REPORTABLE

IN THE SUPREME COURT OF INDIA

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO(s). 889 OF 2007

ARUP BHUYAN **Appellant (s)**

VERSUS

STATE OF ASSAM **Respondent(s)**

O R D E R

Heard learned counsel for the parties.

This Appeal has been filed against the impugned judgment of the Designated Court, Assam at Guwahati dated 28.03.2007 passed in TADA Sessions Case No. 13 of 1991.

The facts have already been set out in the impugned judgment and hence we are not repeating the same here except wherever necessary.

The appellant is alleged to be a member of ULFA and the only material produced by the prosecution against the appellant is his alleged confessional statement made before the Superintendent of Police in which he is said to have identified the house of the deceased.

Confession to a police officer is inadmissible vide Section 25 of the Evidence Act, but it is admissible in TADA cases vide Section 15 of the Terrorist and Disruptive Activities (Prevention) Act, 1987.

Confession is a very weak kind of evidence. As is well known, the wide spread and rampant practice in the police in India is to use third degree methods for extracting confessions from the alleged accused. Hence, the courts have to be cautious in accepting confessions made to the police by the alleged accused.

Unfortunately, the police in our country are not trained in scientific investigation (as is the police in Western countries) nor are they provided the technical equipments for scientific investigation, hence to obtain a conviction they often rely on the easy short cut of procuring a confession under torture.

Torture is such a terrible thing that when a person is under torture he will confess to almost any crime. Even Joan of Arc confessed to be a witch under torture. Hence, where the prosecution case mainly rests on the confessional statement made to the police by the alleged accused, in the absence of corroborative material, the courts must be hesitant before they accept such extra-judicial confessional statements.

In the instant case, the prosecution case mainly relies on the alleged confessional statement of the appellant made before the Superintendent of Police, which is an

extra-judicial confession and there is absence of corroborative material. Therefore, we are of the opinion that it will not be safe to convict the accused on the basis of alleged confessional statement.

For the reasons stated above, we are in agreement with the impugned judgment so far as it has taken the view that the confessional statement in question cannot be acted upon as the sole basis for conviction of the appellant.

However, the TADA Court has convicted the appellant under Section 3(5) of the TADA which makes mere membership of a banned organisation criminal. Although the appellant has denied that he was a member of ULFA, which is a banned organisation. Even assuming he was a member of ULFA it has not been proved that he was an active member and not a mere passive member.

In State of Kerala Vs. Raneef, 2011 (1) SCALE 8, we have respectfully agreed with the U.S. Supreme Court decision in Elfbrandt Vs. Russell, 384 U.S. 17 (1966) which has rejected the doctrine of 'guilt by association'. Mere membership of a banned organisation will not incriminate a person unless he resorts to violence or incites people to violence or does an act intended to create disorder or disturbance of public peace by resort to

violence (See : also the Constitution Bench judgment of this Court in Kedar Nath Vs. State of Bihar, AIR 1962 SCC 955 para 26).

In Clarence Brandenburg Vs. State of Ohio, 395 U.S. 444 (1969) the U.S. Supreme Court went further and held that mere "advocacy or teaching the duty, necessity, or propriety" of violence as a means of accomplishing political or industrial reform, or publishing or circulating or displaying any book or paper containing such advocacy, or justifying the commission of violent acts with intent to exemplify, spread or advocate the propriety of the doctrines of criminal syndicalism, or to voluntarily assemble with a group formed "to teach or advocate the doctrines of criminal syndicalism" is not *per se* illegal. It will become illegal only if it incites to imminent lawless action. The statute under challenge was hence held to be unconstitutional being violative of the First and Fourteenth Amendments to the U.S. Constitution.

In United States Vs. Eugene Frank Robel, 389 U.S. 258, the U.S. Supreme Court held that a member of a communist organisation could not be regarded as doing an unlawful act by merely obtaining employment in a defence facility.

We respectfully agree with the above decisions, and are

of the opinion that they apply to India too, as our fundamental rights are similar to the Bill of Rights in the U.S. Constitution.

In our opinion, Section 3(5) cannot be read literally otherwise it will violate Articles 19 and 21 of the Constitution. It has to be read in the light of our observations made above. Hence, mere membership of a banned organisation will not make a person a criminal unless he resorts to violence or incites people to violence or creates public disorder by violence or incitement to violence.

Hence, the conviction of the appellant under Section 3(5) of the TADA is also not sustainable.

The impugned judgment of the Designated Court, Assam at Guwahati dated 28.03.2007 passed in TADA Sessions Case No. 13 of 1991 is set aside and the Appeal stands allowed.

By Order dated 29.10.2007 this Court had directed that the appellant be released on bail on his furnishing adequate security to the satisfaction of the trial court. Security furnished by the appellant in pursuance of Order dated 29.10.2007 shall stand discharged.

.....J.
(MARKANDEY KATJU)

.....J.
(GYAN SUDHA MISRA)

NEW DELHI;
FEBRUARY 03, 2011. :5: