

A MUKHTIAR SINGH AND ANR. ETC.

v.

STATE OF PUNJAB ETC.

JANUARY 4, 1995

B [DR. A.S. ANAND AND M.K. MUKHERJEE, JJ.]

C *Criminal Procedure Code 1973—Section 354(1)(b)—Judgment of trial court acquitting some accused and convicting others—Whether sustainable—Held, decision does not merely mean conclusion but also reasons which form basis for arriving at conclusion—Judgment should enable appellate court to know basis of decision—Judgment of trial court containing only conclusions, held, cannot be sustained—Case remanded to trial court for disposal on merits—Criminal trial—Penal Code Ss. 148, 302/149, 120B, 397, 460—Arms Act 1950, S.25—Terrorist Affected Areas (Special Courts) Act 1984, S. 14*

D *Terrorist Affected Areas (Special Courts) Act 1984—S.14—Judgment of trial court found infirm, and set aside—Whether case to be remanded to trial court or determination of guilt to be undertaken by appellate court—Held, first appeal being to Supreme Court, analysing evidence and determining guilt by this court would deprive concerned party of right of appeal—Despite occurrence having taken place over a decade ago, case remanded to trial court for disposal on merits—Criminal trial—Penal Code Ss.148, 302/149, 120B, 397, 460—Arms Act 1950, S. 25*

F **Eleven accused person were tried for offences under Ss.148, 302/149, 120B, 397, 460 IPC and S.25 of the Arms Act 1950. The Special Court, Ferozepur, which was the trial court in this case, convicted some of the accused while acquitting others. Appeals were filed under the Terrorist Affected Areas (Special Courts) Act 1984 challenging conviction and acquittals. Remanding the case to the trial court, this Court**

G **HELD : 1. The judgment of the trial court is infirm. The trial court appears to be blissfully ignorant of the requirements of S.354(1)(b) Cr.PC. The trial court was dealing with a case of murder. The cryptic judgment of the trial court does not disclose the reasons for its decision. On the plainest requirement of justice and fair trial, the trial court was expected to notice, consider and discuss, howsoever briefly, the evidence of various**

witnesses and the arguments addressed at the bar. The trial court has not done so. A 'decision' does not merely mean the 'conclusion' - it embraces within its fold the reasons which form the basis for arriving at the 'conclusion'. The judgment of the trial court contains only the 'conclusions' and nothing more. [45-B-C]

2. The exercise of analysing the evidence and determining the guilt or otherwise of the accused could have been undertaken by this Court, particularly considering that the occurrence took place over a decade ago and the conviction was recorded almost nine years ago, but this may prejudice one or the other party as it would deprive the concerned party of its right of first appeal to this Court. The case is, therefore, remanded to the trial court for fresh disposal on merits. [45-E-F]

3. The accused shall continue to remain on bail, and shall remain present before the trial court during the hearing of the case. The absence of either of the respondents in the trial court shall result in the cancellation of his/their bail and he/they shall be taken into custody till the conclusion of the hearing by the trial court. [46-B]

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 434 of 1985 etc..

From the Judgment and Order dated 19.4.85 of the Special Court, Ferozepur in Sessions Cases No. 239 of 1984 and Trial No. 70 of 1985.

R.S. Sodhi and R.C. Kohli for the Appellants.

Mrs. Amita Gupta and R.S. Suri for the Respondents.

The Judgment of the Court was delivered by

DR. ANAND, J. These two appeals under Section 14 of the Terrorists Affected Areas (Special Court) Act, 1984 arise out of a common judgment of the Special Court, Ferozepur dated 19.4.1985. While Criminal Appeal No. 434 of 1985 has been filed by Mukhtiar Singh and Jasbir Singh challenging their conviction and sentence, Criminal Appeal No. 489 of 1985 has been filed by the complainant, Sohan-Lal, and is directed against the acquittal of the acquitted co-accused of Mukhtiar Singh.

11 accused persons were put up for trial before the learned Judge of

A the Special Court, Ferozepur for offences under section 148, 302/149, 120-B, 397, 460 IPC and Section 25 of the Arms Act. The Trial Court convicted Mukhtiar Singh son of Kartar Singh for offences under Section 302/34, 397/34, 460 IPC and Section 25 Arms Act and Jasbir Singh for offences under Section 302/34, 337/34 and 460 IPC. Hazara Singh was convicted for an offence under Section 25 of the Arms Act while Jagrup Singh for offences under Section 411 IPC and 25 of the Arms Act. The remaining accused were acquitted of all the charges.

