

S U P R E M E C O U R T O F I N D I A
RECORD OF PROCEEDINGS

CrI.A.No. 595/2000

Harjit Singh & Anr.

Appellants

VERSUS

State of Punjab

Respondent

(With office report)

Date : 30.11.2000. This appeal was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE K.T.THOMAS
HON'BLE MR. JUSTICE U.C.BANERJEE
HON'BLE MR. JUSTICE R.P.SETHI

For Appellant (s) Mr. Vidya Dhar Gaur,adv.

For Respondent (s) Mr. Rajiv Dutta,Sr.Adv.
Mr. Rajiv Kumar Sharma,adv.

UPON hearing counsel Court made the following
ORDER

.....L.....I.....T.....T.....T.....T.....T.....T.....T.....J
.SP2

Appeal is disposed of.

.SP1

(Suman Wadhwa) (H.K.Bhatia)
PA to Adl.Regr. Court Master

Signed order is placed on the file.

.PA
.PL55

IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO. 595 OF 2000@@
CCCCCCCCCCCCCCCCCCCCCCCCCCCCCCCCCCCC

Harjit Singh & Anr.

... Appellants

vs.

State of Punjab

... Respondent

O R D E R@@
CCCCCCCCCCCC

.....L.....I.....T.....T.....T.....T.....T.....T.....T.J
.SP2

There are two appellants who were convicted by a Designated Court established under Terrorists and Disruptive Activities (Prevention) Act, 1987 (for short 'TADA') for offence under Sec.302 read with Sec.34 and also the offence under Sec.3 of TADA. Both of them were sentenced to imprisonment for life under each count. This appeal has been filed by them as of right under Sec.19 of TADA. The incident described by the prosecution is one of the series of the terrorists' acts committed in Punjab and perhaps this could be during the last stage when terrorism was waning out.

The deceased Avtar Singh and his wife Nachhattar Kaur were living in their farm house at Lachhru Kalan. One of their sons Harvinder Singh (PW.5) was a personnel of Indian Army and he would have gone to be with his parents

-2-

for furlough. The incident happened at 9.00 p.m. on 9.3.1995 when the deceased was shot dead in front of his own house.

The prosecution version of the incident is this: The two appellants were concealing themselves from being caught by the police as the police force was on the prowl targeting them also. Appellants used to visit the house of the deceased and PW.6 Nachhaattar Kaur was giving them food during night time on more occasions than one. But at a particular stage PW.6 felt that it would be dangerous to her and the family for sheltering the appellants who were now targeted by the police in the prowling. So, she suggested to the appellants not to visit there any more particularly since her husband did not approve of the appellants taking food from that house.

On the night in question appellants reached the house of the deceased who was then standing just outside their building. One of the appellants caught hold of the deceased and the other fired a lethal fire arm (it is described differently as AK 47 or AK 56). Frightened by the aforesaid scene PW.6 huddled her children inside the room and closed the door, lest, they too may be targeted by the assailants. Deceased who received bullet injuries fell down and would have breathed his last then and there.

-3-

FIR was lodged by deceased's son PW.5 - Harvinder Singh. A.1 - Harjit Singh was arrested on 4.5.1995 and A.2 - Surinder Singh was arrested on 19.5.1995. A fire arm described as AK.47 was recovered from the possession of A.1 - Harjit Singh alongwith 17 cartridges.

When a ballistic expert examined the said fire arm alongwith the bullets recovered from the body of the deceased and the empties collected from the scene of occurrence, he sent up his report holding that the bullets would have been fired from the said AK.47 (or AK.56 as the case may be) which was recovered from the first accused.

We have absolutely no doubt that the deceased was killed by certain assailant or assailents on the night of 9.3.1995 in front of his house. No endeavour on the part of the defence could have created any doubt in our mind about that stark reality. Hence, the task of the prosecution and the court would bog down to the limited question as to whether the assailants were the appellants in this case.

