

SUPREME COURT OF INDIA

Karmajit Singh @ Pappu

Vs.

State of Punjab

(S R Babu and S S Quadri JJ.)

17.02.2000

ORDER

1. On the night intervening between 7th and 8th October, 1991 in the wee hours at about 12.30 in the midnight, some unknown persons who were stated to be armed with guns came over the roof of the house of Bhah Singh, ASI and attacked the inmates thereof by opening fire and killing six persons, Bhagwan Kaur, Gurmeet Singh, Darshan Singh and Parson Singh and another Gurmeet Singh and Sukhdev Singh, while Jit Singh and Manpreet Singh sustained serious injuries on account of bullet shots received by them. In addition, the marauders burnt the house, scooter and several other valuable articles.

2. On a report being made in the police station, investigation was taken up and a charge sheet was laid against three persons for offences under Section 302, 307, 436 IPC read with Section 3 of the TADA, However, Jaswant Singh, Sukhwinder Singh, the first two accused, could not be apprehended nor did they appear even after the court proclaimed them to be offenders. In their absence the third accused, Karmajit Singh, alone was tried for the charges as stated earlier. The accused pleaded not guilty and claimed to be tried. Several witnesses were examined and statement under Section 313 Cr.P.C. was also recorded.

3. A careful perusal of the evidence on record clearly indicates that the incident, as alleged, did take place on the fateful night of 7th and 8th October, 1991, as a result of which, six persons were killed and others injured; that fire was set to the house and several other valuable articles were destroyed. These facts are also not seriously disputed in view of the abundant evidence on record in the shape of the testimony of members of the family of Bhag Singh, police witnesses and medical evidence.

4. The only evidence available to connect -the accused with the alleged crime is the testimony of two witnesses, Ajit Singh, PW3 and Ramji, PW4. The learned Designated Judge has examined their evidence tendered in court and concluded as follows;

...In this case, there are two eye witnesses to the occurrence. They are Ram Ji and Ajit Singh, PW3 and PW4. Both of them have narrated the prosecution story in their examination-in-chief and both of them have stated specifically that the accused now present in court, was one of those persons, who did the firing and both of these PWs have identified this accused as one of the assailants among

several persons present in the house of the complainant....

...It is argued that these PWs cannot be relied upon as they did not disclose the fact of seeing the incident to any one else. This argument has no force because the statement of Ram Ji and this PW were recorded P.M. 8.10.1991 itself when the FIR was registered on the basis of the statement of Bhag Singh, which is Ex.PA....

...In the present case, accused was identified by the PWs and the identified him and on the basis of identification at the spot of occurrence, they identified him in the court also. In such situation, the absence of test identification parade will not be material....

...In the present case, PWs are definite that the present accused in the court was one of the assailants and so much so PW4 at the earliest gave the name of the present accused to the police in the statement recorded by it and that is why in the cross examination of PW4 a suggestion was made. "It is incorrect that the accused was not one of the assailants, who did the firing in your house". By this suggestion, in fact, what was narrated by this PW in the course of investigation, has been rather suggested to have been admitted by the opposite party.

... In the present case, it is also note worthy that these PWs have no enmity of any kind with the accused so as to involve him falsely or implicate him in this case without any reason of basis. So these witnesses PW3 and PW4 in my opinion were the eye witnesses to the occurrence and they had properly identified the assailants and this is based on proper appreciation of their statements. Merely because the PWs did not know the accused earlier, is no ground to discard their testimony as a whole.... In the present case, the position is different inasmuch as the PW4 has specifically named the accused in the statement recorded by the police in the course of investigation and that in the cross-examination he has denied the suggestion that he has named the accused present in court as one of the assailants in the night when the occurrence took place and even in the statement of the complainant Ex.P.A., it is mentioned that Ram Ji was accompanying this complainant when the statement was recorded.

5. The learned Designated Judge criticised that the defence counsel has not probed into the matter as to the identity of the accused and held that the testimony of the eye witnesses was worthy of credit and convicted the accused on the charges referred to earlier in the course of this order. Hence this appeal.

6. The learned Counsel for the appellant submitted that the learned Designated Court has totally ignored all standard norms of criminal jurisprudence and has been carried away by the enormity of the gruesome tragedy in the death of six persons in the wake of difficult and hard days in the State of Punjab during the period when the crime took place. He submitted that apart from the evidence of PW3 and PW4, there is nothing on record to connect the appellant to the crime in the case; that their evidence is artificial; that they could not have seen the accused at all; that this factor is strengthened by the lapse on the part of the police in not holding the test identification parade or taking their help to identify the accused in the course of investigation. Thus, he submitted that the appellant is entitled to an acquittal. The learned Counsel for the State countering these arguments submitted that in the critical days of violence and hatred in the State of Punjab, no better could have been done by the police and they have been able to apprehend the accused and put them on trial.

7. We have carefully perused the evidence of the eye witnesses Ajit Singh, PW3 and Ram Ji, PW4.

PW3, inter alia, stated as follows:

...At 12-30 night 15/20 persons came there after again said they came from the near by house on the roof of our house.... Accused now present in the court was one of those persons, who did the firing.... I did not look towards the roof see the assailants, when they were firing. The assailants including the present accused ran away after doing the firing. I did not know the present accused earlier. The accused was never go identifies from me, during the investigation after his arrest. Police never informed me about the arrest of the accused in this case, for identifying him.

8. Ram Ji, PW4 also stated similarly, The relevant portion from his evidence is as follows;

...It was 12-30 night, on that day, some unidentified persons numbering 7-8 as it was dark at that time armed with weapons, climbed on the roof of our house. They after digging the roofs started firing on us.... Accused present in the court is the same who was one of those assailants,.... I did not knew the accused earlier. I do not know his parentage and the place of occurrence. I have seen him today after the date of the occurrence. Police never called me for identify the accused, after his arrest.

9. It is not the case of the witnesses that they were sleeping on the roof after participating in the annual Bhog ceremony of late wife of Bhag Singh. The case put forward by them is that the assailants came in a group of 15 to 20 from the roof, cut open the same and started firing from their weapons. It is not clear from their evidence whether any lights were on at that time or they could see the assailants in the moonlight or a star lit night. It is not at all clear that when they did not even know the accused how they could identify him in spite of darkness particularly when these witnesses do not seem to be on the roof. In a fleeting moment of attack and the bolting away of the assailants from the scene they could not have got even a glimpse of the face of the accused. Thus there was no opportunity at all for them to see the accused. Further as to how police connected the accused with having committed the crime in the present case is not at all clear. Help has not been taken from the so-called eye witnesses in that regard. In the circumstances we have no hesitation to hold that the evidence of PW3 and PW4 does not inspire confidence to convict the accused for the murder and that too with charges of the severity of offences arising under TADA. The reasoning given by the learned Designated Judge is wholly illogical and consists of too naive an analysis of evidence. There must be a critical examination of the eye witnesses account before coming to the conclusion one way or the other and such exercise has not been done by the learned Designated Judge at all.

10. In the result, we are satisfied mat there is no case made out against the appellant. His conviction and sentence shall stand set aside and he will be set at liberty at once unless he is required in any other case. Appeal allowed accordingly.