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STATE THROUGH CBI, DELHI

v.

GIAN SINGH

SEPTEMBER 14,1999

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[G.B. PATTANAIK, S.P. KURDUKAR AND K.T. THOMAS, JJ.]

Terrorists and Disruptive Activities (Prevention) Act, 1985—Ss.3 (1) & (2) and 1(3).

C

Assassination of Sikh Sant—Operation Blue Star—Signing of accord by the then Prime Minister and a Sikh Sant—Rival extremist group opposing the accord, conspiring to kill the Sant—Firing and injuring the Sant in a public meeting—Accused and a co-assailant overpowered and caught—Testimony of eye-witnesses—Conviction and sentence by Designated Court —On appeal, Held; the act of assailants was a "terrorist act" Within the ambit of S.3(1)—Designated Court rightly held that accused was one of the assailants who fired at Sant—Conviction confirmed—Penal Code, 1860-S.302 read with S.34.

D

Terrorists and Disruptive Activities (Prevention) Act, 1985—Ss.3(2)(1) & 25—Sentence—Alteration of —Offence committed under 1985 Act—Conviction and death sentence—Subsequent 1987 Act providing lesser punishment for the same offence—Overriding effect over any other enactment including enactment expired by efflux of time—Effect of—Held, exclusivity of the extreme sentence contained in 1985 Act stands superseded by the corresponding provisions in 1987 Act—Article 20(1) of the Constitution not a bar in extending the benefit of 1987 Act—Conviction of accused altered to imprisonment for life—Constitution of India, 1950—Art. 20(1).

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Words and Phrases.

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"terrosist act"—Scope and ambit of in the context of S.3(1) of Terrorists and Disruptive Activities (Prevention) Act, 1985.

Appellant-accused was prosecuted for offences under S.3(2)(1) of Terrorists and Disruptive Activities (Prevention) Act, 1985 and under S.302 read with S.34 IPC. After the 'Operation Blue Star' in Golden Temple, an

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accord was signed between the then Prime Minister and a Sikh Sant. Another extremist group opposed the pact considering the truce a virtual surrender of Sikh pride and conspired to eliminate the Sikh Sant for betrayal. Appellant-accused and his co-assailants were engaged for murdering the Sant. When the Sant was addressing a meeting, appellant and others opened fire and injured the Sant. Appellant and a co-assailant were overpowered and caught on the spot by the body guards and police. On the same night the Sant succumbed to his injuries in the hospital. Trial Court relying upon the evidence of eye witnesses convicted and sentenced the appellant to death for offence under S. 3(2)(1) of TADA Act, 1985 as no other alternative sentence was provided thereunder. However, lesser sentences were awarded for the remaining offences. Aggrieved by the conviction and sentence, appellant preferred the present appeal. State has preferred the Death Reference.

Disposing of the matter, the Court

HELD : 1. The Designated Court was justified in holding that the appellant was one of the assailants in concert with other assailants who fired at the Sikh Sant and his associates at the public meeting. Conviction of appellant for offences under S. 3(1) of Terrorists and Disruptive Activities (Prevention) Act, 1985 and S. 302 read with S. 34 IPC by Designated Court is confirmed. [388-F; 393-F]

2. The act of assailants would fall within the ambit of "terrorists act" in S. 3 (1) of the TADA Act, 1985. In the instant case there is overwhelming evidence to show that the main intention of the persons who fired the revolvers towards the podium wherefrom the deceased Sant spoke, was to administer a terror or shock wave to the people at large that the fate of all those who did not fall in line with extremists would be the same as inflicted on the victims of the shoot out. Deceased Sant was not the only target of the shooters, though perhaps he was one of the principal targets. [390-A-B]

State v. *Nalini,* **[1999] 5 SCC 253, referred to.**

Hitendra Vishnu Thakur v. *State of Maharashtra,* **[1994]4 SCC 602, relied on.**

3. Under S.3 (2) of TADA Act, 1985, the only sentence which was permitted for awarding is death sentence in case of terrorist act resulting in death of any person. But in the succeeding legislation i.e. TADA Act,

