

PETITIONER:  
JAGDISH

Vs.

RESPONDENT:  
STATE OF HARYANA

DATE OF JUDGMENT: 12/12/1997

BENCH:  
G.N. RAY, G.B. PATTANAİK

ACT:

HEADNOTE:

JUDGMENT:

### J U D G M E N T

G.N. RAY. J.

The convictions of the appellant under section 302 IPC and for offence punishable under section 5 of the Terrorists and Disruptive Activities (Prevention) Act, 1987 (hereinafter referred to as TADA) and consequential sentence of imprisonment for life and the fine of Rs. 500/-, in default of payment of fine further rigorous imprisonment for five months for offence under section 302 and rigorous imprisonment for a period of seven years together with a fine of Rs. 200/- in default of payment of fine, further rigorous imprisonment for two months under section 5 of TADA passed in Sessions Trial No. 189/92 by the learned Additional Judge, Designated court, Karnal at Panipat have been impugned in this appeal by the convicted accused Jagdish.

According to the prosecution case, at the instance of co-accused Ranbir Singh who died during the pendency of the trial and at the behest of co-accused Chaudhary Ram, the appellant Jagdish caused the murder of Pritam Lal Chopra on May 3, 1992 by firing at him from a pistol. The appellant was charged for the offence under section 302 IPC and under section 5 of TADA and the said deceased accused Ranbir Singh and the co-accused Chaudhary Ram were charged under Section 302 read with section 120B IPC. The accused Chaudhary Ram and the deceased Ranbir Singh were also charged for the offence under section 115 IPC.

It is the prosecution case that the accused Chaudhary Ram had a very strained relation with his son Om Prakash PW 2. Om Prakash was residing in one portion in the house owned by Chaudhary Ram with his wife and child and in another portion his father Chaudhary Ram and two other brothers used to stay. Chaudhary Ram had filed a civil suit in Delhi against Om Prakash by alleging that Om Prakash in connivance with his wife and in-laws wanted to extract a sum of Rs. 50,00,000/- from him on account of the share of the property and they had also been threatening to kill Chaudhary Ram and his family members and also had been harassing them in various manner. Chaudhary Ram also gave a publication in Hindustan Times on May 7, 1991 to the effect that he had

ousted his son Om Prakash and his wife Veena and his children from the family and they had no right to claim any share in the property of Chaudhary Ram. Chaudhary Ram also issued a notice on May 21, 1991 to Om Prakash asking him to vacate the said house.

On December 14, 1991, there was an attempt on the life of the deceased Pritam Lal Chopra when the assailant fired at him in Karol Bagh in Delhi. It was alleged that Chaudhary Ram led the said plot of murdering Pritam Lal Chopra. The Police, however, filed a final report by indicating that it could not be ascertained as to who had attempted to murder the said Pritam Lal in the said incident. On March, 13, 1991 PW 19 Shiv Lal came to Panipat to attend the auction of liquor vend for the year 1992-93. The deceased Pritam Lal Chopra and other liquor vend contractors had also attended the same and after about 15-20 minutes of the departure of Pritam Lal Chopra, Shiv Lal had noticed that the accused Chaudhary Ram accompanied by the other two accused Ranbir Singh and Jagdish were present at the said place and Chaudhary Ram had told Ranbir Singh and Jagdish that Pritam Lal was a hurdle in this way and he should be eliminated. PW 10 Prem Singla had celebrated the Mahurat ceremony of his liquor vend known as M/s Singla Sales L-I at Gohana Road Panipat and in that connection, PW 1 Joginder Pal PW 2 Om Prakash and the other witness Vijay Kumar came to Panipat and the accused Chaudhary Ram had attended the said function. PW 3 Vijay Kumar also noticed accused Chaudhary Ram in the company of other two accused Ranbir Singh and Jagdish and Vijay Kumar had over-heard Ranbir Singh telling Jagdish the murder of Pritam Lal Chopra must be committed on that day and he should not bother for the money which he would get from Chaudhary Ram. Chaudhary Ram had also told Jagdish that the said work must be done that day and he should not worry for money.

