

PETITIONER:
STATE OF PUNJAB

Vs.

RESPONDENT:
GURMIT SINGH & ANR.

DATE OF JUDGMENT: 19/09/1996

BENCH:
KURDUKAR S.P. (J)
BENCH:
KURDUKAR S.P. (J)
MUKHERJEE M.K. (J)

ACT:

HEADNOTE:

JUDGMENT:

J U D G M E N T

S.P.KURDUKAR, J.

The State of Punjab -appellant has filed this appeal under Section 19 of the Terrorist and Disruptive Activities (Prevention) Act, 1987 (for short 'TADA') against the judgment and order of acquittal dated 30th January, 1989 passed by the Designated Court, Hoshiarpur in Sessions Case No. 48 of 15-10-1987 being Sessions Trial No. 50 of 15-12-1987 arising out of an FIR No. 80 dated 25-7-1987 of Police Station, Mahilpur. The respondents-two accused persons were put up for trial for offences punishable under Section 302 read with Section 34 IPC and Section 3 of TADA for having Committed the murder of Bhag.

2 The prosecution stor / as disclosed at the trial is as under:-

At about 9.00 a.m. on 25th July, 1987, Ranjit Singh (PW 2) was working in his fields. Bhag (since deceased) was the resident of village Kharar Achharwal but was residing in the village Chamiala at the time of the incident. He was going on his bi-cycle from village Rampur to village Fatehpur Kothi, followed by Gurmit Singh @ Mita) (hereinafter called 'Mita'), a resident of village Halluwal and Gurmit Singh (A 2) of Village Chamiala on bicycles separately. When they reached in front of the fields of Ranjit Singh (PW 2), A-2 stopped Bhag and caught hold of him. Mita then gave several blows by the dagger on Bhag who sustained bleeding injuries and fell down. Bhag raised an alarm "Bachao-Bachao". Hearing This alarm, Gurmel Singh (PW 3), Lumberdar of village Chamiala came on the spot from the side of village Fatehpur Kothi, witnessed the incident of assault and remained at the spot. Ranjit Singh (PW 2) went and lodged the FIR (Ex.PE) at 10.20 a.m. with SI Avtar Singh (PW 5), SHO Police Station, Mahilpur who had come to the village Khanpur. The police party headed by SI Avtar Singh reached at the place of occurrence and started the investigation. Blood stained earth was cocollected by SI Avtar Singh (PW 5) and kept it in a sealed parcel vide memo Ex. PK. A rough site plan Ex.

S was also prepared. After inquest panchnama, the dead body of Bhag was sent for post mortem examination. Bicycle Ex.PC of deceased was seized vide memo Ex.PM. The two bicycles of A-1 and A-2 which were lying at the place of occurrence were also taken charge vide memo Ex. PH and marked Ex.P3 and Ex.p4.

3. SI Avtar Singh (PW 5) then deputed ASI Baldev Singh and constable Inderjit Singh to search the accused. Since both the accused were not found in the village, the police party suspected that they might be hiding in the jungle. They, therefore surrounded the jungle and ultimately succeeded in arresting both the accused. During the personal search of A-1, a dagger (Ex.PI) was recovered from the dub (pocket) of his Pyjama which was then seized vide memo Ex.P5. Since blood stains were noticed on the shirts worn by A-1 and A-2. the same were seized and marked Ex.P5 and Ex.6 respectively and kept them in two sealed parcels. These articles were sent to the Director, Forensic Science Laboratory for its report. After completing the investigation, both the accused were charge sheeted for offences punishable under Sections 302/34 of the Indian Penal Code and Section 3 of TADA.

4. Both the accused pleaded not guilty to the charge and stated that they are innocent and be acquitted.

5. In order to bring home the guilt of both the accused, the prosecution examined two eye witnesses i.e. Ranjit Singh (PW 2) and Gurmel Singh (PW 3) in addition to the formal witnesses to prove the seizure Panchnamas etc. Dr. R.S.Mehal(PW 1) was examined to prove the post mortem examination report and the cause of death. The defence examined Karnail Singh (DW 1) the Sarpanch of the village Kaharpur.

6. The Learned Judge of the Designated Court on appreciation of the oral and documentary evidence on record disbelieved the evidence of both the eye witnesses on the ground that their presence at the time of occurrence was doubtful. Having rejected the evidence of eye witnesses, the learned trial judge opined that the other evidence on record was not sufficient to hold the accused persons guilty of the offences for which they were tried. Consistent with these findings, the learned trial judge recorded the impugned order of acquittal. it is this order of acquittal which is the subject matter of challenge in this criminal appeal.

7. Ms. Rupinder Kaur, the learned Advocate appearing in support of this appeal urged that the learned trial judge has completely misread the evidence of two eye witnesses. She urged that the finding of the trial court that because of obstructions caused due to the high rise growth of reeds by the side of the road, none of the eye witnesses could have seen the incident in question. This finding was based upon mere surmises and certain erroneous assumptions. The Learned Counsel urged that the evidence of both these eye witnesses is totally credible which finds corroboration from the presence of human blood of the same group of the deceased on the clothes of the accused. She further urged that both the accused were arrested on the very same day from the forest and there was no question of any manipulation by the investigating agency. The Learned counsel, therefore, urged that the impugned order is totally perverse, unsustainable and the same be set aside and both the accused be held guilty of the offences for which they were tried.

8. Mr. R.S.Sodhi, Learned Counsel for the accused supported the order of acquittal and urged that no interference by this Court is called for and the appeal be

dismissed.

9. At the outset, it may be stated that this criminal appeal is filed under Section 19 of TADA and being the first appeal against the judgment and order of the Designated Court, this Court can re-appreciate the evidence on record. With the assistance of learned counsel for the parties, we have gone through the impugned judgment and the evidence on record.

10. It is not and cannot be disputed that Bhag (since deceased) died a homicidal death. Dr. R.S.Mehal (PW 1) performed the autopsy on the dead body of Bhag and noticed as many as twelve ante mortem incised injuries, of which injury No. 12 was penetrating the right pleural cavity cutting the sternum and going into the right lung. The right pleural cavity was full of blood. He opined that the death was on account of haemorrhage and shock due to injuries caused to the brain, lungs, heart and liver. He further opined that these injuries were individually or collectively sufficient to cause the death in the ordinary course of nature. The death was immediate and it must have occurred within 12 hours before the post mortem. In view of this experts opinion, we safely conclude that Bhag met with a homicidal death because of various incised injuries inflicted on his person.

11. Coming to the complicity of the accused in the present crime, the prosecution story completely rests on the evidence of the two eye witnesses, i.e. Ranjit Singh (PW 2) and Gurmel Singh (PW 3). It is also on record that Gurmel Singh (PW 3) had lodged the First information Report (Ex.PE) with the police within two hours of the incident. This First Information Report did make a reference to the assault caused by both the accused. It is therefore, quite clear that within a short time, the names of the assailants were disclosed by Gurmel Singh (PW 3) in his report.

12. Ranjit Singh (PW 2) in his evidence has stated that in the morning of 25th July, 1987, he was working in his fields and at that time he saw Bhag passing over his fields on bicycle followed by both the accused on their respective bicycles. He knew both the accused. Gurmit Singh (A-2) caught hold of Bhag and thereafter Mita (A-1) caused several dagger blows on his nose, right side of forehead, right flank, back and two on the left flank. Bhag sustained the bleeding injuries, fell down and raised an alarm Bachao-Bachao. In the meantime, Gurmel Singh (PW 3), a Lumberdar of village Chamiala came near the place of occurrence. The accused then fled away. Gurmel Singh (PW 3) remained near the dead body and he proceeded towards the village at about 10.20 a.m. to report the incident to SI Avtar Singh, SHO (PW 5) who happened to be present in the village Khanpur. An FIR (Ex.PE) was then recorded by SI Avtar Singh who thereafter came to the place of incident alongwith his police party and started the investigation. This witness was searchingly cross-examined on behalf of the accused and a suggestion was made to him that because of two pucca walls on both sides of the bridge and high rise growth of reeds on both sides of the roads, it was not possible for him to see the occurrence. The witness had denied the suggestion and emphatically asserted that he was very close to the place of incident and despite the reeds and the walls on the bridge, he could see the assault caused by both the accused on Bhag. A suggestion was also put to this witness that at the relevant time he was not in his fields knew nothing about the incident. This suggestion was also denied by him. There is no challenge to the evidence of this witness that he owned the agriculture fields near the place of incident and

if this fact had gone unchallenged it must follow that the witness in the ordinary course of his vocation being an agriculturist would be in his fields. It is also pertinent to note that this witness had disclosed the names of both the accused in his First Information Report which was lodged within two hours of occurrence. The trial court has erroneously assumed that because of the two walls on the bridge and the growth of reeds of about 7 to 8 feet, it was not possible for this witness to see the incident. This assumption on the part of the trial court in our considered view was totally unsustainable. We, therefore, feel no hesitation in accepting the evidence of this witness being truthful.

