

KARAMJIT SINGH
v.
STATE (DELHI ADMINISTRATION)

MARCH 26, 2003

[S. RAJENDRA BABU AND G.P. MATHUR, JJ.]

Criminal Trial:

Terrorist and Disruptive Activities (Prevention) Act, 1987: Sections 3 and 5:

Charges under TADA Act and Explosive Substances Act—Conviction of police constable—Testimony of police witnesses—Reliance upon—Held, the presumption that a person acts honestly applies to police personnel as well, it is not appropriate to distrust and suspect their testimony without good grounds—In the absence of any material/evidence, it is unreasonable to believe that they would falsely implicate their own colleague—Criminal trial—Evidence Act, 1872—Explosive Substances Act—Ss. 3 and 4.

Testimony of police witnesses—Reliance upon—Conviction thereon without its corroboration by independent public witnesses—Validity of—Held: Testimony of such witnesses depends upon facts and circumstances of each case—No principle of general application could be laid down.

According to the prosecution, on receipt of information, police raided the house of accused-appellant, a police constable, residing in the quarter allotted to his father-in-law also a police constable, and recovered incriminating articles/explosive material therefrom. A case was registered against the accused police constable under the provision of Terrorist and Disruptive Activities (Prevention) Act and Explosive Substances Act. The Designated Court found him guilty of committing offence under ss. 3 and 5 of TADA and under ss. 3 and 4 of Explosive Substances Act and convicted and sentenced him accordingly. Hence the present appeal.

It was contended for the appellant that testimony of police personnel without its corroboration by independent public witness was not sufficient to convict an accused; that since the quarter where incriminating material recovered was not in possession of accused, he should not be held liable

A for recovery of incriminating material; and that testimony of one of the prosecution witnesses completely shatters the case of prosecution.

Dismissing the appeal, the Court

HELD: 1.1 The fact that the quarter in possession of the appellant
B had been allotted to PW 7, a police constable is proved by the statement
of PW 12, Head Constable. PW 7 has deposed that he had given the
quarter to the appellant and the appellant along with his wife was living
there for about a month before the occurrence. PW 7 is the father-in-law
C of the appellant and there is absolutely no reason why he would depose
falsely to implicate his own son-in-law. It is, therefore, fully established
hat the appellant was residing in the quarter, from where the recovery
had been made. There is direct testimony of three witnesses, PW 9, PW
10 and PW 11 that it was the appellant who opened the lock of his
residential quarter and thereafter he opened the lock of the box,
D wherefrom considerable amount of incriminating articles which could be
used for making bombs etc. were recovered. The fact that he was keeping
the key of the box can lead to the only conclusion that articles found in
the box were in his possession. The testimony of these three witnesses is
corroborated by the statement of PW 2, the driver of the vehicle in which
E all of them went to the quarter of the appellant. No doubt he is not a
witness of the recovery itself as he remained sitting in the vehicle but he
does corroborate the testimony of the three witnesses regarding the fact
that some police personnel including the three witnesses had gone to the
quarter of the appellant. The testimony of PW 3 establishes the fact that
the recovered articles were deposited as case property at Police Station
by PW 11. The testimony of these witnesses conclusively establishes the
F charge levelled against the appellant that he was keeping in his possession
considerable amount of explosives and other materials which could be used
for making a bomb. [31-F-H; 32-A-C]

1.2. The defence witness belongs to the native village of the appellant
and has merely deposed about the good character of the appellant. His
G testimony has no bearing on the factum of recovery made from the
possession of the appellant and is thus of no assistance to him. The evidence
on record establishes the guilt of the appellant beyond any shadow of
doubt. [32-D]

1.3. The testimony of police personnel should be treated in the same
H manner as testimony of any other witness and there is no principle of law

that without corroboration by independent witnesses their testimony cannot be relied upon. The presumption that a person acts honestly applies as much in favour of police personnel as of other persons and it is not a proper judicial approach to distrust and suspect them without good grounds. It will all depend upon the facts and circumstances of each case and no principle of general application can be laid down. Besides, PWs have deposed that despite their best efforts no one from the public was willing to join the raiding party due to fear of terrorists. [32-F, G]

