

about 3.45 p.m., on the basis of which a case was registered. On examination of the deceased by PW 1 at 4.20 p.m. at hospital, Sampla, the deceased's condition was found to be serious and deceased was referred to Medical college at Rohtak where he succumbed to his injuries. A

On appreciation of the evidence on record, the Designated Court convicted Appellant no.1 for offences under Section 302 IPC and under Section 25/27 of the Arms Act, 1959 read with Section 6 of TADA and sentenced him to undergo imprisonment for life under Section 302 IPC and to 2 years RI on each of the two counts under Section 25/27 of the Arms Act and Section 6 of TADA. Appellant No.2 was convicted under Section 302/34 IPC and sentenced to undergo imprisonment for life. Hence this statutory appeal. B C

Dismissing the appeal, this Court

HELD: 1. Appellant 1 had the requisite intention to commit the murder of the deceased and his offence, therefore, would squarely fall under Section 302 IPC, as rightly held by the trial court. [17-C] D

2. Appellant 2 shared the common intention with Appellant 1 to commit the murder of the deceased. [17-D]

3. PW 5 supported the prosecution case in its entirety. The evidence of PW 5 is fully corroborated by the dying declaration Ex. PO and his name finds a mention in the said dying declaration. The medical evidence rendered by PW 1 and PW 3 also fully supports the ocular testimony of PW 5. [14-H; 15-B] E

4. The non-examination of S who witnessed the occurrence alongwith PW 5, does not affect the prosecution case. He was given up as won over. Since the evidence of PW 5 has impressed the court and his evidence has remained totally unshaken, the non-production of S is of no Consequence. F

[15-D]

5. Besides the evidence of PW 5, there is also the dying declaration Ex.PO on the record. That dying declaration fully supports the evidence of PW 5. [15-E] G

6. The conviction and sentence of both the appellants is well merited. H

[17-G] H

A CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 243 of 1987.

From the Judgment and Order dated 20.4.87 of the Designated Court at Rohtak, Haryana in Session Case No.124 of 1986.

B K.B. Rohtagi for the Appellants.

Prem Malhotra for the Respondent.

R.C. Verma for complainant.

C The Judgment of the Court was delivered by

DR. ANAND, J. This appeal under Section 16 of the Terrorist and Disruptive Activities (Prevention) Act, 1985 (hereinafter 'TADA') is directed against the judgment and order of the Judge, Designated Court, Rohtak dated 18.4.1987/20.4.1987, vide which appellant No. 1 Paramjit was

D convicted for offences under Section 302 IPC and under Section 25/27 of the Arms Act, 1959 readwith Section 6 of TADA. He has been sentenced to undergo imprisonment for life for the offence under Section 302 IPC and to 2 years RI on each of the two counts under Section 25/27 of the Arms Act and Section 6 of TADA. Appellant No. 2 Inderjit Singh was

E convicted for an offence under Section 302/34 IPC and sentenced to undergo imprisonment for life. Through this statutory appeal, they have called in question their conviction and sentence.

According to the prosecution case, appellant Paramjit passed some indecent remarks on some young girls near the village well when the deceased, a co-villager of the appellant, reprimanded him for this misconduct. On 25.12.1985, some time after the reprimand, the appellants declared that they would teach a lesson to Rambhaji, deceased for becoming a 'dada'. On seeing Rambhaji washing his clothes near the radewala well, in the afternoon, the appellants rushed towards him. On reaching near Rambhaji, deceased, they announced that they had come to teach him a lesson. Rambhaji, got up and came down the perapet of the well. Inderjit

G took the deceased in his grip while Paramjit gave him one blow with a knife on the left side of the chest and another blow on the left side of the thigh. He also hit the deceased with the blunt side of the knife on the right side of the chest. Chander Bhan, PW 5 and Sunder Lal saw the occurrence and

H ran to rescue the deceased. On seeing them coming towards the place of

occurrence, the appellants left carrying the weapon of offence with them. Sunder Lal took Rambhaj to his house and from there to village Sampla. At Sampla they met ASI Rattan Singh, PW6 in the main bazar at about 3.45 p.m., Rambhaj, deceased made a statement, Ex. PO, to the said ASI about the assault on him. After recording the statement, the ASI sent the same to the police station for registration of the formal FIR Ex. PO/C and a case under Section 307/324/323/34 IPC was thereupon registered against the appellants. Rambhaj, deceased was sent to the hospital at Sampla and was medically examined by Dr. B. D. Kalra, PW1 at about 4.20 p.m. The following injuries were found on his person:

"1. Incised wound 1 cm x 5 cm., in the left axillary region, with cut in the shirt. There was fresh bleeding from the wound. The margins of the wound were sharp. There was surgical emphysema in surrounding nipple to lower side in the four inches area medial to the left side.

