

PETITIONER:
NIKKA SINGH

Vs.

RESPONDENT:
STATE OF PUNJAB

DATE OF JUDGMENT: 08/10/1996

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

ACT:

HEADNOTE:

JUDGMENT:

WITH
CRIMINAL APPEAL NO.537 OF 1989

Jit Singh
V.
State of Punjab & Anr

J U D G M E N T

S.P. KURDUKAR, J.

Criminal Appeal No. 585 of 1995 is at the behest of the appellant (accused) under Section 19 of the Terrorist and Disruptive (Special Courts) Act (for short 'TADA'), against the judgment and order of conviction dated 12th November, 1988 passed by the Additional Judge, Designated Court, Ferozpur. The Designated Court, found the appellant guilty of the offence punishable under Section 302 of the Indian Penal Code for committing the murder of Gurdip Singh and sentenced him to suffer imprisonment for life and to pay a fine of Rs. 5,000/-, in default of payment of fine, to undergo further rigorous imprisonment for one year. The appellant was, however, acquitted under the Arms Act and TADA.

The de facto complainant has also filed Criminal Appeal No. 537 of 1989 challenging the very same judgment and order of acquittal in respect of co-accused Gurtaj Singh and prayed that he be convicted under Section 302 of the Indian Penal Code and be sentenced in accordance with law.

2. Since both these appeals arise out of a common judgment passed by the Designated Court, they are being disposed of by this judgment.

3. The prosecution story as disclosed at the trial falls in a very narrow compass:-

Jit Singh (PW 3) was doing some construction work at his house situated near the liquor vend in the village Bishnandi. He asked Gurdip Singh to assist him in the said work. On March 27, 1987, Gurdip Singh alongwith his son Gurcharan Singh (PW 2) had gone to the construction site and were sleeping on a cot. At about 11.00 p.m., Gurdip Singh woke up after hearing some noise and noticed that Nikka Singh and Gaja Singh armed with guns were coming towards the construction site. On seeing these accused, Gurdip Singh raised an alarm and asked them about their identity,

whereupon the accused came towards his cot. Gurdip Singh caught hold of the rifle of Nikka Singh; whereupon, Gaja Singh another accused, exhorted him to fire. Nikka Singh snatched the gun from Gurdip Singh and fired at him from a close range causing injuries on his left jaw. Gaja Singh, thereafter caught hold of Gurcharan Singh (PW 2) by legs and threw him on the ground causing injuries to his head. On hearing the sound of the fire arm, Jit Singh (PW 3) and Harnek Singh, brothers of Gurdip Singh came to the construction site and found Gurdip Singh dead. Jit Singh (PW 3) then fired in the air through his licenced gun in his self defence. In the meantime, both the accused fled away. Gurcharan Singh (PW 2) aged about 11 or 12 years, when got up after hearing the sound of gun shot fired in the air by his uncle, saw the dead body of his father, became unconscious and fell down. However, he regained his consciousness at about 7.00 a.m. on the following day.

4. On March 28, 1987 at about 7.30 a.m. Jit Singh (PW 3) alongwith Gurcharan Singh, ex Sarpanch went to the Police Station at Jaitu and lodged the FIR. SI Gurmej Singh recorded the statement of Jit Singh (PW 3) (Ex.PB) where in he gave the description of the 1 assailants. SI Gurmej Singh then reached at the place of occurrence and carried out further investigation. Two empty cartridges of .12 bore gun bearing marks KF-12 and KF Special long range lying at the place of occurrence were taken charge of by him. During the course of investigation, SI Gurmej Singh recorded the statements of various witnesses including that of Gurcharan Singh (PW 2), who by that time had regained consciousness. After completing the investigation, a charge sheet was submitted against the two accused persons for offence punishable under Section 302 read with Section 34 of the Indian Penal Code as also under Sections 3 and 4 of TADA and under Section 27 of the Arms Act.

5. Both the accused denied the accusations levelled against them by the prosecution and pleaded ; that they are innocent and they be acquitted.

6. The prosecution in support of its case examined as many as nine witnesses of whom Gurcharan Singh (PW 2) was the eye witness.

7. The learned Trial Judge on careful scrutiny of the oral and documentary evidence on record by his impugned judgment found the appellant guilty of an offence punishable under Section 302 of the Indian Penal Code. The other co-accused Gurtej Singh, however, was given the benefit of doubt and acquitted. It is this order of conviction and sentence which is sought to be challenged by the appellant in this Criminal Appeal No. 585 of 1995 whereas the complainant has filed the Criminal Appeal No. 537 of 1989 challenging the order of acquittal in respect of Gurtej Singh Gaja Singh.

8. Mr. M.S.Gujral, the Learned Senior Advocate appearing for the appellant (accused) urged that the impugned order of conviction and sentence is totally unsustainable. He urged that looking to the tender age of Gurcharan Singh (PW 2), it was improbable that he would have gone to the site and slept alongwith his father. The prosecution has coined a false story to show the presence of Gurcharan Singh (PW 2) at the time of incident. He further urged that until the FIR was lodged on 28th March, 1987, the names of the assailants were not known and it contained only the description of the accused. The claim of Gurcharan Singh (PW 2) that he became unconscious after seeing the dead body of his father, but regained the consciousness when Investigating Officer reached at the place of occurrence was nothing but his ipse dixit and should not be accepted in the accepted of medical

evidence in that behalf. He urged that there was enormous delay in lodging the First Information Report and the prosecution has utilized this period for concocting a false story of assault on Gurdip Singh by the accused. In the facts and circumstances of the case, counsel urged that the evidence on record is totally unsatisfactory and the appellant be acquitted.