A 1987, the harshness of the sentence has been diluted by providing an alternative punishment for imprisonment for life. Thus, there is inconsistency between the sentencing scope in S.3(2) of TADA Act, 1985 and in the corresponding provision in TADA Act, 1987. In S.25 of the TADA Act, 1987, providing overriding effect, the expression "in any enactment other than this B Act" would encompass even enactment which, though expired by efflux of time, continues to operate by virtue of any saving clause. Accordingly, the exclusivity of the extreme sentence contained in S.3(2) of TADA Act 1985 must stand superseded by the corresponding benevolent provision in TADA Act, 1987. It is a permissible course and the express prohibition contained in Art. 20(1) of the Constitution that "no person shall be subjected to a C penalty than that which might have been inflicted under the law in force at the time of commission of the offence" is not a bar for resorting to the corresponding sub-section in TADA Act, 1987. Thus on the facts of the case and in view of the long distance of time, particularly in view of accused having already undergone 13 years imprisonment, the sentence for the offence under S.3 (2) of TADA Act, 1985 is altered to imprisonment for life. D [390-D; 392-C; 393-B-C-D]

State of Punjab v. *Mohar Singh Pratap Singh,* AIR (1955) SC 84; *S. Krishnan & Ors.* v. *State of Madras & Anr.,* AIR (1951) SC 301 and *State of Orissa* v. *Bhupendra Kumar Bose,* [1962] 2 SCR 380, referred to.

E CRIMINAL APPELLATE JURISDICTION : Death Reference Case No. 3 of 1998.

WITH

F Criminal Appeal No. 931 of 1998.

From the Judgment and Order dated 18/27.7.98 of the Designated Court, District Nabha at Punjab in S.C. No. 16T dated 20.12.85/16.2.95 in F.I.R. No. 98 dated 20.8.1985.

G K.N. Shukla, (K.C. Kaushik, Mrs. Rekha Pandey) for Mrs. Sushma Suri, (B.L. Wadhera, R.D.Sharma) for M.A. Chinnaswamy, (Mrs. Jayshree Anand) Additional Advocate General, Punjab for Rajiv Dutta for the appearing parties.

The Judgment of the Court was delivered by

H **THOMAS, J.** The military action "Operation Blue Star" carried out in the

Golden Temple complex at Amritsar had a series of aftermaths involving many horrendous incidents. In one such incident a leader of Sikh community, Sant Harchand Singh Longowal, was shot dead from close range distance on the evening of 20.8.1985. Appellant Gian Singh and 6 others were arraigned before a Designated Court under the Terrorists and Disruptive Activities (Prevention) Act, 1985 (for short `TADA Act 1985") for various offences connected with the said murder. The Special Judge of the Designated Court convicted the appellant of a number of offences including Section 3(2)(i) of the TADA Act 1985. He was sentenced to death for the said offence as the Special Judge noticed that no other alternative sentence was prescribed for that offence under TADA Act 1985. However, lesser sentences were awarded for the remaining offences of which too the appellant was convicted including Section 302 read with Section 34 IPC. This appeal was filed by the appellant as of right since it is so provided under Section 16 of the TADA Act 1985. The remaining 6 accused in the array of the indicted persons were found not guilty of any offence and hence they were all acquitted. Two others were also shown as participants in the same offences, one Harinder Singh alias Billa (he later died on account of the bullet wounds sustained) and one Jurnail Singh (he is now a proclaimed offender as his whereabouts are still untraced).

As appellant has been in jail for a period exceeding 14 years in connection with this case, his learned counsel seems to be disinterested in canvassing for an acquittal. But he focused all his efforts to have the sentence brought down to imprisonment for life for the main offence as he feels that the maximum term of fourteen years which appellant has already spent in jail would help him to get the benefit of a release order from jail authorities. But the question of sentence need be considered only if his conviction is liable to be upheld because we are dealing with the first appeal which appellant, as of right, has preferred against his conviction passed by the Trial Court.

