CAPITAL PUNISHMENT UPON DEVENDER PAL SINGH BHULLAR

A case study of Criminal AppealNo.993 of 2001

Devenderpal Singh Bhullar

Versus

State National Capital Territory of Delhi and another

Facts:

On September 11, 1993, Maninderjit Singh Bitta, the then President of All India Youth Congress(I) was in his office at 5, Raisina Road, New Delhi. At about 2.30 p.m., he left the office in his official car. A pilot car in which security personnel provided to him were sitting, was moving ahead of his car. As the pilot car took a turn towards the Raisina Road, there was a big explosion in a car parked outside the office of Mr. Bitta. In this bomb blast, nine persons died and twenty nine persons sustained injuries. Mr. Bitta sufferred injuries on his leg. As per the police version, it was learnt that five members of 'Khalistan Liberation Force'(KLF), a terrorist organisation of sikhs was responsible for the crime. Kuldeep, Sukhdev Singh, Harnek, Devenderpal Singh and Daya Singh Lahoria were accused of committing terrorist offence to assassinate M.S.Bitta. None of the above persons were arrested for a long time.

Devenderpal Singh Bhullar was deported from Germany while Daya Singh Lahoria, a co-accused was extradited from USA to India and both were tried together for the offences under TADA Act, 1987 and various sectioins of Indian Penal Code by the designated court at Delhi. But Daya Singh Lahoria was acquitted by the trial court on the ground that there was no evidence against him and that he has not made any confessional statement.

Devender Pal Singh Bhullar alias Deepak, who had entered Germany to seek asylum on December 18/19, 1994 was detained by the airport authorities at Germany for travelling on fake passport. Ultimately, he was deported back to India on January 17, 1995 and was handed over to Inspector Severara Kujur at Indira Gandhi International Airport,New Delhi on January, 19, 1995. On being caught, Bhullar allegedly tried to swallow a capsule in plastic foil which was caught and after this he disclosed that his name was Devenderpal Singh. On that basis, he was interrogated by Public Relations Officer(Vigilance) and it was found

that he was having forged passport, so a formal First Information Report No.22 dated 19.1.1995, was registered against Bhullar under sections 419,420,468,471 of Indian Penal Code and section 12 of the Passport Act.

As per the police story, he made a disclosure statement describing his involvement in many cases including a bomb blast at 5, Raisina Road, Delhi. He was thereafter produced before Mr.B.B.Chaudhary, Additional Chief Metropolitan Magistrate, New Delhi and was remanded to police custody for ten days. During interrogation on January 22, 1995, Bhullar gave a writing that he wanted to make a confession. Mr.B.S.Bola, Deputy Commissioner of Police, Delhi after following the procedure recorded his 'confessional statement' with the help of his computer on January 23, 1995. On January 24, 1995, he was formally arrested by the police of Police Station Sriniwaspuri in the TADA case and thereafter, produced in the court of ACMM, Delhi before the expiry of police remand. At that time, a police party of Punjab police was present in the court and the Punjab police obtained his police remand and thereafter, he remained in police custody of Punjab Police for more than two months. After he was remanded to judicial custody, he sent an application from jail on April 21, 1995 to the court that he was made to sign on many blank papers and his confessional statement recorded by DCP, B.S.Bola was not voluntary and that he was told that if he will speak the truth before the court, he would be handed over to Punjab police who would kill him in an encounter and as he was under fear, he admitted of making a 'confessional statement' before the learned ACMM.

Both Devenderpal Singh Bhullar and Daya Singh Lahoria were brought to trial in the Court of the designated court-I, New Delhi in sessions case no.4 of 2000.After recording extensive evidence in the case, the trial judge convicted Mr.Bhullar vide order dated August 24, 2001 and sentenced him to death and also to pay a fine of Rs.10,000/- vide judgment dated August 25, 2001. He was also sentenced to suffer rigorous imprisonment for five years for the offence punishable under sections 4 and 5 of TADA and to pay a fine of Rs.10,000/-. Daya Singh Lahoria was however, acquitted of all charges.

