

Rai Saheb And Ors. vs State Of Haryana on 16 March, 1993

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Bench: G.N. Ray

JUDGMENT

K. Jayachandra Reddy, J.

1. This appeal is filed under Section 19 of the Terrorist and Disruptive Activities (Prevention) Act, 1987 (TADA Act' for short). There are five appellants. All of them were tried for offences punishable under Sections 302/149/148 & 404 I.P.C. and Sections 25, 27, 54 & 59 of the Arms Act and Section 6 of the TADA Act. The Designated Court convicted all of them under Section 148 I.P.C. and sentenced each of them to undergo one year's R.I. and under Sections 302/149 they were sentenced to undergo imprisonment for life. They were also convicted under Sections 25, 54 and 59 of the Arms Act and Section 6 of the TADA Act and sentenced to three years' R.I. The sentences were directed to run concurrently. The prosecution case is as follows:

2. The accused, the deceased Sahi Ram and principal witnesses belong to Village Chinder in Hissar District. The deceased was the Chairman of Land Mortgage Bank and he was having a gun licence also. Lakhpati, P.W. 5 was his wife and they had four sons. Praveen, P.W.6 is one of their sons. Among the accused Rai Sahab, A-1 and Raja Ram, A-4 are brothers. Bhajan Lal, A-2 is the brother-in-law of A-1 and A-4 having married their sister. He belongs to a different village. Raja Ram, A-3 and Mohinder, A-5 are their associates. There was enmity between the accused and the deceased because of some incidents that took place earlier. It is alleged that one Manphool, uncle of A-3, received bullet injury. One of the sons of the deceased and others figured as accused in that case and the case was pending. On 11.5.87, the day of occurrence, at about 8 A.M. the deceased went to Fatehabad and he carried his licenced gun with him. P.W.5 went alongwith him to purchase clothes for her daughters and P.W.6, the son of the deceased also followed them. At about 5.15 P.M. the deceased, P.Ws 5 and 6 boarded the bus at Fatehabad Bus Stand for going back to the Village. In the bus they were sitting on the seat near the back window. Bhagirath and Haru residents of Village Chinder were also in the same bus. The bus stopped at the turning point of the factory located in village Badopal. At that place all the five accused also boarded the bus. Accused Nos. 1,3 and 4 were armed with guns and A-5 was armed with a country-made pistol. The bus started and covered a distance of 3/4th of a kilometer towards Village Chinder. At that stage, Accused Nos. 1,2,4 and 5

came towards the deceased. In the meantime the bus stopped. A-2 took the deceased in his grip and threw him on the ground from the back window of the bus. In that process, the gun carried by the deceased also fell on the ground. Thereafter Accused Nos. 1, 3 and 4 who were carrying guns with them and A-5 who was carrying a pistol with him fired at the deceased with their respective weapons. The deceased died at the spot. The occurrence was witnessed by P.Ws 5 and 6 as well as Bhagirath and Haru. A-2 took away the gun of the deceased and all the other accused left the place. P.W.6 and the other two persons went to the house of the deceased to inform the other sons and members of his family. After about 1-1/2 hours Suresh, son, Jagdish, son-in-law and Khaili Ram, elder brother of the deceased arrived at the spot on a tractor. Then in the same tractor P.W.5 alongwith Suresh went to Police Station, Fatehabad and gave the first information report Ex.PB to P.W.13, Raj Singh, the Inspector of Police. P.W.13 in the company of P.W.16, A.S.I. Bhana Ram and a constable proceeded to the spot picking up a photographer P.W.14, Satish on the way. They reached the scene of occurrence and found that the dead body was lying somewhere near the road and photographs of that place were taken. The Inspector collected the blood-stained earth and also recovered some metal pieces and other articles. He held the inquest and the dead body was sent for post-mortem. P.W.9 Dr. A.S. Chaudhary, who conducted the post-mortem, found six fire-arm injuries and he gave the opinion that the deceased met his instantaneous death due to these injuries. The Inspector searched the house of the accused and found them to be absconding. On 17.5.87 he arrested Accused Nos. 1,2 and 5 and recovered a single barrel gun from A-1 and also recovered a pistol from A-5 and at the instance of A-2 after interrogation he recovered a gun belonging to the deceased which was taken away and concealed. On 22.5.87 he arrested A-3 and A-4. From A-4 he recovered a gun of 315 bore and from A-3 another gun was recovered. The recovered guns, pistol and other materials were sent to the ballistic expert and his opinion also was obtained. After completion of the investigation, the charge sheet was laid.

