driving licence which was in his pocket. Since driving licence was having his photograph and address, the Investigating Officer was able to contact his relative, namely, Pragat Singh, who is one of the accused in this case. After recording the statement of Pragat Singh and getting the identification of the deceased persons the aforesaid three dead bodies were sent for post mortem. It is through Pragat Singh that police was able to know the involvement of Gurdeep Singh, the present appellant. It is significant that out of the three deceased two, namely, Prit Pal Singh and Jaspal Singh were closely related to the accused Pragat Singh and his wife Balbir Kaur who was also accused. The deceased Prit Pal Singh was the adopted son of the accused Pragat Singh and Balbir Kaur, while deceased Jaspal Singh was the nephew of the accused Pragat Singh.

From the investigation of the police and the evidence led by the prosecution, it was revealed that the present appellant used to go and stay with Pragat Singh and his wife Balbir Kaur on a number of occasions. Immediately preceding the incident the appellant again went to live with the family of Pragat Singh since 4.10.1990. The bomb which exploded was carried by the two deceased, namely, Prit Pal Singh and Jaspal Singh who were destinate to go to NOIDA. This bomb was meant for explosion in a bus and as per the planning also to kill Prit Pal Singh about which the said two deceased were not aware. This was done in conspiracy with Balbir Kaur wife of Pragat Singh and hence she was also arrested on her return from Jullundhar on 8.10.1990. The appellant was a terrorist who master minded a few earlier

A and the present explosion. It is at the instance of the Pragat Singh that the present appellant was arrested from House No. K- 40, Sector 12, NOIDA.

The significant part in the present case is, when the present appellant was under police custody, the police of Beether (Karnataka) sought his custody for investigation in another case where he was also involved in a B bomb explosion in a cinema hall at Beether in Karnataka. He was interrogated at Beether by the Superintendent of Police, Beether, PW 13, where he made his confessional statement under Section 15 of the Terrorist and Disruptive Activities (Prevention) Act, 1987, hereinafter referred to as the "TADA Act". Therein he admitted his complicity and involvement in the bomb explosion C which was carried by him in Delhi at NOIDA Road killing both Prit Pal Singh and Jaspal Singh. Finally, a challan was filed against the three accused, namely, the present appellant, Pragat Singh and his wife Balbir Kaur. The present appellant was charged under Sections 302, 326, 324, IPC and Section 5 of the Explosive Substances Act. Similarly, charges were also framed against the said two accused. The said designated Court finally acquitted Balbir Kaur D but convicted the present appellant and Pragat Singh. The present appeal is only by the appellant Gurdeep Singh and hence we are not concerned in this appeal with the other accused, namely, Pragat Singh. The third deceased person, viz., Satish Bajaj was only a passerby who became victim by chance of this bomb explosion. It was also not disputed that there was no eye E witness in the present case. Thus the prosecution case is based on circumstantial evidence including the confession made by the appellant.

According to the Inspector Jeet Singh Joon, PW 15, the Investigating Officer, he found two dead bodies of Prit Pal Singh and Jaspal Singh split into pieces which could have happened if these two persons were carrying the F bomb which exploded. Smt. Kusam, PW 14, is the wife of the deceased Prit Pal Singh. According to her statement, her husband was driving a three wheeler and they were living at a different place but during sometime in September, 1990 they shifted to the house of accused Pragat Singh and Balbir Kaur who were her father-in-law and mother-in-law respectively. As per her G deposition both deceased persons, Prit Pal Singh and Jaspal Singh left the house of accused Pragat Singh 15 to 20 minutes before the said explosion took place. Pragat Singh her father-in-law was also driving a three wheeler. He had three daughters. Though earlier those three daughters gave statements which were recorded under Section 164, Cr.P.C. in which they had stated that the appellant used to visit their house, they turned hostile when examined in H Court. This left the prosecution to strongly rely on the deposition of Kusam,