According to the prosecution case, on 10.6.1984 when Sohan Lal, PW5 father of the deceased Jajpal Singh was watching television alongwith his other family members, on hearing the firing of 8 or 9 shots, he came out on to the courtyard and saw two persons standing near his son, Jajpal Singh, deceased. One of them was armed with a gandassa while the other had a pistol in his hand. The person who was armed with a gandassa in the presence of PW5, inflicted some injuries on Jajpal Singh while the other person took away the 12 bore DBBL gun belonging to Sohan Lal, PW5 which was lying near the cot in the courtyard where Jajpal Singh was sitting. Sohan Lal, PW5 also noticed some 8 or 10 persons standing at a distance in the darkness. On hearing noise, the assailants as well as the other 8/10 persons ran away. Finding Jajpal Singh in a seriously injured condition Sohan Lal, PW5 removed him to the Mission Hospital, Ferozepur. Dr. A.S. Mann, Emergency Medical Officer sent information to the police regarding the arrival of Jajpal Singh in an injured condition at the hospital. On receipt of telephonic information, Ratan Singh, SHO, police station Mallanwala proceeded to the hospital. In the meanwhile, it appears Jajpal Singh succumbed to his injuries. Statement of PW5, Sohan Lal was recorded by Ratan Singh, PW9 on reaching the hospital and that statement, Ex. P-9, forms the basis of the FIR Ex. P-9/B. After conducting the inquest proceedings and preparing the inquest report, Ex. P-2, the dead body Jajpal Singh was sent for post-mortem examination by SHO Ratan Singh, PW9. Further investigation was taken in hand and the place of occurrence was inspected and its rough site plan prepared. During inspection of the place of occurrence some empties which were found lying in the courtyard of the house of PW5 were collected beside the blood stained earth. Sealed parcels were prepared of the empties and blood stained earth and the same were deposited in the police Malkahana and later sent to Forensic Science Laboratory and Chemical examiner respectively.

Dr. Jaspal Singh, Emergency Medical Officer, Civil Hospital, Ferozepur performed autopsy on the dead body of Jajpal Singh on June 11, 1984 at 10.00 a.m. he found the following injuries. A

(i) Incised wound 20 cms x 3 cms x 3 cms at the middle of the frontal region oblique in direction near the hairline with clotted blood present. On dissection the underlying bone was found out completely. Extra dural and subdural haemotoma was present and the brain matter visible. B

(ii) Incised wound 14 cms x 2 cms just 2 cms below injury No. 1 with clotted blood and underlying bone cut completely. Extra dural and subdural haemotoma was present. The brain matter was visible. C

(iii) Lacerated punctured wound with inverted and contused margins, dimensions being 0.75 cm x 0.5 cm at the right side of the abdomen in middle with clotted blood present. D

(iv) Lacerated punctured wound with everted margins 3cms x 2-1/2 cms on the left side of the chest middle with clotted blood. On dissection under injuries No. 3 & 4 the track was after performing the intestine going upward and towards left side entering the thorax and impairing the left lung lower part. Injuries No. 3. & 4 communicating with each other. The abdominal cavity was full of clotted blood. The ribs under injury No. 4 were fractured. Injury No. 3 was the wound of entrance and injury No. 4 the wound of exit. There was clotted blood along the track. E

(v) Terminal 1/4 parts of the index, middle and ring finger of the right hand were found amputated with the margins of the wound incised. Level was in one line. Clotted blood was present. F

(vi) Lacerated punctured wound with inverted and contused margins 0.75 cm x 0.5 cm at the outer surface of the right ankle. On dissection the underlying bone was found fractured. A bullet was taken out from the wound which was seized. Clotted blood was present. G

(vii) Lacerated punctured wound with inverted and contused margins, dimensions being 0.75 cm x 0.5 cm at the outer and the middle H

A of the left upper arm with clotted blood present. On dissection the underlying bone was found fractured. A bullet was extracted from the wound which was sized.

B (viii) Grazed lacerated wound in the form of furrow 10 cms x 1-1/2 cms superficial on the outer and middle of the left fore-arm, oblique in direction.