3. The prosecution examined 16 witnesses. Bhagirath and Haru who were present in the bus, however, were not examined. The case mainly rested on the evidence of P.Ws 5 and 6, the eye-witnesses. The accused pleaded not guilty. The accused in their defence examined one Chellu Ram Patwari, D.W.I who proved copy of the Akash Musaal Ex.DC. We have examined the evidence of this defence witness which is of no assistance to the accused. The learned Additional Judge of the Designated Court accepted the evidence of P.Ws 5 and 6 and the medical evidence and also the recoveries and convicted the accused.

4. In this appeal Shri U.R. Lalit, learned senior counsel appearing for the appellants submitted that the prosecution has not established the motive and there was delay in giving the FIR and that the presence of P.Ws 5 and 6 itself is highly doubtful and that non-examination of other independent witnesses is fatal to the prosecution case and that the medical evidence contradicts the evidence of the eye-witnesses and that the recoveries made are fake and should be rejected.

5. So far as the motive is concerned, there is evidence of P.W.8 to show that there were cases pending and there was also bitter enmity between the deceased and his close relations on one side and the accused on the other side. However, when there are direct witnesses, the motive is not very important. The next submission that other important independent witnesses were not examined by itself, in our view, is not fatal to the prosecution case. In areas of this nature and particularly in

these areas where fire-arms are being used freely and indiscriminately, nobody would dare to come and give evidence. On the mere ground that the others who were in the bus, were not examined, the evidence of P.Ws 5 and 6 can not be rejected. Since they are interested witnesses their evidence has to be scrutinised with great care and caution.

6. The learned Counsel for the appellants submitted that the presence of P.Ws 5 and 6 in the bus at the time of occurrence is doubtful and they were put up as eye-witnesses after due consultations. P.Ws 5 and 6 have deposed that they went alongwith the deceased to Fatehabad, a Town and Taluka headquarter to purchase clothes. There is nothing unusual about it. The learned Counsel further submitted that the police have not seized the articles purchased by these people. This by itself is not a ground to doubt their presence. However, the Investigating Officer has recovered three bus-tickets from P.W.6 which would go to show that P.Ws 5 and 6 travelled alongwith the deceased in the bus having purchased the tickets on the fateful day. That apart, the place and time of occurrence can not be doubted. The fact that the deceased was travelling in the bus also is not in dispute and even in the earliest report which was given at about 9.45 P.M. i.e. within reasonable time, all these facts are mentioned. We are unable to agree with the learned Counsel that there was inordinate delay in giving the FIR. According to the prosecution witnesses they boarded the bus at Fatehabad and some time later the occurrence took place in the bus. The Police Station was at some distance from the place of occurrence and after the members of the family of the deceased came to the scene of occurrence in a tractor, P.W-5 was sent immediately to the Police Station in the same tractor and she gave the report to the police by 9.45 P.M. Therefore there is no undue delay.

7. Now we shall consider whether the version given by the two eye-witnesses is consistent with the medical evidence. P.Ws 5 and 6 have deposed that when the bus covered a distance of one mile from the place from where the accused boarded the bus, it stopped and that Accused Nos. 1,3 and 4 alighted from the bus and A-2 took the deceased in his grip and threw him from the bus and as soon as the deceased fell on the ground, Accused Nos. 1,3 and 4 fired at him and A-5 who was carrying a pistol also fired at the deceased and that the deceased died at the spot because of the fire-arm injuries. Both of them have deposed that A-2 took away the gun of the deceased which fell on the ground. The first criticism against the evidence of these two witnesses is that no blood was found on their clothes. It is submitted that if P.Ws 5 and 6, who are no other than the wife and son of the deceased, were present when the occurrence took place, they would have fallen on the body of the deceased and touched the same and their clothes would have got blood stains but no blood stained clothes were seized and their evidence also did not disclose that there were any blood stains. P.W.5, when questioned in this context, categorically stated that she remained in the bus raising cries and did not fall upon her husband to rescue him. Even after the occurrence, it can not definitely be said as to in what manner she touched the body or did not touch at all. At any rate these are all very minor things. The fact remains that the FIR was given in a short and reasonable time and nobody could have imagined and planned to set up these witnesses particularly P.W.6 who is a student studying in the school. Therefore we are fully satisfied that these two witnesses were present in the bus at the time of occurrence.

