

PETITIONER:
DARSHAN SINGH & ORS.

Vs.

RESPONDENT:
STATE OF HARYANA

DATE OF JUDGMENT: 30/08/1996

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

CITATION:
1996 SCALE (6)263

ACT:

HEADNOTE:

JUDGMENT:

J U D G M E N T

M.K. MUKHERJEE. L.

These two appeals have been heard together as they stem from related incidents and this judgment will dispose of both of them. Facts leading to these appeals and relevant for their disposal are as under.

2. Teja Singh (Since deceased was a resident of village Manakpur under Fatehabad Police Station where he used to live with his family which included his brother Harnek Singh (P.W.7) and his (p.w.7 s) son Hardev Singh (P.W.8). In front of their house lived appellants Jaswant Singh and Bikar Singh, who are the sons of Inder Singh. About a year before the incidents with which we are concerned in these appeals, an unrelenting quarrel started between Harnek Singh on the one regarding the use of the Public passage in between their houses which compelled the local police to initiate security proceedings under Section 107 Cr.P.C against both the parties.

3. On October 27, 1986, Harnek Singh, Teja Singh and Hardev Singh had gone to Fatehabad to attend Court as the security proceeding instituted against them was fixed for hearing on that day. After attending Court they came to the bus stand to catch the bus which was to leave for their village at 2.45 P.M. On boarding the bus they found the appellants Jaswant Singh and Bikar Singh sitting inside. On the way when the bus stopped at Banwalli, appellants Darshan Singh, son of Jaswant Singh, and Dilbag Singh, son of Bikar Singh, also boarded in. When the bus reached their destination at Manakpur bus stand at 3.45 P.M. Teja Singh alighted therefrom through the front door and so did Jaswant Singh, Darshan Singh, Bikar Singh and Dilbag Singh. Harnek Singh and Hardev Singh however alighted through the rear door. On coming out of the bus Harnek Singh and Hardev Singh found appellant Dara Singh, another son of Jaswant Singh, standing there. They however along with Teja Singh proceeded towards their village abadi. At that time Darshan

Singh, who was about two paces behind them, took out a pistol from the pocket of his trousers and fired a shot on the back of the shoulder of Teja Singh. On being so hit Teja Singh started running. Darshan Singh, Bikar Singh and Jaswant Singh chased him and ultimately succeeded in surrounding him. Darshan Singh then fired another shot which hit on the right side of the chest of Teja Singh. Teja Singh fell down by the side of the road near a pond. While he was so lying Dara Singh and Dilbag Singh hacked him with gandhalas. Thereafter all the five appellants ran away towards their fields. Harnek Singh and Hardev Singh then came near Teja Singh and found him dead. Leaving Hardev Singh near the dead body Harnek Singh left for Fatehabad Police Station to lodge a report. On the way Harnek Singh met S.I. Shiv Dayal (P.W.9) at the bus stand, where he was on patrol duty, and reported the incident to him. After recording his statement (Ext. PP), S.I. Shiv Dayal sent it to the Police Station for registration of case and took up investigation.

4. S.I. Shiv Dayal then went to the spot, held an inquest over the dead body of Teja Singh and forwarded it for post-mortem examination. Later in the night In the night Inspector Jai Narain (P.W.15) Station House Officer of Fatehabad Police Station went to the spot and took over investigation of the case from S.I. Shiv Dayal. He however could not make proper spot inspection as it was late in the night and therefore with in search of the appellants. On the following morning he went to the spot again, prepared a site plan and seized some blood stained earth from the place where he had found the dead body of Teja Singh. He also recovered a .12 bore empty cartridge which he packeted and sealed. In course of the investigation he received one sealed parcel containing pellets and wads from the doctor who had extracted them from inside the body of Teja Singh at the time of post-mortem. He arrested Dara Singh and Dilbag Singh and pursuant to the disclosure statements made by them recovered two gadhalas. He also interrogated appellant Darshan Singh and pursuant to his statement recovered a country-made pistol of .12 bore (Ex.P.15) on November 12, 1986 which he packeted and sealed. The seized pistol, empty cartridge, pellets and wads were sent by him to Forensic Science laboratory for examination and report. On completion of investigation Inspector Jai Narayan forwarded a charge-sheet against all the accused persons under Sections 148 and 302/149 IPC on the aforesaid by him against Darshan Singh under Section 25 of the Arms Act read with Section 6 (1) of the Terrorist and Disruptive Activities (Prevention) Act, 1985 ('TADA' for short) for having been found in unlawful possession of a pistol on November 12, 1986. While the former charge-sheet gave rise to Criminal Case No 1.T.C. the other to Criminal Case No.2.T.C., both of which were separately tried by the Additional Judge, Designated Court, Bhiwani.