PW 14. She deposed that she saw the appellant coming to their house and he was then a clean shaved person. Her husband always objected to Smt. Balbir Kaur of his coming to her house since young daughters were living in the house. In spite of all this, she deposed, the appellant used to stay in their house and was coming and going. The appellant again came back on 4.10.1990. He continued to stay there for the next three days, i.e., till the day of incident and till a few minutes before the said explosion. She also told her father-in-law earlier that the appellant be asked to go away from here. On 5.10.1990 Smt. Kusam, PW 14, was to go to the hospital, her father-in-law took her there and on the way, at Bangla Sahib Gurudwara he purchased two plastic cans. It is alleged that they were used in preparation of the bomb which exploded. On her return by night time, she found that the appellant was still in the house and he stayed over-night and even the next day. On the fateful day, i.e., next day she saw about 5.30 p.m., the appellant brought drinks and was drinking liquor with her husband, father-in-law, deceased Jaspal Singh and one Kale (cousin of deceased Prit Pal Singh). It was at this point that she went to take her bath and on her return she found that all of them left the house and thereafter, within fifteen to twenty minutes the bomb explosion took place in which her husband died. She also deposed that when the appellant came to their house he was carrying a coloured strips bag which later is said to have been given by the appellant to, and which was carried by, the deceased Prit Pal Singh when the explosion took place.

Prosecution in order to establish the antecedents of the appellant, as a terrorist, examined witnesses to show how he worked as a granthi (who reads religious books) and became a terrorist. Avtar Singh, PW 20, stated that the appellant was working as Granthi in South Anarkali Gurudwara in 1983 and he continued to be such for two to three years. Similarly, Kuldeep Kaur, PW 12, also deposed that he was serving as Granthi in 1984. She was his landlady as he was in her tenancy prior to the year 1984. At that time the appellant was keeping a beard. The evidence of this witness that he was having beard and the testimony of Kusam, PW 14, that when she saw him in September, 1990 as a clean shaved person shows how the appellant brought change in his appearance along with the change from granthi to a terrorist. This part of prosecution evidence is used as corroborative of the confessional statement made by the appellant.

Strong reliance is placed by the prosecution on the testimony of Raj Shekhar Shetty, PW 13, Superintendent of Police, Core of Detectives Karnataka. His testimony reveals that the appellant was produced before him and he

A recorded his confessional statement, in another case being Crime No. 177 of 1990, Police Station New Town Beather, Karnataka under Section 15 of the TADA Act. Before recording this confessional statement he deposed to have complied with all the requirements under law. This witness asked the appellant before recording the confession, whether he was giving his confessional statement voluntarily, without any pressure from any body, to which the B appellant replied in affirmative and further said that he wanted to give his statement voluntarily. He was also forewarned that such statement might be used against him and he was not bound to make a confessional statement. But in spite of all such warnings the appellant insisted to give his confessional statement. Even thereafter P.W.13 gave the appellant time for reflection. C Appellant was thereafter brought back before PW 13. The appellant was again asked whether he was still willing to make confessional statement and again he replied in the affirmative. Thereafter, the confessional statement was recorded (in Hindi) by PW 13 himself. Then it was read over to him and he admitted it to be correct and he signed below it. This witness then gave his endorsement and also gave his certificate on the last page of the statement as required D under law. A comprehensive statement so recorded was sent in a cover to Deputy Commissioner of Police of the Sessions Case with the directions that statement be deposited with the Court. The original statement recorded was placed in the Sessions Court at Beether. The copy of which is filed in the present case and is proved by this witness. The confessional statement of E the appellant is Ex. PZ. But on account of erratic supply of electricity the video recording could not be properly done.

In his confessional statement, on which strong reliance is placed by the prosecution, the appellant admitted that he worked as Granthi in Gurudwaras from 1981 to 1984. In 1983 he developed friendship with one Kashmira Singh. F In the month of February and March 1983 one Parkash Kaur friend of Smt. Balbir Kaur got performed Akhand Path at her residence with the intention to get her brother Ranjit Singh released from Jail in the murder of Baba Nirankari. He performed the same. Later he at Baba Bakala Gurdwara came into contact with AISSF leader Sukhwant Singh Atwal and he joined his group and offered himself to do any work for the sake of panth. However, later he G was arrested and detained under NSA for two years. Thereafter, he met one Bhai Manjeet Singh who appointed him as his body guard. Then he again met Parkash Kaur and asked her to find some place for his hideout in Delhi. She introduced him to Balbir Kaur and since thereafter he used to go to her house as hideout in Delhi. He also stated how he made attempts to come in close H contact with hard core terrorists which is not necessary for us to give in detail

for the purpose of disposal of this case. In the confessional statement the accused also disclosed that on 6.10.1990, the day of incident, he handed over a bomb to Prit Pal Singh in a bag and told him to reach it at NOIDA by a bus. He said he quietly switched on a plastic switch of the bomb so that bomb should explode in the bus after some time. However, both deceased Prit Pal Singh and Jaspal Singh went by scooter instead by bus. It is also clear that neither Prit Pal Singh nor Jaspal Singh were aware of the switch on of the bomb made by the appellant. The relevant portion of his confession is reproduced below:

> "On 23.7.90 I reached Delhi by train and went to Balbir Kaur's house. I called Parkash Kaur there. Parkash Kaur got annoyed with me after seeing me clean shaven. Then I told her about the bomb blast in Bidar and only then she was pacified. Next day I went to Rayya and met with Fauji and narrated about the bomb blast in Bidar. In the month of Oct. on 6th day there was a bomb blast in a TSR on Delhi Noida Road which was also caused by me. In this explosion Pritapal Singh @ Bitto and Jaspal Singh @ Kala died. They were directed to carry the bomb by bus to Noida so that the bomb may be exploded but before handing the bomb to them I secretly switched on the bomb and it was done on the advice of Smt. Balbir Kaur. Balbir Kaur had illicit relations with Pritpal Singh but Pritpal Singh developed sexual relations with her younger daughter due to which she got pregnant so she planned to take revenge with my connivance. I while giving bomb to Pritapal Singh @ Bitto and directing him to reach Noida by bus I wanted to kill two birds with one stone with the connivance of Pargat Singh and his wife. But Jaspal Singh @ Kala got down from Pargat Singh's Auto and accompanied him. For reaching early to Noida both hired a TSR and thus the bomb exploded on the way as the time had already been fixed fifteen minutes for explosion and expired in this blast. Thereafter, I was arrested by Delhi Police and I disclosed the incident of Bidar."

The prosecution, based on the aforesaid evidence and the confessional statement made by the appellant, strongly defended the conviction passed by the Designated Court. Learned counsel for the respondent, Mr. V.N. Saraf, submits, the confessional statement by itself under Section 15 of the TADA Act is sufficient and the appellant was rightly convicted by the Designated Court. He also supported the findings of the Designated Court that the circumstantial evidence proves to the hilt that appellant had committed the

A offence. He further submits that the prosecution witnesses corroborated the confessional statement of the appellant.

On the other hand, learned counsel for the appellant, Mr. P.P. Singh, appearing as Amicus Curaie, submits that there is no corroboration of the prosecution story from the prosecution witnesses. Some of the witnesses B turned hostile. The only evidence on which strong reliance is placed by the prosecution, i.e. the testimony of Smt. Kusam, PW 14, the wife of the deceased Prit Pal Singh, is neither useful for any corroboration of the prosecution story on the material particulars nor does it add to the chain of circumstances, to prove the guilt of the appellant. Hence in a case of circumstantial evidence, C unless the prosecution establishes the chain of circumstances beyond all reasonable doubt no conviction can be made. The prosecution has failed to provide this in the present case according to the counsel. With reference to the confessional statement the submission is that it was not voluntary as it was made under threat. To substantiate this he refers to the facts that his confession was recorded by S.P. Raj Shekhar Shetty, PW 13, when he was in D handcuffs, there was another policeman in the same room holding the chain of his handcuff, and even outside the room, in which his confession was recorded, there were armed guards. Such set up, reveals by itself that threat perception existed which was hanging over his head, thus such confession cannot be construed to be voluntary under Section 15 of the TADA Act, E contended the counsel.

This takes us to the question whether the confession made by the appellant under Section 15 of the TADA Act was voluntary? It is not in dispute that a confession was made by the appellant before P.W.13, Raj Shekhar Shetty,

F Superintendent of Police (COD) Core of Detectives, Karnataka in Crime No. 177 of 1990 of Police State New Town Beather, Karnataka. It is also not in dispute that he followed the procedure prescribed under the TADA Act and Rules before recording the confession. He, before recording the confession, explained to the appellant that he was not bound to make a G confession and if he would make, it could be used against him.

