

PETITIONER:
RAZAKALI KHURESHI SANDHI

Vs.

RESPONDENT:
STATE OF GUJARAT

DATE OF JUDGMENT: 05/05/1997

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

ACT:

HEADNOTE:

JUDGMENT:

J U D G M E N T

S.P. KURDUKAR, J.

This appeal under Section 19 of the Terrorists and Disruptive Activities (Prevention) Act, 1987 (for short 'the TADA') is filed by the appellant challenging the legality and correctness of the judgment and order of conviction and sentence passed by the Designated Judge, Jam Nagar on June 19, 1996 for various offences punishable under Sections 302, 307, 225, 333 of the Indian Penal Code.

2. Briefly stated the prosecution case is as under:-

On March 22, 1992, the Custom Officers intercepted a ship called Safina-Al-Burhani and upon search thereof recovered five belts of gold biscuits of foreign origin. During interrogation, Abbas Hasan Subhaniya, the tandel of the said ship, disclosed that Harun Jusab Bhaya (A-8) and for that a team of Custom Inspectors along with three sepoy went to Khambhalia in a jeep which was driven by Chuni Lal Barad (PW 46). The Custom Officers came to the office of Brother & Brother Transport at Khambhalia where they spotted A-8 and informed him that he was being arrested in connection with the smuggling of gold. A-8 then started running away but the Custom Officers chased and apprehended him. When A-8 was being taken to Jam Nagar in a jeep for further investigation, he became violent and tried to escape from the grip of the Custom Officers who, therefore, stopped the jeep near Shrijee Hotel with a view to tie him with a rope which they fetched from the nearby shop of Puncturwala. When A-8 was being tied with a rope, according to the prosecution, suddenly a truck bearing Registration No. GTE-7461 came from Khambhalia side and dashed against the jeep of the Custom Officers. As a result of this dash, the Custom Officers who were standing near the jeep fell down. Mr. Jacob (PW 2) and Mahendrasinh Rayjada, a sepoy sustained the injuries. The said truck immediately took a turn and again dashed against the jeep and in this process, A-8 could succeed in escaping himself from the clutches of the Custom Officers. A-8 then boarded another truck which was parked nearby and fled away. According to the prosecution, appellant who was the driver of the truck intentionally dashed his truck against the jeep whereby two person,

namely, Mahindersinh Rayjada, a sepoy died on the spot and Somaji Thakor, another sepoy died in the hospital. The appellant then fled away.

3. The Custom Inspector Mr. P.N. Desai (PW 1) then took a lift on the motor cycle of Jadeja and reached the factory of Meera Tiles and gave telephone calls to the Customs Office and also informed the police station at Khambhalia about the incident. He then came back to the place of incident. In the meantime, police officers reached the place of incident and thereafter the injured were removed to the hospital. At about 8.30 p.m., an FIR was lodged by Mr. P.N. Desai (PW 1) in the police station. After completing the investigation, a charge sheet for offences punishable under Sections 147, 302/149, 307/149, 332, 333/149 of the Indian Penal Code as also under Section 3(a) of the Demolition of Public Property Act and under Sections 3 and 4 of TADA came to be submitted in the Court of Judicial Magistrate Ist Class, Khambhalia against the appellant and seven other accused persons. The case was then committed for trial to the Designated Court for the aforesaid offences.

4. The appellant and other seven accused persons denied the charges and claimed to be tried. According to them, they have been falsely implicated in the present crime.

5. The prosecution in support of its case adduced the evidence of four eye witnesses, namely, Mr. P.N. Desai (PW 1), Jacob (PW 2), Bharat Trivedi (PW 3) and Chuni Lal Barad (PW 46). In addition to the above evidence, the prosecution also placed reliance upon the medical evidence to prove the cause of deaths of Mahindersinh Rayjada and Somaji Thakor. The evidence relating to the Test Identification Parade was also produced at the trial. The appellant, however, did not lead any evidence in support of his defence.

6. The Designated Judge, Jamnagar, after careful scrutiny of oral and documentary evidence on record by his judgment and order dated June 19, 1996 convicted the appellant under Section 302 of the Indian Penal Code and sentenced him to suffer imprisonment for life and to pay a fine of Rs. 30,000/-; in default to undergo further sentence of RI for two years. In addition to this, the appellant was convicted under Section 307, 225, 332 and 333 of the Indian Penal Code and was sentenced to suffer RI for various terms in addition to the payment of fine. Harun Jasub Bhaya, original accused No. 8, however, was convicted under Section 224 of the Indian Penal Code and was sentenced to suffer RI for two years and to pay a fine of Rs. 5,000/-; in default of payment of fine to suffer further RI for a period of six months. In this appeal, we are however not concerned with the conviction and sentence of A-8. Rest of the accused persons were, however, acquitted of all the charges. The appellant aggrieved by this order of conviction and sentence has filed this appeal to this Court under Section 19 of the TADA.

