

Mohd. Zahid

Vs

Govt. of NCT of Delhi

Criminal Appeal No. 892 of 1997

(K. T. Thomas, D. P. Wadhwa, M. K. Mukherjee JJ)

08.05.1998

JUDGMENT

M. K. MUKHERJEE, J. –

1. This appeal under Section 19 of the Terrorist and Disruptive Activities (Prevention) Act, 1987 ("TADA" for short) is directed against the judgment and order dated 22-7-1997 of the Designated Court II, Delhi convicting the appellant for an offence under Section 5 of TADA and sentencing him to suffer rigorous imprisonment for 5 years and to pay a fine of Rs. 1000, and in default of payment of fine to undergo rigorous imprisonment for 2 months more.
2. According to the prosecution case, in the afternoon of 8-3-1990, Sub-Inspector Gopi Chand (PW 6) of ISBT (Inter-State Bus Terminus) Police Post along with Assistant Sub-Inspector Chander Bhan (PW 5) and other police personnel was on patrolling duty at the inner gate of ISBT. When they were checking the luggage of passengers they saw the appellant alighting from a bus with a rexine bag. Seeing them, he tried to move away briskly. PW 6 apprehended him on suspicion and found, on search of his bag, 3 country-made pistols and 12 cartridges. He seized those articles under a memo and put them in separate sealed packets. Along with those articles he forwarded a report to the Kashmere Gate Police Station for registration of a case against the appellant and took up investigation. The seized articles were thereafter sent for examination by the Central Forensic Science Laboratory, which reported that the pistols were in working order and the cartridges were alive. On receipt of that report PW 6 filed charge-sheet against the appellant with the requisite sanction of the Deputy Commissioner of Police, North District, New Delhi under Section 39 of the Arms Act, 1959.
3. The appellant pleaded not guilty to the charges levelled against him; and his specific defence was that in the evening of 6-3-1990 when he got down at ISBT from the bus he boarded at Meerut, the police apprehended him, and after detaining him for three days in the police post foisted a false case against him. He asserted that no country-made firearms or cartridges were recovered from him.
4. In support of its case the prosecution examined 7 witnesses of whom PWs 5 and 6 were the witnesses to the recovery and seizure of the firearms and ammunition. The appellant, however, did not examine any witness in his defence but produced before the Court certified copy of a telegram sent by his father to the higher authorities on 8-3-1990, wherein he complained that his son Zahid (the appellant) was arrested by the Police Post ISBT on 6-3-1990 and an application that he (the father) moved before a Metropolitan Magistrate, New Delhi on the same day making identical complaint.

5. The Designated Court held that the evidence of PWs 5 and 6 was reliable and could be made the basis for conviction, notwithstanding the fact that no independent witness was examined to corroborate their evidence as the explanation offered by PWs 5 and 6 that none of the members of the public present at the bus terminus agreed to join the search was reasonable. In disbelieving the case made out by the appellant, the Designated Court observed that if really he was arrested by the police on 6-3-1990 it was expected of the father of the appellant to send the telegram on that date itself and not on 8-3-1990 at 5.00 p.m. as the telegram indicates. According to the Designated Court, since the appellant was apprehended by the police at 5.30 p.m. on 8-3-1990 it was very likely that the said telegram was sent by his father immediately after his apprehension, to make out a defence.

