

CASE NO.:
Appeal (crl.) 410 of 2007

PETITIONER:
DILBAGH SINGH

RESPONDENT:
STATE OF PUNJAB

DATE OF JUDGMENT: 08/05/2008

BENCH:
S.B. SINHA & LOKESHWAR SINGH PANTA

JUDGMENT:
JUDGMENT

O R D E R

Reportable

1. Appellant Dilbagh Singh is a resident of Village Attalan. Village Attalan is appurtenant to the police station known as Ghagga in the district of Patiala.

2. He has been convicted for alleged commission of offence under Sections 302, 382, 452 read with Section 34 of the Indian Penal Code, Section 25 of the Arms Act and Section 3/4 of the Terrorist and Disruptive Activities (Prevention) Act, 1987 (hereinafter referred to as TADA).

3. The occurrence took place at about 8.40 p.m. on 27.7.1991. First Information Report in regard to the said occurrence was lodged by Rajwinder Kaur (PW-3) at about 6.15 in the morning of 28.7.1991. The distance between Village Attalan and the Ghagga Police Station is said to be about 4 kilometers. The family had two residences; one at the Abadi and the other at the place where their farm is situated. At the time of the incident, the mother of the first informant- Lachhman Kaur was at the farm. Her father Gurbachan Singh had come to the village for taking the food. It is stated that he used to carry food for his wife also.

4. The first informant had two sisters and one brother. Her brother, namely Rachhpal Singh, had two sons; one of them was living in his maternal grandfather's family and another was living with them. His name is Malvinder Singh. He was aged about 11 years. Harvinder Kaur, the daughter of her elder sister was also living with them.

5. At the material time, allegedly, when Harvinder Kaur was putting fire in the Tandoor, three persons came to the house. They were armed. Allegedly, they enquired from her father, whether he had any gun. Answer thereto having been rendered in the affirmative, the gun was directed to be produced. The informant brought the gun together with six cartridges and the same was handed over to them. The father of the first informant was again asked a question as to how many sons he had. To that, he replied that he had only one son. Then they asked him to call his son also whereupon Malvinder Singh, her nephew went to call him. Rachhpal Singh, the brother of the first informant then came to the house. Again an enquiry was made as regards the whereabouts of the mother. In reply to that question, they were informed that she was at Dera which is at some distance from there. Allegedly, the first informant, the father, brother and herself were asked to stand in one line and shots were fired at them. Whereas Gurbachan Singh and Rachhpal Singh died instantly, the shot which was fired on the first informant had hit at her back. Believing that all of the three are dead, they left the place. The first informant heard the sound of firing another shot near their Dera. Her mother later on was found dead.

6. In the morning of 28.7.1991, she informed the Village Sarpanch and Lambardar of the Village. She was asked to lodge a first information report whereupon a first

information report was lodged.

7. In the First Information Report, although she did not name anybody, the descriptions of the accused were given. Appellant was purported to have been arrested while he was already in custody, purported to be on the basis a settlement made under Section 161 of the Cr.P.C. by one Chanan Singh, arrested on 17.9.1999. No test identification parade was, however, held.

8. The prosecution examined its witnesses only in 2004. The first informant, who in the meanwhile was appointed as a Constable in the Punjab Police Force, examined herself as PW-3. She purported to have identified the appellant for the first time in Court.

9. Relying on or on the basis of her deposition, the learned Designated Judge recorded a judgment of conviction inter alia opining that no test identification parade was necessary to be held as the accused had never applied therefor. It was furthermore opined that the accused did not lead any evidence in defence to prove that he was not one of the assailants who committed the crime in the present case. A contention was raised on behalf of the appellant that as there was no direct evidence and furthermore the motive to commit the crime had not been proved, he was entitled to the benefit of doubt. It was stated:

\023Here, I do not agree with this contention of the learned counsel for the accused because the prosecution has proved that the accused party had killed Gurbachan Singh, Rachpal Singh and Lachhman Kaur and injured Rajwinder Kaur seriously on the ground that were police informers. That is why they had killed the family of Gurbachan Singh. So I do not find any force in this arguments advanced by the learned counsel for the accused.\024

10. This appeal has been preferred under Section 19 of the TADA. The learned Designated Court did not address itself the question as to how the provisions of TADA were applied. Appellant belongs to the same Village 'Attalan'. As there is no police station in the said Village, it may be safely assumed that the said Village is a small one. If the appellant was a resident of the said Village, it is difficult to accept that the appellant was not known to the first informant.

11. We have noticed hereinbefore that the appellant was arrested on 17.9.1999 i.e. after more than 8 years after the occurrence took place. He was already in custody at the relevant point of time. No other evidence, apart from the purported statement made by the said Lachman Kaur under Section 161 of the Cr.P.C. to the effect that the appellant and two others had come to the field to state that they had killed three persons and if anybody else are there to oppose them, they would also be killed, was brought on record. No test identification parade was held.

12. It was for the prosecution to arrange holding of a test identification parade in view of the fact that in the First Information Report, the names of the accused were not disclosed. There is also nothing on record to show that even the description of the accused, disclosed in the First Information Report, was that of the appellant. The burden to prove that the appellant has committed the offence was on the prosecution. The learned Designated Court, however, throwing all canons of criminal jurisprudence to the wind, held the appellant guilty, stating that it was for the appellant to examine the witnesses in his defence to prove that he had not committed the offence.

13. In a Village which has a population of about 1000-1200 only, it is difficult to comprehend that the first informant would not know the accused \026 appellant. It has been accepted that the appellant belonged to the same Village. If that be so, there did not exist any justifiable reason as to why he was asked the name of Gurbachan Singh and would ask the question as to how many sons did he have. It is difficult to comprehend that a question as to what is the distance of the Dera from his house would also be asked.

14. The learned Designated Judge failed to pose unto himself the relevant questions.

15. No recovery has been made from the appellant. It appears from the evidence of the first informant that she has joined Constabulary with the Punjab Police. We will assume that she joined her services after the occurrence. If that be so, even at that point of time, she should have mustered enough courage to disclose the name of the appellant. It may be possible that a young girl of her age, being in a shock having witnessed two murders and having come to know of the murder of her mother and furthermore, having suffered an injury, would not disclose the names of the assailants as terrorism was at its peak at the relevant time, but it is difficult for us to believe that she would not do so although she had the requisite official protection.

16. The learned Designated Court, without there being any material on record, further held that the enmity is proved as the deceased Gurcharan Singh was police informer. On what premise such a finding was arrived at is not known. We may also notice that PW-8 Chanan Singh has also been declared hostile.

17. We, therefore, are of the opinion that in the facts and circumstances of this case, the impugned judgment is wholly unsustainable. It is set aside accordingly. The appeal is allowed. The appellant is in jail, he is directed to be released forthwith unless wanted in connection with any other case.