

CASE NO.:
Appeal (crl.) 993 of 2001

PETITIONER:
DEVENDER PAL SINGH

Vs.

RESPONDENT:
VS.

DATE OF JUDGMENT: 22/03/2002

BENCH:
M.B. Shah

JUDGMENT:

Shah, J.

By judgment and order dated 24/25.8.2001, in Sessions Case No.4 of 2000, the Designated Court-I, New Delhi convicted the appellant for the offence punishable under Section 3(2)(i) of Terrorist and Disruptive Activities (Prevention) Act, 1987 (hereinafter referred to as the 'TADA') and Section 120-B read with Sections 302, 307, 326, 324, 323, 436 and 427 of the Indian Penal Code and sentenced him to death and also to pay a fine of Rs.10,000/-. He was also sentenced to suffer rigorous imprisonment for five years for the offence punishable under Sections 4 and 5 of TADA and to pay a fine of Rs.10,000/-. Against that judgment and order, the appellant has filed Criminal Appeal No.993 of 2001 and for confirmation of death sentence, the State has filed Death Reference Case (Crl.) No.2 of 2001 before this Court.

It is the prosecution version that on 11.09.1993 Mr. M.S. Bitta, the then President of Indian Youth Congress (I) was in his office at 5, Raisina Road, New Delhi. At about 2.30 p.m., Mr. Bitta left the office and the car in which he was travelling came out of the main gate of 5, Raisina Road and one pilot car, in which security personnel provided to him were sitting, was ahead of his car. The pilot car slowed down in order to take right turn on Raisina Road. In the meantime, one bus came on Raisina Road, from the side of Windsor Palace. At that time, there was an explosion in a car parked outside 5, Raisina Road. Though, Mr. Bitta was not hurt badly, a number of other vehicles parked on the road and footpath caught fire. Because of the bomb blast nine persons succumbed to the injuries and 29 other persons sustained injuries. During the course of investigation, it was learnt that Kuldeep, Sukhdev Singh, Harnek, Devenderpal Singh and Daya Singh Lahoria, all members of KLF, a terrorist organisation, were behind this blast and their aim was to assassinate Mr. Bitta.

It is the further prosecution version that secret information was received that appellant Devender Pal Singh who was in custody of German authorities was to come to Delhi from Frankfurt on the night of 18/19.1.1995. On his arrival, he was handed over to IGI Airport police authorities by Lufthansa Airlines Staff. Immediately upon his arrest, he tried to swallow cyanide capsule. However, he was prevented.

Other accused Daya Singh Lahoria, who was extradited from USA to India was also arrested. He was also tried along with the appellant but was acquitted by the Designated Court on the ground that there was no evidence against him and that he has not made any confessional statement. The Court also observed that there was no iota of material on record to corroborate confessional statement made by accused Devender Pal Singh against his co-accused Daya Singh Lahoria and prudence requires that in absence of corroboration, benefit should go to Daya Singh Lahoria.

In this appeal, learned counsel for the appellant submitted that except the so called confessional statement, there is no other evidence against the appellant and the said confessional statement is neither voluntary nor true and in any case there is no corroborative evidence. Hence, the judgment and order passed by the Designated Court convicting the appellant requires to be set aside.

For appreciating the contention raised by the learned counsel for the appellant, the relevant evidence led by the prosecution is required to be considered. It is the say of PW37 Inspector Severaia Kujur that on 19.1.1995 he was posted at Immigration Airport and at the time of clearance of flight LH-760 at about 2.30 a.m., the staff of LH flight handed over Devender Pal Singh who was deported from Germany. He was interrogated by PRO Vigilance and SB Branch and it was found that he was having forged passport, so he made a rukka under Sections 419, 420, 468, 471 IPC and Section 12 of the Passport Act. Further, PW83 Inspector Tej Singh Verma, Operation Cell, Lodhi Colony, New Delhi, has also stated that on 19.1.1995 he was posted at IGI Airport as Sub Inspector and that accused Devender Pal who was deported from Germany was arrested in case FIR No.22 of 1995 for the offences punishable under Sections 419, 420, 468 and 471 of the IPC and Section 12 of the Passport Act. During the course of interrogation, in the said case, he made a disclosure statement. He has also stated that personal search was conducted and that travelling documents were recovered from the accused. Along with the disclosure statement and personal search memo, he was handed over to ACP K.S. Bedi who conducted the investigation of this case. In cross-examination, he has denied that Devender Pal Singh had not made any disclosure statement and that his signatures were obtained on blank sheets.

