

Supreme Court of India

Amarjit Singh vs State Of U.P. on 9 January, 1996

Equivalent citations: (1998) 8 SCC 613

Bench: A Anand, G Nanavati

ORDER

1. The appellant was tried for an offence under Section 4 of the Terrorist & Disruptive Activities (Prevention) Act, 1985, by the learned Sessions Judge, Meerut and vide judgment dated 7-6-1989, he was convicted for the said offence and sentenced to undergo rigorous imprisonment for five years. Through this statutory appeal he has called in question, his sentence and conviction.

2. On 1-6-1985, Brijesh Chand, PW 2, brother of Yogesh Chand Maheshwari, Advocate, PW 1, found a threatening letter in an envelope at the door of his house. He handed over the same to PW 1. Four days later, on 5-6-1985, he found yet another threatening letter in an envelope at the door of his house which also was handed over by him to PW 1. A complaint was lodged with the Superintendent of Police, Muzaffarnagar by PW 1 with regard to the first threatening letter on 2-6-1985 and with regard to the second threatening letter on 5-6-1985 at PS Meerapur. The two letters Exts. 2 and 3 along with the envelopes Exts. 27 and 28 were handed over to the police along with the complaint. He also handed over the opinion of Handwriting Expert, Brij Pal Singh, Ext. 22, to the police. According to Ext. 22, the letters were written in the handwriting of Neeraj Kumar, accused. Formal case was registered by Yograj, Head Constable PW 1. Magendra Pal Singh, PW 9, Station House Officer, P.S. Meerapur started investigation from 6-6-1985 onwards. During the investigation, he got information through an informant that the appellant Amarjit Singh @ Bunty had a hand in sending those letters and that the said Amarjit Singh was present at his house. On the basis of the information, SHO Magendra Pal Singh along with SI Vinod Kumar Verma, PW 8 and other police officials went to the house of the appellant and as soon as the appellant came out of the house, he was arrested by the police party at about 8.00 a.m. From the search of the appellant, one country-made pistol and three cartridges were recovered. From the pocket of the shirt of the appellant, two envelopes, Exts. 4 and 25 containing two letters, Exts. 1 and 26 were also recovered. The letters and the envelopes were taken into possession vide memo Ext. Ka-7. They were put in a parcel which was sealed at the spot. Both the letters, like Exts. 2 and 3, were threatening letters. During the investigation, the specimen writings of the appellant and Neeraj Kumar were obtained by the Sub-Divisional Magistrate, on a request from the Investigating Officer, on 22-6-1985. The specimen writings along with the recovered letters and envelopes were sent to the Government Handwriting Expert, Shri Prakash Chand Pathak, PW 3 for examination. Vide report Ext. Ka-2, the expert opined that the disputed writings tallied with the specimen writing of the appellant but did not tally with the specimen writing of Neeraj Kumar, who as already noticed was stated to be the author of Exts. 2 and 3 vide Ext. 22 by the other handwriting expert. Inspector Ram Chander Verma, PW 4, who had taken over the investigation under orders of the Superintendent of Police, submitted charge-sheet against the appellant on 4-7-1987. The prosecution examined 9 witnesses to connect the appellant with the crime. After the conclusion of the prosecution evidence, the appellant in his statement under Section 313 CrPC pleaded not guilty and denied the prosecution allegations against him. He denied to have written any letter as also the recovery of the letters and the envelopes from his possession. He stated that he had been arrested during the night at about 12.00 or 1.00 a.m. and

made to write some letters by the police at their dictation. He denied that he had any link with any institute or organisation advocating establishment of Khalistan or was in any other manner connected with any terrorist activity. The trial court after analysing the evidence concluded:

"To sum up, it may be mentioned that the prosecution has been able to prove beyond doubt that the letters and envelopes (Material Exts. 1, 26, 4 and 25) were recovered from the possession of the accused by the police officers on 6-6-1985 when he was arrested in front of his house. The fact that SO Magendra Pal Singh (PW 9) and Sub-Inspector Vinod Kumar Verma (PW 8) are police witnesses would be no ground to discard their testimony specially when their testimony finds corroboration by other circumstances discussed above. The said letters and envelopes are in the handwriting of the accused as is evident from the expert evidence and other material circumstances on record. The said letters did contain recitals which amount to disruptive activities as defined in Section 4 of the Act.

Regarding the letters (Exts. 2 and 3) and envelopes (Exts. 27 and 28) alleged to have been found by Brijesh Chand (PW 2), the accused is granted benefit of doubt as Brijesh Chand (PW 2) and Yogesh Chand Maheshwari (PW 1) have stated that these were not the letters which were received by Brijesh Chand (PW 2) at his house."