Rule 15 of the TADA Rules, 1987 laid down the modalities as to how a confession is to be recorded. Sub-Rule 1 of this Rule requires the confession invariably to be recorded in the language in which it is made and if it is not practical, in the langauge used by such officer for official purpose or in the H language of the Designated Court. Sub-rule 2 requires that such recorded

confession should be shown, read or played back to such accused who made the confession, as the case may be, and in case he does not understand the language in which it is recorded, it has to be interpreted to him in the language which he understands and thereafter such accused has the liberty to add to such confession or to explain any part of it. Sub-rule 3 says that when the confession is recorded in writing it shall be signed by the person making the confession and there has to be certification by the police officer before whom such confession is made that such confession was recorded in his presence and recorded by him and it contains full and true account of the confession. The said police officer has to make a memorandum at the end of the confession as provided therein. Under sub-rule 4, when the confession is recorded on any mechanical device, the memorandum referred to in sub-rule (3) in so far as it is applicable has to be recorded by such police officer at the end of the confession in the mechanical device. In the present case, as we have pointed out the confessional statement was made in writing though during the investigation in another case. But copy of it was brought as evidence in the case and proved through PW 13 and is exhibited Ex.PZ. It is not the case of the appellant that any procedure as required under Rule 15, as aforesaid, or what is contained in Section 15 of the TADA Act was not followed. The limited area of challenge to the said confessional statement is that the same was not made voluntarily as required under Section 15(2) of the TADA Act. For ready reference Section 15 is quoted hereunder :

> "15. Certain confessions made to police officers to be taken into consideration - (1) Notwithstanding anything in the Code or in the Indian Evidence Act, 1872 (1 of 1872) but subject to the provisions of this section, a confession made by a person before a police officer not lower in rank than a Superintendent of Police and recorded by such police officer either in writing or on any mechanical device like cassettes, tapes or sound tracks from out of which sounds or images can be reproduced, shall be admissible in the trial of such person for an offence under this Act or rules made thereunder.
>
> (2) The police officer shall, before recording any confession under sub-section (1), explain to the person making it that he is not bound to make a confession and that, if he does so, it may be used as evidence against him and such police officer shall not record any such confession unless upon questioning the person making it, he has reason to believe that it is being made voluntarily."

It is also not in dispute, nor was there any contention that the disclosure

A therein does not make out all the essential ingredients of the offence for which he is convicted. So the confession reveals, the planning and the subsequent handing over of the bomb etc. by the appellant in the commission of the said offence. It is also not in dispute that PW13 who recorded the confession was then a Superintendent of Police and he recorded it in his own handwriting.

B

It was contended before us that P.W.13 should not have recorded the confession as it was not voluntary. Before we enter into this sphere of controversy to adjudicate on this issue, we may point out that PW13 has not recorded anywhere that it was not being made voluntarily, officer could only record such confession when he has reasons to believe that it is being made voluntary. In other words, it puts an obligation on such officer, who on questioning felt that he was not going to give the confession voluntarily, not to record such confession. But when he recorded the confession the presumption is he was satisfied that the accused was going to make his confession voluntarily.

C

D

The legislature has conferred a different standard of admissibility of a confessional statement by an accused under the TADA Act, from those made in other criminal proceedings. While under Sec. 15 of the TADA Act a confessional statement by an accused is admissible even when made to a police officer not below the rank of Superintendent of Police, in other criminal proceedings it is not admissible unless made to a Magistrate. Section 25 of the Indian Evidence Act debars from evidence a confession of an accused to a police officer, except what is permitted under Sec. 27.

E

In *Sahib Singh* v. *State of Haryana,* [1997] 7 SCC 231, this Court while dealing with TADA Act held that the meaning of confession as under the Indian Evidence Act shall also apply to confession made under TADA Act:

F

> "46. The Act, like the Evidence Act, does not define 'confession' and, therefore, the principles enunciated by this Court with regard to the meaning of 'confession' under the Evidence Act shall also apply to a 'confession' made under this Act. Under this Act also, 'confession' has either to be an express acknowledgement of guilt of the offence charged or it must admit substantially all the facts which constitute the offence. Conviction of 'confession' is based on the maxim '*habemus optimum testem, confitentem reum*' which means that confession of an accused is the best evidence against him. The rationale behind this rule is that an ordinary, normal and sane person

G

H

would not make a statement which would incriminate him unless urged by the prompting of truth and conscience. A

Under this Act, although a confession recorded by a police officer, not below the rank of Superintendent of Police, is admissible in evidence, such confessional statement, if challenged, has to be shown, before a conviction can be based upon it, to have been made voluntarily and that it was truthful." B

In other words, there is one common feature, both in Section 15 of the TADA Act and Section 24 of the Indian Evidence Act that the confession has to be voluntary. Section 24 of Evidence Act interdicts a confession, if it appears to the Court to be the result of any inducement, threat or promise in certain conditions. The principle therein is that confession must be voluntary. Section 15 of the TADA Act also requires the confession to be voluntary. Voluntary means that one who makes it out of his own free will inspired by the sound of his own conscience to speak nothing but the truth. As per Stroud's Judicial Dictionary, 5th Ed., at P.2633, threat means : C D

"It is the essence of a threat that it be made for the purpose of intimidating, or overcoming, the will of the person to whom it is addressed (per Lush J., Wood V. Bowron L.R. 2 Q.B. 21, cited Intimidate)."

