

SAHIB SINGH
v.
STATE OF HARYANA

JULY 28, 1997

[M.K. MUKHERJEE AND S. SAGHIR AHMAD, JJ.]

Terrorist & Disruptive Activities (Prevention) Act, 1987—Penal Code 1860 :

Criminal Trial—S.302/34 IPC read with S.3(2) of the Act—Interested Witness—Prosecution relying on evidence of family members of the deceased—No independent witnesses examined—Enmity between accused and family members of the deceased—Such witnesses testifying the presence of a dead person along with the accused at the place of incident—Conviction on the testimony of such witnesses whether sustainable—Held, witnesses who are related to the deceased are as competent to depose the facts as any other witness—Mere relationship does not disqualify a person—The Court should scrutinise their evidence with care and caution—Under facts and circumstances, the witnesses, on account of the enmity, lied before the Court.

FIR—Lodging of Delay in—Held, under facts and circumstances, the delay was deliberate and meaningful S.15—Confession—Made to Police Officer—Admissibility of—Held, S.15 of the Act makes a special provision as to the admissibility of confession and signals a departure from the normal rule contained in Sections 25 and 26 of the Evidence Act—Confession made to Police Officer not below the rank of Superintendent of Police would be admissible in evidence subject to the fulfilment of requirements indicated therein.

S.15—Confession to Superintendent of Police—Admissibility of—Confession repeating story of dead person—Basic facts of prosecution story not admitted in confession—Held, under facts and circumstances, Confession is not truthful and it is discarded and cannot be acted upon.

Words & Phrases—‘Confession’—Meaning of in the context of the Evidence Act & TADA Act.

‘Hallucination’—Meaning of.

- A Appellant is the accused in an incident which took place at the shop of the deceased located in the centre of the village in a busy locality. The shop of the deceased was targetted by terrorists and the prosecution alleged that appellant and K, who were both armed, were present at the spot with other Sikh youths who were also armed and indiscriminate firing by them resulted in the death of the deceased and injury to one of his sons.
- B After investigation, a charge-sheet was submitted only against the appellant. The appellant contended before the trial court that he had been falsely implicated on account of enmity as civil and criminal cases were pending between him and members of the family of the deceased. The appellant was convicted by the trial court for offence under Section 302/34
- C IPC read with Section 3(2) of the Terrorists & Disruptive Activities (Prevention) Act, 1987 besides some other offences. The basis of conviction of the appellant was the statement of three eye witnesses, all real brothers and sons of the deceased, one of whom was injured in the incident and the Confessional Statement of the appellant recorded by the police under
- D Section 15 of the TADA Act. Against the order of conviction by the trial court, the appellant has appealed to this Court.

- E The appellant contended that the prosecution did not produce any independent eye witness and attempted to prove its case only through interested eye witnesses who were the sons of the deceased, though the incident had taken place at 6.30 p.m. in the market area and independent witnesses were available; and that the conviction cannot be sustained on the testimony of highly interested eye witnesses who were on inimical terms with the appellant and had earlier tried to implicate him and his father in a false criminal case involving the same person, K.

- F Allowing the appeal, the court

- G HELD : 1. The contention that the prosecution had relied only upon witnesses who are family members of the deceased and are thus highly interested cannot, by itself, be a ground to reject their statements. Witnesses who are related to the deceased are as competent to depose the facts as any other witness. Mere relationship does not disqualify a witness. If the incident had taken place at a time or under such circumstances that there was no possibility of any other person being present at the spot, except those who were related to the deceased, those persons, namely,
- H persons related to the deceased, will be competent to depose the facts seen

by them. Even if the possibility of independent witnesses being present is not ruled out, the witnesses related to the deceased would still be competent witnesses. All that has to be shown is that the witnesses were stating the truth. The Court itself, in order to find out whether what they had stated was true or not would scrutinise their evidence with care and caution. [103-E-H]

Kartik Malhar v. State of Bihar, [1996] 1 SCC 614, referred to.