Now, as against this, we have to consider the evidence of PW130 Mr. K.S. Bedi, ACP. It is his say that on the relevant date he was posted in Operation Cell, Lodhi Colony. He received information that an KLF extremist namely Davenderpal Singh @ Deepak has been detained in Germany in the last week of December, 1994, he was trying to get released from there and that he would proceed to Pakistan or he may be deported to India. He along with other officers went to IGI Airport to check the incoming passengers from Frankfurt, Germany. At 2.30 a.m., Lufthansa Airlines Staff handed over the accused who was having forged travelling documents to PW 37. He tried to swallow a capsule in plastic foil which was caught and after this he disclosed that his name was Devender Pal Singh. On that basis, IGI airport staff registered a case vide FIR No.22 dated 19.1.1995. It is his further say that on that date he made disclosure statement describing his involvement in many cases including a bomb blast at 5, Raisina Road. Therefore, he collected the copy of the disclosure statement Ex.PW83/A and made his formal arrest in the present case. He produced the accused before Shri B.B. Chaudhary, ACMM, New Delhi and secured his police remand for 10-days. He was interrogated on 21.1.1995 and accused again made a disclosure statement in which he admitted his involvement in the bomb blast at Raisina Road. On 22.1.1995, he gave in writing that he wanted to make confession. Thereafter, he informed Mr. B.S. Bola, DCP

(PW121) for recording the confessional statement. Mr. Bola after following the procedure recorded his confessional statement on 23rd January, 1995. On 24th January, 1995, he was produced before the Court of ACMM, New Delhi before the expiry of police custody remand and from there the accused was taken by the Punjab Police. In cross-examination, Mr. Bedi has stated that he was not having any prior information that accused was being deported from Germany to India but he had gone to IGI Airport for checking the passengers coming from Germany in the expectation that the accused might have been deported. He also admitted that in pursuance of the disclosure statement Ex.PW83/1, no article was recovered from the accused or at his pointing out. He further stated that there is no recovery memo pertaining to the car recovered from Bulandshahar on the judicial file. However, there is a reference about the car in a photocopy of DD No.69 dated 30.10.1993 of PS Bulandshahar. This DD was not brought by him. He denied the suggestion that the involvement of the accused persons was within the knowledge of police prior to 19.1.1995. He also admitted that on 23.1.1995, the DCP used the computer installed in his office for recording the statement of the accused. He also admitted that he had given a wireless message informing the Punjab Police that accused would be produced before the court on 24.1.1995 and that is how the Punjab Police had sought his police remand. He has denied the suggestion that accused was forced to make a false confessional statement before the DCP and the accused was deliberately produced prior to the expiry of police remand and was sent to Punjab. He admits that thereafter accused remained in police custody for more than two months in Punjab. In further cross-examination, he has stated that he had not produced the copy of the confessional statement or the original before the learned ACMM when the accused was produced before him. He also admitted that before the accused was produced before ACMM on 24.1.1995, he was formally arrested by the police of Police Station Sriniwasपुरी. He also admitted that Investigating Officers of the case pertaining to P.S. Sriniwasपुरी and Punjab Police were present inside the court when the accused was produced before the ACMM. He has denied the suggestion that accused was put under fear and duress or that he was warned not to reveal the true circumstances under which the confessional statement was recorded or that in case he so reveals, he would be done to death by Punjab Police.

PW121 Mr. B.S. Bola, DCP recorded the confessional statement of accused. In the cross-examination, he has admitted that he was aware about the entire facts of the case prior to the recording of the statement of the accused under Section 15 of TADA.

The prosecution also led the evidence of PW131 ASI Kamlesh who recorded the confessional statement on the computer as per the dictation of accused which is running into nine pages. She has admitted in cross-examination that during the period of six hours when his statement was recorded accused was not provided any water or snacks and the matter typed out on the computer was not saved nor it was taken on a floppy.