Words and Phrases - Permanent Edition, Vol. 44 page 622, voluntary defines: E

"Voluntary" means a statement made of the free will and accord of accused, without coercion, whether from fear of any threat of harm, promise, or inducement or any hope of reward - State V. Mullin. 85 N.W. 2d. 598, 600, 249, 1own 10." F

At page 629 - 'confession' defines:

"where used in connection with statements by accused, words 'voluntary' and 'involuntary' import statements made without constraint or compulsion by others and the contrary. Commonwealth V. Chin kee, 186, N.E. 253, 260, 283 Mass. 248." G

In words and phrases by John B. Saunders, 3rd Edn., Vol. 4, page 401, 'Voluntary' defines :

"The classic statement of the principle is that the Lord Sumner in H

A *Ibrahim* v. *Regem,* (1914) AC 599 at 609 where he said, "It has long been established as a positive rule of English criminal law that no statement by an accused is admissible in evidence against him unless it is shown by the prosecution to be a voluntary statement, in the sense that it has not been obtained from him either by fear of prejudice or hope of advantage exercised or held out by a person in authority.
B The principle is as old as Lord Hale. "However, in five of the eleven text books cited to us....support is to be found for a narrow and rather technical meaning of the word 'voluntary'. According to this view 'voluntary' means merely that the statement has not been made in consequence of (i) some promise of advantage or some threat (ii) of
C a temporal character (iii) held pout or made by a person in authority, and (iv) relating to the charge in the sense that it implies that the accused's position in the contemplated proceedings will or may be better or worse according to whether or not the statement is made." *R.* v. *Harz, R* v. *Power* (1966) 3 All ER 433 at 454, 455, per Cantley V."

D So the crux of making statement voluntarily is, what is intentional, intended, unimpelled by other influences, acting on one's own will, through his own conscience. Such confessional statements are made mostly out of a thirst to speak the truth which at a given time predominates in the heart of the confessor which impels him to speak out the truth. Internal compulsion
E of the conscience to speak out the truth normally emerges when one is in despondency or in perilous situation when he wants to shed his cloak of guilt and nothing but disclosing the truth would dawn on him. It sometimes becomes so powerful that he is ready to face all consequences for clearing his heart.

F Thus from the aforesaid premise it has to be seen, whether on the facts and circumstances of this case the appellant's confession was voluntary or not? Learned counsel for the appellant has submitted the following three reasons for holding the same to be not voluntary:

(a) The confessional statement was made when the appellant was
G under hand cuffs;

(b) While recording the confession another police man in the room at some distance was present who was holding the chain of his hand cuffs; and

(c) Outside the room where his confession was recorded it was
H surrounded by armed guards.

No other, as a fact, threat, inducement or promise by any other word or deed is said to have been made to the appellant, in any other form nor it was contended at any stage of the proceedings culminating into his conviction. The only ground that the confessional statement was not voluntary are the three factual situations, as aforesaid. A

Whenever an accused challenges that his confessional statement is not voluntary, the initial burden is on the prosecution for that it has to prove that all requirements under Section 15 and Rule 15 under TADA Act and Rules are been complied with. Once this is done prosecution discharges its initial burden and then the burden shifts on the accused person. Then it is for him to prove through facts that the confessional statement was not made voluntarily. If such fact was pleaded and brought on record during trial the court must test its veracity, whether such fact constitutes to be such as to make his confessional statement not voluntarily made. Returning to the facts of the present case the prosecution has proved to the hilt the initial burden of compliance of both Section 15 and Rule 15 under the TADA Act and Rules. We may at the outset record that it is also not in dispute that the appellant was hand cuffed while confessional statement was recorded and there was another policeman with the chain of his handcuff at some distance in the room and there were armed guard outside the room, where confessional statement was recorded. This leaves us to consider the question, whether this set of situation could be construed to be such as to infer that the confessional statement recorded was not voluntary? In considering this we have to keep in mind the distinction between the TADA Act and the other criminal trial. While a confession recorded under the TADA Act before a police officer not below the rank of Superintendent of Police even under police custody is admissible but not under other criminal trials. Keeping an accused under police custody in what manner with what precautions is a matter for the police administration to decide. It is for them to decide what essential measures are to be taken in a given case for the purpose of security. What security, in which manner are all in the realm of administrative exigencies and would depend on the class of accused, his antecedents and other information etc. The security is also necessary for the police personnel keeping him in custody or other personnel of the police administration including the public at large. Thus what measure has to be taken is for the police administration to decide and if they feel greater security is required in a case of trial under the TADA Act, it is for them to decide accordingly. The preamble of the TADA Act itself reveals that this Act makes special provisions for the prevention of and forthwith keeping with terrorists and disruptive activities. In fact earlier TADA B C D E F G H