5. At the Commencement of the trial of case No.1 T.C. the learned judge framed charges under Sections 148 and 302 IPC and Section 27 of the Arms Act, 1959 read with Sections 148 and 149/302 IPC against the other four appellant. In this trial the learned Judge recorded an order of conviction and sentence against the five appellants in respect of all the above charges. The other trial also ended in conviction of the appellant Darshan Singh under Section 25 of the Arms Act, 1959 read with Section 6 (1) of TADA. Against the conviction and sentence recorded in the first trial the five appellants have jointly preferred Criminal Appeal no 405 of 1989; and the other appeal (Criminal Appeal no 401 of 1989)

has been filed by the appellant Darshan Singh against his conviction and sentence recorded in the other trial.

6. To Prove the above two cases the prosecution examined a number of witnesses besides placing on record the evidence of some formal witnesses. Of the witnesses examined Harnek Singh (P.W.7) and his son Hardev Singh (P.W.8) figured as eye-witnesses. Of the other witnesses Kanwar Singh (P.W.11), Karnail Singh (P.W.12) and Niranjana Singh (P.W.14) were examined by the prosecution to prove the statements made by the three appellants, namely, Darshan Singh, Dilbag Singh and Dara Singh and the discovery of weapons pursuant thereto. The other witnesses who testified for the prosecution were Dr. S.P. Menani (P.W.1), who held post-mortem examination, Shri Harbhagwan (P.W.13), Senior Scientific Officer (Ballistic) of the Forensic Science Laboratory (F.S.L.), who had examined the sized pistol, the fired cartridge, the pellets and the wads, and the two Investigating Officers, S.I. Shiv Dayal (P.W.9) and Inspector Jai Narain (P.W.15)

7. The appellants who had pleaded not guilty to the respective charges framed against them contended while being examined under Section 313 Cr. P.C. that they had been falsely implicated. No witness, however, was examined on their behalf.

8. That Teja Singh met with a homicidal death stands conclusively proved by the evidence of S.I. Shiv Dayal, who held inquest upon the dead body, and Dr. S.P. Menani, who found five injuries on his person, two of which, according to him, were caused by fire-arms and the other three by sharp edged weapons. He opined that all the injuries were ante-mortem in nature and were sufficient to cause death in the ordinary course of nature. He further testified that in course of the post-mortem examination he found pellets and wads embedded in the tissues of the body which he extracted and handed over to the police after preparing a sealed parcel in respect thereof. When shown gadhalas (Ex.P.9 and P.10) allegedly recovered pursuant to the statements made by Dara Singh he stated that the three incised wounds could have been caused by them. Indeed this part of the prosecution case was not seriously challenged by the defence.

9. That brings us to the vital question as to whether the prosecution has been able to conclusively prove that the appellants were responsible for the murderous assault on the deceased. To answer this question we have closely scrutinised the evidence of the two eye-witnesses, namely, Harnek Singh and Hardev Singh in view of the fact that they are close relations of the deceased. We, however, find no reason to discard their evidence, more so, when we find that in spite of a lengthy and searching cross-examination the defence could not succeed in discrediting them in any way. On the contrary, we find that the F.I.R. which Harnek Singh lodged with utmost dispatch contains the substratum of the prosecution case. Besides, the medical evidence which we have referred to earlier fully corroborates the evidence of the two eye witnesses.