The prosecution has also examined PW133 Mr B.B. Chaudhary, ASJ, Tis Hazari, Delhi, who was ACMM, New Delhi at the relevant time stated that accused was produced before him when he was in police custody. He asked only one question to the accused whether his statement was recorded by DCP on 23.1.1995? To that, accused answered in affirmative and his signatures were obtained on the application in confirmation of his admission of having made a statement before the DCP. He admitted that he had not asked any other question. It is his say that he did not think it necessary to take the accused to his chamber to assess his mental state. He also admitted that at that time no statement of accused was produced before him.

From the aforesaid evidence led by the prosecution, questions that arise for consideration are (i) whether the confessional statement is true and voluntary? and (ii) whether there is any corroboration to the said statement?

Before considering the evidence led by the prosecution, it is to be stated that accused in his statement recorded under Section 313 Cr.P.C. stated that he had sought asylum in Germany and was deported from there on refusal of asylum. He has denied recovery of cyanide capsule from him. He has also denied having made the application Ex.PW121/B expressing desire to make a confessional statement. He has also denied having made the confessional statement before Mr. Bola on 23.1.1995. According to him, he was made to sign some blank and partly written papers under threat and duress and entire proceedings were fabricated upon those documents. He has also stated that before he was produced before the ACMM, he was told that if he made any statement to the Court he would be handed over to Punjab Police who would kill him in an encounter, and as he was under fear, he made a statement before learned ACMM. He has also stated that he was taken to Punjab and brought back after about three months and thereafter he sent an application from jail on 21.4.1995 retracting his confessional statement and clarifying the circumstances under which the said statement was recorded.

It is apparent that Investigating Officer Mr. K.S. Bedi has improved his version by stating that accused tried to swallow cyanide capsule when he was arrested. As against this, it is the say of PW37 Severaia Kujur and PW83 Inspector Tej Singh that accused was handed over to them by the staff of Lufthansa Airlines and nowhere they stated that at that time accused tried to swallow any pill. It appears that Mr. K.S. Bedi tried to give colour to the story that appellant tried to swallow the cyanide pill. If that story was genuine, necessary panchnama of the cyanide pill would have been made at the spot. Further, it is admitted position on record that during the course of investigation of the bomb blast, the police had learnt that Kuldeep, Sukhdev Singh, Harnek, Devenderpal Singh and Daya Singh Lahoria, who were members of KLF, a terrorist organisation, were behind the blast. Therefore, it would be difficult to believe that the IO Mr. Bedi had gone to the Airport only for keeping a watch. On the contrary, Mr. Bola has admitted that on his instructions, ACP KS Bedi had gone to the Airport to arrest the accused on the basis of intelligence reports of involvement of accused and his group in the bomb blast case. Therefore, the version of Mr. Bedi that he had gone at the IGI Airport to check the incoming passengers from Frankfurt Germany cannot be relied upon. From the evidence of DCP Mr. Bola it is apparent that information was received that accused was coming from Germany and, therefore, a watch at IGI Airport was kept.

Apart from the aforesaid improvement, it is difficult to believe that the accused who was arrested for travelling on a forged passport after landing at the airport, would make a disclosure statement involving himself in various crimes including the bomb blast. There was no earthly reason to make such disclosure on 19th itself so that accused could be arrested by Mr. K.S. Bedi for the alleged involvement in the offence under the TADA. It is also admitted that when the accused was produced before ACMM, the confessional statement was not produced for the perusal of the ACMM and the ACMM only asked him the question whether he admits making confessional statement before DCP B.S. Bola. It would be difficult to accept that if confessional statement was recorded and when the accused was produced before the Magistrate, he would be taken there without the said confessional statement. Rule 15(5) of TADA requires that every confession recorded under Section 15 shall be sent forthwith to the CMM or the CJM having jurisdiction over the area in

which such confession has been recorded and such Magistrate shall forward the confession so received to the Designated Court which may take cognizance of the offence. In this view of the matter, there was no reason to produce the accused before the ACMM without so-called confessional statement.