Against that judgment and order, Mr.Bhullar filed criminal appeal no.993 of 2001 and for confirmation of death sentence, the state of Delhi filed death reference case no.2 of 2001 before the Supreme Court of India.

The Supreme Court of India with an unprecedented speed, dismissed the appeal of Mr.Bhullar and confirmed the death sentence upon him, vide order dated March 22, 2002. Interestingly, the senior judge of the bench, Mr.Justice M.B.Shah in his minority judgment gave sound reasons for his acquittal and held him 'not guilty'. But the majority view authored by Mr.Justice Arijit Pasayat and

accepted by Mr.Justice B.N.Agarwal, held Mr.Bhullar guilty and confirmed the death sentence.

EXCERPTS FROM THE JUDGMENT

Per M.B.Shah,J.

⇒From the aforesaid evidence led by the prosecution, questions that arise for consideration are-----

(i) whether the confessional statement is true and voluntary ?

(ii) whether there is any corroboration to the said statement ?

⇒The accused in his statement recorded under section 313 Cr.P.C. has denied recovery of cyanide capsule from him. He has also denied having made application, expressing desire to make a confessional statement and also having made any confessional statement before Mr.Bola on January 23, 1995. According to him he was made to sign some blank and partly written papers under threat and duress and entire proceedings were fabricated upon those documents. He also stated that before he was produced before the ACMM, he was told that if he made any statement to the court he would be handed over to Punjab police who would kill him in an encounter and as he was under fear, he made a statement before learned ACMM.

⇒It is difficult to believe that the accused who was arrested for travelling on a forged passport after landing at the airport, would make a disclosure statement involving himself in various crimes including the bomb blast. There was no earthly reason to make such disclosure on 19th itself so that accused could be arrested by Mr.K.S.Bedi,ACP, for the alleged involvement in the offence under the TADA.

⇒It is also admitted that when the accused was produced before ACMM, the confessional statement was not produced for the perusal of the ACMM. It would be difficult to accept that if confessional statement was recorded and when the accused was produced before the Magistrate, he would be taken there without the said confessional statement. Rule 15(5) of TADA requires that every confessional recorded under section 15 shall be sent forthwith to the CMM or the CJM having jurisidiction over the area in which such confession has been recorded and such Magistrate shall forward the confession so received to the Designated court which may take cognizance of the offence.

⇒ The confessional statement was recorded on computer and floppy thereof is not produced in the court and is admitted to have not been saved in the computer by ASI Kamlesh.

⇒ In such state of affairs, doubt may arise---whether the accused has made any confessional statement at all; In such case, it would be unsafe to solely rely upon the alleged confession recorded by Investigating Officer.

⇒ Looking at the original confessional statement, there appears to be some substance in what is contended by the accused in his statement under section 313 Cr.P.C. that his signatures were taken on blank paper. Under Rule 15(3)(b) of the TADA rules, the police officer who is recording the confession has to certify the same "under his own hand" that the said confession was taken in his presence and recorded by him and at the end of confession, he has to give certificate as provided thereunder. In the present case, the certificate was not given under the hands of DCP, but was a typed one.

⇒ In the present case, co-accused Daya Singh Lahoria who was tried together with the accused was acquitted on the ground that there was no evidence against him and that as he had not made any confessional statement. However, for connecting the appellant, the learned trial judge relied upon the decision in Gurdeep Singh vs State(Delhi Admn.) for holding that when the confessional statement is voluntary, corroboration is not required. It appears that the court has not read the entire paragraph of the said judgment and has missed the previous lines.

⇒ In the present case other accused Daya Singh Lahoria was tried alongwith the appeallant and was acquitted. The role assigned to D.S.Lahoria in the confessional statement is major one. There is nothing on record to corroborate the aforesaid confessional statement. In these set of circumstances, without there being corroborative evidence, it would be difficult to solely rely upon the so-called confessional statement and convict the accused and that too when the confessional statement is recorded by the investigating officer.

⇒ In this view of the matter, when rest of the accused who are named in the confessional statement are not convicted or tried, this would not be a fit case for convicting the appellant solely on the basis of so-called confessional statement recorded by the police officer.

