

PETITIONER:
SARWAN SINGH

Vs.

RESPONDENT:
STATE OF PUNJAB

DATE OF JUDGMENT: 26/09/1996

BENCH:
KURDUKAR S.P. (J)
BENCH:
KURDUKAR S.P. (J)
MUKHERJEE M.K. (J)

ACT:

HEADNOTE:

JUDGMENT:

J U D G M E N T

S.P. KURDUKAR, J.

This appeal under Section 19 of the Terrorist and Disruptive Activities (Prevention) Act, 1987 (for short 'TADA') is filed by the appellant accused challenging the order of conviction and sentence passed by the Designated Court, Amritsar, on 18th May, 1993, holding the appellant guilty for offences punishable under Section 302/34, 201 of the Indian Penal Code and Section 3 of TADA.

2. Briefly stated the prosecution case is as under:- Swarn Singh (since deceased) was the real brother of Sohan Singh (PW 4), Sarwan Singh (appellant) and Karan Singh, Sohan Singh was issue less and was residing with the deceased in his house. Appellant was residing separately. Their houses were adjacent to each other and separated by a common wall. The deceased was staying in his house with his wife Pritam Kaur (PW 3), son Balwant Singh (since deceased) and Sohan Singh (pw 4).

It is alleged by the prosecution that on 3rd April, 1991 at about 8.00 p.m. Pritam Kaur (PW 3) was sitting in her house alongwith her husband Swarn Singh, son Balwant Singh and Sohan Singh (PW 4) when two persons whom she could not identify came in her courtyard after scaling the compound wall, They were armed with deadly weapons. An electric bulb was burning in her house. Two unidentified persons then called her husband Swarn Singh and son Balwant Singh to come out of the room. Suddenly, they fired at her husband Swarn Singh and son Balwant Singh. Both of them died on the spot. At the same time, one of the assailants also died in the courtyard. The other assailant called the appellant and told him that his companion had been killed and he was to be carried on gharuka belonging to Balwant Singh. The assailant threatened the inmates not to raise any alarm and if they did, they would be shot dead. It is the case of the prosecution that the assailant and the appellant thereafter carried the dead body of the co-accused on the said gharuka. The appellant drove the said gharuka.

3. It is further alleged by the prosecution that the appellant and other assailants caused the deaths of her husband Swarn Singh and son Balwant Singh. Since it was the night time, she was afraid to go to the police station to lodge a complaint. However, on 4th April, 1991 at about 9.30 a.m. Pritam kaur (PW 3) lodged the FIR (Ex. Pc). After registering the offence, the police party left for the village for investigation.

4. During investigation after drawing the inquest panchanamas on two dead bodies, they were sent for post mortem examination. SI Balkar Singh, (PW 8) SHO, Police Station, Sirhali, thereafter carried out the necessary investigation. On 2nd May, 1991, the appellant came to be arrested while coming from the side of the village Mohanpura on gharuka which was also then seized as it bore the name of Balwant Singh inscribed on it. During interrogation of the appellant, he showed the place where the dead body was cremated. After completing the investigation, a charge sheet came to be filed against the appellant for the offences mentioned hereinabove.

5. The appellant denied the charge and claimed to be tried. According to him, he has been falsely implicated in the present crime due to strained relations between him and Sohan Singh. He prayed that he be acquitted.

6. The prosecution, in order to, bring home the guilt of the appellant examined eight witnesses, of whom Pritam Kaur (PW 3) and Sohan Singh (PW 4) are the eye witnesses to the occurrence. SI Balkar Singh (PW 8) is the Investigating Officer. Dr Paramjit Singh (PW 5) is the medical officer who conducted the post mortem examination on the dead bodies of Swarn Singh and Balwant Singh. The appellant in his defence examined Joginder Singh (DW 1) and Gian Singh (DW 2).