2. The choronology of events indicates that the F.I.R. was registered after the statement of son of deceased who had accompanied him to the hospital was recorded by the police at the hospital at 10.50 p.m. and further that although another son of the deceased remained in the village, he did not go to police station to lodge the report even though he had full opportunity of going to the police station to lodge the report and there is no explanation forthcoming as to why this was not done especially when there was a police outpost in his village itself. This chronology further indicates that the F.I.R. was lodged after unreasonable "delay" and after due deliberation. Considering it in the light of the statement of witnesses, the "delay" was deliberate and meaningful. [105-F-G]

3. So far as the main incident is concerned, the two sons of the deceased who were present at the shop and had seen the whole incident are not consistent. While both stated that K and the appellant were present at the spot and both were armed, one of them did not specifically say that the appellant or K had fired at his father and the job of firing was attributed by him to other Sikh youths present at the spot. While the other, on the contrary, specifically stated that appellant had fired at his father.

[108-F-G]

4. Admittedly, there is positive enmity between the appellant and his family members on the one hand and deceased and his family members on the other. Since K had already been killed by the police before the date of incident as per the finding of Punjab & Haryana High Court in proceedings initiated against the appellant's family at the behest of the deceased, there was no occasion that he would be present at the spot when the incident took place. All the three eye-witnesses, testify to the presence of a dead person at the spot. All of them, therefore, speak a lie. When they saw appellant to be present at the spot in the company of K, they again speak a lie as the appellant could not be in the company of K. It appears that

A these witnesses who are real brothers were not aware of the death of K and, therefore, they made another attempt to implicate the appellant in another false case involving K. Indeed, enmity has always the potential of making a man stoop to the lowest level of inhumanity. The three brothers, on account of the enmity, were highly interested in securing the conviction of the appellant and in achieving this object, they did not shudder in lying before the Court. [105-E; 109-F-H; 110-E-F]

4.2. Hallucination, as a disease, is an apparent perception without any corresponding external object. It is defined as any of numerous sensations, auditory, visual or tactile, experienced without external stimulus and caused by mental derangement or intoxication. It may occur with relation to any of the special senses, namely, hearing sounds or seeing things that do not exist. The appellant was surprisingly, placed in the company of a dead person, K. The three brothers seem to be suffering from auditory and visual sensory perception without any real external stimuli as they had heard gunshots and seen K firing at them even though he was dead on the date of incident, having been killed earlier. [100-H; 101-A; 110-D]

5. Another reason to discard the evidence of the three eye witnesses is that the two sons of the deceased, who were present at the shop when the Sikh youths came to the place and started firing indiscriminately, did not receive any injury. They also alleged that while they were running away, appellant had caught hold of them but they got themselves freed and ran away. Appellant was armed with a gun. If both had come in close contact with him, the appellant would have, in the natural course of conduct, fired at them instead of attempting to catch them alive. [110-A-B]

F 6.1. A "Confession" must either be an express acknowledgement of guilt of the offence charged, certain and complete in itself, or it must admit substantially all the facts which constitute the offence. [111-G]

G *Pakala Narayana Swami v. The King Emperor*, 66 Indian Appeals 66 = AIR (1939) PC 47; *Palvinder Kaur v. State of Punjab*, AIR (1952) SC 354 = [1953] SCR 94; *Om Prakash v. State of U.P.*, AIR (1960) SC 409 (412); *State of U.P. v. Deoman Upadhyaya*, [1961] 1 SCR 14 and *Veera Ibrahim v. State of Maharashtra*, AIR (1976) SC 1167 = [1976] 3 SCR 672, relied on.

H *Queen Empress v. Babu Lal*, ILR 6 Allahabad 509 (539); *Queen Empress v. Nana*, ILR 14 Bombay 260 (263); *Queen Empress v. Mehar Ali*

Mullick & Ors., ILR 15, Calcutta 589; *Emperor v. Cunna*, 22 Bombay Law Reporter 1247; *Imperatrix v. Pandharinath*, ILR 6 Bombay 34; *Muthukumaraswami Pillai & Ors. v. King Emperor*, ILR 35 Madras 397; *Queen Empress v. Jagrup & Anr.*, ILR 7 Allahabad 646 and *Emperor v. Santya Bandu*, 11 Bombay Law Reporter 633, referred to. A