The facts which led to the present case can be stated in brief :

The State of Punjab was passing through a tortuous period during the first half of Nineteen Eighties. The State as a whole was then a terrorist infested area where killings of human beings with illegal firearms were a daily occurrence. Sant Harcharan Singh Longowal (hereinafter referred to as Sant Longowal) was the President of Siromani Akali Dal which was a widely represented association of the Sikh community. Another association consisting of extremists of the Sikh community had recognised one Jurnail Singh Bhindaranwale as the leader. He was supported by another extremist faction

A called All India Sikh Students Federation (AISSF).

Golden Temple at Amritsar has ever been the most revered place of worship for Sikhs all over the world. Within the Golden Temple complex is situate a multi-tier edifice called `Akal Takht' which is regarded as the seat of Almighty. All important decisions concerning the religious affairs of the B community are being adopted at Akal Takht. It has always been eliciting obeisance from the devotees of the great temple. But during the first half of that decade a lot of extremists under the leadership of Jurnail Singh Bhindaranwale had perched inside 'Akal Takht' and army action was resorted to by the Government of India, presumably, to flush out all the illegal occupants C therein. The army action so resorted to is now recorded in history as "Operation Blue Star" which caused the magnificent Akal Takht to crumble down and a large number of occupants therein were crushed to death. It happened in June 1984.

Sant Longowal was arrested soon after the aforesaid army action, and D was interned in prison where he remained till 12.3.1985.

In the meanwhile efforts were on to mollify the wounded feelings of Sikh community. An accord was arrived at between the then Prime Minister Rajiv Gandhi and Sant Longowal on 24.7.1985 and a pact was signed on its basis by the aforesaid two leaders.

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But the followers of Bhindaranwale including members of AISSF opposed the said pact as they considered the truce a virtual surrender of Sikh pride to the destroyers of Akal Takht. They publicly abused the leaders who signed the pact without securing any relief for the Sikh youths lodged in jails and without restoring the Sikh soldiers to their ranks who had impulsively deserted F Defence Services on hearing the news of the destruction of Akal Takht.

The above was the backdrop of the murderous attack launched on Sant Longowal. According to the prosecution case a criminal conspiracy hatched by some persons to eliminate deceased Sant Longowal and his henchmen for G the acts of betrayal of Sikh Panth. They considered it imperative to teach all such betrayers a lesson and terrorise all those who declined to obey the edicts issued by the organisations spearheaded by Jurnail Singh Bhindaranwale.

On 30.7.1985 an attempt was made on Sant Longowal and his comrades H when they visited Golden Temple at Amritsar. But the attempt did not succeed

due to some unforeseen developments. Though the security cover of Sant Longowal was beefed up consequent on the aforesaid attempt on his life, the determined conspirators were not deterred by any such security measures.

The conspirators came to know that Sant Longowal was scheduled to address a meeting on 20.8.1985 at Sherpur Gurudwara. Appellant and his co-assailants were entrusted with the risky task of shooting Sant Longowal and his colleagues. Revolvers and cartridges were supplied to the assailants for achieving the purpose. A motorcycle was also lent to them for swift movement to reach the target at the appropriate opportunity.

The meeting at Sherpur Gurudwara started at 3.30 P.M. But Sant Longowal addressed the audience around 5.30 P.M. As he was closing the speech, appellant and Jurnail Singh opened firing towards the stage. Some people from the audience made a bold bid to thwart the onslaught. But the assailants continued to shower bullets at the personages on the dais. A number of persons including Sant Longowal sustained serious firearm injuries.

The bodyguard of Sant Longowal, besides other police personnel present, tried to catch the assailants. Though one of them (Jurnail Singh) succeeded in escaping, the appellant and Harvinder Singh @ Billa were over-powered and were caught with the illegal firearms in their possession.

Sant Longowal was taken to the Civil Hospital at Sangrur and other injured were removed to different hospitals. Sant Longowal succumbed to his injuries at 8.40 P.M. on the same night.

