

BALWANT SINGH AND ANR.

v.

STATE OF PUNJAB

MARCH 1, 1995

[DR. A.S. ANAND AND FAIZAN UDDIN, JJ.]

*Indian Penal Code, 1860—Sections 124A and 153A—Sedition—Raising slogans casually couple of times by some persons—No reaction from public—Offence u/s 124A or 153A not made out.*

The appellants who are government servants were arrested for raising slogans like 'Khalistan Zindabad', 'Raj Karega Khalsa', and Hinduan Nun Punjab wi Chon Kadh Ke Chhadange Hun Mauka Aya Hai Raj Kayam Karan Da' on the day Smt. Indira Gandhi, the then Prime Minister of India was assassinated. Both appellants raised the slogans together. The first slogan was raised five or six times, the second two or four times and the third only once or twice. They did not raise any slogans after their arrest. The appellants were tried for offences u/s 124A and 153A of the Indian Penal Code. The prosecution examined police constables who conceded that the people in general did not gather on hearing the slogans.

The appellants submitted that the prosecution had not been able to establish the case against them beyond a reasonable doubt. It was argued that though the occurrence had taken place in a busy place, no independent person had been associated at the time of arrest. Relying on the evidence of the Munshi of the District jail the appellants contended that the entire case against them was a made up affair.

The respondents submitted that keeping in view the tension which had been generated on the date of the assassination of the former Prime Minister Smt. Indira Gandhi, the raising of the slogans by the appellants attracted the provisions of Section 124A IPC and 153A of the IPC. Also, as no animosity or reason to falsely implicate the appellants was attributed to PWs 2 and 3, their evidence was reliable even though no independent witness had been associated.

Allowing the appeal, this Court

**A** HELD : 1.1 The fact and circumstances of this case unmistakably show that there was no disturbance or semblance of disturbance of law and order or of public order or peace and tranquility in the area from where the appellants were apprehended while raising slogans. The intention to cause disorder or incite people to violence is the *sine qua non* of the offence under Section 153A IPC and the prosecution has to prove the existence of *mens rea* in order to succeed. In this case, the prosecution has not been able to establish any *mens rea* on the part of the appellants, as envisaged by the provisions of Section 153A IPC. [417-G-H, 418-A]

**B**

**C** 1.2 Raising of some slogans only a couple of times by two lonesome appellants, which did not evoke any response or reaction from the public cannot attract the provisions of S.124A or S.153A IPC. Some more overt act was required. The police officials exhibited lack of maturity and sensitivity in arresting the appellants. The arrest could have created a law and order situation, keeping in view the tense situation prevailing on the date of the assassination. Raising of some lonesome slogans, a couple of times by two individuals, without anything more, did not constitute any threat to the Government of India nor could the same give rise to feelings of enmity or hatred among different communities or religious or other groups. Conviction and sentence for the offences under Section 124A and 153A IPC, cannot be sustained. [419-C-F]

**D**

**E** CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 266 of 1985.

From the Judgment and Order dated 2.3.85 of the Special Court Chandigarh in Crl. C. No. 6/2 of 14.1.1985.

**F** V.M. Tarkunde, Krishan K. Gogna and A.K. Panda for the Appellants.

R.S. Suri and Rohit Aggarwal for the Respondents.

**G** The following Order of the Court was delivered :

**H** Balwant Singh, who was working as an Assistant in the office of D.P.I. Punjab in Chandigarh and Bhupinder Singh serving as a Senior Clerk in the Punjab School Education Board, Chandigarh, at the relevant time, were on 31st October, 1984 at about 5.45 p.m. arrested from near Neelam Cinema, Chandigarh and after completion of the investigation,

tried for offences under section 124-A and 153-A IPC. They were each sentenced to suffer one year rigorous imprisonment and a fine of Rs. 500 on each of the two counts. In default of payment of fine, they had to undergo three months further R.I. on each count. The substantive sentences were to run concurrently. Through this appeal under Section 14 of the Terrorist Affected Areas (Special Courts) Act, 1984 both of them have challenged their conviction and sentence as recorded by the learned Judge of the Special Court, Chandigarh on 2.3.1985.