1.4. When the incident took place terrorism was at its peak in Punjab and neighbouring areas. The ground realities cannot be lost sight of that even in normal circumstances members of public are very reluctant to accompany a police party which is going to arrest a criminal or is embarking upon search of some premises. At the time when the terrorism was at its peak, it is quite natural for members of the public to have avoided getting involved in a police operation for search or arrest of a person having links with terrorists. There is absolutely no material or evidence on record to show that the prosecution witnesses had any reason to falsely implicate the appellant who was none else but a colleague of theirs being a member of the same police force. [32-H; 33-A-C]

1.5. In his examination-in-chief PW 5 has not stated anything regarding the time at which he saw the appellant being interrogated. He was cross-examined nearly three years and nine months after the incident. After such a long gap he may not be remembering the exact time when he reached the police station. It is not at all possible to discard the testimony of the prosecution witnesses merely on account of a stray sentence appearing in the cross-examination of PW 5. [33-F, G]

1.6 The prosecution has established its case against the appellant beyond any shadow of doubt and there is absolutely no ground which may warrant interference with the judgment and order of the Designated Court. [34-D]

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 11 of 2000.

From the Judgment and Order dated 30.1.1996/2.2.1996 of the Designated Court, New Delhi in S.C. No. 140/91 in F.I.R. No. 298 of 1990, P.S. Mehroli.

A K.B. Sinha Sr. Adv. Shekhar Prit Jham, for the Appellants.

Ashok Bhan, R.K. Rathore, Satbir Pillania, Attemesh Rein and D.S. Mahara, for the Respondent.

The Judgment of the Court was delivered by

B **G.P. MATHUR, J.** Karamjit Singh has preferred this appeal against the judgment and order dated 2.2.1996 of the Designated Judge, New Delhi in Sessions Case No.140 of 1991, by which he was convicted under Sections 3 and 4 of the Explosive Substances Act and was sentenced to 5 years R.I. thereunder and was further convicted under Sections 3 and 5 of the Terrorist and Disruptive Activities (Prevention) Act (hereinafter referred to as "the TADA") and was sentenced to 5 years R.I. and 5 years and six months R.I. respectively under the two counts. The sentences awarded to him were ordered to run concurrently.

D The case of the prosecution, in brief, is that the appellant Karamjit Singh at the relevant time was working as driver in Delhi Police and was residing with his wife in quarter no.B-12 in Police Station Mehrauli, which had been allotted to his father-in-law, Didar Singh, who was also a constable. A secret information was received that the appellant was involved in terrorist activities and that he was allowing the terrorists to stay in his residence and
E had also in his possession some explosive material. It was accordingly decided to conduct a search of his residential premises and in that connection a raiding party was organised by ACP, Shakti Singh of the CSS Branch, Operation Cell, Lodhi Colony, New Delhi. Shakti Singh, ACP along with number of police personnel including R.D. Pandey, Inspector, Pratap Singh, Inspector and Rajinder Prasad, Sub-inspector proceeded from their office at
F Lodhi Colony for appellant's quarter in P.S. Mehrauli at 8.30 a.m. on 8.11.1990. The quarter was locked from outside and, therefore, they kept a secret watch. At about 11.30 a.m., the appellant along with his wife arrived there on a scooter. The raiding party disclosed their identity to the appellant, who tried to run away but he was overpowered and was asked to open the
G door of the house. The appellant then opened the lock and the members of the raiding party entered the same. A steel box was found kept in the north side of the bedroom, which was also locked. The box was opened by the appellant and a number of incriminating articles like explosive material in two separate containers weighing 1.60 kg. and 1.80 kg., four detonators fitted with electric wires, time piece fitted with electrical wires in the shape of a
H fixed timer, one pocket watch having electrical wires which was also a timer,