6. Though, apparently, there is no reason as to why PWs 5 and 6 would implicate the appellant falsely, a closer look into the materials brought on record clearly indicates that it is the defence version which is true and not that of the prosecution, as given out by the above two witnesses. From the application that Kadir Ahmed, father of the appellant, filed before the Metropolitan Magistrate, IV Court, Delhi on 8-3-1990 we find that his allegation therein was that his son was arrested by some officers of ISBT Police Post of Kashmere Gate Police Station, Delhi on 6-3-1990 at or about 7.00 p.m. and since then he was in their custody. His further allegation was that even though his son was arrested on that day he was not produced in any court till then, i.e., 8-3-1990. Accordingly, he prayed that his son be immediately released from custody or in the alternative be produced in court. On that application the Magistrate passed an order directing the Station House Officer to report by the following day, i.e., 9-3-1990. It further appears that on that very day, (8-3-1990), the Station House Officer of Kashmere Gate Police Station passed on the said direction of the Magistrate to the Head Constable of ISBT Police Post. Though the appellant did not examine his father or any other witness to prove at which hour of the day the above application was filed and moved, it can be safely presumed that it was filed and order of the Magistrate obtained thereon, during court hours, which ended at 5.00 p.m. Since, according to the prosecution, the appellant was arrested at 5.30 p.m. the above circumstance undoubtedly makes the defence version probable.

7. To confirm whether we would be justified in basing our conclusion on the above circumstance, we called for the Daily Diary Book of the police post containing Entry 33 dated 8-3-1990, a copy of which (Ext. PW 4/A) was exhibited by Head Constable Premvir Singh (PW 4) to prove that the patrolling party left the police post at 5.00 p.m. On a careful look of the original entry we however find that the time at which the party left, stands interpolated; and even by naked eyes it can be seen that the time of departure of the party which was earlier shown as 6 p.m., was changed to 5 p.m. We further find that to keep the sequence of entries in order, similar interpolations had been made in the earlier two entries : while Entry 31 which was initially shown to have been made at 5.30 p.m. was subsequently changed to 4.52 p.m. and Entry 32 earlier made at 5.35 p.m. was changed to 4.55 p.m. PW 4, who exhibited a plain copy of DD 33, testified that he could not produce the original as the same had been destroyed. It is now manifest that the above statement was falsely made by PW 4, lest the production of the original diary entry exposed the police officers concerned about the interpolation made. The reason for the interpolation is not far to seek. If PWs 5 and 6 had left the police post at 6.00 p.m. (as originally shown in the Daily Diary Book Entry 33) they could not have apprehended the appellant at 5.30 p.m. as testified by them nor could they have prepared the seizure list at the same time (as shown).

8. From the materials on record we have, therefore, no hesitation in concluding that it was only on receipt of the order of the Magistrate as communicated through the Station House Officer of Kashmere Gate Police Station that PWs 5 and 6 along with other police personnel felt it absolutely necessary to justify the detention of the appellant and with that ulterior object cooked up the story of

his apprehension at 5.30 p.m. on 8-3-1990 with unauthorised firearms and ammunition. Unfortunately, these aspects of the matter were completely overlooked by the Designated Court while accepting the case of the prosecution in preference to that of the defence.

9. We, therefore, allow this appeal and set aside the conviction and sentence of the appellant and acquit him. The appellant, who is in jail, be released forthwith.

10. Since the appellant has been made a victim of prolonged illegal incarceration due to machination of PWs 5 and 6 and other police personnel of ISBT Police Post we direct the Delhi Government to pay him a sum of Rs. 50,000 as compensation. The payment should be made within two months from the date of receipt of the order. The State Government will, however, be at liberty to recover the said amount from the erring police officers.

11. From the materials on record, discussed above, we are also of the opinion that it is expedient in the interest of justice that an enquiry should be made in accordance with sub-section (1) of Section 340 CrPC into commission of offences under Sections 193, 195 and 211 IPC by Sub-Inspector Gopi Chand (PW 6), and under Sections 193 and 195 IPC by Assistant Sub-Inspector Chander Bhan (PW 5) and Head Constable Premvir Singh (PW 4). We, therefore, in exercise of the powers conferred by sub-section (2) of Section 340 CrPC call upon the above three persons to show cause, on or before 17-7-1998, why a complaint should not be made against them for the aforesaid offences. Let a copy of the judgment along with this order be served upon them through the Commissioner of Police, Delhi. Registry is directed to keep the Daily Diary Book in a sealed cover until further orders of this Court.