The prosecution case against the appellants is that in a crowded in front of the Neelam Cinema, on 31st October 1984, the day Smt. Indira Gandhi, the then Prime Minister of India was assassinated, after coming out from their respective offices after the duty hours, raised the following slogans:

1. Khalistan Zindabad
2. Raj Karega Khalsa,  
and
3. Hinduan Nun Punjab Chon Kadh Ke Chhadange, Hun Mauka Aya Hai Raj Kayam Karan Da."

The prosecution examined Constable Som Nath, PW2 and ASI Labh Singh PW3, in support of its case besides PW1, who proved the order of sanction for prosecution.

According to the testimony of Som Nath PW2 and Labh Singh PW3, they had left the police station at about 5 p.m. or 5.15 p.m. and while they were patrolling in the area of the main market of Sector 17, Chandigarh, they noticed both the appellants raising slogans, as noticed above. Both the witnesses conceded that when slogans were being raised, the people in general were going about doing their jobs and they did not gather on hearing the slogans but stated that some people went away out of 'fear'. In cross-examination, Som Nath PW2 admitted that he could not name anyone or even suggest whether any one out of the passer-by got afraid on hearing the slogans and fled away from the place. According to the witnesses, both the appellants had raised the slogans together. Though PW2 could not state as to how many times each of the three slogans was raised by the appellants, PW3 ASI Labh Singh admitted in the cross examination that the

A slogans "Khalistan Zindabad" was raised about five or six times while the second slogan "Raj Karega Khalsa" was raised two or four times and that the third slogan was raised only once or twice. ASI Labh Singh PW also admitted that the slogans had been raised by the appellants before they were arrested and that they did not raise any slogans afterwards. ASI Labh Singh PW, however, added that the appellants raised slogans while they were being apprehended once or twice and to the same effect is the statement made by PW2 Som Nath, who, however, was confronted with his police statement recorded under Section 161 Cr. P.C., wherein he had not mentioned that the appellants raised any slogan while being apprehended. The appellants in their statement recorded under Section 313 Cr. P.C., denied the prosecution allegations against them. According to Balwant Singh, Bhupinder Singh, appellant came to his office at about 4.30 p.m. and they left together after he finished his day's duty at about 5 p.m. That while they were proceedings towards the bus stand, in order to take a bus to go to Mohali where they reside, they met Mewa Singh DW2 and Surender Pal Singh DW3 near the fountain with whom they exchanged 'Sat Siri Akal'. Being an Amritdhari Sikh, he was wearing a kirpan. That near Neelam Cinema Dy. S.P. Sudhir Mohan and Inspector Baldev Singh caught hold of them, presumably because he was wearing a kirpan and both of them had not tied their beards. That the police officials took them to the police station in Sector 17 in their jeep. ASI Labh Singh was present at the police station attending to the telephone. On their enquiry, as to why they had been brought to the police station and why they were being detained, ASI Labh Singh told him that only the senior officers who had brought them to the police station could give them an answer to their question. Bhupinder Singh, appellant made a substantially similar statement.

F Both Mewa Singh DW2, a Draftsman working in the Punjab Housing Board and Surender Pal Singh DW3, a Junior Accountant working with the Punjab Housing Board, corroborated the statement made by the appellants and stated that they had met the appellants after the office hours near the Neelam Cinema and had exchanged 'Sat Sri Akal' with them. They stated that in their presence, the Dy. S.P. and Inspector Baldev Singh arrested the appellants and took them to the police station in their jeep. That later on they followed them to the police station but when they could not get any information as to why the appellants had been taken to the police station, they informed the family members of the appellants. Both H the defence witnesses stated that the appellants were not raising any

slogans either before or at the time of their arrest and this part of their testimony was not challenged in the cross examination at all.

At the time of arrest of the appellants, the personal search of the appellants was taken and the personal search memos were prepared. In the personal search memo of Balwant Singh, the only two articles which are shown to have been recovered are: one watch HMT and one gold ring. There is no mention of any kirpan having been seized. After the arrest of the appellants, the police produced them before the Ilaqa Magistrate when they were remanded to judicial custody. DW1 Shitla Prasad, Munshi, District Jail, Burail deposed that on November 1, 1984, Balwant Singh appellant was admitted to the District Jail and that;

"At that time he was wearing a kirpan on his person which was taken off and kept in safe custody at the time of his admission into jail and that kirpan is still lying deposited with us. I have brought that kirpan."

Both PW2 and PW3, had however, stated in their statements that they did not see Balwant Singh wearing any kirpan and that no kirpan was taken into possession from him.

Mr. V.M. Tarkunde, the learned senior counsel appearing for the appellants submitted that the prosecution has not been able to establish the case against the appellants beyond a reasonable doubt. Learned Counsel argued that though admittedly the occurrence had taken place in a busy place, where number of independent persons were available, prosecution had not associated any independent person at the time of arrest of the appellants and that was a serious infirmity in the case. Mr. Tarkunde then submitted that the very fact that both the police witnesses, Constable Som Nath and ASI Labh Singh made unsuccessful effort to conceal that Balwant Singh was carrying a kirpan, which fact stands established from the evidence of DW1 Munshi of the District Jail at Burail, it could be safely inferred that the entire case against the appellants, was a made up affair and not based on facts. The prosecution witnesses were guilty of giving false statements. Learned counsel then, in the alternative, went on to submit that even if the prosecution case to the effect that the appellants had raised the three slogans was accepted, no offence under Section 124A IPC or 153A IPC could be said to have been made out.

- A Learned counsel for the State, on the other hand, submitted that keeping in view the tension which had been generated on the date of the assassination of the former Prime Minister - Smt. Indira Gandhi, the raising of the three slogans by the appellants attracted the provisions of Section 124A IPC and 153A IPC and the mere fact that no independent witness was associated, could not detract from the reliability of the evidence of ASI
- B Labh Singh and Constable Som Nath. In this context, learned counsel referred to the statement of PW3 Labh Singh who deposed that he was unable to associate any of the independent persons from the public in spite of his making efforts because none was willing to associate himself. Learned counsel urged that nothing has been brought out on the record to
- C show that either PW2 and PW3 had any animosity or reason to falsely implicate the appellants and that their testimony inspired confidence.

Section 124A IPC reads thus:

- D "124A. Sedition - whoever by words, either spoken or written, or by signs, or by visible representation, or otherwise, brings or attempts to bring into hatred or contempt, or excites or attempts to excite disaffection towards, the Government established by law in India, shall be punished with imprisonment for life, to which fine may be added, or with imprisonment which may extend to
- E three years, to which fine may be added, or with fine.

*Explanation 1* - The expression "disaffection" includes disloyalty and all feelings of enmity.

- F *Explanation 2* - Comments expressing disapprobation of the measures of the Government with a view to obtain their alteration by lawful means, without exciting or attempting to excite hatred, contempt or disaffection, do not constitute an offence under this section.

- G *Explanation 3* - Comments expressing disapprobation of the administrative or other action of the Government without exciting or attempting to excite hatred, contempt or disaffection, do not constitute an offence under this Section."

- H A plain reading of the above Section would show that its application would be attracted only when the accused brings or attempts to bring into hatred

or contempt or excites or attempts to excite disaffection towards the Government established by law in India, by words either written or spoken or visible signs or representations etc. Keeping in view the prosecution evidence that the slogans as noticed above were raised a couple of times only by the appellant and that neither the slogans evoked a response from any other person of the Sikh community or reaction from people of other communities, we find it difficult to hold that upon the raising of such casual slogans, a couple of times without any other act whatsoever the charge of sedition can be founded. It is not the prosecution case that the appellants were either leading a procession or were otherwise raising the slogans with the intention to incite people to create disorder or that the slogans in fact created any law and order problem. It does not appear to us that the police should have attached much significance to the casual slogans raised by two appellants, a couple of times and read too much into them. The prosecution has admitted that no disturbance, whatsoever, was caused by the raising of the slogans by the appellants and that in spite of the fact that the appellants raised the slogans a couple of times, the people, in general, were unaffected and carried on with their normal activities. The casual raising of the slogans, once or twice by two individuals alone cannot be said to be aimed at exciting or attempt to excite hatred or disaffection towards the Government as established by law in India. Section 124A IPC, would in the facts and circumstances of the case have no application whatsoever and would not be attracted to the facts and circumstances of the case.