one ampere meter tester, one pair of magnets, soldering wire, splinters weighing 1.150 kgs., nut and bolts, wrenches and screw drivers, etc. were found stored therein. The recovered articles were sealed on the spot. Thereafter a Rukka was sent to the Police Station, Mehrauli through PW2 Naresh and on the basis thereof PW1 Shashi Bala, who was on duty, registered a case against the appellant being FIR No.298 of 1990 under Sections 3 and 4 of the Explosive Substances Act and Sections 3, 4 and 5 of TADA. The appellant was produced in Court on the next day, where he was taken on police remand. The appellant also give a disclosure statement. After investigation of the case, charge sheet was submitted against the appellant on the basis of which cognizance was taken by the Designated Court. The learned Additional Sessions Judge (Designated Court No.1), New Delhi, framed charges under Sections 4 and 5 of the Explosive Substances Act and Sections 3 and 5 of TADA on 12.5.1993. The prosecution in support of its case examined 14 witnesses and filed some documentary evidence. The appellant in his statement under Section 313 Cr.P.C. denied the prosecution case. He stated that the quarter was not in his possession and he was not residing there nor any incriminating articles were recovered from his possession. He also denied to have made any disclosure statement. He further submitted that he had no association with any terrorist and had a clean service record while working as a driver with Delhi Police. He examined one witness, namely, DW1, Mukhtiar Singh in his defence. The Designated Court, after appraisal of evidence on record, believed the case of the prosecution and convicted and sentenced the appellant as mentioned earlier.

Before examining the contentions raised by Shri K.B. Sinha, learned senior counsel for the appellant, it will be proper to briefly notice the evidence which has been adduced by the prosecution to sustain the charge levelled against the appellant. PW 11 Pratap Singh has deposed that he was posted as Inspector in CSS Branch, Operation Cell, Lodhi Colony, New Delhi, on 8.11.1990. On that day, a raid was organised by ACP, Shakti Singh, at the residence of the appellant Karamjit Singh, who was living in quarter no.B-12 of P.S. Mehrauli, as a secret information had been received that he was having explosives in his possession and was helping the terrorists by allowing them to stay at this residence. At about 8.30 a.m., the police party headed by ACP, Shakti Singh, started from Lodhi Colony office and went to Mehrauli. They kept a secret watch at the house of the appellant, which was locked. At about 11.30 a.m., the appellant came there along with his wife on a scooter. He was stopped and the raiding party disclosed their identity on which he tried to run away but he was overpowered. The appellant was asked

- A to open the lock of his house, which he did and thereafter all of them went inside the house and found that a box was kept in the bedroom which was also locked. On the asking of ACP Shakti Singh, the appellatant opened the lock of the box and it was found that a number of articles like explosives, detonators fitted with electric wires, time piece, pocket watch, wrenches, wires, soldering material, splinters, etc., details of have been given earlier
- B were found there. The articles were sealed on the spot and a site plan was prepared. The witness has further deposed that thereafter he prepared a Rukka and after signing the same sent it to P.S. Mehrauli through PW2 Naresh, Constable, for registration of the case. The appellatant also made disclosure statements on 9.11.1990 and 10.11.1990. After completing investigation, he
- C sent papers for obtaining sanction from the concerned officers and after the same had been granted charge sheet was submitted against the appellatant in Court. PW9 R.D. Pandey, Inspector, and PW10 Rajinder Prasad, Sub-Inspector were also posed in CSS Branch, Operation Cell, Lodhi Colony, New Delhi on 8.11.1990 and they were members of the raiding party headed by ACP Shakti Singh and they had also gone to the residence of the appellatant. These
- D two persons have given exactly similar statements as that of PW11 Pratap Singh and have deposed about the opening of the lock of the house and the opening of the lock of the box by the appellatant and also recovery of the incriminating articles from there.
- E PW12 Ashok Kumar, Head Constable, Quarter Allotment Cell, Police Headquarters, New Delhi, produced before the Court the original file regarding allotment of quarter no.B-12, Type II, P.S. Mehrauli to Constable Didar Singh. PW7 Didar Singh has deposed that he had married his daughter Harinder Jeet Kaur to the appellatant on 1.9.1990 and at that time he was posted in PCR Anand Parbat. The appellatant at the time of his marriage was
- F living in village Naharpur near Rohini and he was having only one room. Since his daughter was facing difficulty there, he asked the appellatant to live in the quarter allotted to him (quarter no. B-12, PS Mehrauli) and accordingly the appellatant started living there about a month prior to the date on which search of his quarter was made. PW2 Naresh, Constable driver has deposed that he had driven the Gypsy on 8.11.1990 on which the raiding party headed by
- G ACP Shakti Singh had proceeded from Lodhi Colony to P.S. Mehrauli. PW 11 Pratap Singh, Inspector, had given him the Rukka for being handed over to the Duty Officer at P.S. Mehrauli, which he did. The Duty Officer after registering the case gave him a copy of the FIR which he handed over to Pratap Singh. PW1 Shashi Bala has deposed that she was Duty Officer at P.S.
- H Mehrauli on 8.11.1990 and on the basis of the Rukka brought by Naresh,

