

PETITIONER:
PARAMJIT SINGH & ORS.

Vs.

RESPONDENT:
THE STATE OF PUNJAB & ORS.

DATE OF JUDGMENT: 10/12/1996

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

ACT:

HEADNOTE:

JUDGMENT:

THE 10TH DAY OF DECEMBER, 1996

Present:

Hon'ble Mr. Justice M.K. Mukherjee

Hon'ble Mr. Justice S.P. Kurdukar

Dr. B.L. Wadhwa, M.A. Chinnasamy, Devender P.Singh, Advs.
for the appellants.

Ranbir Yadav, Adv. for R.S. Suri, Adv. for the Respondents.

J U D G M E N T

The following Judgment of the Court was delivered:

J U D G M E N T

S.P.KURDUKAR, J.

This Criminal Appeal under Section 19 of Terrorist and Disruptive Activities (Prevention) Act, 1987 (for short 'TADA') is filed by the appellants accused challenging the legality and correctness of the impugned judgment and order of convictions dated 15th February, 1996 passed by Addl. Judge, Designated Court, District Jail, Nabha, under Sections 302/34 and 397 of the Indian Penal Code as also under Section 3 of TADA.

2. The prosecution story as unfolded at the trial is as under:-

Jagjit Singh, SHO (PW 6) attached to the police station, Sadar, on 22-3-1991 was posted on patrolling duty in the jurisdiction of Bahadurgarh Town alongwith constables Mohinder Singh (PS 4), Sohan Singh and Madan Lal (PW 5). While they were on duty near the gate of Escort & Soetze Factory, Bahadurgarh, Paramjit Singh (A-1) and Satnam Singh (A-2) came there and told that they intended to have room on rent and for that purpose they requested Sukhdev Singh (since deceased) to accompany them so that they will have a drink and then find out the suitable room on rent. Saying so, according to the prosecution, both the accused and Sukhdev Singh left in the direction of Mandirwali Pulli. It is alleged by the prosecution that one gentleman on bicycle informed Mohinder Singh (PW 4) and Madan Lal (PW 5) who were on patrolling duty that a person in the police uniform was lying in an injured condition near Mandirwali Pulli. Thereafter, Jagjit Singh, SHO (PW 6) went to the place of occurrence and found Sukhdev Singh was lying with bleeding injuries. Upon inquiry, Sukhdev Singh told him that A-2

fired at him through his revolver and thereafter they escaped with his service stengun. The detailed statement of Sukhdev Singh (since deceased) was then recorded by Jagjit Singh, SHO (PW 6) and marked as Ex.PD/1. On the basis of this statement, a crime was registered under Sections 307/34 IPC; 3,4,5 and 6 of TADA and 25 of the Arms Act. Sukhdev Singh was then shifted to Rajendera Hospital, Patiala for medical treatment. During investigation, blood stained earth was collected from the spot in a small tin box and after sealing the same, it was sent to the Chemical Analyser. Sukhdev Singh, while in the hospital succumbed to his injuries on 2nd May, 1991. Dr. Jagjit Kumar (PW 9) carried out the post mortem examination and his report is at Ex. PB/1. It is noticed from the record that both the accused were arrested on 25th April, 1991 in another crime and were shown to have been arrested in the present crime on 28th April, 1991. After completing the investigation, both the accused were put up for trial for the offences punishable under Sections 302//307/382/394/397/34 of the Indian Penal Code as also under Section 25 of the Arms Act and under Sections 3,4,5 and 6 of TADA.

3. The appellants accused denied the accusations leveled against them and claimed to be tried. According to them, they have been falsely implicated because of enmity. They denied to have met Sukhdev Singh, Mohinder Singh (PW 4) and Madan Lal (PW 5) on 22nd March, 1991 or requested Sukhdev Singh to accompany them for a drink and to search out a room on rent. They pleaded that they are innocent and they be acquitted.

4. At the outset, it may be stated that the entire prosecution case rested on circumstantial evidence. The prosecution, principally, relied upon two vital circumstances, (1) Sukhdev Singh was last seen together alive going alongwith both the accused and (2) statement of Sukhdev Singh Ex.PD/1. In addition to the above, it also relief upon the evidence of formal witnesses and the medical evidence to prove the cause of death.

