

Akshardham Judgment – I

The Law at Work

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The Supreme Court judgment in the Akshardham temple attack case has acquitted six innocent men who were tortured and then made to suffer imprisonment. The Supreme Court has come down hard on the investigating agencies of Gujarat and the way in which the lower judiciary has functioned in this case. The apex court must take this forward and revisit the existing prosecutions under the Prevention of Terrorism Act and examine the Unlawful Activities (Prevention) Act which incorporates many of the POTA provisions.

Incredible India it certainly is. On the day that a majoritarian government led by luminaries who are no friends of democratic freedoms and civil liberties was voted in by one-third of the voters in the recent Lok Sabha elections, there was some cold comfort for those who would like to believe in the rule of law.

The Supreme Court in its order of 16 May struck half a blow for the rule of law when it ordered the acquittal of all the innocents framed in the Akshardham temple attack case.¹ Four of the six acquitted were released after being in prison for 11 years. Three of them, Adambhai Ajmeri, Abdul Qaiyum Muftisaab Mohamed Bhai and Chand Khan were under sentence of death since July 2006. The fourth, Mohammad Salim Hanif Sheikh, was serving a life imprisonment. The fifth, Abdullamiya Yasinmiya, was on bail after having been in prison for seven years of the 10-year sentence imposed on him by the trial court. The sixth, Altaf Malek, was out after having served his five-year sentence.

The Supreme Court in its judgment expressed itself in no uncertain terms about how innocents are framed and the shoddy nature of investigations, conveying its

anguish about the incompetence with which the investigating agencies conducted the investigation of the case of such a grievous nature, involving the integrity and security of the Nation. Instead of booking the real culprits responsible for taking so many precious lives, the police caught innocent people and got imposed the grievous charges against them which resulted in their conviction and subsequent sentencing (p 280, para 136).

It further declared,

Here, we intend to take note of the perversity in conducting this case at various stages, right from the investigation level to the granting of sanction by the state government to prosecute the accused persons under POTA, the conviction and awarding of sentence to the accused persons by the

Special Court (POTA) and confirmation of the same by the High Court. We, being the apex court cannot afford to sit with folded hands when such gross violation of fundamental rights and basic human rights of the citizens of this country were presented before us... (p 261, para 131).

Falling Short

And yet the reliefs it provided to the acquitted fell far short of what it loftily claimed. There was no court order granting monetary compensation or other restitution for those who had lost 11 years of their lives for a crime they did not commit. No orders were given for the prosecution of those who had held these men in illegal police custody, concealed evidence, fabricated evidence, and committed torture. Nor were there orders against elected and other public officials for dereliction of duty.

The Supreme Court saw the process adopted by the prosecution as flawed. It held the sanction granted as “void” and illustrative of, “clear non-application of mind by the Home Minister in granting sanction” (p 109, para 77). The home portfolio was held at that time by the then chief minister of Gujarat, Narendra Damodardas Modi. His minister of state for home was a worthy by the name of Amit Shah.

The apex court even held the confessional statements obtained under torture and duress as “highly contradictory and improbable in nature” (p 255, para 125).

The Supreme Court is conscious that Parliament has placed the judiciary and the citizen in a situation that borders on the theatre of the absurd. It states,

POTA was repealed in 2004. Yet, the trials, its implementation has entailed, are continuing till date. POTA was repealed for the gross violation of human rights it caused to the accused persons due to abuse of power by the police. This is an important aspect to be kept in mind while deciding this case and hence, it was pertinent to mention this in the beginning to say that we are wary of the abuse the provisions of this Act might bring... (p 97, para 90).

The Dramatis Personae

The initial investigation was done by V R Tolia of the Crime Branch, Gandhinagar, and later by K K Patel of the Anti-Terrorist Squad (ATS). It was later

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taken over by G L Singhal, Assistant Commissioner of Police (ACP), Crime Branch on 28 August 2003 (p 17, para 8). On the same day Ashfaq Bhavnagari (PW-50) “was interrogated, and he revealed the entire conspiracy as well as the role of A-1 [Malek] and A-3 [Sheikh] in committing the dastardly offences” (p 58, para 41).

Singhal was accused of torture by all the defendants. All six accused

in their retraction statements, complained of having been beaten up by ACP Singhal, V D Vanar and R I Patel, because of which they could not stand up on their feet. On denying their complicity in the Akshardham attack, they were threatened of being encountered. Each accused persons said that every day they were called either by Singhal, V D Vanar or by R I Patel and were forced to admit their complicity in the Akshardham attack (p 45, para 32).

When the accused persons were produced before the Special Court (POTA) on 5 November 2003 all of them

made an oral complaint of police atrocities during the police custody and also complained of having been in police custody for long time. According to each accused person, he was made to sign the confessional statement prepared by the police under coercion and duress and had not made the same of his own free will (p 46, para 32).

The retraction statement of the accused Ajmeri Suleman Adam says it all.

Then Singhal Sahib abused me and told that should agree to what they say. I should agree that I am the criminal of Akshardham carnage. I told them that I have never gone to Akshardgam (sic) nor have I seen it. Kindly do not involve me. He immediately called five or six persons and told me to have handcuffs and fetters. Vanar Saheb beat me on soles. Shri Singhal Saheb told me that I agree with the crime of Askhardham (sic), they shall not beat me and have some benefits. Then they beat me in such a way that I became unconscious and fell down.When I became conscious I was near Vanar Saheb office. I suffered much difficulty. I was weeping. It was night. At that time one constable came and told me that superior sahib was calling. I had no strength to walk or stand. I was caught and taken to Vanzara Saheb office. All four officers were present there. “They told me to agree the crime, otherwise I shall be encountered. But I did not believe. Then they brutally beat me. There was bleeding in back portion....They gave me currents. Then I told them, sir, have mercy on me. I am not culprit. Pardon me. Please don't make me criminal wrongly. I do not

know anything in this regard. They threatened me to harass me and my family members. Even though I have not committed any crime, they wanted to agree Akshardham crime” (p 231, para 115).