Constable, at 1.30 p.m., she registered a case against the appellant under Sections 3 and 4 of the Explosive Substances Act and Sections 3, 4 and 5 of the TADA as FIR no.298 of 1990. PW3 Babu Khan, Head Constable deposed that PW11 Pratap Singh, Inspector deposed the case property at P.S. Mehrauli on 8.11.1990 as per the recovery memo and filed the photocopy of the entry made regarding the same in the register.

PW4 Om Prakash Khatri, Inspector, Operation Cell, deposed that the appellant made a disclosure statement on 9.11.1990 that he could get recovery of arms, ammunitions and explosives made from some places in Delhi and Punjab. Similar statements about disclosure statement having been made by the appellant have been given by PW5 Kartar Singh, S.I. of Operation Cell. He also deposed that the appellant had further stated that he could get Jarnail Singh @ Jilla who was Lt. General of BTFK, Sukhvinder Singh Chadha, Vikram Jit Singh Bittu and some others arrested. PW13, Sukhdev Singh, who was Deputy Commissioner of Police, Special Cell, proved the sanction accorded by him on 12.9.1991 and PW14 M.V. Siddiqui Deputy Secretary, Home also proved the sanction given by him. Both the witnesses have stated that the sanction was granted by them after perusal of the documents of the case.

The appellant examined one witness in his defence, namely, DW1, Mukhtiar Singh, who is Surpanch of village Guddar Tadi, District Ferozepur. He deposed that Karamjit Singh belongs to his village and he knew him and also his family members for the last 40 years. The appellant had clean antecedents and he was never involved in any criminal case.

We have given above the gist of the evidence which is available on the record. The fact that quarter no.B-12 in P.S. Mehrauli had been allotted to PW7 Didar Singh is proved by the statement of PW12 Ashok Kumar, Head Constable. Didar Singh has deposed that he had given the said quarter to the appellant and the appellant along with his wife was living there for about a month before the occurrence. It is important to note that Didar Singh is the father-in-law of the appellant and there is absolutely no reason why he would depose falsely to implicate his own son-in-law. It is, therefore, fully established that the appellant was residing in quarter no.B-12, from where the recovery had been made. There is direct testimony of three witnesses, namely, PW9 R.D. Pandey, PW10 Rajinder Prasad and PW11 Pratap Singh that it was the appellant who opened the lock of his residential quarter and thereafter he opened the lock of the box, which was kept in the bedroom and from the said

A box considerable amount of incriminating articles which could be used for making bombs etc. were recovered. The testimony of these three witnesses is corroborated by the statement of PW2 Naresh, the driver of the vehicle on which they went from Operation Cell, Lodhi Colony to the quarter of the appellant in PS Mehrauli. No doubt he is not a witness of the recovery itself as he remained sitting in the vehicle but he does corroborate the testimony of the aforesaid three witnesses regarding the fact that some police personnel including the aforesaid three witnesses had gone to the quarter of the appellant in the morning of 8.11.1990. The testimony of PW3 Babu Khan, establishes the fact that the recovered articles were deposited as case property at Police Station Mehrauli by PW11 Pratap Singh. The testimony of these witnesses conclusively establishes the charge levelled against the appellant that he was keeping in his possession considerable amount of explosives and other materials which could be used for making a bomb. The defence witness examined by the appellant belongs to a village in District Ferozepur and he has merely deposed about the good character of the appellant. His testimony has no bearing on the factum of recovery made from the possession of the appellant and is thus of no assistance to him. The evidence on record, therefore, establishes the guilt of the appellant beyond any shadow of doubt.

