

CASE NO.:
Appeal (crl.) 477 of 2007

PETITIONER:
Dilbagh Singh

RESPONDENT:
State of Punjab

DATE OF JUDGMENT: 27/05/2008

BENCH:
S. B. Sinha & Lokeshwar Singh Panta

JUDGMENT:
J U D G M E N T
Reportable

Lokeshwar Singh Panta, J.

1. The appellant has filed this appeal under Section 19 of the Terrorist and Disruptive Activities (Prevention) Act, 1987 against the final judgment and order dated 26.02.2007 passed by the Additional Judge, Designated Court, Maximum Security Jail, Nabha (Punjab) in Sessions Case No. 2 of 15.04.2004 whereby and whereunder the Designated Court convicted and sentenced the appellant for offences punishable under Section 302/382 of the Indian Penal Code [for short \021the IPC\022] and Section 5 of the Terrorists and Disruptive Activities (Prevention) Act, 1987 [for short \021TADA\022].

2. Briefly stated, the case of the prosecution is that on 9.5.1992, Kirandeep Singh- the complainant (P.W. 7), son of Balkar Singh (P.W. 4), went to Inspector Swaran Singh, the Station House Officer (P.W. 15) who along with other police personnel was on patrol duty at Atalan bus stand and reported that he is a resident of village Atalan, P.S. Ghagga, District Patiala. They are four brothers, and two of his elder brothers are residing at Ludhiana, whereas he along with his third brother Jagmail Singh - the deceased and father Balkar Singh (P.W. 4) are residing in village Atalan and are engaged in the occupation of farming. It was his case that due to terrorism activities in the area, the Government has provided two rifles, one .303 bore and other 7.62 bore with cartridges to their family for self-protection and security. On 9.5.1992, at about 7:00 p.m. he and his brother \026 Jagmail Singh were returning to their house from the fields carrying the said arms (complainant was armed with .303 and his brother armed with 7.62 bore). Dilbagh Singh, the accused-appellant along with Jasbir Singh and one more tall young man armed with fire arms suddenly appeared before them near the chowk of their house. Dilbagh Singh and Jasbir Singh are the residents of the same village. They both opened fire on Jagmail Singh who on receipt of fire arm injuries fell down on the ground. Thereafter, third accomplice, picked up the rifle of Jagmail Singh and shot at Jagmail Singh who died on the spot. The complainant took shelter by the side of a water channel and started firing in the air to scare the accused. The accused after sometime stopped firing. The complainant rushed to the place where Jagmail Singh was lying dead and his 7.62 bore rifle was taken by the accused.

3. Balkar Singh (P.W. 4) had witnessed the entire incident

from his house. He rushed to the scene of occurrence. According to the complainant, the motive behind the murder was that before joining the main stream of the society his brother Jagmail Singh \026 the deceased used to participate in the extremist activities with the accused. The deceased later on abandoned the extremist activities and got married. The accused still wanted the deceased to join their extremist activities, but since he refused to do so, the accused killed him on the count.

4. The complainant asked his father, Balkar Singh (P.W. 4) to guard the body of Jagmail Singh and himself went to P.S. Ghagga to lodge a report of the incident of murder to the police but he met the SHO on the way where his statement (Ex.P1) was recorded. The SHO endorsed Ex. P1 to the incharge of the Police Station for registration of the case, on the basis of which FIR No. 27 (Ex. P2) dated 09.05.1992 came to be registered for offences punishable under Sections 302/384 read with Section 34 IPC and Section 5 of TADA and Section 25 of the Arms Act. Inspector Swaran Singh (P.W. 15) rushed to the place of occurrence and inspected the spot and informed his superior officers and Army Officers requesting them to reach at the spot. He prepared the inquest report (Ex. PA) on the body of the deceased which was identified by Joginder Singh (P.W. 2) and ASI Jarnail Singh (P.W. 17), residents of the same village. On 10.5.1992, the body of the deceased was sent to Civil Hospital, Samana, with inquest and an application (Ex. PL) for conducting the post-mortem examination through police C. Ram Dia 1041 and C. Karnail Singh 2250.