⇒ Finally, such type of confessional statement as recorded by the investigating officer cannot be the basis for awarding death sentence.

⇒ In the result, criminal appeal filed by the accused is allowed and the impugned judgment and order passed by the designated court convicting the appellant is set aside. The accused is acquitted for the offences for which he is charged and he is directed to be released forthwith if not required in any other case.

Per A.Pasayat J.

⇒ Menace of terrorism is not restricted to our country and it has become a matter of international concern and the attacks on the World Trade Centre and other places on 11th September, 2001 amply show it. Attack on the Parliament on 13th December, 2001 shows how grim the situation is. TADA is applied as an extreme measure when police fails to tackle with the situation under the ordinary penal law.

⇒ The confessional statement of the accused can be relied upon for the purpose of conviction and no further corroboration is necessary if it relates to the accused himself.

⇒ In this case, we are concerned with the question as to whether the accused making the confessional statement can be convicted on the basis of that alone without any corroboration.

⇒ It is true that the witnesses have not spoken about the role of the appellant in the alleged transactions.

⇒ It is to be noted further that the appellant's so called retraction was long after he was taken into judicial custody. While he was taken to judicial custody on 24.3.1995, after about a month, he made a grievance about the statement having been forcibly obtained. This is clearly a case of after-thought. Since the confessional statement was voluntary, no corroboration for the purpose of its acceptance is necessary.

⇒Merely because no statement has been made by witnesses about the attempt to swallow the cyanide, that does not, in any way, dilute the evidence recording seizure of a cyanide capsule from the accused-appellant. Mention about the

cyanide capsule in the confessional statement goes a long way to show that the statement was truthful.

⇒ When the accused was produced before the ACM, he did not make any grievance that his confessional statement was not in fact recorded as claimed or that his signatures were obtained on blank pieces of paper as claimed latter. Such a plea was raised after a long passage of time. It is further relevant to note that when the accused was produced in court, he never made any grievance about any duress or coercion. It is to be noted that the confessional statement was sent directly to the Designated court and was received at 12.45 p.m. Merely because the report was sent directly to the Designated court, it does not become a suspicious circumstance. Rather, it addres to the authenticity of the document.

⇒ That being so, in the absence of any prejudice to the accused, non-despatch of the confessional statement to the ACM is really of no consequence.

⇒ The accused never made a grievance about any deficiency in the confessional statement till 19.4.1995. That is of great significance. Merely because the confessional statement was recorded in a computer, it cannot be a ground for holding that the confessional statement was not voluntary.

⇒ As DCP has given a certificate in typing when the requirement is that certificate has to be "under his own hand" that is urged to be illegal. It would be too technical to discard the confessional statement or doubt its authenticity on that score. This is merely a procedural requirement. The non-observance does not cause any prejudice to the accused. It has not been shown as to how the accused was prejudiced by the certificate having been typed.

⇒Procedure is handmade and not the mistress of law, intended to subserve and facilitate the cause of justice and not to govern or obstruct it.

⇒Such minor deficiency, if any, cannot be considered to be a fatal factor so far as prosecution case is concerned.

⇒ It could not be shown as to why the officials would falsely implicate the accused. There is a statutory presumption under section 114 of the Evidence Act that judicial and official acts have been regularly performed. The accepted meaning of section 114(e) is that when an official act is proved to have been done, it will be presumed to have been regularly done. The presumption that a person acts honestly applies as much in favour of a police officer as of other persons, and

it is not judicial approach to distrust and suspect him without good grounds therefor. Such an attitude can do neither credit to the magistracy nor good to the public. It can only run down the prestige of police administration.