C In the opinion of the doctor, death was caused due to shock and haemorrhage as a result of multiple injuries which were sufficient in the ordinary course of nature to cause death. Dr. Jaspal Singh also opined that injuries No. 3 & 4 were the result of one shot while injuries No. 6 & 7 were the result of two shots. During the post-mortem examination two bullets MO-1 and MO-2, were taken out from the dead body and the same were taken into possession by the police vide Memo Ex. P-32. Various recoveries were effected from the accused persons after their arrest on different dates by the police.

D The prosecution examined Dr. Jaspal Singh, PW1, Dr. A.S. Mann, PW2 Shri Bhupinder Singh, PW3, Shri Sunder Singh, PW4, Sohan Lal PW5, Kashmiri Lal, PW6, Shri Jarnail Singh, PW7, Shri Harcharan Singh, PW8 and Shri Ratan Singh PW9. Some affidavits of police official whose evidence was of a formal character were admitted into evidence and placed on record. After close of the prosecution evidence, the accused were examined under Section 313 Cr. P.C. They denied the prosecution allegations against them and alleged false implication. They, however, did not lead any evidence in defence.

F The Trial Court acquitted Surjit Singh observing in paragraph 28 :

G "The learned Public Prosecutor in fairness to the Court and the defence frankly conceded at the Bar that there was no evidence on the record to connect Surjit Singh with the crime. The charge against Surjit Singh accused was that he had conspired with his co-accused. The witness in that connection was Dwarka Dass who had refused to support the prosecution. As such the case of the prosecution fails against Surjit Singh accused for want of evidence. Surjit Singh accused is acquitted."

H The Trial Court also acquitted Satnam Singh, Sukhdev Singh, Sucha

Singh, Kulwant Singh and Jagir Singh accused. Paragraph 29 deals with their acquittal :

Satnam Singh, Sukhdev Singh, Sucha Singh, Kulwant Singh and Jagir Singh accused were arrested in this case. The statement of Kashmiri Lal (PW6) brother of Sohan Lal (PW5) is that he had seen the aforesaid accused proceeding towards the village abadi. Thereafter there were reports of firing and he saw them running away from the village abadi towards the fields but from this circumstance alone I cannot spell out their criminality. Accordingly I acquit Satnam Singh, Sukhdev Singh, Sucha Singh, Kulwant Singh and Jagir Singh accused."

The conviction of Jagrup Singh and Hazara Singh for the various offences as noticed above, was recorded, in paragraph 30 thus :

"Sohan Lal (PW5) at the trial on oath stated that Jasbir Singh accused had given *gandassa* blows and Mukhtiar Singh had taken away the gun. The gun was subsequently recovered from Jagroop Singh accused in pursuance of his disclosure statement Exh. P-23. The gun is Exh. M.O. 3 which is the licenced gun of Sohan Lal (PW5). In as much as the gun was taken away from the spot by Mukhtiar Singh, Jagroop Singh would be liable criminally under Section 411 of the Penal Code and under Section 25 of the Arms Act. The only evidence against Hazara Singh accused is that he was arrested by Shri Harcharan Singh Assistant Sub Inspector and his search brought out pistol .315 bore Exh. M.O.4 and two cartridges Exh. M.O.5 and M.O. 6 for which he had no licence. Hazara Singh accused has to be convicted under Section 25 of the Arms Act."

The learned Judge of the Special Court then proceeded to consider the case of the prosecution against Mukhtiar Singh and Jasbir Singh, appellants. The discussion in that behalf is found in paras 31 and 32 of the judgment which read thus :

"The two empties recovered from the spot were found to have been fired from the pistol of Jasbir Singh and two from the revolver of Mukhtiar Singh accused. The Supreme Court in the case of Bhura 1985 Supreme Court Cases (Criminal) 33 in similar circumstances had held the accused guilty setting aside their acquittal by the

A High Court.

B Jasbir Singh and Mukhtiar Singh accused at the time of their arrest were directed to keep their faces muffled and they refused to participate in the identification parade on the ground that they had been shown to the witnesses of the prosecution for which there is not an iota of evidence. Both the accused had committed a tress pass and there were fire-arm injuries on the body of Jajpal. Their act of taking away the gun would make them criminal liable under Section 397 r/w section 34 of the Penal Code and they would also be liable under the Arms Act."

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After recording these findings, both Mukhtiar Singh and Jasbir Singh were convicted for various offences as noticed above and sentenced.