5. On inspection of the spot, the Investigation Officer took into possession: (i) blood-stained earth vide recovery memo (Ex. PB); (ii) two empty cartridges of 7.62 bore vide recovery memo (Ex. PC); (iii) 20 empty cartridges of AK-47 rifle near the dead body vide recovery memo (Ex. PD); and (iv) 7 empty cartridges of .303 bore near from the dead body vide recovery memo (Ex. PE). All the articles were packed and sealed with seal SS in the presence of Mohinder Singh (P.W. 3). A rough site plan of the place of occurrence was prepared and marked Ex. PM. Statements of witnesses were recorded. All recovered articles were later on deposited with MHC Balwinder Singh (P.W. 12) at P.S. Ghagga.

6. On 10.5.1992 at 10:00 a.m., post mortem examination on the body of the deceased was conducted by Dr. Satish Arora (P.W. 5) who in his report (Ex.PF) reported that the cause of death of Jagmail Singh was gun shot injuries to brain and right lung resulting in his death which were sufficient to cause death in the ordinary course of nature. All the injuries were ante-mortem in nature.

7. The accused Dilbagh Singh @ Bagha was arrested on 17.9.1999 by Inspector Budh Ram (P.W. 14) who conducted the personal search of the accused and prepared personal search memo and disclosed the grounds of arrest to the accused vide separate memo. Blood-stained earth (Ex. PB) was sent to the Chemical Examiner whereas empty cartridges (Exs. PC, PD & PE) were sent to Forensic Science Laboratory, Chandigarh, Punjab. On receipt of the report of the Chemical Examiner and after completion of investigation, charge sheet was prepared and filed against accused Dilbagh Singh under Sections 302/382/34 IPC, Section 25 of the Arms Act and Section 5 of TADA. The accused pleaded not guilty to the charges and claimed to be tried.

8. The prosecution in support of its case examined as many as 18 witnesses namely, Dalip Singh (P.W. 1) was a witness of extra-judicial confession allegedly made by accused Dilbagh Singh, but he did not support the prosecution case; Joginder

Singh (P.W. 2) identified the dead body of Jagmail Singh, Mohinder Singh (P.W. 3) resident of the village in whose presence the empty cartridges and blood stained earth were taken into police possession from the spot by the Investigating Officer, proved the recovery memos in this regard Exs. PC, PD and PE. Balkar Singh (P.W. 4), father of the deceased is an eye witness of the occurrence; Dr. Satish Arora (P.W. 5), Medical Officer, who conducted the post mortem on the dead body of Jagmail Singh; MHC Manmohan Singh (P.W. 6) produced the original FIR register of this case; Kirandeep Singh (P.W. 7) the informant is the brother of the deceased; C. Tejinder Singh (P.W. 8) took the sealed parcels of cartridges to the Forensic Science Laboratory, Chandigarh, Punjab; HC Kuldeep Singh (P.W. 9) proved the death of co-accused Jasbir Singh in police encounter and FIR No. 41 dated 29.5.1992 in this regard stood registered at P.S. Patran; SI Harminster Singh (P.W. 10) partly investigated this case; C. Hardam Singh (P.W. 11) took the parcels of the blood stained earth and blood stained clothes of the deceased and deposited the same in the office of Chemical Examiner, Patiala and MHC Balwinder Singh (P.W. 12) with whom the case property was deposited in the Malkhana by the Investigating Officer, P.W. 12 also proved that one rifle bearing No. 1050 with 50 live cartridges along with other rifle of 7.62 bore and 25 cartridges were issued to the complainant party for their security. ASI Grudev Singh (P.W. 13) also partly investigated this case proved the death of co-accused Jasbir Singh @ Pappu and Bawa Singh (the third co-accused with the appellant) in police encounter in some other case, Budh Ram (P.W. 14) (since retired) Inspector of Police arrested accused Dilbagh Singh @ Bagha on 17.9.1999 and proved his personal search memo and the grounds of arrest memo; Inspector Swaran Singh (P.W. 15), Investigating Officer of this case proved the investigation part of this case; Balbir Singh (P.W. 16) proved the report of the Chemical Examiner Exs PW16/A; Jarnail Singh (P.W. 17) the then Ahlmad in the court of Judicial Magistrate, First Class and Pardeep Kumar (P.W. 18), In-charge, FSL, Chandigarh, Punjab stated that the empty cartridges could not be examined as the weapons were not recovered in this case.