Digest of the Law of Evidence by Justice Stephen, referred to. B

6.2. Section 24 of the Evidence Act provides, though in the negative form, that "Confession" can be treated as relevant against the person making the confession unless it appears to the court that it is rendered irrelevant on account of any of the factors, namely, threat, inducements, promises etc. mentioned therein. The "Confession" has to be affirmatively proved to be free and voluntary. Before a conviction can be based on "Confession", it has to be shown that it was truthful. [111-G-H; 112-B] C

Satbir Singh v. State of Punjab, [1977] 3 SCR 195 = [1977] 2 SCC 263 and *Hern Raj v. State of Ajmer*, [1954] SCR 1133 = AIR (1954) SC 462, referred to. D

7.1. Section 15 of the TADA Act makes a special provision as to the admissibility of confession and signals a departure from the normal rule contained in Sections 25 and 26 of the Evidence Act. It provides that a confession made by an accused to a Police Officer not below the rank of a Superintendent of Police would be admissible in evidence and can be proved against that person subject to the fulfilment of other requirements indicated in that Section. Before recording the confession, the Police Officer has to explain to the person concerned that he is not bound to make the confession and that if he makes the confession, it may be used as evidence against him. The Police Officer has also to satisfy himself, after questioning the person concerned, that he is making the confession voluntarily. The Officer recording the confession has also to record a certificate of having observed the requirements of law. Such Confessional Statement, if challenged, has to be shown, before a conviction can be based upon it, to have been made voluntarily and that it was truthful. [112-F-H; 113-A-D] E F G

7.2. The TADA Act, like the Evidence Act, does not define "Confession" and therefore, the principles enunciated with regard to the meaning of "Confession" under the Evidence Act shall also apply to a "Confession" made under this Act. Conviction on "Confession" is based on the Maxim "*habemus optimum testem confitentem reum*" which means that confession H

A of an accused is the best evidence against him. The rationale behind this rule is that an ordinary, normal and same person would not make a statement which would incriminate him unless urged by the promptings of truth and conscience. [113-B-C]

B 8.1. The story of Hallucination is repeated in the so-called Confes-
sional Statement of the appellant recorded by Superintendent of Police,
Jind, by saying that a dead person came to the appellant, talked to the
appellant, asked the appellant to pay Rs. 15,000 so that that "dead person"
may pay it to other terrorists through whom the job of killing the deceased
would be performed; the dead person came to the spot along with other
C terrorists on the date of incident and committed the murder of deceased.
The Confessional Statement further makes that dead person to ride on a
motorcycle and drive away along with other terrorists on the same motor-
cycle. [114-G; 115-A-B]

D 8.2. The Confessional Statement does not admit even substantially
the basic facts of the prosecution story, in as much as in the Confessional
Statement, no role is assigned to the appellant while in the prosecution
story an active role has been assigned to him by showing that he too was
armed with a gun and had gone at the spot and participated in the
commission of the crime by firing his gun specially at the injured witness.
E The Confessional Statement is not truthful and is part of the Hallucination
with which prosecution and its witnesses were suffering. It is accordingly
discarded and cannot be acted upon. [115-B-C]

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No.
219 of 1994.

F From the judgment and Order dated 8.2.97 of the Designated Court
in Rohtak at Jind, in S.C. No. 30 of 24.4.1992.

U.R. Lalit, (Ms. Kamaljeet Kochhar) for J.D. Jain for the Appellant.

G B.S. Chahar and Prem Malhotra for the Respondent.

The Judgment of the Court was delivered by

S. SAGHIR AHMAD, J. HALLUCINATION, as a disease, is an
apparent perception without any corresponding external object. It is
H defined as any of numerous sensations, auditory, visual or tactile, ex-

perienced without external stimulus and caused by mental derangement or intoxication. It may occur with relation to any of the special senses, namely, hearing sounds or seeing things that do not exist. A

2. The prosecution in this case presents before us a story of Hal-lucination where a dead person is seen by the eye-witnesses to have come armed with a gun, fired the gun at one of the witnesses who was injured and then was seen running away with other people including the appellant, towards another village never to be found again. The appellant was seen in the company of that dead person, shoulder to shoulder, armed with a gun and triggering it to keep pace with the activities of his companion, the dead. B C

3. Prosecution unfolds its story by ushering us into an era when the Punjab was writhing in pain of militancy.

4. Village Pipaltha, P.S. Garhi, Distt. Jind, where Om Prakash (deceased) lived with his three sons, Dharam Pal (P.W.10), Surinder (P.W. 11) and Suresh (P.W. 12) (fourth is not material) was targetted by terrorists resulting in the death of Om Prakash and gunshot injuries to his son, Suresh. D