13. Gurmel Singh (PW 3) is another eye witness who had also given the same version like Ranjit Singh (PW 2). Gurmel Singh (PW 3) has stated that when he heard the alarm raised by Bhag he came to the place of occurrence and saw the assault on Bhag by both the accused. The witness further stated that he waited near the dead body whereas Ranjit Singh (PW 2) went to the village to lodge the report. This witness was again searchingly cross-examined on behalf of the defence and there is hardly any material brought on record to discredit his evidence. The trial court has totally misread the evidence of this witness. We accept his testimony as trustworthy which in all material particulars supports the evidence of Ranjit Singh (PW 2).

14. Apart from the evidence of these two eye witnesses, the prosecution has also relied upon certain other circumstances i.e. the recovery of the dagger (Ex.PI) from the person of A-1, blood stained shirts of both the accused, and blood stained earth. All these articles were sent to the Director, Forensic Science Laboratory for its report. The report is dated 3rd September, 1987 Ex.PU. The dagger was marked article A, lumps of earth and loose earth marked b, khaki colour marked Ex.C of Gurmit Singh @ Mita (A-1) and black colour shirt of Gurmit Singh (A-2) marked Ex.D. these articles Ex.A,b,c & D were examined biologically and serologically and it was concluded 'that all the exhibits were stained with human blood of group A'. The blood group of the deceased was "A". This report again corroborates the evidence of Ranjit Singh (PW 2) and Gurmel Singh (PW 3) as regards the complicity of the accused. No explanation whatsoever was offered by both the accused in their statement recorded under Section 313 of the Criminal Procedure Code.

15. The respondent accused has examined Karnail Singh (DW 1) in support of his defence. Karnail Singh (DW 1) has stated that he was the Sarpanch of village Kaharpur panchayat and on the date of occurrence, he was going to village Kothi when he reached near the bridge, he saw a dead body lying there. He further stated that the reeds on both the sides of the bridge were more than 6 to 7 feet high and there was also growth of Tahli trees near that Chai. He then stated that if one stands on the said bridge, nothing present in the nearby fields is visible. There was a bicycle lying near the dead body and no other bicycle was seen there. At about 9.30 a.m., the police had arrived there. During the cross-examination on behalf of the prosecution, he admitted that he did not go to the police station to inform about the presence of the dead body. After going through the evidence, we are satisfied that this witness is not reliable. Being a Sarpanch, it was his duty to go and inform about the dead body to the police. His evidence appears to us a tailor made one to support the defence and we have no hesitation in rejecting his evidence

as unreliable.

16. After going through the evidence on record very carefully, we are of the considered view that there is unimpeachable evidence on record to hold that Gurmit Singh @ Mita son of Ganda Singh (A-1) had assaulted Bhag with the dagger causing his death whereas Gurmit Singh son of Shangara Singh (A-2) by holding the deceased Bhag facilitated A-1 to cause murderous assault on him (Bhag). The evidence on record, therefore, clearly shows that A-2 shared the common intention to commit the murder of Bhag.

17. In the result, the appeal is allowed. The impugned judgment and order of acquittal is quashed and set aside. Gurmit Singh @ Mita son of Ganda Singh (A-1) is convicted for the offence punishable under Section 302 of the Indian Penal Code and sentenced to suffer life imprisonment. Gurmit Singh son of Shangara Singh (A-2) is also held liable for murder of Bhag, an offence punishable under Section 302/24 of the Indian Penal Code and sentenced to suffer life imprisonment. Since A-1 and A-2 are on bail, they are directed to surrender to their bailbonds to serve out the remainder of their sentences. The order of acquittal under Section 3 of TADA is affirmed.