9. The accused in his statement recorded under Section 313 Cr.P.C. denied the prosecution case and pleaded innocence. He stated that the deceased was a terrorist and was killed by the Police in an encounter and that he has been falsely implicated in this case by the Police to save its own skin. Three defence witnesses namely, SI Harminster Singh (D.W. 1), Darshan Singh (D.W. 2) and Amar Singh (D.W. 3) all residents of village Atalan were examined. The trial court, on appreciation of the oral and documentary evidence found the accused guilty of the offences punishable under Section 302/382 IPC and Section 5 of TADA and, accordingly, convicted and imposed the following sentences upon him which shall run concurrently:-

Offences

IMPRISONMENT

Fine

(Rs.)

in default of payment

OF FINE

U/S. 302 IPC

Imprisonment

for life

5,000/-

RI for 3 months

U/S. 382 IPC
5 Years R.I.
2,000/-
RI 1 month
U/S. 5 TADA
5 years R.I.
2,000/-
RI 1 month

10. Aggrieved by and dissatisfied with the said judgment and order dated 26.02.2007 passed by the Additional Judge, Designated Court, Maximum Security Jail, Nabha, the appellant has filed this statutory appeal before this Court.

11. We have heard learned counsel for the parties and with their assistance, we have examined the judgment of the trial court and re-apprised the entire oral and documentary evidence placed on record.

12. Mr. Sarup Singh, learned senior counsel appearing for the appellant, assailed the judgment of the trial court, inter alia, contending: (i) that the presence of Kirandeep Singh \026 complainant (P.W. 7) at the place of occurrence of the incident along with the deceased is highly doubtful because the informant did not try to save his brother and the fact that the accused persons who allegedly were fully armed would have spared the complainant especially when he himself was having a .303 bore rifle cannot be accepted; (ii) that even the conduct of Balkar Singh (P.W. 4) \026 father of the deceased was not natural as he too did not make any attempt to save his son from attack allegedly made by the accused; (iii) that as the trial court has not convicted the appellant for charged offence under Section 25 of the Arms Act which technically would amount to acquittal for the said offence, therefore, on the same set of evidence conviction of the appellant for offences under Section 302/382 IPC and Section 5 of TADA by using the same weapons is not sustainable; (iv) that the alleged incident had occurred at about 7:00 p.m. at the chowk of the village, it is unbelievable that no independent witness from the village has been examined by the prosecution to corroborate the testimony of P.Ws. 4 and 7 who are highly interested witnesses; and (v) that the evidence of defence witnesses has wrongly been ignored by the learned trial court who have proved on record that the deceased was murdered by the police in an encounter and the complainant at the instance of the Police has implicated the appellant in a false case because of enmity.

13. Mr. Ajay Pal, the learned counsel appearing on behalf of the respondent-State on the other hand submitted that the reasons given by the trial court for recording the order of conviction of the appellant are based upon proper appreciation of the evidence led by the prosecution in the case. He then submitted that merely because P.Ws. 4 and 7, the two eye witnesses are relatives of the deceased, their testimony cannot be disbelieved and discarded on this premise only as their evidence is cogent, consistent and unblemished with the hypothesis of the guilt of the appellant and this Court should be slow to interfere in the well-reasoned and well-merited judgment of the trial court.

