

PETITIONER:
KASHMIR SINGH

Vs.

RESPONDENT:
STATE OF PUNJAB

DATE OF JUDGMENT: 13/01/1997

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

ACT:

HEADNOTE:

JUDGMENT:

J U D G M E N T

M.K. MUKHERJEE, J.

This appeal under Section 19 of the Terrorist and Disruptive Activities (Prevention) Act, 1987 ('TADA' for short) is directed against the judgment and order dated July 21, 1993 rendered by the Additional Judge. Designated Court, Amritsar in Sessions case No. 300 dated October 31, 1991 convicting the appellant under Sections 302 and 307 IPC and Section 3 of TADA.

Shorn of details the prosecution case is as under:

In the year 1989, Swinder Singh (P.W.1) settled the marriage of his sister Surinder Kaur with the appellant. Since, however, in the following year he (the appellant) joined a terrorists' organisation Swinder Singh refused to solemnise the marriage. Such refusal enraged the appellant; and after he came out of the prison where he was detained for about a year owing to his such activities he went to the house of Swinder Singh in village Thata and gave out that in case Surinder Kaur was married elsewhere he would kill all the members of their family. On being so threatened Swinder Singh the Surinder kaur left their house and went to village Burj Raike where they started living with the family of Major Singh, whose daughter Manjit Kaur was a class mate and close friend of Surinder Kaur.

About a week later- in the dead of night between May 20 and 21, 1991 to be precise- when Swinder Singh was sleeping the courtyard of the house of Major Singh, the appellant and one Swinder Singh appeared there after scaling its boundary wall. While accused Swinder Singh went to the roof of the house the appellant stayed back in the courtyard. He (the appellant) then menacingly told Swinder Singh that his wife Surinder Kaur should be presented before him. In the meantime Major Singh, the member of his family and Surinder kaur, who were sleeping inside the house, got up. The appellant then started firing from the AK 47 rifle which he was carrying, aiming each of them as a consequence whereof Major Singh and the other four members of his family comprising his two daughters and two sons and Surinder Kaur, sister of Swinder Singh, fell down dead. Swinder Singh was also fired at as a result of which he received injuries on

right eye, chest, neck and other parts of his body. Thereafter the appellant and the other accused fled away.

Swinder Singh was taken to the Primary Health Centre, Sirhali for treatment in the following morning; and on receipt of a report from its senior Medical Officer in that regard sub inspector Balkar Singh (P.W.7), of Sirhali police station went there and recorded the statement of Swinder Singh (Ext. PA). On that statement a case was registered and S.I. Balkar Singh took up investigation. he went to the house of Major Singh in village Burj Raike and after holding inquest on the six dead bodies lying there sent them for post-mortem examination. From that house he recovered 28 cartridges of AK-47 rifle and made them into a sealed parcel. He also seized blood-stained earth from beneath the dead bodies and prepared a separate parcel in respect thereof. On completion of investigation he submitted charge sheet against the appellant only, as the other accused, namely, Swinder Singh had died in the meantime.

The appellant pleaded not guilty to the charges levelled against him and stated, while being examined under Section 313 Cr.P.C., that he was arrested prior to the date of the alleged offence, namely, May 21, 1991 from his village Jand by the police and since then he was kept in police custody wherein he was brutally tortured. Thereafter he was falsely shown arrested in the instant case. In support of their respective cases the prosecution examined seven witnesses while the appellant examined two.