- ⇒ **Where trustworthy evidence establishing all links of circumstantial evidence is available, the confession of a co-accused as to conspiracy even without corroborative evidence can be taken into consideration.**
- ⇒ **Justice cannot be made sterile on the plea that it is better to let hundred guilty escape than punish an innocent. Letting guilty escape is not doing justice according to law.**
- ⇒ **Prosecution is not required to meet any and every hypothesis put forward by the accused.**
- ⇒ **Proof beyound reasonable doubt is a guideline, not a fetish.**
- ⇒ **When considered in the aforesaid background, the plea that acquittal of co-accused has rendered prosecution version brittle, has no substance. Acquittal of co-accused was on the ground of non-corroboration. That principle as indicated above has no application to accused himself.**
- ⇒ **It has been pleaded that prosecution has failed to place any material to show as to why accused would make a confessional statement immediately on return to India. Acceptance of such a plea would necessarily mean putting of an almost impossible burden on the prosecution to show something which is within exclusive knowledge of the accused. It can be equated with requiring the prosecution to show motive for a crime. One cannot normally see into the mind of another. What is the emotion which impels another to do a particular act is not expected to be known by another. It is quite possible that said impelling factors would remain undiscoverable.**
- ⇒ **When the collective conscience of the community is so shocked, that it will expect the holders of the judicial power centre to inflict death penalty irrespective of their personal opinion as regards desirability or otherwise of retaining death penalty, same can be awarded.**
- ⇒ **As the factual scenario of the present case shows, at least nine persons died, several persons were injured, a number of vehicles caught fire and were destroyed on account of the perpetrated acts. The dastardly acts were diabolic in conception and cruel in execution. The 'terrorists' who are sometimes described as "death merchants" have no respect for human life. Innocent persons lose their lives because of mindless killing by them. Any compassion for such persons would frustrate the purpose of enactment of TADA, and would amount to misplaced and unwanted sympathy. Death sentence is the most appropriate sentence in the case at hand and learned trial judge has rightly awarded it.**

COMMENTS AGAINST THE MAJORITY JUDGMENT

The present case is one of many cases in which the expression "confession' has been mis-interpreted and re-defined to upheld the conviction of accused.

In Indian criminal law, confession made to a police officer is not admissible as evidence, because it is presumed that the police might have extorted such confession by threat or torturing the suspect and fabricating record. But this presumption does not apply in cases tried under Terrorist and Disruptive Activities Act,1987(TADA) which was promulgated in India on September 3, 1987 and it lapsed in May, 1995. Section 15 of the TADA states: "*Notwithstanding** anything in the Code or in the Indian Evidence Act, a confession made by a person before a police officer not lower in rank than an Superintendent of Police and recorded by such police officer either in writing or on any mechanical device like cassettes, tapes or sound tracks from out of which sounds or images can be reproduced, shall be admissible in the trial of such person or co-accused, abettor or conspirator for an offence under this Act or rules made thereunder, provided that co-accused, abettor or conspirator is charged and tried in the same case together with the accused."*

In the case of Devenderpal Singh Bhullar, he allegedly made the confession(see Annexure –I) on January 19, 1995 and retracted on April 19, 1995. The trial court and the supreme court held it to be voluntarily and truthfully made by the accused.

A confession is an admission of guilt. It is voluntary if it is made in a state of remorse and repentance and can therefore be assumed to be essentially true. In a plethora of judgments, the supreme court has held that even a retracted confession only needs to be tested in general and not in material particulars,i.e. not in those specifics that link the accused to the crime. But on the other hand, a confession made under duress and torture is no confession at all, because in order to stop physical pain any ordinary person could confess to anything, however damning to oneself.

The apex court committed a gross error when it was overpowered by emotions and discussed the impact of terrorism and certain acts of terrorism before going into the merits of the case. Whether the criminal act was committed with an intention to strike terror in the people or section of people, is the primary question needed to answer before terming a particular act as "terrorist act". But the apex court painted its own picture of a 'terrorist' and saw the accused with coloured eyes. Earlier to this case, it was repeatedly held that the crucial postulate for judging whether the offence is a terrorist act falling under TADA or not is whether

it was done with the intent to overawe the government as by law established or to strike terror in the people. The fall out of the intended activity is to be one that it travels beyond the capacity of the ordinary law enforcement agencies to tackle it under the ordinary penal law. In the instant case, the act of bomb blast was a simple criminal act to kill a particular target(M.S.Bitta) and there was no claim by the accused or his organisation that it was intended to strike terror in the mind of the people. There was no eye-witness to the crime. Even the co-accused Daya Singh Lahoria, who faced trial in the TADA case alongwith Mr.Bhullar was held not guilty, because there was no corroborative evidence to the alleged confession made by Mr.Bhullar. Still, the said confession was held admissible against Mr.Bhullar whereas it was rejected against Daya Singh Lahoria. It is really a strange preposition of law that a particular document is given two different meanings by the court. It speaks volume of the biased view taken by the apex court.