14. We have given our anxious and thoughtful consideration to the respective contentions of the learned counsel for the parties. The arguments put forward by Mr. Sarup Singh although are very attractive yet we find ourselves unable to agree with the same.

15. On independent scrutiny of the entire evidence produced on record, more particularly the testimony of eyewitnesses namely, Balkar Singh (P.W. 4) - father and informant Kirandeep Singh (P.W. 7) brother respectively of the deceased, it stands fully proved that on 9.5.1992, around 7:00 p.m., P.W. 7 and the deceased were returning to their house after doing routine agricultural pursuits in the fields. Dilbagh Singh the appellant along with Jasbir Singh and one more unknown accomplice armed with fire arms suddenly came and stood in front of them near the chowk located near their house and opened fire at Jagmail Singh and shot him dead. The unknown accomplice picked up 7.62 bore rifle of Jagmail Singh and started firing shots at the body of Jagmail Singh - the deceased. P.W. 7 took shelter behind the cover surrounding the water channel and opened fire in the air to scare the accused and after a short while the accused stopped firing and fled away from the place of occurrence. P. W. 7 rushed to the spot where his brother was lying dead and his rifle was found missing. Both these witnesses deposed with one voice that it was the appellant accompanied by Jasbir Singh a resident of their village and one more unknown accomplice who murdered the deceased and the motive behind the killing of Jagmail Singh was that he was a member of extremist activities with the appellant, but later on the deceased joined the main stream of the society and left extremist activities which offended Dilbagh Singh who wanted the participation of Jagmail Singh in the extremist activities but the deceased refused to rejoin their gang. The deceased after joining the main stream of the society also got married. The evidence of the eye witnesses could not be shattered by the prosecution and their evidence has been found trustworthy, reliable and free from any doubt.

16. Dr. Satish Arora (P.W. 5), conducted the post-mortem examination on the body of the deceased Jagmail Singh and found the following injuries:-

\023(1) Gun-shot injury:

(a) Wound of entry \026 .6cm x .6cm over the right temporal region above the pinna. Margins inverted, blackened, collar of abrasion present around the wound.

(b) Wound of exit \026 10cm x 10cm on the left front temporal region, margins averted. Multiple fractures skull bones and brain matter coming out of the wound.

(2)

(a) Wound of entry - .6cm x .6cm on the right scapular region.

(b) Wound of exit \026 2.5cm x 2.5cm on the front aspect in its upper 1/3rd.

(3)

(a) Wound of entry - .6cm x .6cm on the right mid thoracic region.

(b) Wound of exit \026 2.5cm x 2.5cm on the front of chest in its lower 1/3rd.

(4)

(a) Wound of entry - .6cm x .6cm on the right leg in its lower 1/3rd.

(b) Wound of exit 8cm x 8cm on the back of right leg in its upper 1/3rd.

As deposed before the court that there were multiple fractures of skull bone, brain matter was badly damaged; there was haemothorax on right side; the abdomen of the deceased was healthy, stomach was containing semi-digested food material and, in his opinion, the cause of death of Jagmail Singh was gun shot injuries to brain and right lung, which were sufficient to cause death in the ordinary course of nature. All the injuries were ante-mortem.

17. MHC Kuldeep Singh (P.W. 9) of Police Station Patran and ASI Gurdev Singh (P.W. 13), have proved on record that Jasbir Singh and Bawa Singh, accomplices of Dilbagh Singh were killed in police encounter in regard to another case FIR No. 41 dated 29.5.1992 registered against them under Section 307, 148, 149 IPC, Section 25 Arms Act and Section 5 of TADA at P.S. Patran, whereas Dilbagh Singh was arrested in this case on 17.7.1999 by Budh Ram (P.W. 14).