10. It was however urged on behalf of the appellants that having regard to the fact that the case under Section 107 Cr. P.C. against the appellants had earlier been disposed of on October 22, 1986 there was no occasion for the appellants Jaswant Singh and Bikar Singh to go to Fetehabad on the date of the alleged incident of murder and, for that matter, board the bus in which the deceased was to travel. It was further urged on their behalf that the evidence of the two alleged eye witnesses regarding the presence of the above two

appellants is patently untrue for they would not know that the deceased was to board the same bus. These contentions are wholly unsustainable. It was not disputed by the appellants, and indeed unimpeached document (Ext PF) also proves, that the deceased was to attend the Court at Fatehabad on October 27,, 1986, being the date fixed for hearing of the case lodged against them. It was therefore not unlikely that being certain that the deceased would be going to Fatehabad on that date, the appellants chalked out their strategy to do sway with him and accordingly decided to follow him since he got into the bus. It was next contended that there was material contradiction between the medical evidence and the ocular evidence, in that, where as the two eye witnesses testified that Teja Singh was fired at when he was going along the fields, Dr. Minani opined that since the track of injury No.1 which he found on the person of Teja Singh, was upward to downward in all probability it suggested that the victim had been either in sitting position or in lying position or at a level lower than the assailant. We do not find any substance in this contention also. Apart from the fact that the opening of the doctor as to how an injury was caused cannot over-ride unimpeachable testimony of eye witnesses in case there is any inconsistency between them, the above opinion of the doctor is not a definitive for in his further cross-examination he clarified that the victim and the assailant could be at the same level. Another contention that was raised on behalf of the appellants was that even though Harnek Singh had testified that he was carrying a bag of vegetables which he had thrown near the bus stop when the first shot was fired at Teja Singh, no such bag was seized by the Investigating Officer nor produced in Court, which necessarily belied the testimony of P.W.7. This contention has to be stated only to be rejected. As earlier noticed the claim of P.W.7 that he along with Teja Singh and others had gone to Court at Fatehabad and was coming back after attending the Court was not disputed at all in cross examination.

11. In view of the foregoing discussion it would not have been necessary of the weapons pursuant to the statements of three of the appellants but since appellant Darshan Singh also stands convicted for having been found in possession of a country made pistol on November 12,1986, it will be necessary to refer to and reappraise the evidence in respect of such recovery.

12. Inspector Jai Narain (P.W.15) testified that on 12.11.1986 he interrogated Darshan Singh while he was in his custody in the presence of Niranjana Singh (P.W.14) and Jagdish Singh. In pursuance of his disclosure statement (Ext.Px) he recovered a country-made pistol Ex.p.15). He put that pistol in parcel and sealed the same after making a rough sketch (Ext. PZ) thereof. He further stated that thereafter he took the pistol in his possession and forwarded in for examination by Forensic Science laboratory (F.S.L.). Niranjana Singh (P.W.14) fully supported the above statement of Inspector Jai Narain and also stated that he had attested the statement made by Darshan Singh. It was, however, contended on behalf of the appellants that since Niranjana Singh admitted that he was the brother-in law of Harnek Singh, no reliance should be placed upon his evidence. Even if we leave his evidence out of our consideration in view of his relationship with Harnek Singh, still then we do not find any reason to disbelieve the evidence of the Investigating Officer, more so, when his statement stands corroborate by the documents contemporaneously prepared by him relating to recovery of

the pistol. In his disclosure statement Darshan Singh stated he had kept concealed one country made pistol in a kotha situated near tubewell hidden in the fodder and that he could get the same recovered. The statement do made along with the recovery of the pistol from that place clearly proves that it was in possession of Darshan Sing. Sri Harbhagwan Singh, Senior Scientific Officer (Ballistic) F.S.L (P.W. 13), who had examined the pistol, the pellets, the wads and the empty cartridge testified that:

(i) the country-made pistol(ex. P.15) is a fire-arm as defined in arms act and was found in working order:

(ii) the cartridge case (Ex.P.11) had been fired from pistol (Ex.p.15) and not from any other fire-arm; and

(iii) the wad (Ex p. 80 and other pieces could from part of empty cargridge (EX.P.11)

13. The above testimonies of P.W.13 and P.W. 15 not only bring home the charge levelled against Darshan Singh that on November 12,1986 he was in unlawful possession of a country-made pistol but also substantially corroborate the prosecution case relating to rioting and murder earlier committed by the appellants.

On the conclusions as above, we do not find any merit in any of these appeals and accordingly dismiss them. The appellants, who are on bail, will now surrender to their bail bonds to serve out the remainder of their sentence.