In so far as the offence under Section 153A IPC is concerned, it provides for punishment for promoting enmity between different groups on grounds of religion, race, place of birth, residence, language, caste or community or any other ground whatsoever or brings about disharmony or feeling of hatred or ill-will between different religious, racial, language or regional groups or castes or communities. In our opinion only where the written or spoken words have the tendency or intention of creating public disorder or disturbance of law and order or effect public tranquillity, that the law needs to step in to prevent such an activity. The facts and circumstances of this case unmistakably show that there was no disturbance or semblance of disturbance of law and order or of public order or peace and tranquillity in the area from where the appellants were apprehended while raising slogans on account of the activities of the appellants. The intention to cause disorder or incite people to violence is the *sine qua non* of the offence under Section 153 A IPC and the prosecution has to prove

A the existence of mens rea in order to succeed. In this case, the prosecution has not been able to establish any mens rea on the part of the appellants, as envisaged by the provisions of Section 153A IPC, by their raising causally the three slogans a couple of times. The offence under Section 153A IPC is, therefore, not made out.

B On facts, we find that the prosecution witnesses PW2 and PW3 have not spoken the whole truth. Both the prosecution witnesses PW2 and PW3 made a deliberate attempt to conceal the existence of kirpan on the person of Balwant Singh at the time of his arrest, which fact stands amply proved from the evidence of DW1. The trial court while dealing with this aspect of the case observed :

C "On 1.11.1984 the accused were produced before the Magistrate. No order of the Magistrate has been produced to show that Balwant Singh accused was wearing a kirpan when he appeared before him. It was only thereafter that the accused were sent to jail. *It, therefore, appears that the kirpan was supplied to Balwant Singh after he had been remanded by the Magistrate and was on his way to the jail.*" (Emphasis ours)

D We are unable to appreciate this reasoning. The trial court appears to have made out a case which was neither spoken to nor relied upon either by the prosecution or the defence. It is nobody's case that Balwant Singh and been supplied with the kirpan when he was on his way to the jail. It defies logic to think that some one from the public would have such easy access to a person in custody of the police so as to be able to arm him with as kirpan, without the police escort knowing about it! It is not permissible for the trial court to make such an inference on assumptions without any evidence on the record. The Court must confine itself to the evidence to decide the case and not base its opinion on surmises and conjectures. We also regret to note that the trial court while recording the conviction observed:

E "To conclude, therefore, the accused shouted slogans 'khalistan zindabad', Hindustan Murdabad', Hinduan Nun Punjab Chon Kadh Ke Chhadange Hun Mauka Aya Hai Raj Kayam Karan Da', in the piazza of Sector 17 market which is frequented by people of both the principle communities i.e. Hindus and Sikhs at about 5.45 p.m. on the day when the beloved Prime Minister of India

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Smt. Indira Gandhi was riddled with bullets.

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It is not the prosecution case that either of the appellants had shouted the slogan 'Hindustan Murdabad'. On what material did the learned Judge find that the appellants had shouted that particular slogan belies our comprehensions. Obviously, for convicting the appellants, the trial Judge also pressed into aid the allegation that the appellants had shouted 'Hindustan Murdabad', which is nobody's case. The learned trial Judge, to say the least, seems to have drawn upon his imagination a course not permissible for a Court of Law.

B

It appears to us that the raising some slogan only a couple of times by the two lonesome appellants, which neither evoked any response nor any reaction from any one in the public can neither attract the provisions of Section 124A or Section 153A IPC. Some more overt act was required to bring home the charge to the two appellants, who are Government servants. The police officials exhibited lack of maturity and more of sensitivity in arresting the appellants for raising the slogans - which arrest - and not the casual raising of one or two slogans - could have created a law and order situation, keeping in view the tense situation prevailing on the date of the assassination of Smt. Indira Gandhi. In situations like that, over sensitiveness some times is counter productive and can result in inviting trouble. Raising of some lonesome slogans, a couple of times by two individuals, without anything more, did not constitute any threat to the Government of India as by law established nor could the same give rise to feelings of enmity or hatred among different communities or religious or other groups.

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In our opinion, for what we have stated above, the prosecution has not succeeded in establishing the case against the appellants beyond a reasonable doubt. Their conviction and sentence for the offences under Section 124A and 153A IPC, cannot be sustained. This appeal accordingly succeeds and is allowed. The conviction and sentence of the appellants is set aside. The appellants are on bail. Their bail bonds shall stand discharged.

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A.G.

Appeal allowed.