5. The appellant was prosecuted and tried by the Additional Judge (Designated Court, Rohtak at Jind) and convicted for offences u/s 302/34 IPC read with Section 3(2) of the Terrorist & Disruptive Activities (Prevention) Act, 1987 (for short, the 'Act') with a fine of Rs. 200 or else further rigorous imprisonment for one year; under Section 452/34 IPC (Sentence : 3 years R.I. with a fine of Rs. 100 or else 3 months further R.I.); under Section 307/34 IPC (Sentence : 7 years R.I.); and under Section 394/34 IPC (Sentence : 10 years R.I. with a fine of Rs. 200 or else R.I. for one year). E F

6. House of Om Prakash which also contained a shop at which Dharam Pal and Surinder used to sit, was located almost in the centre of the village in a busy locality. A short distance away was another shop at which Suresh and his brother, the fourth son of Om Prakash, used to sit. G

7. On 18.11.1991 at about 6.30 P.M. while Om Prakash was at the shop of his two sons, Dharam Pal and Surinder, two young Sikhs armed with small guns, came and asked Om Prakash to hand over his revolver but H

A Om Prakash who did not possess a revolver offered his .12 bore gun. The two Sikh youths, at the point of gun, brought all the three, namely, Om Prakash, Dharam Pal and Surinder on the street where a group of three other young Sikhs were standing on the right side of the shop while another group of three or four Sikh youths, which also included the appellant, was standing in front of their shop. All of them were holding small guns and were between the age group of 25-30 years. One of the two Sikh youths, brought out a Hero-Honda Motor Cycle from the shop and wanted Om Prakash to sit on the Motor Cycle but Om Prakash refused and while trying to run inside the shop, he was fired upon. He attempted to enter the room on the rear of the shop but all the Sikh youths present there started firing indiscriminately as a result of which he received injuries on various parts of his body. While Dharam Pal and Surinder managed to escape, Suresh, who was at the other shop, came running to help them but was injured in the firing. All the Sikh youths then went away towards village 'Rewar'.

D 8. Om Prakash was taken to a hospital at Narwana where he was declared dead while Suresh, who was medically examined there, was admitted for treatment.

E 9. After due investigation, a charge-sheet was submitted only against the appellant who was tried and ultimately convicted as aforesaid.

F 10. The appellant, from the very beginning, had denied the prosecution story and had contended that he had been falsely implicated on account of enmity as civil and criminal cases were pending even on the date of incident between him and other members of the family of Om Prakash. He, in that connection, examined one witness in defence and also brought on record certain documents including a copy of the order passed by the Punjab & Haryana High Court in Criminal Miscellaneous Case No. 6397(M) of 1992.

G 11. Let us find out the truth.

H 12. The statement of three eye witnesses one of whom was an injured witness as also the appellant's confessional statement recorded by the police under Section 15 of the Act, constitute the basis of his conviction for the offences in question.

13. So far as eye witnesses are concerned, they are three, namely, Dharam Pal (P.W. 10), Surinder (P.W. 11) and Suresh (P.W. 12). They are sons of Om Prakash (deceased). Suresh (P.W. 12) is an injured witness. These witnesses speak of the appellant's presence at the spot with a gun with one Kala Singh who was also armed with a gun.

14. It is contended by the learned counsel for the appellant that although the incident had taken place at 6.30 P.M. on 18.11.1991 in the market area, the prosecution did not produce any independent eye witness and attempted to prove its case only through interested eye witnesses who were the sons of the deceased. It is contended that in such a situation where the independent witnesses, in spite of being available were not produced, the conviction cannot be sustained merely on the testimony of highly interested witnesses particularly in view of the fact that Om Prakash (deceased) and his family members including his three sons who have been produced as eye witnesses were on inimical terms with the appellant and had even tried earlier to implicate him and his father in a false criminal case involving, incidentally, the same Kala Singh in whose company the appellant, in the instant case, has been placed.