At about 4.00 P.M. on May 3, 1992, when PW 1 Joginder Pal and PW 2 Om Prakash were present near the said liquor vend of M/s Singla Sales, they found that accused Jagdish took out a pistol from the right side pocket of his trouser and fired at Pritam Lal Chopra and on being hit Pritam Lal Chopra fell down. Joginder Pal and Om Prakash rushed to take care of Pritam Lal Chopra and in the meantime Jagdish fled away from the place of incident. Pritam Lal Chopra was taken to civil hospital Panipat by Joginder Pal and Om Prakash and on examination, Dr. R.K. Tandon declared him dead. The said doctor despatched a written report Ex. PF to Police Station and Sub-Inspector Satbir Singh PW 21 rushed to the hospital and recorded the statement of Joginder Pal (Ext. PA) on the basis of which the FIR was registered PW 7 Dr. V.P. Gupta performed post mortem examination on the dead body of Pritam Lal on May 4, 1992 and in his report Ex. PE, the doctor noted that the death had taken place between 4 to 36 hours from the time of post mortem. The doctor also extracted the fired bullet (Ex. P4) from the dead body.

The accused Jagdish was arrested on December 10, 1992 and on investigation in the presence of panch witness Naresh Kumar (PW 17) and others, the said Jagdish made a disclosure statement (Ex. PL) and on the basis of such disclosure statement, pistol (Ex. P5) as well as two cartridges were recovered underneath the earth near the culvert of Ganda Nala in Huda colony in Panipat. PW 4 Lal Chand also told the police that when he was sitting in the office of liquor contractor at old bus stand, Gohana, he had seen Chaudhary Ram along with co-accused Jagdish and Chaudhary Ram told that he had cleared the way by getting Pritam Lal Chopra murdered. He also praised Jagdish for carrying out the job

nicely and told Jagdish that the money had been kept with Ranbir Singh and he could take it from him. A fired cartridge was found by the Investigating officer from the place of incident and the same was seized being Ex. P4. PW 11 Dr. L.A. Kumar the Ballistic expert give a report that the cartridge fired from the pistol Ex. P.5 and the fired cartridge seized by the police officer had been fired from the same pistol namely, Ex. P.5.

The learned Designated Judge did not accept the case of conspiracy hatched by Chaudhary Ram by indicating that the version given by the witnesses in support of such conspiracy to cause murder of Pritam Lal Chopra was not free from doubt and it was unlikely that Chaudhary Ram against whom an allegation of setting an assailant for murdering Pritam Lal Chopra had earlier been made, would tell Jagdish and Ranbir Singh at the hearing of other persons that Pritam Lal Chopra was to be murdered by Jagdish and he should pay for it. The learned Designated Judge having also indicated that if Joginder Pal and Om Prakash had over-heard such conversation between Chaudhary Ram, Jagdish and Ranbir Singh, they would have immediately warned Pritam Lal Chopra and would have ensure that such incident would not take place. Therefore, the learned Designated Judge came to the finding that the case against Chaudhary Ram could not be held to have been established beyond reasonable time. But accepting the depositions of eye-witnesses, namely, PW 1 and PW 2 Joginder Pal and Om Prakash, the learned Designated Judge convicted the appellant Jagdish for the said offences under section 302 IPC and section 5 of TADA.

Mr. Rajinder Sachher, the learned senior counsel appearing for the appellant, has submitted that admittedly there was strong enmity and bad feeling between Om Prakash and his in-laws and the deceased who was a close relation of the wife of Om Prakash. It is, therefore, quite likely that Om Prakash, Joginder Pal Vijay Kumar and others were keen to implicate Chaudhary Ram and others by fabricating a false story when Pritam Lal Chopra was murdered by some unknown assailant. The prosecution fabricated a false story of hatching a conspiracy by Chaudhary Ram by engaging Ranbir Singh and Jagdish to execute the plot of murdering Pritam Lal. Such false allegation against Chaudhary Ram had not been believed by Designated Judge and Chaudhary Ram was, therefore, acquitted. Mr. Sachher has submitted that the murder of Pritam Lal Chopra by Jagdish was the outcome of the conspiracy hatched by Chaudhary Ram. If the main story of hatching such conspiracy cannot be accepted, the other part of the prosecution case, namely, in implementing such conspiracy, Jagdish had murdered Pritam Lal Chopra is not at all believable and such case must also fail.

Mr. Sachher has submitted that according to the prosecution case Jagdish was only a hired murderer otherwise he has no enmity with Pritam Lal Chopra. If the case of hiring Jagdish in executing the conspiracy is to be discarded, the role not to be accepted. Mr Sachher has also submitted that although Om Prakash and Joginder Pal deposed that they were eye witnesses to the incident of murder committed by Jagdish, it is quite apparent that Jagdish was not known to the said eye witnesses. Therefore, mere assertion by PW 1 and PW 2 that Jagdish was known to them from before cannot be accepted. It has come out from the evidences adduced by the said eye witnesses that they did not know the other co-villagers and also the Sarpanch and other important persons in the village of Jagdish. It has not been satisfactorily established how the said PWs. 1 and 2 had come to know Jagdish from before. Therefore, simply

because in the FIR the name of Jagdish was given, Jagdish cannot be convicted for want of convincing evidence.