5. The Addl. Judge, Designated Court, on appraisal of oral and documentary evidence on record held that the prosecution proved both the vital circumstances mentioned hereinabove as also other circumstances which complete the chain of circumstantial evidence. Consistent with these findings, the Trial Court convicted A-2 under Section 302 of the Indian Penal Code whereas A-1 under Section 302/34 of the Indian Penal Code and sentenced each one of them to suffer imprisonment for life and to pay a fine of Rs.1000/- and in default RI for one year. Both the appellants were also convicted under Section 397 of the Indian Penal Code and were sentenced to suffer RI for seven years and to pay a fine of Rs. 2500/- and in default six months RI. Both the accused were also convicted under Section 3 of TADA and each of them was awarded imprisonment for five years and a fine of Rs. 2500/- or in default six month's RI. All the substantive sentences were ordered to run concurrently. Out of the amount of fine as and when realised, half of it shall be paid to the widow of Sukhdev Singh. Aggrieved by paid to the widow of Sukhdev Singh. Aggrieved by this order of conviction and sentence, the appellants have preferred the appeal under Section 19 of TADA to this Court.

6. Before we deal with these two important circumstances, it may be stated that learned counsel for the appellants did not and could not seriously challenge the fact that Sutskhdev Singh met with a homicidal death. We, therefore, do not think it necessary to set out in detail the evidence of Dr. Jagjit Kumar (PW 9) who held the autopsy on the dead

body of Sukhdev Singh and prepared the post mortem examination report Ex.PB/1. Suffice it to mention that according to Dr. Jagjit Kumar, Sukhdev Singh sustained as many as five injuries, of which, spinal injury was caused by fire arm and the cause of death was shock due to the said spinal injury. All these injuries were ante mortem. The spinal injury was possible with shotgun since there were pellets. During the cross-examination, he stated that bullet comes out of revolver, stengun and pistol whereas pellets are from shotguns. In view of this medical evidence, we have no hesitation in upholding the finding of the Trial Court that Sukhdev Singh died a homicidal death. We, accordingly do so.

7. Coming to the vital vital circumstance, namely, Sukhdev Singh was last seen alive in the company of the appellants and in order to prove this fact, prosecution strongly relied upon the evidence of Mohinder Singh (PW 4) and Madan Lal, PC (PW 5). Both the witnesses undoubtedly stated on oath that on 22nd March, 1991, when they were on patrolling duty alongwith Sukhdev Singh, the appellants came and asked Sukhdev Singh to come alongwith them to find out a room on rent and also share a drink. Saying so, Sukhdev Singh left the patrolling duty and went alongwith the appellants. We have gone through the evidence of both these witnesses very carefully and we do not feel it safe to accept the same as credible one. The main reason for discarding their evidence is that their statements under Section 161 of Cr. P.C. came to be recorded on 8th August, 1991 after about four and a half months. No explanation whatsoever was given by the Investigating Officer Gurmeet Singh (PW 11) as to why their statements could not be recorded earlier. Both these witnesses were members of the patrolling duty and even after knowing that on 22nd March, 1991, Sukhdev Singh left alongwith the appellants and was admitted in the hospital in an injured condition, they did not come forward to tell about this fact. It is in these circumstances, we do not feel it safe to accept their evidence on this vital circumstance, namely, Sukhdev Singh was last seen alive in the company of the appellants.

8. The next circumstance strongly relied upon by the prosecution to prove the complicity of both the appellants was the alleged dying declaration Ex.PD/1 of Sukhdev Singh recorded by SHO Jagjit Singh (PW 6) on 22nd March, 1991 between 8.30 and 9.00 p.m. Jagjit Singh (PW 6) testified that on 22nd March, 1991, he was posted as an Inspector/SHO, Police Station Sadar Patiala and on that day, he alongwith SI Kuldip Singh and other police officials were going in the area of Bahadurgarh, Seel road, in connection with patrolling duty and investigation of a case bearing FIR No.76/91, PS Sadar Patiala. He saw Sukhdev Singh, HC in an injured condition lying on the road side. He lifted him by giving support and made inquiries. Sukhdev Singh made the statement Ex.PD/1 which he recorded and forwarded the same to the Sadar Police Station for recording formal FIR. Accordingly, an FIR was registered Ex.PD/2. Sukhdev Singh in his statement Ex.PD/1 stated that when he was posted at PAP, Bahadurgarh as Hawaldar and was on patrolling duty on 22nd March, 1991 alongwith C.Mohinder Singh (PW 4) and Madan Lal PC (PW 5) at about 8.00 p.m., Paramjit Singh (A-1) and Satnam Singh (A-2) came near the gate of Escort and Goetze Factory, Bahadurgarh, whom, he was knowing earlier. They told him that if he needed a room on hire, they would provide the same and they would sit somewhere to have the snacks. Accordingly, he went alongwith them to Seel Road and when they reached near Mandirwali Puli, A-2 took out the

