

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

CRIMINAL APPEAL No. 140 of 2001@@
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State of Haryana ..Appellant

Vs.

Kartar Chand & Ors. ..Respondents
(With Appln.(s) for exemption from filing O.T. and office
report)

With
Crl.A. 141/2001(S.IIA), Crl.A. No. 185/2001 (S.IIA)
(With Appln.(s) for stay and issuance of non-bailable war. of
arrest)
Crl.A. 127/2001(S.IIA)
(With Appln.(s) for ex-Parte stay and issuance of non-bailable war.
of arrest)

Date : 06/11/2001 This/these Petition(s) was/were called on for
hearing today.

CORAM :

HON'BLE MR. JUSTICE K.T. THOMAS
HON'BLE MR. JUSTICE S.N. PHUKAN
HON'BLE MR. JUSTICE Y.K. SABHARWAL

For Appellant Mr. Ashok K Srivastava,Sr.Adv.
Mr. KP Singh,Adv.
Mr. DS Nagar,Adv.
Mrs. Raj Rani Dhanda,Adv.
Mr. JP Dhanda, Adv.

For Respondent Ms. Jaspreet Gogia,Adv.

UPON hearing counsel the Court made the following
O R D E R

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

.SP2
Criminal Appeal No. 140 of 2001@@
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Appeal is dismissed in terms of the signed order.
Criminal Appeal Nos. 141, 185, 127 of 2001@@
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List tomorrow.

.SP1

(N.K. Goel) (H.K. Bhatia)
Court Master Court Master
(Signed order is placed on the file)

IN THE SUPREME COURT OF INDIA

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL No. 140 of 2001@@
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State of Haryana

..Appellant

Vs.

Kartar Chand & Ors.

..Respondents

O R D E R@@
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This is an appeal under Section 19 of the Terrorist and Disruptive Activities (Prevention) Act, 1987 (TADA) against acquittal of three persons. The prosecution case is that those three persons along with one Balbir Singh went to the house of deceased Bakshish Singh during the dead of the night on 11th March, 1992 (around 1.00 a.m.) and decoyed Bakshish Singh, took him to the house of his father Malook Singh (PW 6) and right in front of his father Balbir Singh shot him and that deceased died instantaneously. We are told that the killer Balbir Singh got himself involved later in an encounter and died and thus he was not available for trial.

The Designated Court found that the testimony of the three witnesses who identified the three respondents as persons who accompanied Balbir Singh cannot be relied on as they have not seen these accused on any day prior to the night of occurrence.

..2/-

:2:

Mr. Ashok Srivastava, learned senior counsel appearing for the State of Haryana contended that the evidence of PW6 (Malook Singh - father of the deceased), PW7 (Dilbag Singh) and PW8 (Sukhvinder Kaur) in the court could be relied on. What is the assurance to the court that they have correctly identified the three respondents as the assailants who accompanied Balbir Singh? The time was midnight, and they claim to have seen the three respondents in that night. The three witnesses admitted that they have never seen these three persons on any day prior to the night in question. They also said that they had not seen these persons in any test identification (T.I.) parade because no such parade was conducted. Learned senior counsel tried to salvage the situation by saying that the T.I. parade was not conducted due to the non-cooperation of the accused. The investigating agency, which failed to arrange the T.I. parade merely on the excuse that the accused did not agree to participate, cannot claim any credit for the same, for, the cooperation of the accused is not always available for any investigation for completing their part. A T.I. parade was absolutely necessary on the fact situation of this case, and its absence along with the absence of other assuring circumstances have

rendered the testimony of the eye-witnesses (that these accused were the co-assailants of Balbir Singh) not a very safe basis to convict the respondents.

..3/-

:3:

Though the case was tried under TADA no attempt was made by the prosecution to let in evidence under Section 15 of the TADA. We do not know why they could not let in any evidence under Section 15 of TADA. The said deficiency had only impaired the already deficient structure of the prosecution case as against these three persons.

In this appeal, against acquittal, we do not find any scope for interference on account of aforesaid infirmities. Hence the appeal is dismissed.

.SP1

.....J.@@
BB
(K.T. THOMAS)@@
BB

.....J.@@
BB
(S.N. PHUKAN)@@
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.....J.@@
BB
(Y.K. SABHARWAL)@@
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NEW DELHI@@
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NOVEMBER 6, 2001 @@
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