7. At the outset, it may be stated that it is not and cannot be disputed that two sepoys of Custom Department, namely, Mahindersinh and Somaji Thakor died in the incident in question. Both of them were crushed to death because of the dash given by the truck bearing registration No. GTE-7461. It is, therefore, needless to refer to the medical evidence on record. In addition to these two unnatural deaths, P.N. Desai (PW 1) and Jacob (PW 2) were also injured in the same incident. No sustainable arguments were advanced before us to the contrary and we, therefore, see no reason to confirm the finding of the learned trial court that Mahindersinh Rayjada and Somaji Thakor met with unnatural deaths and P.N. Desai (PW 1) and Jacob (PW 2) sustained

injuries in the same incident.

8. The main contention raised on behalf of the appellant is that there is no satisfactory material on record to establish the identity of the appellant being the driver of the truck bearing registration No. GTE-7461. In order to establish the identity, the prosecution relied upon the evidence of four witnesses, namely, P.N. Desai (PW 1), Jacob (PW 2), Bharat Trivedi (PW 3) and Chuni Lal Barad (PW 46). The learned trial judge, however did not accept the evidence of Jacob (PW 2) and Chuni Lal (PW 6) as dependable to prove the identity of the appellant being the driver of the said truck. However, in our considered view, the evidence of P.N. Desai (PW 1) and Bharat Trivedi (PW 3) is totally unblemish and credible one to establish the identity of the appellant being the driver of the said truck. P.N. Desai (PW 1) in his evidence has stated that he has seen the appellant 4 to 5 times before the incident in the B & B Transport Company. He came to know the name of the appellant six months before this incident. He was introduced by senior Custom Officers for preventive purpose. When the jeep was standing near Shrijee Parotha House, they were not aware that any truck was coming from behind. When the truck came and dashed against them, they all fell down and the head of Mahindersinh was crushed. The truck thereafter went ahead and dashed against the electric poll and thereafter it came in reverse. Seeing this incident, Somaji who was sitting in the jeep, got down and ran towards the road side. At that time, the truck took a turn and came in speed and dashed against Somaji. On both these occasions, he saw the appellant being the driver of the truck from a distance of 80-100 feet. The defence although cross-examined the witness at great length but there is hardly any material brought out during cross-examination which could discredit his testimony. We have carefully gone through the evidence of this witness and we see no hesitation to accept his evidence being credible one. The identity of the appellant being the driver of the truck is fully established. The material on record also proves that the appellant was the associate of Harun Jusab Bhaya (A-8). The manner in which the incident took place leaves no manner of doubt that the appellant purposely and intentionally dashed against these Custom Officers wherein Mahindersinh was crushed to death. The appellant on the second time also brought the truck in speed after taking a turn and dashed against Somaji who sustained injuries and later on died in the hospital. In view of these circumstance, we have no manner of doubt that the appellant has intentionally caused the deaths of Mahindersinh Rayjada and Somaji Thakor.

9. The FIR was lodged by P.N. Desai (PW 1) within a few hours wherein the name of the appellant being the driver of the truck No. GTE-7461 was mentioned. The FIR also made a mention of all details about the incident and it fully corroborates the evidence of P.N. Desai (PW 1). The evidence of P.N. Desai (PW 1) finds corroboration from that of Bharat Trivedi (PW 3) who has also sustained minor injuries during the incident in question. He asserted that he was standing at a distance of 60 to 70 feet when the truck dashed against Mahindersinh Rayjada. He had seen the appellant driving the truck in a great speed. We have gone through his evidence carefully and we find that his evidence suffers from no infirmity as regards the identity of the appellant. The learned Advocate for the appellant despite his efforts could not persuade us to disbelieve the evidence of these two witnesses. The trial court, in our opinion, has rightly believed the evidence of these two witnesses. The evidence

of both these witnesses has clearly established that the appellant has intentionally caused the deaths of Mahindersinh and Somaji Thakor. The conviction of the appellant passed under Section 302 of the Indian Penal Code, therefore, does not suffer from any infirmity. The learned Advocate for the appellant was unable to point out any error in the impugned judgment as regards the convictions of the appellant passed on other counts. Thus, this appeal is devoid of any merit.

10. For the foregoing conclusions, we see no merit in this appeal and the same is dismissed.

JUDIS