Supreme Court of India
Balbir Singh vs State Of Haryana on 20 January, 1987
Equivalent citations: 1987 AIR 1053, 1987 SCR (1)1095
Author: S Natrajan
Bench: Natrajan, S. (J)

PETITIONER:
BALBIR SINGH

Vs.

RESPONDENT:
STATE OF HARYANA

DATE OF JUDGMENT20/01/1987

BENCH:
NATRAJAN, S. (J)
BENCH:
NATRAJAN, S. (J)
SEN, A.P. (J)

CITATION:
1987 AIR 1053 1987 SCR (1)1095
1987 SCC (1) 533 JT 1987 (1) 210
1987 SCALE (1)127
CITATOR INFO :
F 1991 SC 45 (10)

ACT:
Terrorist and Disruptive Activities (Prevention) Act, 1985, ss.3 and 4--Conviction under--Prosecution evidence lacking in credibility-Conviction set aside--Investigation of cases under the Act to be not only thorough but also of a high Order.

HEADNOTE:
A crowd of about 1500 persons had gathered near the railway line in the village Siwah, District Karnal on the morning of 2.9.85 in response to a call given by the Bhartiya Kisan Union for a Rail Roko Abhiyan. To safeguard the railway line and to maintain law and order the authorities posted a large contingent of police. Since the demonstrators became violent and attempted to cause damage to the railway line, the police force resorted to lathi charge four or five times during the day and in addition fired tear-gas and even resorted to shooting.
The appellant, it is alleged, came at about 8 or 8.30 p.m. to the place where lathi charge and shooting had taken place, addressed the demonstrators and incited them to

violence. According to the prosecution, P.Ws. I and 2, who were on intelligence duty, carefully listened to the speech and on the next morning P.W.I presented a report at he Police Station. Thereupon a case was registered against the appellant under s.4 of the Terrorists and Disruptive Activities (Prevention) Act, 1985 and after investigation he was charge-sheeted. The Designated Court under the Act accepted the prosecution evidence and found the appellant guilty and convicted him under s.4 of the Act.

Allowing the appeal by the appellant, this Court,

HELD: 1. The Judge of the designated court was not justified in holding the prosecution case proved beyond reasonable doubt and finding the appellant guilty under s.4 of the Act and convicting him accordingly. The prosecution evidence is not only lacking in credibility but also suffers from numerous infirmities. It is far from satisfactory to justify the conviction of the appellant under s.4. The conviction and sentence awarded to the appellant are therefore set aside.

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2. Section 16 of the Act provides for an appeal against a judgment rendered by a designated court to the Supreme Court alone and to no other court. Consequently, this appeal constitutes the first appeal as well as the final appeal. Such being the case, the Supreme Court has to necessarily scrutinise the evidence in its entirety and re-appraise the testimony of witnesses to determine its evidentiary value. [1099G-H]

3.1. P.Ws.I and 2 were not on security duty at that place but were only there to submit intelligence reports. When a lathi charge had been made even at 4.30 p.m. it is inconceivable that the entire police force would have left the place in the evening and gone away elsewhere. Therefore, this unnatural version is put forward to cover up the lacuna for not examining any police officer of a higher rank regarding the inflammatory speech alleged to have been made by the appellant at about 8.30 p.m. on that day. [1100E-F]

3.2 The prosecution could have certainly examined some independent witnesses to prove what the appellant had spoken on that night. Surely, it cannot be said that among the 1500 or 2000 persons present there, no one would have come forward to give evidence about what the appellant spoke on that night. No explanation has been offered as to why no independent witness has been examined. In fact P.Ws.I and 2 have not even stated that they tried to find out the names of any of the people assembled there or made any effort to note down their names so that they can later be summoned to appear as witnesses if a case was to be filed against the appellant. [1100G-H; 1101A]

3.3 The appellant was a stranger to P.Ws.1 and 2 and hence they could not have known who he was and what was his occupation. P.Ws. I and 2 had not made any enquiries to find out who the appellant was and where he was residing. The

strange version given by P.W.I is that before the appellant began his speech he introduced himself to the demonstrators by giving out his name, address and occupation. The statement, apart from its artificiality is not corroborated even by P.W .2. Another discrepancy noticed is that while P.W. I has stated that the appellant addressed the gathering from the Chaubra with a microphone in his hand, P.W.2 has stated that the appellant stood in the midst of the demonstrators and addressed them. Moreover P.W.2 makes no reference to the appellant having any microphone. [1101A-C]