The Designated Court acquitted all the remaining accused who were tried along with the appellant, on the premise that prosecution did not succeed in proving that they were members of the criminal conspiracy. Regarding appellant the Designated Court found that he shared the common intention to murder Sant Longowal and his comrades and they fired the revolvers in pursuance thereto. Hence the conviction and sentence.

There is no dispute that Sant Longowal and the other deceased were shot at while they were attending the meeting at Sherpur Gurudwara on the evening of 20.8.1985. There is also no dispute that appellant and Harvinder Singh alias Billa were over-powered by people at the same site and they were arrested by the police. So the limited question regarding facts is whether appellant was one of the assailants and whether he did it in concert with his co-assailants.

A The occurrence which happened at 5.30 P.M. in which Sant Longowal was shot down was witnessed by a large number of persons. A few among them were examined as prosecution witness. PW-29 Surinder Singh was a member of the legislative assembly during the relevant time. He was the nephew of Sant Longowal. He said that he too was present in the meeting and narrated the incident, identified the appellant as one of the assailants B using a revolver to shoot the persons on the stage. PW-30 Rajinder Singh, PW-34 Karamjit Singh, PW-35 Santosh Singh, PW-40 Joginder Singh, PW-41 Sher Singh and PW-102 Amir Singh were the other eye-witnesses examined by the prosecution.

C Among the above eye-witnesses PW-34 had sustained injuries while assailants fired revolvers. PW-40 Joginder Singh was the General Secretary of Akali Dal District Committee. Both of them narrated that after Sant Longowal completed his speech, purses were presented to him by some people in the audience as contributions towards the movement which Sant Longowal spearheaded. Thereafter "Jaikara" was said (it is the traditional slogan of Sikh D people) and it was then the appellant opened firing from a distance of 5-6 karms away from the stage. They and PW-29 Surinder Singh have said that Sant Longowal was dragged backwards to save him from further onslaughts, and one person tried to catch the appellant but he too was shot at by the appellant; thereafter appellant took to his heels and he was chased and E intercepted. When the police came, they took charge of the appellant and they also took into custody the revolver from the hands of the appellant. PW-41 Sher Singh was the bodyguard of Sant Longowal. It was PW-102 Amir Singh who succeeded in catching the appellant after the chase.

The Designated Court has considered the evidence of the aforesaid F witnesses in detail. Nothing has been shown to us for doubting the correctness or the truth of their version. Therefore we are also in agreement with the finding of the Designated Court that the appellant was one of the assailants, in concert with the other assailants, who used firearms aiming at Sant Longowal and his associates who were present at the meeting.

G We have now to consider whether the aforesaid acts of the appellant would fall within the ambit of "terrorist act" in Section 3 of the TADA Act 1985. We extract Section 3(1) here :

> "Whoever with intent to overawe the Government as by law established or to strike terror in the people or any section of the H people or to alienate any section of the people or to adversely affect

the harmony amongst different sections of the people does any act or thing by using bombs, dynamite or other explosive substances or inflammable substances or fire-arms or other lethal weapons or poisons or noxious gases or other chemicals or any other substances (whether biological or otherwise) of a hazardous nature in such a manner as to cause, or as is likely to cause, death of, or injuries to, any person or persons or damage to, or destruction of, property or disruption of any supplies or services essential to the life of the community, commits a terrorist act."

The above said sub-section is identically worded with the corresponding sub-section in the TADA Act of 1987 except the added limb in the subsequent Act having the following words: "or detains any person and threatens to kill or injure such person in order to compel the Government or any other person to do or abstains from doing any act."

Sub-section (2) of Section 3 of TADA Act 1985 deals with punishment. It reads thus:

"Whoever commits a terrorist act shall—

(i) if such act has resulted in the death of any person, be punishable with death;

(ii) in any other case, be punishable with imprisonment for a term which shall not be less than five years but which may extend to term of life and shall also be liable to fine."

The only difference between Sub-section (2) of Section 3 quoted above and its corresponding provision in the TADA Act 1987 is that the latter provides one more alternative punishment even for the most serious offence, i.e., "death or imprisonment for life."