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We have gone through the judgment of the learned trial Judge and find that the same is far from satisfactory. Both, the order of acquittal as well as the order of conviction, have been made by the Trial Court in a most perfunctory manner without even noticing much less, considering and discussing the evidence led by the prosecution or the arguments raised at the bar. The trial court noticed the prosecution case, the medical evidence and the material collected during the investigation of the case besides the arrest of different accused persons on different dates in paras 1 to 23 of the judgment. In paragraph 24 it noticed the names of the prosecution witnesses and in paragraphs 25 and 26 it noticed the fact that the accused had been examined under Section 313 Cr. P.C. It was in paragraphs 28 to 32, notice above, that the orders of acquittal and conviction were made.

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The trial Court was dealing with a serious case of murder. It was expected of it to notice and scrutinize the evidence and after considering the submissions raised at the bar arrive at appropriate findings. In vain have we searched through the cryptic judgment of the Trial Court the reasons which prevailed with it to acquit the respondents in Criminal Appeal No. 489 of 1985 or convict the appellants in Criminal Appeal No. 434 of 1985.

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On the plainest requirement of justice and fair trial the least that was expected of the trial Court was to notice, consider and discuss, howsoever briefly, the evidence of various witnesses as well as the arguments address at the bar. The Trial Court has not done so. The Trial Court apparently failed in the discharge of its essential duties. There is no mention in the

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judgment as to what various witnesses deposed at the trial, except for the

evidence of the medical witness. The judgment does not disclose as to what was argued before it on behalf of the prosecution and the defence. The judgment is so infirm that we are unable to appreciate as to how the findings were arrived at. The judgment of the trial Court is truly speaking not a judgment in the eye of law. The trial court appears to have been blissfully ignorant of the requirements of Section 354(1)(b) Cr. P.C. Since, the first appeal lay to this court, the trial Court should have reproduced and discussed atleast the essential parts of the evidence of the witnesses besides recording the submissions made at the bar to enable the appellate court to know the basis on which the 'decision' is based. A 'decision' does not merely mean the "conclusion" - it embraces within its fold the reasons which form the basis for arriving at the "conclusions". The judgment of the Trial Court contains only the "conclusions" and nothing more. The judgment of the trial court cannot, therefore, be sustained. The case needs to be remanded to the Trial Court for its fresh disposal by writing a fresh judgment in accordance with law.

We are conscious of the fact that the occurrence took place more than a decade ago and the conviction was recorded almost 9 years ago. But, looking to the manner in which the judgment has been rendered by the Trial Court, it appears appropriate to us to remand the case to the Trial Court for writing a fresh judgment, after providing opportunities of hearing to both the parties, on the basis of the material which is already on the record. We could have undertaken the exercise ourselves and analysed the evidence to determine the guilt or otherwise of the accused persons but we are of the opinion that our doing so may prejudice one or the other party as it would deprive the concerned party of its right of first appeal to this Court. We have, therefore, considered it proper, after setting aside the judgment under appeal, to remand the case to the Trial Court for its fresh disposal in the light of the observations made by us above.

The appellants Mukhtiar Singh and Jasbir Sing were directed to be released on bail during the pendency of the appeal in this Court by an order of the learned Judge in chambers dated 19.7.1990. We do not consider it appropriate to cancel their bail during the fresh hearing of the case by the Trial Court but we direct that they shall remain present before the Trial Court during the hearing of the case and in the event of their being found guilty, they shall be remanded to custody. In case they or either of them does not appear before the Trial Court during the hearing,

- A their/his bail shall stand cancelled and they shall be taken into custody till the conclusion of the hearing by the Trial Court. The respondents in Criminal Appeal No. 489/85 shall also remain present during hearing of the case before the Trial Court and continue to remain on bail till the hearing of the case. The absence of either of the respondents in the Trial Court shall result in the cancellation of his/their bail and he/they shall be
- B taken into custody till the conclusion of the hearing by the Trial Court. In case of conviction of any of the accused persons, the sentence already undergone by them as well as the period of detention before and during the trial shall be set off against the period of sentence.
- C Since, it is an old case, we direct the Trial Court (Judge, Special Court, (Sessions Judge) - Ferozepur) to fix an early date for the hearing of the case and dispose it of on *merits* expeditiously preferably within a period of three months from the date of the communication of this order.

- D Since, we are remanding the case for writing a fresh judgment by the Trial Court after hearing the parties in the light of the observations made by us, we clarify that we have not expressed any opinion regarding the merits of the case and nothing said by us hereinabove shall be construed expressly or impliedly as any opinion on the merits of the case.

U.R.