Mr. Sachher has also submitted that the doctor holding post mortem on the deceased Pritam Lal Chopra had noticed singing and blackening on the person of the deceased. Such singing and blackening can take place if the victim is fired from a very close range, but the eye witnesses had stated that Jagdish had fired on the deceased from a distance of 3 to 4 feet. No singing or blackening would have taken place if the victim had been fired from a distance of 3 to 4 feet. Such fact only indicates that the said two witnesses had not seen Jagdish firing on Pritam Lal.

Mr. Sachher has also contended that the report of the ballistic expert should not be accepted to be reliable because the ballistic expert has not noted the characteristics of weapon, namely, pistol Ex. P.5 in his report. In the absence of such noting of the characteristics of the weapon, his deposition becomes doubtful as to whether he had clearly noticed the characteristics of the weapon.

Mr. Sachher has also contended that the alleged disclosure statement and consequential recovery of pistol and cartridge, by the police should not be believed. He has submitted that the seizure witness was not a local person but admittedly a chance witness. Mr. Sachher has submitted that search and seizure must be done by taking all precautions to ensure that such search and seizure had been done honestly and there was clear transparency in such search and seizure. Mr. Sachher has also submitted that the name of the witnesses were not mentioned in the daily diary. It is, therefore, doubtful whether the alleged FIR was registered on the basis of the statement of Joginder Pal shortly after the incident as alleged by the prosecution. It is not unlikely that at a later stage, the FIR was fabricated by cooking a false story and giving the names of the accused. Mr. Sachher has, therefore, submitted that in the facts and circumstances of the case, there is enough scope to doubt the correctness of the prosecution story. The appellant, therefore, is entitled to get the benefit of doubt and his convictions and sentences are liable to be set aside.

Such contention of Mr. Sachher has, however, been disputed by Mr. Siwach, learned counsel appearing for the respondent-state. Mr. Siwach has submitted that within two hours from the said incident of murder, the FIR was lodged where the name of Jagdish alongwith the name of his father and other particulars were mentioned. He has also submitted that simply because characteristics of the weapon of assault was not mentioned by the Ballistic expert, there is no occasion to discard his evidence because the identity of the pistol which was seized on the basis of the disclosure statement by the accused Jagdish has been clearly established. Mr. Siwach has also submitted that non-mentioning of the name of the witnesses in the daily diary cannot vitiate the prosecution case when the name of the accused with relevant particulars was clearly mentioned in the FIR lodged without any delay. By convincing evidences of the eye witnesses the complicity of Jagdish in the commission of the said murder has been established. He has, therefore, submitted that this appeal should be dismissed.

After giving our careful consideration to the facts and circumstances of the case and the evidences adduced through which we have been taken, it appears to us that the incident of murder had taken place at about 4.00 P.M. PW 1 and PW 2 immediately had removed the victim to the hospital where he was declared dead by the doctor who had examined the

deceased and on the basis of ruqua sent by the doctor, the police came to the hospital and immediately on the arrival of the police statement of PW 1 forming the FIR was recorded. In the said FIR the name of the appellant Jagdish was clearly mentioned by indicating the name of his father and other particulars. There is nothing on record on the basis of which it can be reasonably held that such FIR was fabricated. There is no good reason to discard the evidences of the eye witnesses of PW 1 and PW 2 only because the co-villagers of Jagdish were not known to them. It also appears to us that a recovery of the weapon of assault on the basis of disclosure statement made by the accused had been established convincingly and the report of the ballistic expert also establishes that the bullet which was recovered from the body of the deceased at the tie of post mortem examination was fired from the pistol which was recovered on the basis of disclosure statement made by the accused Jagdish. The manner in which Pritam Lal Chopra was murdered by firing pistol shot from behind as indicated by the said two eye witness also stands corroborated from the medical evidence about the nature of the injury suffered by the said deceased. Therefore, the complicity of the appellant Jagdish in committing the murder of the deceased has been clearly established. The prosecution case about hatching a conspiracy by Chaudhary Ram has not been established by any convincing evidence but on that account, the direct evidence against the accused Jagdish in committing the said murder cannot be discarded as sought to be contended by Mr. Sachher, We, therefore, find no reason to interfere with the order of conviction and sentences passed against the appellant and the appeal, therefore, fails and is dismissed.

IN THE MATTER OF