

PETITIONER:
MOHINDER SINGH & ANR.HARJINDER SINGH

Vs.

RESPONDENT:
STATE OF HARYANA.

DATE OF JUDGMENT: 23/09/1996

BENCH:
MUKHERJEE M.K. (J)
BENCH:
MUKHERJEE M.K. (J)
FAIZAN UDDIN (J)

ACT:

HEADNOTE:

JUDGMENT:

J U D G M E N T

M.K.MUKHERJEE, J.

These two appeals have been heard together as they stem from one and the same incident. Facts leading to these appeals and relevant for their disposal are as under.

2(a) On April 12, 1987 at on about 12 noon Krishan Lal, driver of car No. RRK-4450, which belongs to one Ved Prakash, lodged an information with Inspector Hazair Singh, Station House Officer of Hissar Police Station, whom he met at Balsamand bus stand, that in that morning at or about 6.30 A.M. when he was standing in the taxi stand of Ganga Nagar one clean shaven young man sporting a beard and wearing trousers and bush shirt hired his car for going to Hissar. The fare was settled at Rs.1.20 per kilometre and he took Rs. 400/- from him as advance. A few minutes later a Sikh gentleman, aged about 25 years, came there and both of them then got into the car. At or about 11 A.M. when the car was on its way to Hissar and was about to reach Balsamand the clean shaven man placed a revolver on his neck and asked him to stop the car. That man then fired a shot in the air and his companion demanded the return of the sum of Rs.400/- paid to him earlier against the fare. After he acceded to their demand they pushed him out of the car and drove away.

(b) Inspector Hazair Singh recorded the above complaint of Krishan Lal and forwarded it to Hissar police station for registration of the case and sent wireless message to all the police station in the District to apprehend the car and the culprits.

(c) In that evening, when Om Prakash, Sub-Inspector of Police attached to Hissar Police Station, alongwith Head Constable Ramphal and other police personnel was holding a Nakabandi on the Hissar-Hansi Bye-Pass by placing drums on the road, they found, at or about 8 p.m. the above car coming from the side of Hissar. They signalled the car to stop and when it came to a halt the two occupants of the car started running away. Ultimately they succeeded in

apprehending both of them, who disclosed their names as Mohinder Singh and Harjinder Singh. After their apprehension the car was searched and the documents relating to the car the driving licence of Harjinder Singh and one steel chain containing the keys of the car were recovered. On search of their persons a country made revolver with a cartridge loaded therein and four currency notes of Rs.100/- each were recovered from Harjinder Singh and Mohinder Singh respectively. All the articles recovered together with the car were seized and taken possession of by S.I. Om Prakash under different recovery memos prepared there.

(d) On completion of investigation the Investigating officer Submitted two chargesheets; one against both Mohinder Singh and Harjinder Singh Under section 392 read with 397 I.P.C., and section 27 of the Arms Act, 1959 read with Section 6 of Terrorist & Disruptive Activities (Prevention) Act, 1985 ('TADA' for short) and another against Harjinder Singh alone under section 25 of the Arms Act, 1959 read with Section 6 of TADA for unlawful possession of the country made revolver.

3. The learned Designated Court, Hissar tried the two cases arising out of the above chargesheets one after the other and delivered two separate judgments whereby it convicted and sentenced the appellants for all the above offences.

4. Aggrieved by their conviction and sentence for robbery Mohinder Singh and Harjinder Singh have filed one of these appeals (Criminal Appeal No.72 of 1989) and Harjinder Singh has filed the other appeal (Criminal Appeal No.1647 of 1996) for his conviction and sentence under section 25 of the Arms act, 1959 read with Section 6 of TADA.

5. To prove the case of robbery against the two appellants the prosecution relied principally upon the evidence of Krishna Lal (P.W.5), H.C. Ramphal (P.W. 6) and S.I. Om Prakash (P.W.7), Krishan Lal detailed the prosecution case regarding the snatching of Rs. 400/- and the car from him after putting him in instant fear of death by two miscreants and he identified the appellants as those miscreants. We have carefully gone through his evidence and we find no reason whatsoever to disbelieve him more so when nothing could be elicited in his cross examination to discredit him. On behalf of the appellants it was suggested to him that he was a procured witness and that the entire case was falsely engineered but the suggestion was denied. Indeed, we have searched in vain for materials in support of the above defence contention but found none. On the contrary we find that his evidence stands amply corroborated by the fact the immediately after he was relieved the entire incident. His identification of the appellants as the two mistake was with them from 6.30 A.M. till 11.00 A.M. and, therefore, he had sufficient time to mark their features. While on this point we may also mention that the appellants refused to be placed in the test identification parade, which was prayed for by the Investigating Officer. The other corroboration of his evidence, as regards the factum of robbery as also the identification of the two appellants as the miscreants, is furnished by the evidence of P.Ws. 6 & 7 who seized the care within 9 hours of the incident with two appellants as the occupants thereof, recovered the sum of Rs. 400/- from Mohinder Singh and the revolver from Harjinder Singh, who according to P.W.5 was the clean shaven man who had placed the revolver on his neck and had fired shot in the air. We do not find any infirmity in the evidence of the above two witnesses, more so when their evidence is supported by the contemporaneous documents prepared in respect of the

seizures. For the foregoing discussion we do not find any merit in Criminal Appeal No. 72 of 1989.

6. The other appeal filed by Harjinder Singh against his conviction under section 25 of the Arms Act, 1959 read with Section 6 of TADA for unlawful possession of the revolver has got to be allowed for the simple reason that the prosecution did not prove that section as required under section 87 was accorded for prosecuting him for the above offence.

7. On the conclusions as above we dismiss Criminal Appeal No. 72 of 1989 and uphold the conviction and sentence recorded against the two appellants by the Designated Court in Sessions Case No.5-TC 1987. We, however, allow Criminal Appeal No. 1647 of 1996 and set aside the conviction and sentence recorded against the appellant Harjinder Singh Under Section 25 of the Arms Act, 1959 read with Section 6 of the TADA in Sessions Case No. 3-TC of 1987. The appellants, who are on bail, will now surrender to the bail bonds to serve out the sentences imposed upon them in Sessions Case No. 5-TC 1987.