3.4 The report Exhibit P.A. is said to have been prepared on the basis of rough notes prepared by P.W.I, but the 'rough notes' is not forthcoming and has not been marked in evidence and is said to have

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been destroyed. Since the rough notes constitute the first recorded entry of the speech it is an important document and in its absence the fair report cannot be given unreserved acceptance. Even in the matter of the preparation of the report, one would except P.W.2 holding a higher rank than P.W.I to have prepared it. Not only has P.W.2 not prepared any report but his own admission is that he did not sign or even initial the rough notes or the fair report Exhibit P.A. [1101D-F]

[The Court observed that it is highly regrettable that the authorities concerned should have launched a prosecution under the Act in a manner which can be easily termed as cavalier. The Act though intended to effectively deal with the terrorists and disruptionists contains drastic provisions for punishing them. Furthermore, against any judgment, sentence or order rendered under the Act, an appeal would lie, directly to the Supreme Court and not to the High Court. Therefore, the investigation of the case under the Act has not only to be thorough but also of a high order.]

JUDGMENT:

CRIMINAL APPELLATE JURISDICTION: Criminal Appeal No. 222 Of 1986 From the Judgment and Order dated 11.3. 1986 of the Sessions Judge, Karnal in Misc. Sessions Case (D) No. 1072 of 1985 Harbans Lal and G.K. Bansal for the Appellant. V.C. Mahajan and C.V. Subba Rao for the Respondent. The Judgment of the Court was delivered by NATARAJAN, J. While allowing this appeal and setting aside the conviction of the appellant Balbir Singh under Section 4 of the Terrorist and Disruptive Activities (Pre- vention) Act, 1985 (in short the 'Act') by our order dated 30.10.86 we had stated that the reasons for our judgment will follow. We now proceed to give the reasons for our judgment.

The appellant who holds the degrees of M.A. and B.T. was originally a Lieutenant in the Armed Forces. On account of some mental ailment he was discharged from the Army. There- after he joined the Haryana Education Department and was appointed as a Lecturer in the Government Higher

Secondary School at Siwah. After about 7 years of service in that School he was transferred to the Government Senior Secondary School at Sanauli Khurd. He, however, continued to reside at Siwah since he could not get accommo- dation at Sanauli Khurd.

The circumstances under which the appellant has come to be convicted under Section 4 of the Act are to be found in the evidence of two prosecution witnesses viz. P.W.I Jagdish Chander, a Police Constable and P.W.2, Gian Chand, a Head Constable. One other witness Ramji Lal (P.W.3), an Assistant Sub-Inspector of Police is also a prosecution witness but since he speaks only about the filing of the charge-sheet his evidence is not very material.

The evidence of P.Ws. 1 and 2 is to the following ef- fect. Pursuant to a call given by the Bhartiya Kisan Union for a Rail Roko Abhiyan on 2.9.85 a crowd of about 1500 persons had gathered on the forenoon of that day at a place near the railway line in the village Siwah, Tehsil Panipat, district Karnal. To safeguard the railway line and to main- tain the law and order, the authorities had posted a large contingent of police at the place of gathering of the demon- strators. In spite of the presence of the police force the demonstrators became violent and attempted to cause damage to the railway line and also indulged in throwing brickbats at the police force. To control the situation the police party had to resort to lathi charge on four or five occa- sions and also to firing tear-gas shells. At one point of time, as the violence did not abate the police had to resort to shooting also. One of the demonstrators died on account of gun shot injuries and some others sustained injuries due to the lathi charge.

The appellant, it is stated, came at about 8 or 8.30 P.M. to the place where the lathi charge and shooting had taken place and addressed the demonstrators and incited them to violence. In his inflammatory speech the appellant is said to have condemned the actions of the Central Government and the State Government in trying to appease the rebel elements and extremists of Punjab by sacrificing the inter- ests and welfare of the people of Haryana and further stated that if the people of Haryana want to protect their rights they should also resort to the ways and methods adopted by the Punjab extremists and that for his part he was prepared to lead their struggle since he had an eight-chamber revolv- er and that he had on earlier occasion attempted to kill Ch. Bhajan Lal, Chief Minister of Haryana and hence the demon- strators may lend him their cooperation so that the Govern- ment can be forced to safeguard the interests of the people of Haryana.