18. The deposition of MHC Balwinder Singh (P.W. 12) Incharge of the Malkhana of P.S. Ghagga would prove that as per the report of P.S. Ghagga, i.e. DDR No. 10 dated 5.4.1992 one rifle .303 bore bearing no. 1050 with 50 live cartridges was supplied to Balkar Singh (P.W. 4) and another rifle of 7.62 bore having butt No. 476 with 25 cartridges was entrusted to Kirandeep Singh ((P.W. 7), under the BDS Scheme for the protection of their personal life and property and safety of the life of other members of the family from the attack of the terrorists who had been extending threats to them. He deposed that on 9.5.1992 rifle 7.62 bore having butt No. 476 was said to have been snatched by the terrorists from the possession of the deceased and that the entire case property was deposited by Inspector Swaran Singh (P.W. 15) - SHO P.S. Ghagga, with him with seals intact and the same were sent to the office of the Chemical Examiner through Constable Hardam Singh (P.W. 15), whereas the parcels of empty cartridges were sent by him to the Forensic Science Laboratory, Chandigarh, Punjab, but the same could not be got compared as the fire arms used for commission of the crime could not be recovered from the accused. It is his evidence that so long as the parcels remained in his possession, he neither tampered with them nor allowed any other person to tamper with the same.

19. On independent scrutiny of the evidence of P.Ws. 4 and 7 we find that they are the truthful witnesses who have helplessly witnessed the crime from the close range but could not help the deceased because of the sudden attack on him by the accused who were three in number with deadly fire arms. P.W. 7 fortunately protected himself by taking shelter by the side of the water channel as he could not take proper position and target the assailants with his fire arm and he could only succeed in firing shots in the air so that he could protect himself and when he looked at his brother the assailants had already done their job. P.W. 4 at the relevant time was about 65 years of age and was unarmed while standing on the terrace of his house which fact itself was enough to prove that he could not target the assailants to save his son from their brutal attack. It was but natural that under such fearful and dangerous circumstances it could not be expected from people of ordinary prudence such as P.Ws. 4 and 7 that they could encounter with the terrorists who had come with pre-

meditated plan to take revenge with the deceased who turned down their command of not joining the terrorist activities in the areas of operation. We do not notice material contradiction in the ocular and medical evidence appearing on record. The evidence of P.W. 4 and P.W. 7 finds corroboration from the post mortem report (Ex. PF) of the deceased which proves that the assailants had used deadly fire arms and as many as four direct gun shot injuries were inflicted on the body of the deceased which resulted in 8 injuries of the wounds having entry and exit of the gun shots. Added to it, there were also multiple fractures of skull bone of the deceased and brain matter was badly damaged as deposed by Dr. Satish Arora (P.W. 5).

20. We have gone through the statements of D.Ws. 1, 2 and 3 who have admitted in the cross-examination that they did not know how Jagmail Singh died. They have not seen the occurrence nor were they present at the time of occurrence at the spot. They stated that there was some murmuring in the village that Police might have killed deceased Jagmail Singh. Further, these witnesses have never reported to the Police or higher authorities that they have heard that Jagmail Singh was killed by Police authorities or that the accused has been falsely implicated in this case. They have deposed in the court in favour of the appellant for the first time in the year 2007 whereas the murder of Jagmail Singh was committed on 9.5.1992 in front of the home of P.W. 4 in the same village to which the defence witnesses do belong. The trial court has rightly come to the conclusion that the evidence of defence witnesses was of no help and assistance to the appellant to prove that he has been falsely implicated by P.Ws. 4 and 7 in the case on hand.

20. Having given our careful consideration to the above-stated submissions made by the learned counsel for the parties and in the light of the evidence discussed above, it must be held that the evaluation of the findings recorded by the trial court do not suffer from manifest error and improper appreciation of evidence on record warranting any interference in this appeal.

21. In the result, for the afore-stated reasons, we find that there is no merit in the appeal and it is, accordingly, dismissed.