9. Since it is a first appeal against the judgment of the Designated Court, we have carefully gone through the oral and documentary evidence on record.

10. As regards the unnatural death of Gurdip Singh, it is not and cannot be disputed that he met with a homicidal death. The evidence of Dr. K.K. Aggarwal (PW1) who held the autopsy on the dead body of Gurdip Singh on 28th March, 1987 found the following injuries:

"A lacerated wound 10 cm x 8 cm x 5 cm present on left side of face. It was triangular in shape, pointed and was towards nostril and broad surface was 2 cm anterior to left ear. Margins were inverted cherring present. Clotted blood was present in the wound. The muscles, fascia, fascial bones, blood vessels, nerves were lacerated in the wound."

On dissection of scalp clotted blood was found present over left parietal area. On removal of skull, the left cerebral hemisphere was found lacerated on different sides and three pellets were recovered therefrom. The middle cranial fossa was fractured and subarachnoid hematoma was present over both cerebral hemispheres. The wound over the face contained 22 pellets, which were lying in different directions, and they were taken out. He opined that the death was due to shock and haemorrhage as a result of injury caused by the fire arm. The injury was ante mortem and sufficient in the ordinary course of nature to cause the death. Ex.PA is the carbon copy of the post mortem report. In view of the expert's evidence, we see no hesitation in concluding that Gurdip Singh met with a homicidal death.

11. Coming to the complicity of the appellant in the present crime, the prosecution story rests entirely on the evidence of Gurcharan Singh (PW 2). It is true that the age of Gurcharan Singh at the time of incident was 11 or 12 years. It is also true that he is the son of the deceased. Bearing in mind both these factors, we have carefully scrutinized the evidence of Gurcharan Singh (PW 2). The Designated Court after putting some questions to the witness found him to be quite intelligent and capable of giving the evidence and accordingly recorded his statement on oath. Gurcharan Singh (PW 2) in his evidence has stated that he had gone to the construction site to sleep along with his father. The construction site was near their house. Jit Singh (PW 3) is his uncle. He then stated that on 27-3-1987 at about 11.00 o'clock he woke up due to the noise and at that time, he heard his father asking about the identity of the two persons. Suddenly, Nikka Singh came near his father who held his rifle, whereupon Gurtaj Singh exhorted and asked Nikka Singh to fire at Gurdip Singh. Suddenly, Nikka Singh snatched his rifle from his father and fired at him from a close range as a result thereof he collapsed. In the meantime, he saw Jit Singh (PW 3) coming on the spot. Upon seeing the dead body of his father, he fainted and fell down. He regained the consciousness only on the following day at about 7.30/8.00 a.m. The statement of this witness

under Section 161 Cr.P.C. was recorded on 28th March, 1987 at about 7.30/8.00 a.m. In his evidence before the Court, he has stated that he identified Nikka Singh who was having a rifle in his hand and fired at his father from a close range. He was searchingly cross-examined by the defence but there is hardly any material which could discredit his testimony. Learned Trial Judge, in our opinion was, therefore, right in accepting the evidence of Gurcharan Singh (PW 2) as truthful and credible. We see reason to discard his testimony.

12. Jit Singh (PW 3), who lodged the First Information Report on 28th March 1987, at about 7.30 a.m., in his evidence, has stated that after hearing the noise, he woke up, went towards the construction site and at that time, he saw two persons running away. Since, he saw them from a distance he could not identify them and, therefore, he has given the description of the assailants in his complaint. He further stated that when he reached at the place of occurrence, Gurdip Singh was found dead whereas Gurcharan Singh (PW 2) was lying unconscious whom he shifted to the house. However, he did not regain the consciousness until he left to lodge the First Information Report. He then stated that during the course of investigation, the statement of Gurcharan Singh (PW 2) was recorded by the Investigating Officer and at that time, he told the names of the assailants. There is nothing in the evidence of this witness, which could discredit his testimony.

13. After going through the evidence of both these witnesses, we are satisfied that the evidence of Gurcharan Singh (PW 2) is quite trustworthy and the trial court has committed no mistake in convicting the appellant on the basis of his evidence.

14. It is true that the prosecution has led no medical evidence to show that Gurcharan Singh (PW 2) was unconscious throughout the night and regained his consciousness on the following day. The criticism on this issue made by Shri Gujral does not appeal to us because the incident in question took place at about 11.00 p.m. in village Bishnandi and it was not expected to get any medical help for Gurcharan Singh (PW 2) at such late hours. Mr. Gujral urged that even when the inquest panchanama was being drawn the names of the assailants were not known and if they were known they should have been figured in the inquest panchanama. We do not see any substance in this contention.

15. Coming to the next submission of Mr. Gujral that there was considerable delay in lodging the first information report we see no merit in this contention. The incident took place on 27th March, 1987 during night and the First Information report was lodged in the following day at about 7.30 a.m. In our considered opinion, there was no delay and, therefore, the question of concocting a false story against the appellant does not arise.

16. Coming to the Criminal Appeal No. 537 of 1989 filed by the complainant after hearing Mr. Naresh Bakshi, Learned advocate for the de facto complainant, we are of the opinion that no interference with the order of acquittal of Gurtaj Singh is called for.

17. In the result, there is no substance in both these appeals and, therefore, to stand dismissed. Appellant Nikka Singh if on bail shall surrender to his bailbonds forthwith to serve out the remainder of his sentence.