

## **Sukhwinder Singh Alias Jaggi vs State Of Punjab on 23 March, 1993**

**Equivalent citations:** AIR1994SC764, 1994CRILJ1117, 1994SUPP(3)SCC727, AIR 1994 SUPREME COURT 764, 1994 AIR SCW 426, 1995 SCC(CRI) 187, 1994 (3) SCC(SUPP) 727, 1994 SCC (SUPP) 3 727, 1994 APLJ(CRI) 189, (1994) 1 APLJ 82

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**Bench:** G.N. Ray

### **JUDGMENT**

1. This is an appeal under Section 19 of the Terrorist and Disruptive Activities (Prevention) Act, 1987 (TADA) filed against the judgment of the Designated Court, Amritsar. The appellant-Sukhwinder Singh was tried along with one Harnek Singh for offences punishable under Sections 397 read with Section 511, I.P.C. 307 read with Section 34, I.P.C. and under Section 3 read with Section 34 of TADA. Both of them were convicted and sentenced to various terms of imprisonment. Sukhwinder Singh, alone has filed this appeal. The prosecution case is as follows :

2. On 6-10-88 when PW-3, Rachhpal Singh and his father PW-4, Sohan Singh were present in their farm house situated in the area of Village Udhonangal, three young men came on motor cycle and after parking the same one out of them remained at the motor cycle. The two accused entered the farm house. The accused Sukhwinder Singh, appellant herein, was armed with a revolver. He took out the same and demanded Rs. 50,000/- from Sohan Singh and Rachhpal Singh at the point of pistol failing which both the accused threatened them that they would be killed. Both Sohan Singh and Rachhpal Singh told them that they had no ready cash. Thereupon, the appellant fired a round after taking an aim at PW-3, Rachhpal Singh but he managed to save himself by laying down on the ground. Both of them raised hue and cry and the persons working in the nearby fields ran towards the farm house. When the accused started running they were chased and caught redhanded and were taken into custody. A report was sent to the police and the Assistant Sub-Inspector came to the place of occurrence with a police force and arrested the two accused. The revolver along with the empties and the missed cartridges were taken into possession and after completion of the investigation the charge-sheet was filed. The accused pleaded not guilty and stated that they were in police custody four days back of the occurrence and they have been falsely implicated. The Designated Court, accepting the evidence of PW-3 and PW-4 convicted both the accused as stated above.

3. The learned Counsel for the appellant submits that the provisions of Section 3 of TADA are not attracted and the appellant was charged only Under Section 511 read with Section 397, I.P.C. but ultimately convicted Under Section 397 simpliciter which is contrary to the very charge that was

framed and that at any rate 10 years sentence awarded to the accused is highly excessive.

4. At this stage we are not impressed with the evidence of DW-1 and DW-2 who tried to support the version of the accused that he was already in the custody of the police. So far as PW-3 and PW-4 are concerned, we do not find anything significant in their cross-examination which affects their veracity. Both the witnesses deposed that the appellant and the other convicted accused came to their farm house, demanded Rs. 50,000/- and when their payment was not met with the appellant with his pistol fired. These averments in their evidence specifically made against the appellant also find corroboration from the fact, namely, recovery of the pistol along with the empties and the missed cartridges. Moreover, the accused were chased and were caught red-handed and the police-inspector who came on the spot found them in custody and had formally arrested them and proceeded with the investigation. Therefore, the evidence is sufficient to bring home the guilt to the appellant.

5. Coming to the question of sentence we find that ultimately neither of the two witnesses were injured nor the appellant succeeded in taking any money from them. No doubt the demand made by them is an offence in the eye of law and attract the provisions of law with which they are charged. An offence under Section 397 simpliciter is not made out and as the learned Counsel rightly pointed out it would be only one punishable Under Section 397 read with Section 511, I.P.C. We are also of the view that under Section 3 of TADA Act the sentence of 10 years is uncalled for and a minimum sentence of 5 years would meet the ends of justice.

6. Accordingly, we confirm the conviction of the appellant under Section 25, Arms Act to one year R.I. and the fine thereunder. The conviction Under Section 3 of TADA Act is confirmed but the sentence of 10 years is reduced to 5 years. The sentence of fine and default clause are confirmed. The conviction under Section 307, I.P.C. to undergo R.I. for 5 years as well as the fine clause and default clause are confirmed. The conviction of the appellant under Section 397, I.P.C. is altered and he would be punished under Section 397 read with Section 511, I.P.C. The sentence is reduced to 5 years R.I. Sentence of fine and the default clause are confirmed. All the sentences are directed to run concurrently. Subject to this the appeal is dismissed. The accused, if on bail, shall surrender and serve out the remaining sentence.