There can be no doubt that PW.6 the widow of the deceased who was admittedly one of the inmates of the house could be the most natural witness who had witnessed the occurrence. She said that she saw both the assailants who were quite acquainted with her, reached the place at 9.00 p.m. and did the act as narrated above. PW.5-Harvinder

-4-

Singh also said that the assailants were the appellants and he identified them. But when PW.5 went to the police station and lodged the FIR he did not know the names of the assailants as his mother alone knew them earlier. It is the case of the prosecution that the mother felt unconscious soon after his father was shot dead and before she regained consciousness. PW5 proceeded to the police station and lodged the FIR. The FIR did not contain the names or other descriptions of the assailants. The names of the appellants reached the records of the investigation for the first time when PW.6 Nachhattar Kaur was interrogated by the police.

Learned counsel Mr. Vidya Dhar Gaur for the defence of the accused raised a contention, seemingly forceful, that non-mentioning of the names of the assailants in the FIR was solely because none in the house of the deceased knew who the assailants were. According to the learned counsel the unconsciousness pictured as for PW.6 is only a cover up for the initial inability to find out as to who the assailants were. We examined the said contention with all the anxiety which it required. PW.6 the wife of the deceased felt unconscious as a consequence of the unforeseen calamity befallen her which no body can dub as improbable on the fact situation. We must remember

-5-

that it was right in her presence that the life of her healthy husband who was also her bread winner was snuffed in a trice, an event which she would never have even visualised earlier any lady of her situation could fall in a fit. Therefore we are not disposed to reject her version that the story of her falling unconscious when her son went to the police station for lodging the FIR, was a concocted one.

Learned counsel next contended that the case of PW.6 that she knew the assailants earlier could not be true because she said in her evidence that when the assailants came to the scene of occurrence one of the assailants asked the others by pointing to the deceased whether it was Avtar Singh. According to the learned counsel the said conduct would indicate that assailants were not acquainted to the family of the deceased. That alone is not enough to dispel the version of PW.6 because the assailants would have seen one more stranger in the house i.e. PW.5 - Harvinder Singh who had just returned home for a furlough and they would have wanted to ensure themselves that they should shoot only the proper target and not any wrong man.

Another point highlighted by the learned counsel is that when the deceased was targeted PW.6 had closed down the door of the house in order to prevent the assailants

attacking the rest of the inmates of the house and if that be so it was not possible for PW.6 to have seen what happened thereafter. There is force in the said contention and therefore we are also unable to pin-point as to who among the assailants would have given the fatal shot to the deceased.

In spite of that aspect, we have to conclude that the prosecution has proved beyond reasonable doubt that the two appellants reached the house of the deceased with the object of finishing Avtar Singh. One of them used the weapon and fired at him while the other caught hold of the victim. So both of them could be convicted only with the help of Sec.34 of the IPC as the offence of murder by itself cannot be tagged with one of them.

However we are unable to sustain the conviction for the offence under Sec.3 of TADA as there is no acceptable evidence to prove that the appellants have perpetrated the above crime not merely for taking vengeance towards the deceased but for striking terror among the people. This Court has held in State vs. Nalini & Ors. [(1999) 5 SCC 253] that the object of the act must be to strike terror for constituting it a terrorists' act and it is not enough that terror has been struck merely as a consequence of the act done by them. That apart, prosecution, unfortunately,

did not prove that the weapon allegedly possessed by A.1-Harjit Singh was actually recovered from his possession. One Ram Saran was cited as a witness to prove the said fact. We have noticed from the minutes of the proceedings that the said witness was given up. We do not know for what purpose he was given up, but the fact remains that he has given up.

In the result we confirm the conviction passed on the appellants for the offence under Sec.302 read with Sec.34 of the IPC and also the sentence passed on them under that count. However, we set aside the conviction and sentence passed on them under Sec.302 of the TADA.

The Appeal is disposed of accordingly.

.SP1

.....J.
(K.T. Thomas)

.....J.
(U.C. Banerjee)

New Delhi;J.
November 30, 2000. (R.P.Sethi)