SUPREME COURT OF INDIA

Jeet Singh

Vs.

State of Punjab

(K.T. Thomas and R.P. Sethi JJ.)

15.11.2000

ORDER

1. The two appellants have been convicted by a Designated Court under the Terrorist and Disruptive Activities (Prevention) Act, 1987 (for short 'TADA') for the offence under Section 5 of TADA. This appeal is filed by them as of right. We heard Mr. M.S. Gujral, learned senior Advocate and Mr. Rajiv Dutta, standing Counsel for the State of Punjab.

2. The gist of the case against the appellants is that they were caught red-handed with explosive substances during the untimely hours of 28.10.1992 i.e. around 1.00 a.m. in the night. The contraband articles alleged to have been recovered from them consisted of 100 kgs. of gun powder in 5 bags, 200 detonators, one pistol, another gun and six live cartridges.

3. The appellants adopted a defence line in the trial court that they were actually taken into custody by the police on 19.10.1992 from their village on the basis of some suspicion that they were either terrorists or harbouring terrorists during the troublesome days in Punjab.

4. Prosecution examined four witnesses out of whom PW2 - Sukhdev Singh and PW4 - Sukhdev Singh were police officers who claimed to have intercepted the two appellants with the contraband articles. PW3 - Nachhatar Singh was examined as the explosive expert who said that he tested the contrabands and found them to be explosive substances. PW1 - H.C. Satpal was only a formal witness.

5. The appellants examined five witnesses on their side for showing that the defence line adopted by them is a more probable story, if not entirely true.

6. The Designated Judge rejected the defence version, disbelieved the testimony of defence witnesses and found the prosecution story to be reliable on the strength of the evidence adduced by the prosecution witnesses. Accordingly, he reached the conclusion that both the appellants were in possession of those explosive substances mentioned above and hence, they are guilty of the offence under Section 5 of the TADA and sentenced them to imprisonment for 10 years each and to pay a fine of Rs. 500/- each.

7. If the evidence of PW-2 and PW-4 is to be believed, there can be no doubt that the appellants were in possession of the explosive substances mentioned above. Mr. M.S. Gujral, learned senior Counsel made a frontal attack on the evidence from different angles. One was that when PW-4

himself admitted that two Deputy Superintendents of Police were also present at the time of search, they were not examined by the prosecution nor their signatures taken on any of the documents of search nor their presence mentioned in any of the documents. Learned senior Counsel contended that the said suppression was made deliberately as the senior officers were not prepared to authenticate the fabricated documents.

8. We considered the said contention in all its seriousness. If the two Dy. Superintendents of Police were present when the search was conducted it was obligatory on the part of the Public Prosecutor to examine them. We would have appreciated the Public Prosecutor if he had chosen to examine them, in case they were merely present at the time of search. But looking at the said aspect from different angles, we have noticed that none of the documents indicated that those two senior officers were present when the search was made, they were not cited in the charge sheet as witnesses and possibly there was no statement recorded under Section 161 of the CrPC attributing to those two witnesses. In such a situation how a Public Prosecutor could venture to examine those two Dy. Superintendents of Police on an assumption that those two were present merely because one of the two witnesses said that in cross examination. We do not think that the prosecution can be castigated on account of non-examination of those two witnesses. We leave it at that.

9. Learned senior Counsel then contended that independent persons should have been taken by the searching police officers to become witnesses for such search. If such independent witnesses were brought and they too were examined in Court it would have been well and good. But in the present situation no independent witness was available. The time and place of search were such that no police officer could be expected to find out any independent person to remain at the scene to watch and then to subscribe his signature to the documents. If they failed to bring someone from elsewhere, we are not inclined to express our dissatisfaction of it in the peculiar facts and circumstances of this case.

10. The second alternative contention made by the learned senior Counsel was to show that the evidence of defence witnesses deserved better acceptance. It is too much for us to believe that the people of the locality of the second accused -Baldev Singh (who was a Sarpanch of the Panchayat) would not have moved the authorities and the court if he was actually taken by the police in custody on 19.10.1992 and kept in such custody for many days until this case was registered against them. Defence relies on the resolutions said to have been passed by the Panchayat on a complaint made by somebody on the allegation that the accused were taken into custody on 19.10.1992. We are not satisfied that those resolutions were passed as a matter of fact. In the absence of any legal step resorted to by the persons concerned, it is difficult for us to believe that the police would have taken those two persons and kept them in police custody for so many days without anybody making any enquiry into that matter. Even that apart, it is too much to countenance that PW2 and PW4 would have managed to procure 100 kgs of gun powder in fire bags, 200 detonators, one pistol, another gun and six live cartridges for the purpose of concocting a false case against these two persons. There are far too many methods, if they wanted to concoct a case, without procuring such costly and explosive substances.

11. Bestowing our anxious consideration on the arguments forcefully addressed by the learned senior Counsel, we are still of the view that trial court was correct in reaching the conclusion that the two appellants were caught red-handed with the contraband articles. Hence, the conviction has been rightly arrived at by the Trial Judge.

12. Nonetheless, we are inclined to show some leniency in the matter of sentence despite the largeness of the explosive substances involved. This is because the situation in Punjab has now admittedly improved very much and peace has come back to that region. Therefore, it is not necessary in this case to award a sentence beyond the minimum, fixed by the statute. We, therefore, reduce the sentence of imprisonment to five years as for each of the appellants. Fine amount will remain undisturbed.

13. The appeal is disposed of accordingly.