Further sub-section (1) of Section 15 of TADA specifically provides inter alia that in case confession made by a person before the police officer is recorded by such police officer either in writing or on any mechanical device like cassettes, tapes or sound tracks from out of which sounds or images can be reproduced, shall be admissible in trial of such person for an offence under this Act or rules made thereunder. The confessional statement was recorded on computer and floppy thereof is not produced in the court and is admitted to have not been saved in the computer by ASI Kamlesh.

From the aforesaid evidence, it is apparent that the confessional statement of the appellant is recorded by DCP B.S. Bola (PW121) who was the Investigating Officer at the relevant time. Admittedly, the accused was in police custody. Thereafter he was handed over to the Punjab Police. Further, from the record it appears that accused was wanted in bomb blast case since 1993 and as soon as he arrived at the IGI Airport, he was arrested and was handed over to PW130 Mr. K.S. Bedi, ACP. It is stated that Mr. Bedi also recorded the disclosure statement of the appellant on 21.1.1995, wherein he admitted his involvement in the bomb blast case. Thereafter, confessional statement under Section 15 of the TADA was recorded by DCP B.S. Bola. In such state of affairs, doubt may arise whether the accused has made any confessional statement at all. In Kartar Singh v. State of Punjab [(1994) 3 SCC 569], this Court observed thus: -

"Though it is entirely for the court trying the offence to decide the question of admissibility or reliability of a confession in its judicial wisdom strictly adhering to the law, it must, while so deciding the question should satisfy itself that there was no trap, no track and no importune seeking of evidence during the custodial interrogation and all the conditions required are fulfilled."

In such case it would be unsafe to solely rely upon the alleged confession recorded by Investigating Officer. Further, looking at the original confessional statement, there appears to be some substance in what is contended by the accused in his statement under Section 313 Cr.P.C. that his signatures were taken on blank paper. Under Rule 15(3)(b) of the TADA Rules, the police officer who is recording the confession has to certify the same "under his own hand" that the said confession was taken in his presence and recorded by him and at the end of confession, he has to give certificate as provided thereunder. In the present case, the certificate was not given under the hands of D.C.P., but was a typed one.

Further, for finding out whether the statement is truthful or not, there must be some reliable independent corroborative evidence. In the present case, co-accused Daya Singh Lahoria who was tried together with the appellant was acquitted on the ground that there was no evidence against him and that as he had not made any confessional statement. However, for connecting the appellant, the learned Judge has relied upon the decision in Gurdeep Singh vs. State (Delhi Admn.), [(2000) 1 SCC 498] for holding that when the confessional statement is voluntary, corroboration is not required. It appears that the Court has not read the entire paragraph of the said judgment and has missed the previous lines which read thus: -

"For the aforesaid reasons and on the facts and circumstances of this case, we have no hesitation to hold

that the confessional statement of the appellant is not only admissible but was voluntarily and truthfully made by him on which the prosecution could rely for his conviction. Such confessional statement does not require any further corroboration. Before reliance could be placed on such confessional statement, even though voluntarily made, it has to be seen by the court whether it is truthfully made or not. However, in the present case we are not called upon nor is it challenged that the confessional statement was not made truthfully."

From the aforesaid judgment, it is clear that before solely relying upon the confessional statement, the Court has to find out whether it is made voluntarily and truthfully by the accused. Even if it is made voluntarily, the Court has to decide whether it is made truthfully or not. But in Gurdeep Singh's case (supra), there was no challenge made to the fact that it was not made truthfully.

In the confessional statement it is mentioned that accused hired rooms at Sahibabad, Jaipur and Bangalore. Merely because some house numbers are mentioned in confessional statement, it cannot be held that as house numbers are found by police officers, it is a corroborative piece of evidence. None of the neighbours has deposed before the court that the accused stayed in the said houses. To write such numbers is easy for investigating officers because they were investigating the case from the date of the bomb blast i.e. since 1993. No independent witnesses or landlord came forward to depose that accused resided in the said premises or took it on lease. No incriminating articles were found from the said house or places mentioned in confession to connect the accused with the crime. Even PW80 Harcharan Singh who sold the car which was seized at the scene of offence in 1993, has not stated that appellant-accused purchased the said car or that acquitted accused Daya Singh purchased the same. PW44 Prehlad Sharma, property dealer of Sahibabad, Ghaziabad, stated that in August, 1993 he had arranged a house on rent basis for two boys, who told themselves to be working as contractor in G.D.A. He, also, failed to identify accused as the boys who came at his shop to take the premises on rent. On 28.9.1993, the police came to him and informed that some RDX was recovered from that house, shown some photographs to him and he identified two photographs of the said persons. However, he has not identified the accused as the boy who came at his shop to take the premises on rent. Similarly, PW69 Nasir Siddiqui, who was running a shop of electrical goods at Lajpat Nagar had sold one water pump to a customer residing in Lajpat Nagar. The police came to his show-room and pointed some photographs for identification of the person who had purchased the water pump. He had identified the photograph of that person. However, in the court, he refused to identify the accused as the customer who had purchased the water pump from his shop.