In *State* v. *Nalini,* [1999] 5 SCC 253 a three- Judge Bench of this Court has quoted the dictum laid down in *Hitendra Vishnu Thakur* v. *State of Maharashtra,* [1994] 4 SCC 602 with approval and concluded thus:

"Thus the legal position remains unaltered that the crucial postulate for judging whether the offence is a terrorist act falling under TADA Act or not is whether it was done with the intent to overawe the Government as by law established or to strike terror in the people etc."

A Here, there is overwhelming evidence to show that the main intention of the persons who fired the revolvers towards the podium wherefrom Sant Longowal spoke, was to administer a terror or shock wave to the people at large that the fate of all those who did not fall in line with Bhindaranwala and AISSF would be the same as inflicted on the victims of the shoot out at Sherpur. Sant Longowal was not the only target of the shooters, though B perhaps he was one of the principal targets. We have, therefore, no doubt that the said act would fall within the ambit of Section 3(1) of the TADA Act 1985.

It does not require much discussion to concur with the conviction passed on the appellant for offences under Section 302 read with Section 34 C of the IPC as well. As pointed out earlier, learned counsel for the appellant did not address any arguments regarding that aspect as he has focussed solely on the extent of sentence by pleading that it should not go beyond imprisonment for life.

We have extracted Section 3(2) of TADA Act 1985 above. It could be D discerned therefrom that the only sentence which the sub-section permitted for awarding is death penalty in case the terrorist act resulted in the death of any person. It must be pointed out that TADA Act 1985 remained in force only for a period of 2 years starting from 23.5.1985. In other words, TADA Act, 1985 expired on 22.5.1987. Instead of the statute reaching the stage of expiry by efflux of time, if it was repealed by another statute, nothing would E have survived from the repealed statute unless the succeeding enactment incorporates necessary provision to the contrary. This is pithily amplified in Section 6 of the General Clauses Act. But the aforesaid legal implications of repeal of a statute cannot be applied in the case of expiry of a statute, {vide *State of Punjab* v. *Mohar Singh Pratap Singh,* AIR (1955) SC 84}. Normally F the proceedings terminate ipso facto with the expiry of the statute. Craies on "Statutes Law" at page 409 of the 7th edn. has stated thus :

> "As a general rule and unless it contains some special provision to the contrary, after a temporary Act has expired, no proceedings can be taken upon it, and it ceases to have any further effect. Therefore, G offences committed against temporary Acts must be prosecuted and punished before the Act expires and as soon as the Act expires any proceedings which are being taken against a person will *ipso facto* terminate."

A Constitution Bench of this Court in *S. Krishnan & Ors.* v. *State of* H *Madras & Anr.,* AIR (1951) SC 301 has given approval to the above observation

of the celebrated author. A

While dealing with the implications of "*ipso facto* termination of temporary statutes" another Constitution Bench of this Court in *State of Orissa* v. *Bhupendra Kumar Bose,* [1962] Suppl. 2 SCR 380 has held that "the Legislature can, and often does, avoid such an anomalous consequence by enacting in the temporary statute a saving provision, the effect of which is in some respects similar to that of Section 6 of the General Clauses Act." B

Incidentally it has to be pointed out that in the expired statute i.e. TADA Act 1985 there is a saving clause which is embodied in Section 1(3) which mandates for a different outflow even after the expiry of the Act. The sub-section reads thus : C

> "It shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint and shall remain in force for a period of two years from the date of its commencement, but its expiry under the operation of this sub-section shall not affect- D
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> (a) the previous operation of, or anything duly done or suffered under, this Act or any rule made thereunder or any order made under any such rule, or
>
> (b) any right, privilege, obligation or liability acquired, accrued or incurred under this Act or any rule made thereunder or any order made under any such rule, or E
>
> (c) any penalty, forfeiture or punishment incurred in respect of any offence under this Act or any contravention of any rule made under. this Act or of any order made under any such rule, or F
>
> (d) any investigation, legal proceeding or remedy in respect of any such right, privilege, obligation, liability, penalty, forfeiture or punishment as aforesaid,
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> and any such investigation, legal proceeding or remedy may be instituted, continued or enforced and any such penalty, forfeiture or punishment may be imposed as if this Act had not expired." G