3. We have heard learned counsel for the parties and examined the record.

4. The case was initiated on the basis of the first information report lodged by PW 1 with regard to receipt of the two threatening letters Exts. 2 and 3 in envelopes Exts. 27 and 28 by his brother PW 2, which were handed over to the police at the time of lodging the FIR along with the opinion of a handwriting expert, Ext. 22. It was during the investigation of the FIR, that letters Exts. 1 and 26, envelopes Exts. 4 and 25 are said to have been recovered from the personal possession of the appellant. At the trial, PW 1 and PW 2 expressly stated that Exts. 2 and 3 and Exts. 27 and 28, which were shown to them in the trial court were not the two letters which had been handed over by them to the Investigating Officer at the time of lodging the FIR. It was in view of that evidence that the trial court gave benefit of doubt to the appellant insofar as the writing of those two threatening letters to PW 2 is concerned.

5. Insofar as the recovery of Exts. 1, 26, 4 and 25 is concerned, the prosecution has relied upon two circumstances to connect the appellant with the incriminating material - (1) the recovery from the person of the appellant of Exts. 1, 26, 4 and 25; and (2) the report of the government handwriting expert showing that the writing in those exhibits tallied with the specimen writing of the appellant which had been sent to him.

6. From our analysis of the evidence on the record, we find that there are serious lacunae in the prosecution case and the conviction of the appellant cannot be sustained.

7. There is, in the first place, no evidence on the record to show that the specimen writing was given by the appellant voluntarily. According to the statement of Magendra Pal Singh, PW 8, he had requested the SDM to take the specimen writing of the appellant and the said writing was obtained from the appellant in the Court of the SDM on 22-6-1985. The SDM has not been examined at the

trial for reasons best known to the prosecution. The appellant has denied to have voluntarily given any specimen writing to the SDM. Admittedly, the SDM was neither conducting the inquiry into the case nor was the trial of the case fixed before him. The specimen writings obtained with the directions of the SDM, therefore, were not meant to assist the "Court to form its opinion" as envisaged by Section 73 of the Evidence Act. The specimen writing, under the circumstances, could not be used against the appellant and in taking this view we are fortified by a judgment of this Court in Sukhvinder Singh v. State of Punjab, . This lacuna affects the relevancy of the evidence of the expert in the case.

8. That apart, according to PW 4, Inspector R.C. Verma, to whom the investigation had been entrusted by the Superintendent of Police, the documents which had earlier been sent to the expert, PW 3, had been returned by the expert on finding some mistake of numbers. PW 4 admitted that he had opened the sealed cover received from the expert and corrected the numbers and again sent the incriminating documents to the expert. He admitted in cross-examination that he did not prepare any memo either while opening the sealed packet or while sending the documents back to the expert and the prosecution has led no evidence whatsoever to show that what was sent to the expert subsequently by PW 4, R.C. Verma, was the same material as had been sent to the expert earlier. There is also no material on the record to show that the documents sent by PW 4, R.C. Verma, were the documents which had been allegedly recovered from the appellant by PW 8 during the investigation. The identity of the documents on which the expert has given his opinion is, thus, not free from doubt. This is yet another infirmity in the prosecution evidence relating to the opinion of the handwriting expert, which even otherwise is a weak type of evidence. This circumstance, has thus, not been proved and it also does not connect the appellant with the crime conclusively.

9. So far as the second circumstance related to the recovery of documents Exts. 1, 4, 25 and 26 is concerned, that also does not appear to be free from doubt. According to Magendra Pal Singh, SI, after the recovery of the two letters and the envelopes from the left pocket of the shirt of the appellant, the same were put in a sealed cover and the witnesses were made to put their signatures on the same. During his cross-examination, however, Magendra Pal Singh admitted: "I did not take the signatures of the witnesses on the recovered envelopes and letters Exts. 4, 25, 1 and 26." The witness also admitted that there were no signatures of the witnesses on the cover and that the cloth, which had been used for sealing the articles was not available. These factors create a doubt about the genuineness of the recovery, particularly when we find that the only two independent witnesses, Ashok Kumar and Braham Paul, were given up by the prosecution and not examined at the trial. During his cross-examination, Magendra Pal Singh also admitted: "I do not remember as to whether at the time of the arrest of Bunty, those witnesses whose statements were taken down by me had even reached the place of arrest or not." It could be because of this ambiguity, that the prosecution deliberately did not examine those two witnesses. Moreover, the bona fides of the investigation has also come under a cloud when PW 1 and PW 2 categorically and specifically deposed at the trial that Exts. 2, 3, 27 and 28, which were shown to them at the trial, were not the documents which had been handed over by them to the SHO at the time of the lodging of the first information report. It is relevant at this stage to note that the appellant was tried separately for the offence under the Arms Act, 1959 in connection with the recovery of the pistol and cartridges at the same time when the incriminating documents were allegedly recovered from his possession. In the case under the Arms

Act, the appellant has been acquitted on being given the benefit of doubt. The second circumstance relied upon by the prosecution, therefore, also has neither been proved nor does it connect the appellant with the crime conclusively and on the other hand probabilises the defence version that the letters were got written from the appellant at the police station later on.

10. Considered on the whole, we find that the prosecution has not been able to establish the case against the appellant beyond a reasonable doubt. The trial court fell in error in convicting the appellant on the basis of discrepant and untrustworthy evidence. The appeal, therefore, succeeds and is allowed. The conviction and sentence of the appellant is set aside. The appellant is on bail. His bail bonds shall stand discharged.