In any set of circumstances, let us consider the confessional statement as it is. In the present case other accused D.S. Lahoria was tried along with the appellant and was acquitted. The role assigned to D.S. Lahoria in the confessional statement is major one. In the confessional statement, appellant Devenderpal Singh has stated as under: -

"I was born in Jullandar on 26.5.65. I completed pre-engineering examination from Loyal Pur Khalsa College Jullandhar in 1984 and joined B.E. in the Mechanical at Guru Nanak Engineering College, Ludhiana and completed my degree course in 1988. In the month of Nov., 1991, police came to know about the names of the boys who were

behind the car bomb attack on SSP/Chandigarh and the police raided the house Partap Singh where Dr. Hari Singh and Videshi had stayed one day before the blast. Partap Singh further disclosed that they are also known to me..The police raided my house. I was not present in the house. My father and father-in-law were arrested by the policeI was told that he alongwith Partap Singh, Balwant Singh Multani and Navneet Singh Kadian @ Pal R/o village Kadia Distt. Batala and Mangal Singh are wanted in SSP/Chandigarh bomb blast case. Thereafter, I went under ground and talked to my maternal uncle Shri Sukhdev Singh Sandhu in Vencouver, Canada who advised me that the chances of release of his father are very minimum as the case relates to Sumed Singh Saini and that he should also go under ground.

In August, 1993, plans were chalked out to eliminate M.S. Bitta because Keepa felt that he is speaking too much against their movement and the militants. Keepa along with Charni went to Punjab and took out one quintal of RDX and left it with one Pawan Kumar @ Chajju at Ludhiana. They came back and sent Harnaik @ Chottu to bring this RDX to their Sahibabad hideout. Part of this consignment was brought by Pawan Kumar which was handed over to Kuldeep Keepa at Delhi Karnal Border. Harnaik @ Chotu got the steel container fabricated for the bombs. Daya Singh Lahoria went to purchase an Ambassador Car which was subsequently used in the bomb blast. The cordless telephone was purchased from Ludhiana by Harnaik. On 2nd September, 1993, Kuldeep Keepa and Navneet Kadian conducted the recce of the office of MS Bitta at 5, Rai Sina Road, New Delhi. Next day, Kuldeep Keepa, Navneet, Sukha @ Sangatpuria, Harnaik, Lahoria and myself again came to the office of Bitta to watch the proceedings. We made two attempts on 6th and 9th September, 1993. On 6th September, 1993, the mechanism did not work and we could not trigger the blast. On 9th September, 1993, MS Bitta did not come to the office. Myself and Kuldeep Keepa fixed the bombs in the rear seat and the dickey and the master receiver of the telephone was placed on the rear seat. The two wires coming out the receiver were connected to the detonators. Around 40 kgs. of RDX was used in the blast.

On 11.9.1993, we came to the office of Bitta at around 11 a.m. and the car was parked close to the front gate. Navneet, Keepa and Sangatpuria were waiting in the back side of parking of Meridian Hotel alongwith Gypsy No.DNC-1790 which was a fake number. I went to Connaught Place to bring Harnaik @ Chotu with whom the time was fixed the previous day. In the meanwhile, MS Bitta went inside his office and we could not trigger off the blast as none of us were in position. We decided to go back, but when we reached Pragati Maidan, Keepa insisted on making another try. We reached Janpath Hotel and connected the wires in the parking area and sent Lahoria to park the car near the gate of the office. The other five of us went in the Gypsy and parked it in the parking area in front of Chelmsford club. Harnaik and myself got down from Gypsy and went towards the office of MS Bitta. I positioned myself on the opposite side of the office and