The effect of operation of the above sub-section is that in spite of the expiry of TADA Act 1985 on 22.5.1987 all liabilities, penalties or punishments to which a person has already become liable in respect of any offence under H

A the said Act would continue to chase him as though the said Act remains in force. Of course it is only for the limited purpose of such continuity that Parliament wanted the legal fiction to operate that the Act would still continue in force.

B If the outflow of TADA Act 1985 had continued as such without any succeeding legislation for covering the same subjects there would not, perhaps, have been any problem. But some difficulty has been posed when TADA Act 1987 was enacted as its provisions substantially cover the same area as in the former legislation prescribing punishments for identical offences. In TADA Act 1985 (during the subsistence of which the offence in this case was C committed) the extreme penalty, without any alternative, has been provided for the most serious offence under Section 3(2). But in the succeeding legislation the harshness of the sentence has been diluted for the same offence by providing an alternative option to the court to impose.

D If the position was just in the reverse order i.e. the later Act contained harsher sentence and the former Act contained a lesser sentence the prohibition embodied in Article 20(1) of the Constitution that "no person shall be subjected to a penalty greater than that which might have been inflicted under the law in force at the time of commission of the offence" would have come to the rescue of the offender. But the offender (who is liable to be convicted for the E same offence, had it been committed after the coming into force of the subsequent TADA Act 1987) could have been punished with a sentence of imprisonment for life, because such an alternative is provided in that enactment.

What is the jurisprudential philosophy involved in the second limb of clause (1) of Article 20 of the Constitution? "No person shall be subjected F to a penalty greater than that which might have been inflicted under the law in force at the time of commission of the offence." It is a fundamental right of every person that he should not be subjected to greater penalty than what the law prescribed, and no ex post *facto* legislation is permissible for escalating the severity of the punishment. But if any subsequent legislation would G downgrade the harshness of the sentence for the same offence, it would be a salutary principle for administration of criminal justice to suggest that the said legislative benevolence can be extended to the accused who awaits judicial verdict regarding sentence.

In the above context a reference to Section 25 of the TADA Act 1987 H will provide added strength to the above proposition. Section 25 reads thus:

"*25.Over-riding effect.*—The provisions of this Act or any rule made thereunder or any order made under any such rule shall have effect notwithstanding anything inconsistent therewith contained in any enactment other than this Act or in any instrument having effect by virtue of any enactment other than this Act." A

There is inconsistency between the sentencing scope in Section 3(2) of TADA Act 1985 and in the corresponding provision in TADA Act 1987. The expression "in any enactment other than this Act" would, under Section 25, encompass even enactment which, though expired by efflux of time, continues to operate by virtue of any saving clause. Accordingly, the exclusivity of the extreme sentence contained in Section 3(2) of TADA Act 1985 must stand superseded by the corresponding benevolent provision in TADA Act 1987. It is a permissible course and the express prohibition contained in Article 20(1) of the Constitution is not a bar for resorting to the corresponding sub-section in TADA Act 1987. B C

The result of the aforesaid discussion is that the court gets jurisdiction to award the alternative sentence of imprisonment for life as for the offence under Section 3(1) of TADA Act 1985. On the fact situation of this case and in view of the distance of time, particularly in view of the long period of 13 years during which appellant was languishing in jail under the spell of death penalty, we are persuaded to award the lesser alternative i.e. imprisonment for life. D E

We, therefore, confirm the conviction of the appellant of the offences under which he stands convicted by the Designated Court as per the impugned judgment. But the sentence as for the offence under Section 3(2) of TADA Act 1985 is altered to imprisonment for life. The other sentences will remain undisturbed and will run concurrently with the main sentence. F

S.V.K. Appeal disposed of.