8. Now coming to the so-called inconsistencies between their evidence and the medial evidence, the foremost thing that has to be borne in mind is that the medical evidence established that the

deceased died because of the fire-arm injuries. The Doctor, P.W.9, who conducted the post-mortem, noted the following injuries:

1. Lacerated wound over shaped measuring 3 cm. x 2 cm. was present over left temporal region just lateral to left eye. Margins were inverted. The surrounding area of the face was tattooed.
2. Lacerated wound 2 cm. x 4 cm. with everted margins, was present over right side of face just lateral to upper lip. On probing, the probe passed from injury No. 1 to 2. On dissection, the orbital bone was pierced, the left eye ball was crushed, the palate roof was pierced, artificial denture of both jaws was broken.
3. Lacerated wound oval shaped measuring 5 cm. x cm. was present over right side of chest, just above clavical at mid-clavicular point. The margins were blackened and inverted. The surrounding skin was tattooed. There were corresponding holes in the shirt and banyan and were blackened.
4. Lacerated wound with everted margins measuring 2 cm. x 2.5 cm. with abrasions on lateral and lower borders, was present on the right side of chest of anterior axillary line and was 10 cm. below the arm-pit.
5. Lacerated wound measuring 2 cm. x 1 cm. was present over front of right upper arm 15 cm. below arm-pit. Margins were everted.
6. Lacerated wound 1 cm. x 5 cm. was present back at upper end of the scapula and was 15 cm. lateral to mid-line. The margins were everted. On probing the wound, the probe passed from injury Rs. 3 in all directions of injuries 4,5 and 6. The probe also passed into the chest wall at upper border of second rib. On dissection, the tracks of the probe were confirmed. On opening the chest, there was lacerated wound in the chest wall. The upper apex was lacerated, there was a lacerated wound in the diaphragm. The liver was lacerated at its anterior border. There was a lacerated wound in the posterior chest wall and embedded pellet was recovered from the wound. The pellet was sealed. The thoracic cavity was full of blood and abdominal cavity was also contained blood. The clavicle bone was broken into pieces at its lateral 1/3rd level. The brachial plexuses and vessels were badly lacerated.

In the cross-examination, P.W.9, the Doctor has clarified that Injury Rs. 1 was the entry wound and Injury Rs. 2 was its exit wound. Injury No. 3 was another entry wound and the Injuries Nos. 4, 5 and 6 were the exit wounds of Injury Rs. 3. He also found a bullet lodged in the body and removed the same. The report of the ballistic expert would show that two of the metallic pieces which were examined by him could have been fired from a country made pistol. Therefore his report corroborates the prosecution version that a country made pistol could have been used and the evidence of the eye-witnesses shows that A-5 used a country made pistol. Their evidence also is to the effect that Accused Nos. 1, 3 and 4 used their guns. The mere fact that there are not three entry

wounds by itself is not a ground to show that three guns were not used. May be some of the shots fired by the accused did not hit the deceased. Even otherwise there is evidence to show that all the accused came in a body and boarded the bus and when A-2 threw the deceased on the ground all the accused surrounded him and two or three of them fired at the deceased. Then all of them ran away together from the place of occurrence. These circumstances are enough to attract Section 149 or even Section 34 I.P.C. The other discrepancies pointed out are in respect of some omissions or contradictions elicited from P.Ws 5 and 6 after confronting them with their earlier statements. We have carefully examined them and we find them to be not at all material. One of the discrepancies pointed out is that P.W.5 stated that the Inspector was writing her statement on papers and not in a book and on that statement she affixed her thumb impression on two papers. The question is whether the statement was written on papers or on a book. We are unable to see as to how this would be very material. It may be that she mistook the sheets of the book to be loose papers. She deposed that she reached Police Station, Fatehabad at about 9.15 P.M. after the occurrence and she further deposed that she has given all the details namely what time they started from Fatehabad and how they were sitting in the bus. It appears that in the FIR some of these minor details are not there. The earliest report need not contain all these minute details and on the other hand we find that all the material facts are mentioned in the earliest report. Their travelling in the bus and the accused getting into the bus and later attacking the deceased and the details of the occurrence, the presence of P.W.6 and other necessary materials are all there. We have carefully scrutinised the evidence of P.Ws 5 and 6 and we find no traces of any false implication and we are satisfied that they were present at the scene of occurrence and have given a truthful version. Similar criticism has been made against the evidence regarding the recoveries and it was argued that all the recoveries are fabricated. In the view we are taking that the evidence of P.Ws 5 and 6 is wholly sufficient and trust-worthy we do not propose to examine this aspect. The appeal is dismissed accordingly.