

PETITIONER:  
GURNAM SINGH

Vs.

RESPONDENT:  
STATE OF PUNJAB

DATE OF JUDGMENT: 28/07/1998

BENCH:  
G.T. NANAVATI, S.P. KURDUKAR

ACT:

HEADNOTE:

JUDGMENT:

With Crl. Appeal No. 420/98 and Death Ref. No. 2/98

J U D G M E N T

NANAVATI, J.

Criminal Appeal No. 381/98 is filed by Gurnam Singh, who has been convicted under Sections 364 and 302 IPC for kidnapping Inder Singh, Puran Singh and Baldev Singh and then committing their murder. He has also been convicted under Section 3 of the TADA Act. For committing murders of those three persons he has been sentenced to death. He has, therefore, filed Criminal Appeal No. 381/98, challenging his conviction and also the sentence. As required Reference No. 2/98 has been made by the Designated Court for confirmation of his death sentence.

Criminal Appeal No. 420/98 is filed by Palwinder Singh, who has been convicted under Sections 364 and 302 IPC for kidnapping Baldev Singh and committing his murder alongwith appellant Gurnam Singh. He is also convicted under Section 3 of the TADA Act. For these offence he has been sentenced to suffer imprisonment for life. For the offence punishable under Section 3 of the TADA Act, both the appellants have been sentenced to pay a fine of Rs. 5,000/- also.

As all the three cases arise out of common judgment passed by the Designated Court. Nabha in Sessions Case No.145 of 1994, they are heard together and disposed of by this common judgment.

The prosecution case against the two appellants was that they alongwith six other accused had formed an unlawful assembly, the common object of which was to abduct Baldev Singh, Inder Singh, Puran Singh, Kuldeep Singh and Maheshwar Rai, and murder them and in prosecution of that object they did abduct those persons and killed them. The prosecution had not led any direct evidence to prove the murders of those persons by the appellants. It, however, led evidence to prove that the eight accused, including the two appellants, had abducted those five persons and had failed to explain what had happened to them thereafter. Relying upon the evidence of PW 3 Pritam Singh and PW 7 Mukhtiar Singh, the Designated Court held that appellant Gurnam Singh had abducted Inder Singh and Puran Singh on 7-10-92. Believing the evidence of PW 8 Sukhwinder Kaur it held that

the appellants Gurnam Singh and Palwinder Singh had, abducted Baldev Singh, on 7.10.92 between 9 and 10 p.m. It also believed their evidence that at the time of abduction they were armed with deadly weapons and had given threats to other family members that if they reported the offence to the Police they would also be finished. Even though there was no direct evidence to show how those three persons were murdered, the Designated Court, relying upon the medical evidence which proved that the deaths had taken place shortly after their abduction and also upon failure of the appellants to explain what they did with the abducted persons, held them guilty for the offence of murder also.

It was contended by the learned counsel for the appellants that their being no direct evidence as to how and under what circumstances Inder Singh, Puran Singh and Baldev Singh were killed, the Designated Court ought not to have convicted the appellants under Section 302 IPC.

It was also submitted that all the three eye witnesses had not named either of the appellants in their Police statements as the person who had abducted Inder Singh, Puran Singh or Baldev Singh and it was for the first time in the Court that they had stated that the appellants were the abductors. It was also submitted that their evidence suffered from other infirmities also and, therefore, it should not have been believed.

We have scrutinised the evidence of PWs 1, 2, 3, 6, 7 and 8. Evidence of PWs 1 and 2 establishes that Kuldip Singh and Maheshwar Rai were also abducted on 7.10.92 between 9 and 10 p.m., but it does not implicate the appellants. PW3 Pritam Singh has stated that Gurnam Singh and one Jita had come to their house about 10 p.m. and taken away Inder Singh at gun point. He has also stated that when he protested both the accused had threatened him that if he protested any more, then the whole family would be killed. In his cross examination he has stated that really he did not know the names of the persons who had abducted his brother and that he had come to know their names only when the police had told him who were those persons. He also stated that he had not identified them on 7.10.92. This witness thus turned round in the cross examination and gave a different version. What needs to be appreciated is that the witness and both the appellants belong to the same village Shutrana. It was not even suggested to the witness that there was no light and, therefore, he could not have identified the persons who had taken away his brother. The only attempt made to raise some doubt regarding identity of the offenders was by suggesting to the witness that they had changed their clothes and, therefore, he could not identify. This suggestion was readily accepted by the witness. It is difficult to appreciate how a person who was otherwise known, being of the same village, could not have been identified merely because he had changed his clothes. It was not suggested to the witness that the offenders had concealed their faces or done anything else to prevent their identification. This witness later explained that he had not given names of the accused to the police because a threat was given by them that they would otherwise kill the whole family. That appears to be the reason why while giving evidence in the Court also this witness accepted the suggestions made in the cross examination and stated that he was not able to identify the offenders when the offence took place. In our opinion the Designated Court was, right in accepting what Police. Both these suggestions were denied by the witness. Having gone through the entire record, we find that there is not material on record to show that they

were two factions in the village. Even the Sarpanch who was examined as a defence witness did not depose about any faction in the village. There is also no material to show that this witness was under the thumb of Police or that the Police could have exercised some influence over him. Thus, the suggestions made by the defence do not receive any support from the material on the record and, therefore, no weight can be attached to them and they deserve to be disregarded. There was no reason for the witness to falsely involve Gurnam Singh and other two accused if really his brother was not kidnapped by them. In our opinion the Designated Court was right in placing reliance upon his evidence and in holding that Gurnam Singh and Amrik Singh had kidnapped Puran Singh.

PW 8 Sukhwinder Kaur has, deposed that about 9 p.m., two sikh young persons, armed with guns, came to her house and took away her husband. When she had tried to prevent them from doing so, she was pushed aside and door of the house was closed from outside. She has further stated that she had identified those two persons

Thus, the evidence of PWs 3, 7 and 8 clearly establishes that Inder Singh, Puran Singh and Baldev Singh were in fact kidnapped by Gurnam Singh and some other accused and that in the kidnapping of Baldev Singh, Palwinder Singh had also taken part. The evidence further establishes that while kidnapping the accused were armed with deadly weapons. Both the appellants had also given threats to the witnesses. As rightly pointed out by the Designated Court, the medical evidence also establishes that the deaths of Inder Singh, Puran Singh and Baldev Singh had taken place within a short time after they were kidnapped and that leads to a legitimate inference that the persons who had kidnapped had killed them.

The prosecution case, was that Gurnam Singh and Palwinder Singh alongwith six other accused had committed the offences. There is no evidence to show that any of the appellants had himself killed any of the deceased. Therefore, the Designated Court instead of convicting under Section 302 should have convicted them for the offence punishable under Section 302 read with Section 34 IPC. We are also of the view that in absence of any evidence as regards the motive for abduction and as regards the accused who actually caused their deaths and the manner and circumstances in which they were caused, the Designated Court should not have imposed death sentence upon appellant Gurnam Singh.

We, therefore, partly allow the appeal of Gurnam Singh. His conviction under Section 302 IPC is altered to one under Section 302 read with Section 34 IPC. The order of his sentence is modified and instead of death sentence, he is directed to suffer imprisonment for life for the deaths of Inder Singh, Puran Singh and Baldev Singh. Criminal Appeal No. 402/98 filed by Palwinder Singh is dismissed subject to the alteration of his conviction from under Section 302 to one under Section 302 read with Section 34 IPC. As were are not confirming the death sentence, death reference stands rejected.

IN THE MATTER OF :