P.Ws. 1 and 2, who were on intelligence duty, carefully listened to the speech and on the next morning P.W. 1 pre- sented a report (Exhibit P.A.) at the Police Station at Nissing. Thereupon a case was registered against the appel- lant under Section 4 of the Act and after completion of investigation he was charge-sheeted in the Court of Shri S.K. Jain, Judge, Karnal, the Designated Court under the Act.

As already stated the prosecution rested its case on the testimony of P.Ws. 1 and 2, they being the material witness- es. The appellant denied the prosecution case and stated in defence that on compassionate grounds he went to the place of congregation of the demonstrators to make enquiries when he came to know in the evening, on his return from School, that the police had resorted to lathi charge and firing to disperse the demonstrators and that one person had died on account of the

firing. In support of his defence the appel- lant examined two witnesses besides himself and further sought to contend that about 60 persons who had been arrest- ed were let off without being prosecuted while he alone has been unjustly charge-sheeted on false avernments. The learned Judge of the Designated Court has accepted the prosecution evidence and found the appellant guilty and convicted him under Section 4 of the Act. After hearing the appellant on the question of sentence the Court has awarded him the minimum sentence of three years' R.I. Arguing the case of the appellant before us Mr. Gopal Kishan Bansal, learned counsel levelled many criticisms against the prosecution case and submitted that the learned Judge of the Designated Court ought not to have acted on the testimony of P.Ws. 1 and 2 and convicted the appellant. The learned counsel took us through the evidence of P.Ws. 1 and 2 and also the relevant portions of the judgment under appeal and adverted to several infirmities in the evidence of the witnesses and also drew our attention to the lack of credible evidence in the case.

Section 16 of the Act provides for an appeal against a judgment rendered by a Designated Court to the Supreme Court alone and to no other court. Consequently, this appeal constitutes the first appeal as well as the final appeal against the judgment of the Designated Court. Such being the case, we have to necessarily scrutinise the evidence in its entirety and re-appraise the testimony of witnesses to determine its evidentiary value. On making such scrutiny and re-appraisal of the evidence we find the contentions of the appellant's counsel to have merit and substance in them. We find the prosecution evi- dence to be not only lacking in credibility but also to suffer from numerous infirmities.

At the outset we would like to point out that even according to the prosecution a crowd of about 1000 to 1500 persons had gathered near the railway line in the village of Siwah on the morning of 2.9.85 in response to the call given by the Bhartiya Kisan Union for a Rail Roko Abhiyan. It is the further case of the prosecution that the demonstrators became violent and attempted to cause damage to the raiway line and in order to safeguard the railway property and maintain law and order the police force, assembled in ade- quate numbers, had resorted to lathi charge four or five times during the day and in addition the police had also to fire tear-gas shells and even to resort to shooting. One man had died on account of the shooting and several persons had sustained injuries on account of the lathi charge. Neverth- less the crowd had not dispersed but continued to remain at the scene to carry on their agitation. In such circumstances it is natural to expect the police force to have remained, in strength at the scene to maintain effective control over the demonstrators and to safeguard the railway line. Curi- ously enough, the entire force comprised of a Deputy Super- intendent of Police, Inspectors, Sub-Inspectors, Assistant Sub-Inspectors, Head Constables and Constables is said to have left the place en-masse except P.Ws. 1 and 2. It is significant to note P.Ws. 1 and 2 were not on security duty at that place but were only there to submit intelligence reports. When a lathi charge had been made even at 4.30 P.M. it is inconceivable that the entire police force would have left the place in the evening and gone away elsewhere. We are, therefore, led to think that this unnatural version is put forward to cover up the lacuna for not examining any police officer of a higher rank than P.Ws. 1 and 2 regarding the inflammatory speech alleged to have been made by the appellant at about 8.30 P.M. on that day.