Shri Sinha, learned senior counsel for the appellant, has vehemently urged that all the witnesses of recovery examined by the prosecution are police personnel and in absence of any public witness, their testimony alone should not be held sufficient for sustaining the conviction of the appellant. In our opinion the contention raised is too broadly stated and cannot be accepted. The testimony of police personnel should be treated in the same manner as testimony of any other witness and there is no principle of law that without corroboration by independent witnesses their testimony cannot be relied upon. The presumption that a person acts honestly applies as much in favour of police personnel as of other persons and it is not a proper judicial approach to distrust and suspect them without good grounds. It will all depend upon the facts and circumstances of each case and no principle of general application can be laid down. PW11 Pratap Singh has clearly stated in the opening part of his examination-in-chief that ACP Shakti Singh asked some public witnesses to accompany them but they showed their unwillingness. PW10 Rajinder Prasad, SI has given similar statement and has deposed that despite their best efforts no one from public was willing to join the raiding party due to the fear of the terrorists. Exactly similar statement has been given by PW9 R.D. Pandey. We should not forget that the incident took place in November 1990, when terrorism was at its peak in Punjab and neighbouring

areas. The ground realities cannot be lost sight of that even in normal circumstances members of public are very reluctant to accompany a police party which is going to arrest a criminal or is embarking upon search of some premises. At the time when the terrorism was at its peak, it is quite natural for members of public to have avoided getting involved in a police operation for search or arrest of a person having links with terrorists. It is noteworthy that during the course of the cross-examination of the witness the defence did not even give any suggestion as to why they were falsely deposing against the appellants. There is absolutely no material or evidence on record to show that the prosecution witnesses had any reason to falsely implicate the appellants who were none else but a colleague of theirs being a member of the same police force. Therefore, the contention raised by Shri Sinha that on account of non-examination of a public witness, the testimony of the prosecution witnesses who are police personnel, should not be relied upon has hardly any substance and cannot be accepted.

Shri Sinha has next urged that PW5 Kartar Singh, SI of Operation Cell had admitted in his cross-examination that he had gone to P.S. Mehrauli in connection with some official work at about 10.00 a.m. on 8.11.1990 and had seen PW9, PW10 and PW11 and ACP Shakti Singh interrogating the appellants Karamjit Singh in the room of I.O. and this clearly contradicted the testimony of the prosecution witnesses that the appellants came at 11.30 a.m., opened the lock of the quarter and thereafter the recovery was made. According to learned counsel, the testimony of this witness completely shatters the prosecution case that the raiding party kept a watch on the locked premises and the appellants arrived at the scene only at 11.30 a.m. In our opinion the learned counsel has tried to make a mountain of a mole hill from a stray sentence in the cross-examination of the witness. In his examination-in-chief which was recorded on 21.5.1994 PW5 has not stated anything regarding the time when he saw the appellants being interrogated. He was cross-examined on 23.7.1994 i.e. nearly three years and 9 months after the incident. After such a long gap he may not be remembering the exact time when he reached the police station. PW11 Pratap Singh has clearly stated in his cross-examination that SI Kartar Singh had come to the Police Station in pursuance of a wireless message sent to the Operation Cell by ACP Shakti Singh and that he came after 3.30 4.00 p.m. Therefore, it is not at all possible to discard the testimony of the prosecution witnesses merely on account of a stray sentence appearing in the cross-examination of PW5.

Shri Sinha has also urged that the quarter was not in exclusive possession

A of the appellant and, therefore, it cannot be held that the incriminating articles were recovered from his possession. As mentioned earlier, PW7 Didar Singh who is none else but the father-in-law of the appellant, has deposed that he had given the quarter to the appellant and he was residing therein for about a month prior to the occurrence. The testimony of PW9, PW10 and PW11 clearly establishes that it was the appellant who had opened the lock which was put on the front door of the quarter and he had also opened the lock which was put on the box from where the incriminating articles had been recovered. The box having been found in the quarter which was in possession of the appellant and the fact that he was keeping the key of the lock of the box can lead to the only conclusion that articles found in the box were in his possession.

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Having given our careful consideration to the submissions made by the learned counsel for the parties, we are clearly of the opinion that the prosecution has established its case against the appellant beyond any shadow of doubt and there is absolutely no ground which may warrant interference with the impugned judgment and order of the Designated Court. The appeal is accordingly dismissed.

D

S.K.S.

Appeals dismissed.