revolver from his dub and fired at him. He sustained a fire arm injuries and fell down. Thereafter, A-1 and A-2 took away his stengun No. 20261, Batt No. 86, two magazines and cartridges and ran away. He was lying for long time. No one came to him due to fire arm injury sustained by him. The market was already closed but the outer lights of the shops were on. A-1 and A-2 in connivance with each other with the intention to kill him and snatch the arms and ammunition brought him at the place of occurrence and fired at him. He was unable to sign as his hands were shrinking. This complaint be recorded and action be taken.

Jagjit Singh (PW 6) in his evidence stated that he recorded the statement of Sukhdev Singh in his own words and since his injuries were bleeding, he was shifted to Rajendera Hospital, Patiala. On the way, he became semi unconscious and did not regain consciousness till he died on 2nd May, 1991. Dr. R.P. Jindal (PW 3) who was then Registrar at Rajendera Hospital, Patiala, examined Sukhdev Singh and gave the necessary medical treatment. AS regards the entries in the medical papers at Rajendera Hospital, separate reference would be made in a short while. This witness was cross-examined at great length and after going through his evidence and the contents of the dying declaration Ex.PD/1, neither the said evidence nor the contents of the dying declaration inspire confidence in us to accept the same as credible and truthful. Jagjit Singh (PW 6) admitted in his evidence that after recording the dying declaration of Sukhdev Singh, he became semi unconscious and was unable to speak. He further admitted that he did not record his remarks on the dying declaration that the maker was in a fit condition to make such a statement. Dr. Jagjit Kumar (PW 9) had stated that Sukhdev Singh had sustained pellet injury on his spinal cord. Having regard to the medical evidence and the admission of Jagjit Singh (PW 6) that after recording the dying declaration Ex.PD/1, Sukhdev Singh became semi unconscious, it would be totally unsafe to accept the testimony of this witness to hold that Sukhdev Singh was in a fit condition to make the dying declaration. Moreover, the contents and the manner in which all minor details were alleged to have been given by the injured Sukhdev Singh in his dying declaration does not inspire confidence in us to accept it as truthful. For instance, the dying declaration apart from giving the names of his two colleagues, it mentioned their buckle numbers and how he was tempted to go alongwith both the appellants. The maker despite such a serious injury to the spinal cord mentioned the stengun No. 20261 including Batt No.86. We have very carefully gone through the dying declaration Ex.PD/1 and we are satisfied that the said document cannot be accepted as a true dying declaration of Sukhdev Singh and we will not be unjustified if we call it a "concocted document." If this dying declaration Ex.PD/1 is left out of consideration, there is hardly any evidence to connect the appellants with the present crime.

9. Coming to the entries in the medical papers and the bed head ticket at Rajendera Hospital, what surprises us was the entry made on these papers as "accidental". It is not at one place such an "accidental" entry was made but also at three other places. Dr. R.P. Jindal (PW 3), Registrar, Rajendera Hospital, Patiala, had stated that he did not make these entries but he was also unable to account for the same. Surprisingly, the learned Trial Judge Expected that the appellants were supposed to give explanation as to how the entry "accidental" was made in the medical papers. The entire approach of the learned Trial Judge was totally

erroneous on this aspect and no explanation whatsoever in this behalf could have been expected from the accused.

10. We have gone through the judgment of the learned Trial Judge as well as other materials on record and we are satisfied that the prosecution has failed to prove both these vital circumstances and reluctantly the conviction of the accused cannot be sustained.

11. For the foregoing conclusions, we allow the appeal filed by the appellants. The impugned judgment and order of conviction passed by the Addl. Judge, Designated Court, District Jail, Nabha, on 15th February, 1996, in Sessions Case No. 250 of 12th September, 1991 is quashed and set aside and both the appellants are acquitted of all the charges.

Vide our order dated 8th November, 1996, we directed that the appellants be released forthwith if not required in any other case. It is, therefore, not necessary to pass separate order in this regard.