A Act of 1985 was repealed to bring in the present Act to strengthen the prosecution to bring to the books those involved under it without their filtering out, by bringing in more stringent measures under it. In this background, we do not find the handcuffing of the appellant or another police man being present in the room with the chain of his handcuff or armed guards present outside the room to be such to constitute that the appellant B confessional statement was not made voluntary. It has to be kept in mind that Section 15 and Rule 15 of the TADA Act and the Rules have taken full precaution to see that confessional statement is only recorded when he makes it voluntarily. First, confession could only be recorded by a police officer to the rank of Superintendent of Police or above. Such police officer has to C record in his own hand writing, he has to clearly tell such accused person that such confession made by him shall be used against him and if such police officer after questioning comes to the conclusion that it is not going to be voluntarily he shall not record the same. Keeping this in the background which is complied in the present case and keeping the administrative exigencies under which an accused is kept under handcuff with armed guards etc. which D may be for the antecedents activities of the appellant as terrorist, for the purpose of security, then this could in no way be constituted to be a threat or coercion to the accused for making his confessional statement. The policeman holding his chain of his handcuff was only a constable and the person recording his confession was of the rank of Superintendent of Police. E The Superintendent of Police conveyed confidence to the appellant and made it clear to the appellant as aforesaid. After all this, if the appellant was still ready and made his confessional statement, then merely presence of a constable a subordinate of Superintendent of Police, who was holding chain cannot be constituted to be such to be a threat which could induce him not to make any voluntary statement. Hence, we have no hesitation to hold that F the presence of a constable in a room could not in fact or law be constituted to be such to hold that such confessional statement was not made voluntarily. Mere handcuffing and presence of a policeman we fail to understand in what way could it be said to be a threat to the accused appellant. It is not the case that before making confessional statement any inducement, threat or promise G by any other word or deed was made to him by any person which resulted into his making the said confessional statement. Firstly, we find total absence of inducement, threat or promise in the present case as against the appellant and as we have said handcuffing, presence of a policeman holding chain of handcuff or even keeping armed guard outside the room which being parts of the security measure by itself cannot penetrate into the realm as to make H a confessional statement not to be voluntarily made.

For the aforesaid reasons and on the facts and circumstances of this case, we have no hesitation to hold that the confessional statement of the appellant is not only admissible but was voluntarily and truthfully made by him on which prosecution could rely for his conviction. Such confessional statement does not require any further corroboration. Before reliance could be placed on such confessional statement, even though voluntarily made, it has to be seen by the court whether it is truthfully made or not. However, in the present case we are not called upon nor is it challenged that confessional statement was not made truthfully. So for all these reasons we hold that the impugned judgment passed by the designated court was just and proper which does not require any interference by this Court. We confirm the conviction and sentence. The appeal is accordingly dismissed.

Before concluding we would like to record our conscientious feeling for the consideration by the legislature, if it deem fit and proper. Punishment to an accused in criminal jurisprudence is not merely to punish the wrong doer but also to strike warning to those who are in the same sphere of crime or to those intending to join in such crime. This punishment is also to reform such wrong doers not to commit such offence in future. The long procedure and the arduous journey of the prosecution to find the whole truth is achieved some time by turning on accused as approvers. This is by giving incentive to an accused to speak the truth without fear of conviction. Now turning to the confessional statement, since it comes from the core of 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 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.

In view of the finding, as aforesaid, we uphold the judgment and order passed by the Designated Court No. III and uphold the conviction of the appellant under the aforesaid Sections. The appeal is accordingly dismissed.

S.V.K. Appeal dismissed.