Even assuming for argument's sake that the entire police force had left the scene and only P.Ws. 1 and 2 were left at the place, the prosecution could have certainly examined some independent witnesses to prove what the appellant had spoken on that night. Surely, it cannot be said that among the 1500 or 2000 persons present there, no one would have come forward to give evidence about what the appellant spoke on that night. No explanation has been offered as to why no independent witness has been examined. In fact P.Ws 1 and 2 have not even stated that they tried to find out the names of any of the people assembled there or made any effort to note-down their names so that they can later be summoned to appear as witnesses if a case was to be filed against the appellant. Admittedly, the appellant was a stranger to P.Ws. 1 and 2 and hence they could not have known who he was and what was his occupation. P.Ws. 1 and 2 had not made any enquiries to find out who the appellant was and where he was residing. The strange version given by P.W. 1 is that before the appellant began his speech he introduced himself to the demonstrators by giving out his name, address and occupa- tion. The statement, apart from its artificiality is not corroborated even by P.W. 2. Another discrepancy noticed is that while P.W. 1 has stated that the appellant addressed the gathering from the Chaubara with a microphone in his hand, P.W. 2 has stated that the appellant stood in the midst of the demonstrators and addressed them and moreover P.W.2 makes no reference to the appellant having any micro- phone. While P.W. 2 has stated that he did not apprehend any violent reaction from the public on account of the speech made by the appellant, P.W.i would say that from the moment the appellant started introducing himself to the demonstrators he anticipated things and began to take notes of the appellant's speech.

A noticeable feature in the case ifs that the report Exhibit P.A. is said to have been prepared on the basis of the "rough notes" prepared by P.W. 1 but the "rough notes" is not forthcoming and has not been marked in evidence and it is said to have been destroyed. Since the "rough notes" constitute the first recorded entry of the speech it is an important document and in the absence of it the fair report cannot be given unreserved acceptance. Even in the matter of the preparation of the report, one would expect P.W. 2 holding a higher rank than P.W. 1 to have prepared it. Not only has P.W. 2 not prepared any report but his own admis- sion is that he did not sign or even initial the "rough notes" or the fair report Exhibit P.A.

Apart from the failings in the evidence of P.Ws. 1 and 2 we also find that virtually no investigation has been done before the appellant was charge-sheeted. The Investigating Officer has not taken any steps to find out the antecedants of the appellant and whether he was a member of any politi- cal party. No investigation has been made to find out wheth- er the appellant had an eight-chamber revolver as he is alleged to have claimed and whether he had made any attempt on the life of Ch. Bhajan Lal on an earlier occasion. With- out making any effective investigation the police authorities have lightly launched a prosecution against the appel- lant solely on the basis of the report given by P.W.I.

Having regard to the numerous infirmities which are apparent in the prosecution case, we are clearly of the opinion that the learned Judge of the designated court was not justified in holding the prosecution case proved beyond reasonable doubt and finding the appellant guilty under Section 4 of the Act and convicting him accordingly. We are constrained to observe that it is highly regrettable that the authorities concerned should have launched a prosecution under the Act in a manner

which can be easily termed as cavalier. The Act though intended to effectively deal with terrorists and disruptionists contains drastic provisions for punishing terrorists and disruptionists under Sections 3 and 4 of the Act. Anyone convicted under Section 3(2)(i) of the Act is liable to be punished with death and whoever is convicted under Section 3(2)(ii) of the Act is liable to be punished with imprisonment for a term which shall not be less than 5 years but which may extend to term of life and shall also be liable to fine. Whoever is con- victed under Section 4 of the Act is liable to be punished with imprisonment for a term which shall not be less than 3 years but which may extend to term of life and shall also be liable to fine. Furthermore, against any judgment, sentence or order rendered under the Act, an appeal would lie direct- ly to the Supreme Court and not to the High Court. Having regard to all these features the investigation of cases under the Act has not only to be thorough but also of a high order. In this case we find the investigation to be nowhere near the required standards and likewise the evidence ad- duced in the case to be far from satisfactory to justify the conviction of the appellant under Section 4 of the Act. The appeal has, therefore, to be necessarily allowed and the conviction and sentence awarded to the appellant set aside.

M.L.A. Appeal al- lowed.