7. The Learned judge of Designated Court on appreciation of oral and documentary evidence on record vide his impugned judgment and order convicted the appellant under Section 302/34 and 201 of the Indian Penal Code and on first count, sentenced him to suffer imprisonment for life and a fine of Rs. 500/-; in default of payment of fine, further RI for two months. On second count, RI for seven years and fine of Rs. 200/-; in default of payment of fine, further RI for one month. The Designated Court also found the appellant guilty under Section 3 of TADA and sentenced him to suffer RI for five years and to pay a fine of Rs. 200/-; in default of payment of fine further RI for two months. The substantive sentences were ordered to run concurrently. It is this judgment and order which is the subject matter of challenge in this appeal.

8. At the outset, it may be stated that the Learned Counsel for the appellant did not and could not dispute the fact that Swarn Singh and Balwant Singh died homicidal deaths. The evidence of Dr. Paramjit Singh (PW 5) who held the autopsy on the two dead bodies noted as many as four lacerated wounds on the dead body of Swarn Singh and two lacerated wounds on the dead body of Balwant Singh. He further stated that these injuries were ante mortem and caused due to fire arm. They were sufficient in the ordinary course of nature to cause the death of both the victims. We, therefore, unhesitatingly hold that Swarn Singh and Balwant Singh died homicidal deaths in an incident which took place in the night of 3rd April, 1991.

9. Coming to the complicity of the appellant (accused) and co-accused (absconding), the prosecution case mainly rested on the evidence of Pritam Kaur (PW 3) and Sohan Singh, (PW 4). Mr. R.C. Verma, the Learned Counsel appearing in support of this appeal urged that both these eye witnesses did not

state in their evidence that the appellant was a party to the preparation of assault or infact present and participated in the firing. He urged that the appellant is convicted with the aid of Section 34 IPC for the substantive offence punishable under Section 302 IPC, however, the evidence on record does not justify the conviction. It is the case of the prosecution that tow unidentified assailants came from the side of the house of the accused by scaling the compound wall and thereafter opened the fire on Swarn Singh and Balwant Singh. One of the unidentified assailants gave a call to the appellant who than came to the courtyard of the deceased. But at the time, the firing was stopped and three persons were already killed. In the facts and circumstances of the case, therefore, Mr. Verma, urged that the accused cannot be convicted with the aid of Section 34 IPC for the substantive offence punishable under Section 302 IPC.

10. Mr. Yadav, the Learned Counsel appearing for the State of Punjab supported the impugned judgment.

11. As stated earlier, the appellant has been convicted with the aid of Section 34 IPC and, therefore, it is necessary to find out as to whether the appellant shared a common intention to commit the murder of either Swarn Singh or Balwant Singh.

12. Pritam Kaur (PW 3) who is the widow of Swarn Singh (since deceased) in her evidence has stated that at about 8.00 p.m. on 3rd April, 1991, when she, Swarn Singh and Balvinder Singh were sitting in their room, the unidentified assailants came in their courtyard by scaling the compound wall and called her husband Swarn Singh and son Balwant Singh, who came out of the room. These two assailants suddenly fired at her husband and son as a result of which they died on the spot. One the assailant, namely, Narvail Singh also died in her courtyard. Balvinder Singh (absconding accused) then called the appellant and told him that his companion was shot dead and he was to be carried on gharuka of Balwant Singh. The appellant then came to her courtyard and threatened her and Sohan Singh (PW 4) not to raise any alarm and keep quiet otherwise they would be killed. The appellant and absconding co-accused carried the dead body of Narvail Singh on Gharuka belonging to her son. She further stated that the appellant was not on talking terms with them as he suspected that Sohan Singh (PW 4) had given his share in the lands to Swarn Singh and Balwant Singh (since deceased).