15. The contention that the prosecution had relied only upon witnesses who are family members of the deceased and are thus highly interested cannot, by itself, be a ground to reject their statements. Witnesses who are related to the deceased are as competent to depose the facts as any other witness. Mere relationship does not disqualify a witness. If the incident had taken place at a time or under such circumstances that there was no possibility of any other person being present at the spot, except those who were related to the deceased, those persons, namely, persons related to the deceased, will be competent to depose the facts seen by them. Even if the possibility of independent witnesses being present is not ruled out, the witnesses related to the deceased would still be competent witnesses. All that has to be shown is that the witnesses were stating the truth. The Court itself, in order to find out whether what they had stated was true or not would scrutinise their evidence with care and caution. In *Kartik Malhar v. State of Bihar*, [1996] 1 SCC 614 = 1996 Cr.L.J. 889 decided by a Bench of this Court of which one of us (Saghir Ahmad, J.) was a member, it was held :-

A "A close relative who is a natural witness cannot be regarded as an interested witness. The term 'interested' postulates that the witness must have some direct interest in having the accused somehow or the other convicted for some animus or for some other reason."

B 16. This contention raised on behalf of the appellant will be considered a little later to find out whether the witnesses had the motive to secure the conviction of the appellant and were, therefore, interested witnesses.

C 17. Dharam Pal (P.W. 10) has stated that he had taken his father Om Prakash and brother Suresh to the hospital at Narwana where they reached at about 10.00 P.M. The Police Outpost at Pipaltha had already radioed the message to Police Station, Garhi which was received by A.S.I. Dharam Singh (P.W. 16) at 6.50 P.M. It is not disputed that Police Station, Garhi
D falls on way to Narwana but there too the matter was not reported. That by itself would not be relevant as Dharam Pal who was taking his father and brother to the hospital might have been in a hurry to save their lives. What is, however, relevant is that Surinder (P.W. 11), the other son of Om Prakash remained in the village and did not accompany his father or the
E injured brother to the hospital. He had full opportunity of going to the police station to lodge the report but there is no explanation forthcoming as to why this was not done. Dharam Pal, in his statement on oath, has stated that there was a police outpost in his village but there too, no report was lodged.

F 18. The police of P.S. Garhi which already knew the incident, having been informed by the Police Outpost, Pipaltha, reached at the hospital at 9.30 P.M. Om Prakash was already declared dead by the doctors at the hospital. The statement of Dharam Pal was recorded by the police at the hospital at 10.50 P.M. on 18.11.91 after obtaining the opinion of the doctors
G that Suresh (P.W.12) who was injured in the incident in question, was not in a fit condition to make the statement. On the basis of the statement of Dharam Pal, a formal F.I.R. No. 237 was recorded at Police Station, Garhi at 12.15 A.M. on 19.11.91 in which the appellant was named as an accused. The Special Report which was sent to the Magistrate at Narwana was
H received by him at 4.00 A.M.

19. It would be relevant here to reproduce the following passage from the statement of Dharam Pal (P.W. 10) :-

"My brother Surender remained in the village. I cannot tell whether Surender my brother made any report to the police in vill. Pipaltha when we had taken our father to Hospital. We did not lodge any report with the police station Garhi as we were first of all to save our father. It is correct that if we come from village Pipaltha to Narwana, P.S. Garhi is located on the road on the way to Narwana. We reached the Hospital at about 8.10 P.M. The police came at about 9.30 P.M. in the Hospital. On our arrival in the Hospital, the doctor had declared our father as dead. My statement was recorded at about 10.15 PM by the police. My statement was recorded only at that time and was not recorded subsequently. I did not make any supplementary to the police in this case after my statement was recorded by the police in Civil Hospital. I stated to the police in that very Hospital after about 2/3 hours of my recording the statement, name of Kala Singh but no statement to that effect was recorded by police at that time. I had fully recognised Kala Singh and he was standing with Sahab Singh near the wall of Bharthu. Kala Singh had also fired shots as all the eight were firing while running after us. I had not stated name of Kala Singh in my statement Ex.PD to the police. I had stated the name of Kala Singh afterwards."

20. The chronology of events indicates that the F.I.R. was registered after the statement of Dharam Pal was recorded by the police at the hospital and further that although Surinder remained in the village, he did not go to the police station to lodge the report. This chronology further indicates that the F.I.R., in this case, was lodged after unreasonable "delay" and after due deliberation. Normally, this delay would have been ignored but if it is considered in the light of the statement of witnesses, which we shall presently scrutinise, it would come out that this "delay" was deliberate and meaningful.