It would be proper to cite few reasons that made this case a rare one. First, there was no eye-witness to the commission of crime by the accused. The case is solely based on circumstantial evidence. Second, the confessional statement allegedly given by Mr.Bhullar wherein he had disclosed the role played by each person in the crime, was not held to be admissible against Daya Singh Lahoria, the co-accused who was tried together with Mr.Bhullar, but the same confessional statement was held admissible against Mr.Bhullar himself, even though he retracted from that statement later on. Third, even if Mr.Bhullar is to be held guilty under TADA and other sections of Indian Penal code, he does not deserve the extreme punishment of death, but life imprisonment, in the absence of any motive or intention to create terror in the minds of people. The self created description of "rarest of rare" by the apex court has been wrongly stretched to bring the present case within its purview, probably for the reason that the accused belongs to a minority community which has a long history of patriotism and bravery. Fourthly, the apex court has itself diverted from the earlier law settled by plethora of judicial pronouncements, only to bring this case within the purview of "rarest of rare" case for awarding capital punishment. Further, on one hand, the apex court discussed the conventions and protocols of international law laid down by the United Nations regarding terrorism and combating the menace, but with the same breadth it became wholly oblivious of the fact that 108 member states of United Nations have decided to abolish death penalty in law or practise in their country, but by awarding death sentence to Mr. Bhullar, the court has shown utter disregard to the international pressure for abolition of death penalty. It is indeed painful that a crime behind which there was no clear motive nor corroborative evidence to connect the accused with the crime, except a 'defective confession', has been termed as rarest of rare case, which is ordinarily awarded in case of the murder being committed in a gruesome and inhuman manner. The exceptional

circumstances in which death penalty may be awarded can be classified into five categories; manner in which the murder was committed; the motive which evinces depravity and meanness;anti-social or socially abhorrent nature of the crime;magnitude of the crime; personality of the victim of murder. In the case of Mr. Bhullar, the manner in which murder was committed is not gruesome, nor the motive is clear, the nature of crime is also not very serious and the personality of the target i.e. Mr.Bitta was a politician and not a minor or female.

LEGAL VIEW AGAINST CAPITAL PUNISHMENT

Indian Constitution protects the right to life enshrined in Article 21, but for long the death penalty is being awarded by the law courts wholly oblivious of the trauma and mental torture every awardee undergoes till he is executed. Even Section 302 of Indian Penal Code provides for punishment upto death to the convict. In 1999 the Union government proposed for extending the death penalty for the crime of rape---a proposal that drew country wide criticism. Although the Supreme Court of India has held on many occasions that death penalty can only be awarded in the "rarest of rare cases", yet the number of persons being brought in this category is indeed depressing. The apex court falling prey to its inhuman tendencies have, in many cases, extended the limitation of "rarest of rare case" and awarded the most inhuman punishment of death penalty even to such cases where only one political leader was killed, but took a lenient view in cases where many persons of a particular religious community were burnt alive in riots case and commuted the death sentence to that of life imprisonment.

On the one hand, we worship the father of the nation, Mahatama Gandhi for his principle of ahimsa, but on the other hand, have simply forgotten that he gave us the golden rule of humanity, "Hate the sin, not the sinner !" When we hear about a murderer, rarely do we understand what drove him to murder; more often we wish to kill him. The feeling toward a murderer, which drives us to champion execution, is identical to the wish for revenge the murderer feels for what he believes to be the horrendous injustice in his life. We feel as murderous towards him as he do toward those he had killed. This makes a murderer, if he is imprisoned, even more murderous. Just as the murderer's murder accomplishes nothing, so too the death penalty has not in any way succeeded in preventing crime.