That Major Singh, his two sons and two daughters and Surinder Kaur met with homicidal deaths owing to fire-arm injuries in his (Major Singh's) house stood established by overwhelming evidence on record. Indeed this part of the prosecution case was not challenged by the defence. The evidence of the Investigating Officer (P.W.7) and that of Jagtar Singh (P.W.2), a brother of Major Singh, clearly prove that the dead bodies of the earlier mentioned six person with injuries thereon were found in the house of Major Singh. The evidence of P.W.2 further proves that Swinder Singh was also lying injured there. Dr. Haripal Kaur Dhariwal (P.W.5) who held autopsy testified that all the injuries that she found on the six dead bodies were caused by fire-arms. From the evidence of Dr. Mohan Singh (P.W.6) the Medical Officer of Sirhali Primary Health Centre we get that Swinder Singh (P.W.1) had a number of injuries on his person and that he was referred to the S.G.T.B. Hospital, Amritsar for better treatment where he was kept as an indoor patient for one and a half month. He further stated that the right eye ball of Swinder Singh was totally damaged.

The next and the crucial question that falls for our determination is whether the appellant was the author of the above six gruesome murders and attempted murder of Swinder Singh as alleged by the prosecution. To prove this part of its case the prosecution relied, needless to say, solely upon the evidence of Swinder Singh (P.W.1), for consequent upon the death of all the other inmates of the house there was none, nor there could be any, other eye-witness to the murders that took place in the house at the unearthly hour of 2 A.M. P.W.1 detailed the entire incident as stated earlier including the motive behind the murder of his sister. We have carefully gone through the evidence of this witness and find no reason to disbelieve him, more so, when we find that this presence in the house of Major Singh at the material time is corroborated by the evidence of P.W.2. as also D.W.2, another brother of Major Singh, (both of whom lived in different houses in the same village) who testified that on the following morning they found him lying injured

in the house of their brother. besides, as noticed earlier, the appellant had a strong motive to kill the sister of P.W.1. The other fact which lends strong corroboration to the evidence of P.W.1 is that the F.I.R that he lodged the following morning contains the substratum of the entire prosecution case including the motive.

It was, however, contended on behalf of the appellant that on reliance should be placed on the testimony of P.W.1 as he did not disclose the name of the appellant as the culprit at the earliest opportunity. In support of this submission the learned counsel for the appellant drew our attention to the cross-examination of P.W.1 wherein he stated that some residents of village Burj Raide including Jagtar Singh (P.W.2) came to the place of occurrence at or about 7 pm 7.30 A.M. but he did not mention the name of the appellant to any of them. We cannot lose sight of the fact that P.W.1 not only saw six ghastly murders being committed before his own eyes but he himself sustained multiple gunshot injuries. In such circumstances it can be safely presumed that he was so dumbfounded and terror stricken that he could not and dared not disclose the names of the assailants to those people but as soon as he met the police he mustered courage to narrate the entire incident as would be evident from the F.I.R. It was next contended that in view of the testimony of Pritam Singh (D.W.2) that Major Singh was earlier threatened by the terrorists and that P.W.1 did not disclose the name of the appellant before him on the ground that he could not identify the miscreants, the trial court ought to have held that it was not unlikely that the murders were committed by some unknown terrorists. We do not find any merit in this submission also; firstly because, P.W.1 categorically stated that he could identify the appellant and the other miscreants by the electric light of the house then burning and secondly because, there is not an iota of material on record to indicate that P.W.1 had any reason to falsely implicate the appellant.

Having given our anxious consideration to the entire evidence on record we are in complete agreement with the trial court that the prosecution has been able to conclusively prove that the appellant committed the six murders and attempted to commit the murder of P.W.1. His convictions under Section 302 and 307 IPC and sentences therefore must be upheld. We are however of the opinion that the trial court was not justified in convicting the appellant under Section 3 of TADA for the accusation levelled against him (the appellant) does not by any stretch of imagination answer the definition of 'terrorist act' under TADA. We, therefore set aside the appellant's conviction and sentence under Section 3 of TADA. The appeal is thus disposed of.

Before we part with this record we wish to mention that the trial court ought to have, considering the magnitude of the crime and the brutal manner of its commission, sentenced the appellant to death instead of imprisonment for life but as the State did not choose to prefer any appeal for enhancement of sentence, we feel, now that about six years have elapsed since the offences were committed by the appellant, no suo motu interference in respect thereof is called for.