21. Admittedly, there is positive enmity between the appellant and his family members on the one hand and Om Prakash and his family members on the other. The following extract from the statement of Dharam Pal would bring out the factum of enmity existing between the parties :-

A "Lakhi and Giani Harijans were employed by us to work in the fields alongwith other workers on daily wages whenever we felt any necessity. They were not our regular employees. I do not know whether Lakhi and Giani got registered a case against Sucha Singh and two brothers of Sahab Singh accused at our instance after this occurrence. It is correct that a criminal case under Section 325 IPC etc. was pending in the Court of JMIC, Narwana against Sahab Singh etc. accused and against us, prior to this occurrence. In other words, cross-cases against us were pending before this occurrence. A civil litigation had also proceeded between us and Sahab Singh accused prior to this occurrence. We and Sahab Singh accused were on inimical terms prior to this occurrence due to civil and criminal litigation between us."

22. To the same effect is the statement of Surinder (P.W.11) who stated as under :-

D "It is correct that civil and criminal litigation between us and Sahab Singh accused is still pending in the courts and it was also pending at the time of alleged occurrece. Both of us were challaned in case under sec. 325 IPC and cross-cases against Sahab Singh and also against us was pending at the time of occurrence. I had also told the police about the enmity."

23. Suresh Kumar (P.W. 12), who is an injured witness, also admitted that he and Sahib Singh were on inimical terms.

F 24. It is in this background that the statement of these three eye witnesses, who are real brothers, are to be analysed to find out whether the occurrence did take place in the manner stated by them and whether in that incident Sahib Singh and Kala Singh participated and fired at Suresh Kumar (P.W. 12) or at Om Prakash deceased).

G 25. Dharam Pal, in his statement, narrated the incident in the following words :-

H "One Sikh youth remained standing inside the shop while the other Sikh youth came outside and took our personal search. The Sikh youth who took personal search brought our motor-cycle from the shop outside. The motor-cycle was of Hero-Honda make bearing

registration No. HR-32/0218. The Sikh youth who took out the motor-cycle from the shop, made to sit forcibly my father on the motor-cycle but my father pushed him back and then my father started walking inside the shop. The Sikh youth standing inside the shop fired a shot from his fire-arm which hit my father on the left side of the chest. The Sikh youths who were standing outside the shop started firing indiscriminately on my father which hit him on the chest, back and on the hand etc. My father fell down inside the room next to the shop and we ran away but at that time while we were running, Sahab Singh accused tried to catch hold of us but we succeeded in getting rid off Sahab Singh and concealed our presence in the street of the house of Krishna Mehra. Sahab Singh etc. all the 8 sikh youths chased us and were firing. On hearing the noise of shots, my brother Suresh and Sadhu came towards the side of our shop and while he was crossing the street, he (Suresh) received gun shot injury."

26. Surinder (P.W.11) narrated the incident in the following words :-

"We saw that three sikh youths were standing in front of shop of Bharthu and three sikh youths were standing near the wall of Fatia Kumhar. They were also armed with small size guns. Sahab Singh accused present in the court today was one of the three sikh youths who were standing in front of the shop of Bharthu. Kala Singh was also standing at that time with Sahab Singh. Out of the two sikh youths, who took out us, one of them took our personal search and one of them remained standing before us aiming the gun towards us. The sikh youth conducted our search took out our Hero Honda motor-cycle from the shop and asked my father to sit on the carrier of that motor-cycle and he also forcibly tried to make my father sit on the carrier of the motor-cycle but my father gave him a push and moved towards the shop. One of them fired at my father in the left side of the chest. The sikh youth who was standing inside the shop came out and all the sikh youths then fired at my father who was in the shop at that time. Rather my father had entered the next room in which the shop was opening from behind at that time. Sahab Singh and Kala Singh had also fired my father at that time and were two of the eight. My father received injuries on the

A back, near the right hip-region. He also received injuries on back, hands etc. My father fell down in the room as a result of injuries sustained. We i.e. I and my brother Dharam Pal, tried to run away but Sahab Singh accused tried to catch hold of us but we escaped and ran towards the street and concealed ourselves."