If we have to define the curse of death penalty, in plain words, it is a murder by the State. It certainly adds judicial murders to social murders. No Law or custom, for that matter can justify the uncivilized rule---Blood for Blood ! Any country which still carry out such punishment are condemned as medieval. If a pre-meditated, planned murder shocks us for its cold-blooded cruelty, because of its

intentional taking awy of someone's life which can never be given back, Is not judicial execution more shocking—since it is the most pre-meditated, planned and cold blooded taking of life than can ever be ? Any Law or judicial pronouncement which justifies the awarding of death sentence must and should be condemned and society's role in opposing such act takes the center stage. Each member of the intelligensia must come forward and express their concern that death penalty is not only contrary to justice, but also contrary to the law as well. It needs to be borne in mind that in one case the Supreme Court says that a sentence of death should not be given as a rule but only in exceptional cases. But in another case, it does not feel hesitant to treat any case as an exceptional case, without applying its mind toward the human psychology, his feelings and emotions. In the case of Kehar Singh and Satwant Singh, the alleged assassin of the former Prime Minister Indira Gandhi, the Supreme Court became a party to the political vendetta or social hysteria and saw the two accused as enemy of the deceased leader of the country and without any whims or reason ordered them to be hanged till death ! Many in India feel that Kehar Singh, and Satwant Singh were wrongly convicted and hanged. A day may come when the Supreme Court too regrets its confirmation of Kehar Singh's death sentence. But can it then give back Kehar Singh his life ? Why then persist with this pretence of infallibility which is assumed by the courts when they sentence people to death ? Be it as it may, but why did they decide to distinguish the same crime if committed by Kishori, the person who burnt alive four members of a Sikh family in the anti-sikh riots in New Delhi, and commuted his death sentence to that of life imprisonment. Was the life of those four sikhs less valuable than that of Indira Gandhi ? If the dastardly act of burning alive four innocent people can be brought out of the category of "rarest of rare case" as they call it, Why can't the apex court take such a view in all cases of murder ? A sane penal system must look at these conditions rather than to increase the weight of punishment to reduce the incidence of crime. The policy adopted by the Law courts in the country have brutalise the judicial system solving the problem of crime.

One thing we all must bear in mind that no punishment can act as a deterrent for the criminal. With the passage of time, it has been shown that the deterrent theory is not only outdated but without basis in a civilized society like ours. Had the punishment of death a deterrent, then the number of murders and serious crimes ought to have come down. Yet such number have not come down. To the contrary it is on the rise. Further, if justice means redressal of a wrong and not revenge, can the taking of a life be the answer for taking another's life ? Deterrence also means,"setting an example" so that others will not repeat the same crime. Is that ethically justifiable ? If 'A' has committed a crime, he must be punished for that crime. But is it permissible to punish 'X' so as to set an example that will deter "Y" or "Z" from committing a similar crime in the future ? How can justice hold

me responsible for what others may choose to do tomorrow ? Thus, the deterrence function of death penalty is surely not an argument in its favor. In fact, it is wholly unjust to regard a criminal as a born inhuman. The propounders of reformist theory have a solid argument. It is possible that by keeping a person alive and his conscience haunting him every minute of the wrong done by him, he can be cured and his criminal state of mind is reformed enabling him to become a law-abiding citizen and lead a normal life. But killing a human being in a most gruesome fashion in public gaze, lower our eyes in shame, every time a human being is hanged. To think otherwise, is only to brutalize the system of justice, which should be humane and never brutal.

To conclude, I must say that we Indians love to regard ourselves as the most civilized country in the world in terms of humane and spiritual values. Can then we continue to hang people in the name of justice when nearly a quarter of the world has already stopped doing so ? So, for the sake of civilization, we all must strive for doing away of death penalty from the Statute books, leaving life imprisonment as the maximum punishment for any crime. Let KARUNA always prevail upon every Judge while awarding sentence to the accused.

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