



Versus

State of Punjab

Respondent

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This appeal is directed against the judgment and order dated 12th December, 1992 passed by the Designated Court, which convicted the appellant under Section 302 read with Section 34 IPC.

According to the prosecution story, the appellant along with two assailants Naib Singh and Balbir Singh since deceased, committed the murder of one Harpal Singh at about 7.45 A.M. on the 26th January, 1992. Since the said two assailant died before filing of the charge sheet, the case proceeded only against the appellant under Sections 3 and 4 of Terrorist and Disruptive Activities (Prevention) Act, Section 302/34 IPC and under Sections 25/27/54/59 of the Arms Act. The Designated Court acquitted the appellant for the charge under Sections 3 and 4 of the TADA Act but convicted only under Section 302/34 IPC. As per the prosecution story, Puran Singh, complainant had three sons, Harpal Singh the deceased, Gurdev Singh and Jit Singh. His son Harpal Singh was active worker of CPI. At about 8 P.M. on 25th January, 1992 there was a knock at the outer door of the complainant house and the complainant saw two young persons, wrapped in warm clothes who asked the complainant to open the door as they wanted to meet his son Harpal Singh for getting employment for a girl. The complainant did not open the door and asked them to come next morning. On the next morning at about 7.45 a.m. two young persons again came wrapped in warm clothes. Detail description of their height and age was got recorded by the complainant, in the FIR. At that time Harpal Singh was on the first floor and younger son Jit Singh was standing by his side. On seeing Harpal Singh the said two youth climbed on the roof. Seeing this Harpal Singh started running but was followed by the said two persons who fired at him with their weapons. As a result of this Harpal Singh fell down and the said two assailants ran away. Harpal Singh later succumbed to his injuries. Learned counsel for the appellant Ms. Jaspreet Gogia submits that the appellant accused was neither named in the FIR nor in the complainants first statement recorded by Sh. Gujjan Singh, DSP investigating officer PW9. His name was introduced through complainants supplementary statement later. This supplementary statement records, the appellant also came along with the said two unknown assailants. There was no recovery of any arms from him. This supplementary statement is said to have been recorded by one Hakam Singh, PW 4, ASI on 26.1.1992. This led to the arrest of the accused. The prosecution examined ten witnesses in all. The accused denied his involvement in the case through his statement under Section 313 Cr.P.C. He has stated, he has been implicated on account of dispute with the complainant, in respect of ancestral properties. The Designated Court acquitted the appellant under Sections 3 and 4 of the TADA Act but convicted him under Section 302 read with Section 34 IPC to undergo RI for life imprisonment with fine of Rs. 1,000/-. Against this the present appeal has been preferred by the appellant.

The first striking feature which we find is the recording in the FIR which describes in detail about the two assailants including their age, height etc. There is no

reference in it about the present appellant. In fact, presence of any third person is not recorded. Similar is the position when the statement of the complainant, PW 2 is recorded by the SHO Gujjan Singh, PW 9. We have examined the deposition of PW 4 Hakkam Singh, Inspector, Police Line Bhatinda who recorded the said supplementary statement of the complainant Puran Singh. This statement is said to have been recorded on the same date, namely, on 26th January, 1992. It is not in dispute on this date, SHO Gujjan Singh PW 9 was investigating this case. PW 4 was neither the IO nor was authorised as such to record that statement. This witness admits that SHO Gujjan Singh, did not entrust the investigation to him on 26.1.1992. He further admits, he had no knowledge upto what date SHO Gujjan Singh, conducted the investigation. If this be the fact, how he recorded this supplementary statement which is the foundation of introducing the appellant into this crime is not explained. He further admits, whenever an investigation of any case is entrusted to some other police officer, the case diary is issued and no case diary was issued to him on 26.1.1992, entrusting the investigation. He further deposes, investigation was entrusted to him only on 24.2.1992. It is also significant to note that PW 7 Teja Singh, a retired Inspector of Police has stated that he prepared the final report against the accused Chamkaur Singh. The Investigating Officer, Gujjan Singh, PW 9, has deposed that he recorded the statement of the complainant Puran Singh and what was told to him was read over to the complainant before taking his thumb mark. Both in the FIR and in his statement presence of the appellant is not to be found. On the contrary commission of crime is disclosed clearly to be by two unknown assailants. With reference to the supplementary statement he voluntarily stated that it was recorded by Hakkam Singh, PW 4, but he cannot tell the date of such recording. He further admits he did not go through the supplementary statement and so long as investigation remained with him he knew the accused were two unknown assailants.

In view of the said depositions of the prosecution witnesses, presence of the appellant along with the said two assailants at the site of the crime cannot be believed. The introduction of the accused seems to be after thought when his name was introduced through the said supplementary statement. How and in what capacity PW 4 recorded the statement of the complainant on the same day of the crime when he was neither the Investigating Officer nor the case was entrusted to him. After way laid all the norms of prosecuting procedure if any name is introduced how can any credence be given to it, unless some intrinsic evidence is on the record. Even the then Investigating Officer PW 9 did not give any credence to this supplementary statement. The core reason for the chaos in the society is the indiscipline. Out-burst of crime is resultant effect of indiscipline in the social order. Terrorism is indiscipline of the highest order. In order to curb the crime, discipline in police force, the prosecuting agency has to be of the highest order. Before charging any person, it must be seen by the prosecuting agencies that innocent persons are not brought in unless there exists any prima facie evidence. The prosecuting authority performs most sacred duty by bringing to the book the violators of the law. Performance of their duty dispassionately brings peace and happiness in the society. Any infirmity in its performance or reactionary approach, vengeance of any form or malafides, brings indiscipline in it. If any indiscipline creeps in the police force, the societal disorder take a long leap. According to PW 2 the complainant, the father of the deceased, three terrorists came to the house during the night on 25.1.1992. He could not identify the assailants during the night. Though he deposes, firing was made by three assailants but there is no explanation why his name or his act was not recorded both

in the FIR and in his statement recorded by Investigating Officer, PW9. According to his deposition, his son identified the appellant, If this is a fact, there possibly could be no reason for the exclusion of his name, both in the FIR and his first statement recorded by PW 9. On the one hand, the prosecution story reveals that the two assailants were unknown while in his deposition he deposes that accused were members of our family . This contradiction gives death nail to the prosecution story. If they were members of his family, why they were not named?

After hearing learned counsel for the parties, and on scrutiny of the evidence, some of which we have referred to above, it is clear that the prosecution has failed to prove the guilt of the appellant beyond all reasonable doubt. The Designated court has not taken into consideration the aforesaid incongruities. On this evidence conviction of the appellant cannot be upheld. Accordingly, the order of the Designated Court is not sustainable in law. Thus the conviction and sentence of the appellant is set aside, the appeal is allowed, and the accused be set at liberty forthwith unless required in any other case.

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.....J.  
(A.P. Misra)

New Delhi.  
21st August, 2001

.....J.  
(P. Venkatarama Reddi)