B 27. Suresh Kumar (P.W. 12) narrated the incident in the following words :-

C "I was resident at Pipaltha along with my brothers and father about 1½ years ago. We were having two shops at village Pipaltha. At one of the shops, my father, Om Prakash, brother Dharam Pal and Surrender used to sit while on the other shop my brother Sadhu Ram and I used to sit. On 18.11.91, I was present at my shop. Sadhu Ram was also present at that time. We heard the noise of gun shots. Sadhu Ram, my brother, went via street which runs by the side of the houses while I was going to my house through the main street. 8 persons including Sahab Singh accused were coming while firing. Kala Singh was also one of them. Sahab Singh fired at me which hit my arm. Kala Singh also fired at me and which also hit me at my right arm. The accused went towards village Rewar."

E 28. He further stated in the cross-examination as under :-

"I received two gun shots injuries and two shots were fired at me one by Kala Singh and one by Sahab Singh."

F 29. From the above, it would appear that so far as main incident is concerned, Dharam Pal and Surinder who were present at the shop and had seen the whole of the incident are not consistent. While Dharam Pal and Surinder both stated that Kala Singh and the appellant were present at the spot and both were armed, Dharam Pal did not specifically say that the appellant had fired at Om Prakash nor did he say that Kala Singh had fired at his father. The job of firing was attributed to other Sikh youths present at the spot. Surinder (P.W.11), on the contrary, specifically stated that Sahib Singh had fired at his father.

H 30. Suresh Kumar (P.W. 12) speaks of the presence of Kala Singh along with the appellant among the group of eight Sikh youths who had

come to the shop of Dharam Pal and Surinder. He stated in his examination-in-chief that Sahib Singh had fired at him which had hit his arm. He also stated that Kala Singh had also fired at him which had hit his right arm. In cross-examination, he repeated that he had received two gunshot injuries as two shots were fired at him; one by Kala Singh and the other by Sahib Singh.

31. Who is this Kala Singh?

32. Dharam Pal, in his cross-examination, has stated that he knew Kala Singh from his childhood as he was the resident of village Pipaltha which he had left about 2 or 3 years prior to the occurrence but his family members still lived in the village.

33. On account of the enmity between the parties, appellant's father Sucha Singh and others were implicated in a case relating to the "harbouring" of Kala Singh in their house. This case was initiated on the basis of the FIR lodged by Lakhi Ram under Section 216-A IPC read with Section 4(3), 3 and 6 of the Act on the ground that Kala Singh was harboured by Sucha Singh and others in their house. This FIR was challenged by the accused, involved in that case, in Criminal Miscellaneous Petition No. 6397-M of 1992 and Criminal Miscellaneous Petition No. 7728-M of 1992. Both the Petitions were allowed by Justice G.S. Chahal of the Punjab & Haryana High Court by judgment dated December 1, 1992 with the finding that Kala Singh had already been killed by the police on October 31, 1991, prior to the registration of the case and, in any case, the allegations made in the FIR did not make out any case of "harbouring".

34. Since Kala Singh had already been killed by the police on October 31, 1991, there was no occasion that he would be present at the spot on 18.11.91 when the incident, giving rise to this case, took place. All the three eye witnesses, examined in this case, testify to the presence of a dead person at the spot. All of them, therefore, speak a lie. When they saw appellant to be present at the spot in the company of Kala Singh, they again speak a lie as the appellant could not be in the company of Kala Singh. It appears that these witnesses who are real brothers were not aware of the death of Kala Singh and, therefore, they made another attempt to implicate the appellant in another false case involving Kala Singh. The first case, as was seen earlier, was initiated by Lakhi Ram who was the labourer of Om Prakash (deceased).

A 35. Another reason to discard the evidence of these witnesses is that
Dharam Pal and Surinder, who were present at the shop when the Sikh
youths came to the place and started firing indiscriminately, did not receive
any injury. They also alleged that while they were running away, Sahib
Singh had caught hold of them but they got themselves freed and ran away.
B Sahib Singh was armed with a gun. If both Dharam Pal and Surinder had
come in close contact with him, he would have, in the natural course of
conduct, fired at them instead of attempting to catch them alive.