2. Reddish bruise, 2 inches x 1/2 inch on the right side of the front of chest extending laterally.

3. Incised wound 1 cm x .5 cm with sharp everted margins, with corresponding cut in the underwear on the left side of lateral side of thigh. There was fresh bleeding from the wound. Wound was four inches below and left to anterior superior iliac spine. Injuries No. 1 and 2 were kept under x-ray observation.

Dr. Kalra, PW1 found the condition of Rambhaj to be serious and referred him to Medical College at Rohtak where the injured reached at about 5.35 p.m. Dr. Ashok Arora, PW2 medically examined the injured at the hospital. The deceased, however, succumbed to his injuries at about 6.20 p.m. Information about the death of Rambhaj was sent to police post through ruqqa Ex. PD. The offence was altered and investigation taken in hand. The investigating officer, PW6 recorded the statement of the eyewitnesses and took into possession the clothes of the deceased from the hospital. An inquest was conducted by PW6 and the dead body of Rambhaj was sent for post-mortem examination, which was conducted by Dr. Juneja PW3. According to PW3, death of Rambhaj was caused due to shock and haemorrhage, resulting from injury No. 1 and that the injury No. 1 was found sufficient to cause death.

- A ASI Rattan Singh, PW6 on receiving telephonic information that the appellants were present in Sampla Mandi, rushed there and arrested them. On interrogation, Paramjit appellant disclosed that he had concealed a knife and bushirt in a cattle shed in his house and pursuant to the said disclosure statement, he led the police party to the recovery of the knife and the bushirt. Inderjit, appellant, also made a statement under Section 27 of the Evidence Act and got recovered a bushirt from his house. Both the bushirts were found to be stained with blood. The blood stained clothes of the deceased and the accused were sent to forensic science laboratory, Madhuban and as per the reports Ex. PN and PN/1 of the Serologist and Chemical Examiner all the articles were found to be stained with human blood. On completion of the investigation, the appellants were sent up for trial and tried and convicted in the manner already noticed.

- D The prosecution examined Chander Bhan, PW5 and five other witnesses. The statement made by the deceased, Ex. PO to ASI Rattan Singh, PW6, which formed the basis of the FIR, was treated as the dying declaration of Rambhaji. That statement reads as follows:

- E "I am a student of Xth Class. Today, it was holiday, I was washing my clothes at Radhewala well, which is near the pond. Paramjit son of Kali Ram, Jat, resident of Kharawar was also present there. He was passing indecent remarks at the girls passing that way. I raprimanded him. On hearing exchange of words between us, my grand-mother, who is wife of Ant Ram, separated us. After a little time, at about 1.30 p.m., Paramjit alongwith Inderjit, who is the son of his tau (father's elder brother), came there. Both of them said to me that they would teach me a lesson for becoming a dada. Inderjit caught hold of me by the hands and Paramjit, who was carrying in his hand a knife-like iron object, gave me one blow in the left side and one blow on the left thigh from the sharp side of the weapon, and one blow from the wooden side on the right side of the chest. Seeing this, Chander Bhan and Sunder Lal, Brahma-
 G mand, rescued me. Otherwise, the accused would had inflicted further blows on me. Sunder Lal was taking me to the Police Station when you met us at Sampla and I have made statement before you. I have heard it. It is correct. Action may be taken."

- H PW5, Chander Bhan is the eyewitness. He supported the prosecution

case, in its entirety. Despite lengthy cross-examination, the defence was not able to create any dent in his evidence and his credibility has remained unshaken. The evidence of PW5 is fully corroborated by the dying declaration Ex. PO and his name finds a mention in the said dying declaration. The medical evidence rendered by PW1 and PW3 also fully supports the ocular testimony of PW5. We have carefully scrutinised the evidence of PW5 and are of the opinion that he is a truthful witness and his evidence inspires confidence.

The argument of learned counsel for the appellants that the non-examination of Sunder Lal and Smt. Kela has rendered the prosecution case doubtful does not appeal to us. Smt. Kela admittedly, had not witnessed the occurrence and, therefore, her non-examination does not affect the credibility of the prosecution case. The non-examination of Sunder Lal, who witnessed the occurrence alongwith PW5, also does not affect the prosecution case. He was given up as won over. Since, the evidence of Chander Bhan, PW5 has impressed us and his evidence has remained totally unshaken, the non-production of Sunder Lal is of no consequence.