Singhal, who was also an accused in the Ishrat Jehan case was reinstated in service in the last week of May. Earlier, he was enlarged on bail by the court after the Central Bureau of Investigation (CBI) failed to charge sheet him within the mandatory 90-day period. Singhal also figured prominently in the Snoop-gate controversy. Clearly, both the governments of Gujarat and India had conveniently forgotten about Article 311 of the Constitution permitting them to effect summary dismissal of the official.

Second Lead: D G Vanzara

The defence brought out the role of D G Vanzara. It stated that there was

serious doubt about the manner in which the evidence was sought to be fabricated by police officer, D G Vanzara whose entrusting of the case to the Crime Branch on 28.08.2003 suddenly resulted in feverish activity, whereupon the accused persons were arrested and their confessional statements were recorded.

Vanzara was not produced as a prosecution witness. This was not surprising as he went public with his sense of hurt at being let down by his political gods. His cross-examination, had it taken place, would have proved most interesting. The apex court is scathing about the statements of the accomplices,

we fear that the story against the accused persons and its corroboration through the statements of accomplices is an act of concoction to make up a case against them. It was recorded in the statement of [ACP Singhal] that the information regarding PW-50 was given to him by D G Vanzara. However, D G Vanzara had not even been examined in this case and there is no information as to how he came to know about [Bhavnagari] after almost a year of the attack on Akshardham. This very important aspect of the lapse in investigation had been ignored by the courts below. The learned senior counsel for the accused persons have contended that there has been a delay of around a year from the time of the attack on Akshardham in recording the statements of the accomplices which shrouds the case of the prosecution.

We have to accept the contention of the learned senior counsel for the accused

persons in this regard as there is an inordinate delay in recording of the statements of the accomplices and this casts a grave suspicion on the reliability of the testimony of the accomplices (pp 182-83, para 96).

Failure of Lower Courts

The role of the lower courts was not a happy one. They failed in not considering the deposition of some brave doctors who deposed in favour of the accused pointing out that they “had complained of severe beating by the police prior to recording of the confessional statements” (p 65, para 48). As is expected in such situations the medical records such as the x-ray plates were missing from the file (p 65, para 48). It is distressing that the lower court and the high court did not take umbrage at the suppression of both evidence and documents by the prosecution.

The defence counsel in the Supreme Court drew attention to the confessional statements of the accused which “were recorded without sufficient time being given for reflection” and was thus in gross violation of the principle laid down by the apex court in a plethora of cases (p 67, para 49).

The attention of the apex court was also drawn to the failure of the lower courts,

to take into consideration the element of fear of further torture by the police, in the minds of the accused persons which was bound to be present, especially when their confessional statements were recorded by PW-78 [Sanjay Gadhvi, Deputy Commissioner of Police] in his office without them being assured of being sent to judicial custody immediately after making their statements (p 67, para 49).

The defence also drew the attention of the apex court to the fact that the confessions were retracted at the earliest available opportunity and that there had to be independent evidence corroborating the confessional statements if they had been retracted (p 71, para 51). The Supreme Court held that the evidence of the accomplices could not be used to corroborate the confessional statements of the accused persons in the absence of independent evidence. Moreover, it stated, “the delay of more than one year in recording their statements causes us

to disregard their evidence” (pp 188-89, para 97).

Two letters written in Urdu were allegedly found in the trouser pockets of the alleged militants who were killed during the Akshardham attack,

the post mortem report of the *fidayeens* stated that all their clothes were stained with blood and mud and all clothes bore multiple tears and holes due to perforation by bullets. In such a case, the fact that the letters remained clean, without any tear, soiling or stains of blood and soil is highly unnatural and improbable... (p 204, para 103).

The Supreme Court also chided the Gujarat High Court pointing out

we cannot accept the recording of the High Court that the secret behind the crease-free unsoiled and unstained letter lies in the divine philosophy of ‘Truth is stranger than

fiction ‘for this renowned epithet by the author Mark Twain comes with a caveat that says, ‘Truth is stranger than fiction. Fiction must make sense’ and rejected these letters as evidence (p 204, para 103).

It also discounted the prosecution’s contention that the car already in the possession of the Jammu and Kashmir police at the Special Operations Group camp was the car used to carry weapons from Jammu and Kashmir to Bareilly for carrying out the attack on Akshardham (p 222, para 111).

If the Akshardham judgment is to be taken forward the Supreme Court must be asked to revisit the tenability of all existing prosecutions under POTA. Moreover, its attention should be drawn to the fact that the amendments to the Unlawful Activities (Prevention) Act (UAPA) in

2008 incorporate many of the POTA provisions. Justice was served in this particular case by the extraordinary fortitude of the accused and their families and credit goes to the exemplary work of the defence lawyers in the lower court and the Supreme Court. Clearly, we rejoice in the acquittals in the Akshardham judgment by the Supreme Court but the bench, the bar and citizens need to ask for more whilst also doing more. All of us should emulate Oliver Twist and ask the courts and Parliament to please do some more.

NOTE

- ¹ *Adambhai Sulemanbhai Ajmeri & Ors Appellants vs State of Gujarat ...Respondent with criminal appeal No 45 of 2011*, <http://www.supremecourtindia.nic.in/outtoday/Crl.Appeal No 2295-2296of2010.pdf>