13. Sohan Singh (PW 4) who is another eye witness to the occurrence stated that on 3rd April, 1991, at about 8.00 p.m., tow assailants i.e. Narvail Singh (since deceased) and Balvinder Singh (the absconding accused) came into the courtyard and asked Swarn Singh and his son Balwant Singh to come out of the house. Suddenly, the deceased Narvail Singh and absconding accused fired at Swarn Singh and Balwant Singh as a result thereof they died on the spot. He further stated that Balvinder Singh Butto called the appellant and told him that his companion was killed and he was to be carried on a gharuka. The appellant then came to his courtyard and thereafter they carried the dead body of Narvail Singh on gharuka. The appellant then warned them not to disclose the incident to anybody otherwise they would meet the same fate.

14. This is the only direct evidence led by the prosecution to prove the complicity of the appellant in the present crime. Now, the question that needs to be considered in this appeal is as to whether the above evidence is sufficient to uphold the conviction of the appellant with the aid of

Section 34 of the Indian Penal Code for causing two murders? The evidence of Pritam Kaur (PW 3) and Sohan Singh (PW 4) is only to the effect that two accused, namely, Narvail Singh (since deceased) and Balvinder Singh (absconding) came from the house of the appellant into their courtyard by scaling the compound wall and thereafter they opened fire in which Swaran Singh and Balwant Singh were killed. It is not the case of either of the eye witness that the appellant had participated in the firing at Swaran Singh and Balwant. The prosecution has led no evidence to show that these two accused and the appellant shared a common intention to commit the murders when they came from the house of the appellant by scaling the compound wall. Admittedly, the appellant was not present at the time when the incident took place, but positive evidence on the record is that he came in the courtyard of Pritam Kaur (PW 3) when Balvinder Singh, the absconding accused told him (appellant) that his companion had been killed and he was to be carried on gharuka. The only circumstance that could be said to have been proved by the prosecution against the appellant is that he and Balvinder Singh, the absconding accused head threatened both the eye witnesses not to disclose this incident to anybody otherwise they would be done to death. This evidence, in our opinion, is not sufficient to hold the appellant guilty for the offence of two murders with the aid of Section 34 of the Indian Penal Code. There is no evidence on the record to show that the appellant had any serious dispute with Sohan Singh (PW 4) or Swarn Singh (since deceased).

15. There is also another important circumstance which goes against the prosecution, viz, that both these witnesses have failed to account as to how Narvail Singh, the other co-accused found dead in their courtyard. It is not the prosecution case that Balvinder Singh, the absconding accused had fired at Narvail Singh and as a result thereof, he died. No empty was recovered from the place where Narvail Singh was shot dead. Both these eye witnesses, however, stated that accused persons took away the dead body of Narvail Singh. They also took away with them their weapons. The prosecution, in our opinion, had not unfolded the entire true story before the Court. This is the serious lacuna in the prosecution case and, in our opinion, in the absence of any satisfactory explanation, as regards the cause of death of Narvail Singh, the possibility of inmates of the house opening a fire on Narvail Singh could not be ruled out.

16. Coming to the conviction of the appellant under Section 201 of the Indian Penal Code, we are of the opinion that the same is unsustainable because both the prosecution witnesses on this issue have turned hostile. The only evidence on record is of Pritam Kaur (PW 3) and Sohan Singh (PW 4) to the effect that the appellant and Balvinder Singh carried the dead body of Narvail Singh (co-accused) on a gharuka. It is, therefore, not possible to sustain the conviction of the appellant under Section 201 of the Indian Penal Code.

17. The appellant was also convicted under Section 3 of TADA. In our opinion, there is no material on record to sustain the said conviction.

18. After considering the oral and documentary evidence on record, we are of the opinion that the conviction of the appellant under Section 302 read with Section 34 and under Section 201 of the Indian Penal Code as also under Section 3 of TADA is unsustainable and accordingly, the same is quashed and set aside.

19. In the result, the appeal is allowed. The impugned judgment and order of conviction and sentence against the

appellant is quashed and set aside and the appellant is directed to be set at liberty forthwith, if not required in any other case. If the appellant is on bail, his bailbond to stand cancelled.

JUDIS