Besides, the evidence of PW5, Chander Bhan, there is also the dying declaration of Rambhaj Ex. PO on the record. That dying declaration extracted elsewhere, fully supports the evidence of PW5. Learned counsel for the appellants, however, submitted that the dying declaration Ex P.O. was a doubtful document and appeared to be a case of police padding. In this connection, learned counsel referred to the statement of Dr. B. D. Kalra, PW1, who has deposed that when Rambhaj was brought to the hospital, his pulse rate was 144 per minute and his blood pressure was not recordable. On this basis, it was canvassed that Rambhaj could not have made the statement Ex. PO. We find ourselves unable to agree with the learned counsel for the appellant. The evidence of Dr. Kalra, PW1 refers to the point of time, when he examined the deceased at Sampla Hospital. It was at about 4.20 p.m. that PW1 had found that the blood pressure of Rambhaj was not recordable. From that it cannot be assumed that the statement made by him more than half an hour before, could not have been made by the deceased. The very fact that the statement Ex. PO has been signed by Rambhaj, deceased, shows that he was in a proper state of health and mind not only to make a statement but also to sign it. There is no challenge to the authenticity and genuineness of the signatures of Rambhaj on Ex. PO. The condition of Rambhaj was continuously deteriorating and

A therefore the fact that his blood pressure was not recordable at about 4.20 p.m. cannot lead to the inference that he could not have made the statement Ex.PO at about 3.45 p.m.. We, therefore, do not find any reason to doubt the genuineness of the dying declaration Ex. PO. The deceased has narrated clearly not only about the motive for the assault on him but also about the manner in which the assault was committed on him. The dying declaration coupled with the evidence of Chander Bhan, PW5 and the medical evidence clearly connects the appellants with the crime.

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D Learned counsel for the appellants then submitted that since Dr. Juneja PW3, had opined that injury No.1 could result in death "if sufficient and proper medical care was not given in time", therefore the offence for which the appellants could be convicted would not fall under Section 302 IPC. Learned Counsel in this connection also submitted that there was an altercation between the deceased and appellant Paramjit shortly before the occurrence in which Paramjit had been reprimanded by the deceased and that on seeing Rambhaji, the appellants had shouted that they were going to teach him a lesson for becoming a Dada, implying thereby that they wanted to give him some beating and as such it could not be said that the appellants had the requisite intention to commit murder of the deceased. The argument is more attractive than sound.

E A reference to Explanation II to Section 299 IPC at this stage is relevant. It reads thus:

F *Explanation 2.* Where death is caused by bodily injury, the person who causes such bodily injury shall be deemed to have caused the death, although by resorting to proper remedies and skilful treatment the death might have been prevented."

G This explanation is a complete answer to the submission of the learned counsel based on the medical opinion furnished by Dr. Juneja PW3. The offence committed by the appellants was of culpable homicide as death of the deceased was a direct consequence of their act. There is ample evidence on the record to show that the offence was committed with the requisite intention to cause death of the deceased, squarely bringing his case within the ambit of Section 302 IPC. In this connection, it deserves a notice that the deceased died in less than 4 hours after the receipt of injuries, though in less than 3 hours he had been administered medical aid at Sampla hospital. The injuries found on the deceased were sufficient to

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cause his death. The weapon with which the injuries were caused on the deceased is a sharp edged knife with the blade measuring 13-1/2" in length. It is a formidable weapon. Paramjit appellant was armed with this weapon when he rushed towards Rambhaj and caused a number of injuries on a vital part of the body of the deceased. The nature of injury No.1 and the extent of the damage it caused to the internal organs shows the force with which it was caused on the deceased, apparently who had been taken unawares and was empty handed. All these established facts go to show that Paramjit appellant had the requisite intention to commit the murder of the deceased and his offence, therefore, would squarely fall under Section 302 IPC, as rightly held by the trial court.

The presence of Inderjit appellant at the time of the assault is also fully established. The argument that since he caused no injury to the deceased, therefore he could not be said to have shared the common intention with Paramjit has no merits. But, for the fact that Inderjit appellant took the deceased in his grip, perhaps it may not have been possible for Paramjit appellant to inflict the injuries on the deceased who was a youngman. The action of Inderjit was, obviously, aimed to render the victim immobile and give him no chance to escape, and thereby facilitate the infliction of injuries by his co-accused on the deceased. He therefore, definitely can be said to have shared the common intention with Paramjit appellant to commit the murder of the deceased. He was not merely present at the time of assault but had actually taken part in the same. The situation may have been somewhat different had appellant Inderjit not been aware that Paramjit was armed with a knife when they went towards the well but the evidence on the record shows that Paramjit came armed, holding the knife, alongwith his cousin Inderjit to the place of occurrence and assaulted the deceased. His conviction, therefore, for an offence under Section 302/34 IPC does not suffer from any error either.

After giving our careful consideration to the evidence on the record and the submissions made at the bar, we are of the opinion that the conviction and sentence of both the appellants is well merited and there is no merit in this appeal. This appeal, therefore, fails and is dismissed. The appellants are on bail. Their bail bonds shall stand cancelled and they shall be taken into custody to undergo the remaining part of their sentences.