

PETITIONER:
JASPAL SINGH @ PALI

Vs.

RESPONDENT:
THE STATE OF PUNJAB

DATE OF JUDGMENT: 08/10/1996

BENCH:
M.K. MUKHERJEE, S.P. KURDUKAR

ACT:

HEADNOTE:

JUDGMENT:

WITH
CRIMINAL APPEAL NO. 263 OF 1996

Darshan Singh and Ors.

V.
State of Punjab

J U D G M E N T

S.P. KURDUKAR. J.

The appellants in these two criminal appeals before us were sent up for trial before the Additional Judge, Designated court. for the offences punishable under Sections 148, 302/149 of the Indian penal Code read with Sections 3/4 of the Terrorist and Disruptive Activities (Prevention) Act. (for short TADA) for having committed the murder of Jasbir Singh @ Bhure on the intervening night of 22/23rd July, 1991 at his village Shanurki, Police Station, Nabha.

2. The brief facts of the prosecution case are as follows:-

Gurjant Singh (PW3). the father of Jasbir Singh (since deceased) lodged an FIR alleging that he and his five brothers were residing in their houses having a common boundary wall whereas his seventh brother Sarup Singh was residing separately in the village. On the fateful night of 22nd July, 1991, he was sleeping in the courtyard along with his two sons, namely, Gurbinder Singh and Jasbir Singh @ Bhura (since deceased). Two of his nephews were also sleeping in the same courtyard. The ladies and children were sleeping inside the rooms. His younger brother Ram Singh was sleeping on the roof of the house. At about 12.30 a.m., seven terrorists entered in his house by opening the gate and scaling over the wall of whom five were armed with pistols and two were having Sten guns. One of the terrorists who was known as 'Saba' came forward and demanded a licensed rifle and Rs. 1,00,000/- from him. He replied that he was neither having a rifle nor cash. The terrorists then entered into the rooms and searched all the iron boxes lying therein and thereafter came out in the courtyard. One of the terrorists then asked 'where was Jasbir Singh @ Bhura and to which terrorist organisation they belonged?'. Gurjant Singh (PW 3) retaliated and asked them as to which organisation they belonged? The terrorists then left the house telling

Gurjant Singh (PW 3) that they would come back again after a few minutes and by that time, he should keep the amount of Rs. 1,00,000/- ready. It was further alleged by Gurjant Singh (PW 3) that after a few minutes, all these terrorists came back to his house and enquired about the cash amount. They also asked Jasbir Singh to accompany them to which Gurjant Singh (PW 3) and his family members pleaded for mercy and told them not to take him away. The terrorists then told Gurjant Singh (PW 3) and his family members that Jasbir Singh would be let off soon. Accordingly, the terrorists carried Jasbir Singh with them and within 5 to 7 minutes, a fire arm shot was heard from the direction of the street. Because of the apprehension to their lives, they did not go to the spot immediately but after some time, when they reached there, they saw Jasbir Singh was lying dead with the fire arm injury on the left side of his chin near the house of his brothers pal Singh and Mohinder Singh.

3. It is then alleged by Gurjant Singh (PW 3) that because it was the night time they did not go to the police station immediately and waited near the dead body until the day dawned. He then contacted Bant Singh, the Sarpanch of the village and thereafter they went to lodge the FIR at the police station. SI Hitinder Singh, SHO, Police station, Sadar Nabha, registered the crime. He alongwith a police party reached at the place of occurrence and started the investigation.

4. At the outset, it may be stated that since the names of the terrorists were not known to any of the family members including Gurjant Singh (PW 3), only description thereof was given in the complaint. The dead body of Jasbir Singh was then sent for post mortem examination. During the course of investigation on 27th July, 1991, Chhota Singh (PW 7), the Sarpanch stated that the terrorist (accused) had come to his house and confessed the crime. The appellants were thus found to be the terrorists who on the fateful night committed the Crime in question, and came to be arrested on 19th September, 1991. Saudagar Singh (A-2) while in custody made a statement under Section 27 of the Evidence Act which led to the recovery of Pistol alongwith cartridges. The appellants Jaspal Singh (A-1) and Rajinder Singh (A-3) while in police custody also made statements which led to the recovery of fire arms. After completing the investigation, a charge sheet came to be filed in the Designated Court, Sangrur against five accused persons.

5. The appellants denied the accusation against them and pleaded that they are innocent and have committed no offence. They, therefore, prayed that they be acquitted.

6. The prosecution in support of its case examined as many as ten witnesses, of whom the star witnesses were Gurjant Singh (PW 3)-the complainant, Chhota Singh (PW 7), and the sarpanch before whom the appellants alleged to have confessed their guilt.