Harnaik positioned himself close to the walls of Jawahar Bhawan to save himself from the blast. When Lahoria came out of the car after parking immediately, thereafter, the cars of MS Bitta started moving out and Lahoria gave a signal to Harnaik who pushed the button of the hand set of the cordless telephone. The security car of MS Bitta was hit and Bitta's car which was behind was not damaged. Since Lahoria was very closed, he was hit by splinters on his back. Harnaik and myself went to the parked Gypsy from where Sukha had already come towards 5 Rai Sina Road, New Delhi to see whether any of us had been injured or not. Kuldeep and Navneet were already sitting in the Gypsy. Four of us left the place and dropped Navneet at the back of Meridian Hotel to come by bus or auto-rickshaw because he was a Sikh and possibility of identification was more strong. Lahoria went to the hospital in auto rickshaw and registered himself under the name of VK Sood and left the hospital immediately after first aid. He went to his hideout which is not known to me."

There is nothing on record to corroborate the aforesaid confessional statement. Police could have easily verified the hospital record to find out whether D.S. Lahoria went to the hospital and registered himself under the name of V.K. Sood on the date of incident and left the hospital after getting First Aid. In any set of circumstances, none of the main culprits i.e. Harnaik or Lahoria is convicted. In these set of circumstances, without there being corroborative evidence, it would be difficult to solely rely upon the so-called confessional statement and convict the accused and that too when the confessional statement is recorded by the investigating officer. For this purpose, it would be worth-while to refer to the decision in *Topandas v. State of Bombay* [AIR 1956 SC 33 para 6]: - "Criminal conspiracy has been defined in Section 120-A Penal Code:

"When two or more persons agree to do or cause to be done (i) an illegal act, or (ii) an act which is not illegal by illegal means, such an agreement is designated a criminal conspiracy.

By the terms of the definition itself, there ought to be two or more persons who must be parties to such an agreement and it is trite to say that one person alone can never be held guilty of criminal conspiracy for the simple reason that one cannot conspire with oneself. If, therefore, 4 named individuals were charged with having committed the offence under Section 120-B, Penal Code, and if three out of these 4 were acquitted of the charge, the remaining accused, who was the accused No.1 in the case before us, could never be held guilty of the offence of criminal conspiracy."

The court further discussed the aforesaid question and referred to the decision in *R. v. Plummer* [1902 (2) KB 339 (C)] and held as under: -

"(1902) 2 KB 339 (C) which is cited in support of this proposition was a case in which, on a trial of indictment charging three persons jointly with conspiring together, one person had pleaded guilty and a judgment passed against him, and the other two were acquitted. It was held that the judgment passed against one who had pleaded guilty was bad and could not stand. Lord Justice

Wright observed at p.343:

"There is much authority to the effect that, if the appellant had pleaded not guilty to the charge of conspiracy, and the trial of all three defendants together had proceeded on that charge, and had resulted in the conviction of the appellant and the acquittal of the only alleged co-conspirators, no judgment could have been passed on the appellant, because the verdict must have been regarded as repugnant in finding that there was a criminal agreement between the appellant and the others and none between them and him: see 'Harison v. Errington', (1627) Poph 202 (D), where upon an indictment of three for riot two were found not guilty and one guilty, and upon error brought it was held a "void verdict", and said to be "like to the case in 11 Hen 4 c.2, conspiracy against two, and only one of them is found guilty, it is void, for one alone cannot conspire."

In this view of the matter, when rest of the accused who are named in the confessional statement are not convicted or tried, this would not be a fit case for convicting the appellant solely on the basis of so-called confessional statement recorded by the police officer.

Finally, such type of confessional statement as recorded by the investigating officer cannot be the basis for awarding death sentence.

In the result, Criminal Appeal No.993 of 2001 filed by the accused is allowed and the impugned judgment and order passed by the Designated Court convicting the appellant is set aside. The accused is acquitted for the offences for which he is charged and he is directed to be released forthwith if not required in any other case.

In view of the above, Death Reference Case (Crl.) No. 2 of 2001 would not survive and stands disposed of accordingly.

J.
(M.B. SHAH)

March 22, 2002.