7. At the conclusion of the trial, the learned Additional judge of the Designated Court, accepted the evidence of Gurjant Singh (PW 3) and Ram Singh (PW4) as trustworthy and reliable, although they identified the appellants for the first time in the court. The learned trial Judge also accepted the evidence of Chhota Singh (PW 7), before whom Jaspal Singh (A-1) alongwith other appellants had confessed the guilt on 27th July, 1991, as truthful. In addition to the above evidence, the learned Trial' judge also relied upon the evidence of recovery of wallet from the kitchen garden of the complainant wherein photograph of Jaspal Singh (A-1) was found. On appraisal of evidence on record, the learned Trial Judge held that the prosecution has proved the

complicity of all the appellants in the present crime and accordingly convicted all the five appellants under Sections 302/149 of the Indian Penal Code and Section 3/4 of TADA and sentenced each one of the appellants to suffer rigorous imprisonment for life and to pay a fine of Rs. 2,000/- in default of payment of fine to undergo further rigorous imprisonment for a period of two years. The Trial Court also convicted and sentenced each one of the appellants to undergo rigorous imprisonment for a period of three years under Section 148 IPC. The substantive sentences were ordered to run concurrently. It may also be stated that Saudagar Singh and Rajinder Singh (the appellants Nos. 3 and 4 in criminal Appeal No. 163 of 1996) were tried in two connected special sessions Case No. 73 of 4-4-1991 respectively for the offences punishable under Section 25 of the Arms Act read with Section 5 of TADA and were sentenced to undergo rigorous imprisonment for five years and to pay a fine of Rs. 1,000/-; in default of payment of fine, to undergo further rigorous imprisonment for one year. The impugned judgments and orders are dated 31st October, 1995.

8. Aggrieved by the judgments and orders dated 31st October, 1995 passed by the designated Court, Sangrur, Jaspal Singh, the appellant has filed Criminal Appeal No. 268 of 1996 whereas the other four appellants have filed Criminal Appeal No. 1/03/96 in this Court challenging the legality and correctness thereof. Since both these appeals arise out of a common judgment, they are being disposed of by this judgment.

9. Mr. R.S. Sondhi the Learned Counsel appearing for the appellants in both the appeals urged that although they were arrested on 27th July, 1991 yet no T.I. Parade was held. The identity of the appellants was sought to be established in the Court. Such identification was totally unsafe and could not form the basis of their conviction. He also urged that Gurjant Singh (PW 3) had admitted in his evidence that the terrorists who had entered into his house on the fateful night were not known to him and, therefore, they could not have been identified by him. On this premise, the evidence of Gurjant Singh (PW 3) does not take the prosecution case any further. He also urged that the identity of Jaspal Singh (A-1) sought to be proved by the prosecution with reference to the seizure of wallet from the kitchen garden of the complainant wherein his photograph (Jaspal Singh) was found, is again a very weak piece of evidence and on such evidence, his conviction is unsustainable. He further urged that the evidence of Chhotu Singh (PW 7) to prove the alleged extra-judicial confession having been made by Jaspal Singh (A-1) in the presence of other coaccused is totally untrustworthy and it was highly improbable that the appellants would have gone to the house of Chhotu Singh (PW 7) to confess their guilt. Counsel, therefore, urged that the impugned judgments and orders of convictions and sentences are unsustainable and accused be acquitted.

10. Smt. Hemantika Wahi, learned Advocate appearing for the respondent supported the impugned judgment and order.

11. At the outset, it may be stated that there was no challenge before of the appellants that Jasbir Singh (since deceased) died due to fire arm injuries sustained by him during the night intervening between 22/23rd July, 1991. It is, therefore, needless to refer to the evidence of Dr. Shiv Kumar Garg (PW 2) and his autopsy report. We have gone through the evidence of Dr. Shiv Kumar Garg (PW 2) and see no hesitation in holding that Jasbir Singh died because of ante mortem fire arm injuries sustained by him.

12. We have carefully considered the submissions urged on

behalf of the appellants and in our opinion each one of them deserves to be accepted.

13. It is common premise that although the appellants were arrested on 27th July, 1991, yet the investigating agency did not hold T.I. parade. The identification of the appellants in the Court made by Gurjant Singh (PW 3) and Ram Singh (PW 4) cannot be accepted with certainty as reliable identification. If this be so, the attempt of the prosecution to establish the identity of the accused in the present crime has to be rejected and, therefore, it is not possible to connect any of the appellants with the present crime.

14. coming to the second contention of Mr. Sodhi, we agree with him that finding of the photograph in the wallet which was seized during the investigation from the kitchen garden of the complainant is again a weak piece of evidence. On such evidence, it is difficult to connect Jaspal Singh (A-1) with the present crime.

15. The third contention of Mr. Sodhi Viz., that it is highly improbable that Jaspal Singh (A-1) would have gone to this witness alongwith his co-accused to confess the guilt, is equally formidable. Chhota Singh (PW 7) has not give any reason as to why and how Jaspal Singh (A-1) and other co-accused have reposed such a confidence in him and confessed their guilt. After going through the evidence of Chhota Singh (PW 7), we do not find it safe to hold any of the appellants guilty in the present crime.

16. In View of the aforesaid conclusion, it is not possible to sustain the convictions and sentences of any of these appellants. Result there of is that both the appeals succeed. The impugned judgments and orders of convictions and sentences are quashed and set aside and the appellants are acquitted. The appellants, who are in jail, be set at liberty forthwith, if not required in any other case.