C 36. The evidence on record indicates that the incident had not taken
place in the manner alleged by the prosecution in which a dead person is
shown to have participated in the incident in question. Not only that he
was shown to be armed with a gun, he was also shown to have fired at
Suresh. The appellant was surprisingly, placed in the company of that dead
person. Is this not Hallucination? The three brothers seem to be suffering
from auditory and visual sensory perception without any real external
stimuli as they had heard gunshots and seen Kala Singh firing at them even
D though he was dead on the date of incident, having been killed on
31.10.1991.

E 37. Indeed, enmity has always the potential of making a man stoop
to the lowest level of inhumanity. This is what has happened in the instant
case where certain terrorists appear to have come and attacked the shop
of Dharam Pal where his father was sitting who was shot dead and the
Hero Honda Motor Cycle was taken away. Not having seen as to what had
happened and who had killed their father, the three brothers, thought of
involving the appellant in this case so that he may be removed from the
scene and lodged in the jail as they, on account of the enmity, were highly
F interested in securing his conviction and in achieving this object, they did
not shudder in lying before the Court, ignoring, in the process, what
WILLIAM HAZLITT had said that "Lying is the strongest acknow-
ledgement of the force of truth."

G 38. The Confessional Statement of the appellant with which we
intend to deal now is the other basis for his conviction. Before looking into
the contents of the Confessional Statement, we may first consider the
relevant provisions of the Evidence Act around which certain principles
have been built by judicial pronouncements including those of this Court.

H 39. Evidence Act contains a separate part dealing with "Admission".
This part comprises of Sections 17 to 31. "Confession" which is known as

a species of "Admission" is to be found contained in Sections 24 to 30. A

40. "Confession" has not been defined in the Evidence Act. Mr. Justice Stephen in his *Digest of the Law of Evidence*, defined it thus :

"A confession is an admission made at any time by a person charged with crime, stating or suggesting the inference that he committed the crime." B

This definition was adopted by various High Courts here. (See : *Queen Empress v. Babu Lal*, ILR 6 Allahabad 509 (539); *Queen Empress v. Nana*, ILR 14 Bombay 260 (263); *Queen Empress v. Meher Ali Mullick & Ors.*, ILR 15 Calcutta 589; *Emperor v. Cunna*, 22 Bombay Law Reporter 1247; *Imperatrix v. Pandharinath*, ILR 6 Bombay 34; *Muthukumaraswami Pillai & Ors. v. King Emperor*, ILR 35 Madras 397. Straight, J., however, in *Queen Empress v. Jagrup & Anr.* ILR 7 Allahabad 646, did not adopt this definition and held that only those statements which are direct acknowledgements of guilt could be regarded as "confessions" and not mere inculpatory admission which may fall short of an admission of guilt. Similar view was taken in *Emperor v. Santya Bandu*, 11 Bombay Law Reporter 633. The judicial opinion was thus not unanimous as to the exact meaning of "Confession." The Privy Council, however, by its authoritative pronouncement in *Pakala Narayana Swami v. The King Emperor*, 66 Indian Appeals 66 = AIR (1939) PC 47, clarified the position and laid down that "a confession must either admit in terms the offence, or at any rate substantially all the facts which constitute the offence." This was followed by this Court in many cases, including *Palvinder Kaur v. State of Punjab*, AIR (1952) SC 354 = [1953] SCR 94; *Om Prakash v. State of U.P.*, AIR (1960) SC 409 (412); *State of U.P. v. Deoman Upadhyaya*, [1961] 1 SCR 14 and *Veera Ibrahim v. State of Maharashtra*, AIR (1976) SC 1167 = [1976] 3 SCR 672. C D E F

41. In view of these decisions, it is now certain that a "Confession" must either be an express acknowledgement of guilt of the offence charged, certain and complete in itself, or it must admit substantially all the facts which constitute the offence. G

42. Section 24 provides, though in the negative form, that "Confession" can be treated as relevant against the person making the confession unless it appears to the Court that it is rendered irrelevant on account of any of the factors, namely, threat, inducements, promises etc. mentioned H

- A therein. Whether the "Confession" attracts the frown of Section 24 has to be considered from the point of view of the confessing accused as to how the inducement, threat or promise from a person in authority would operate in his mind. (See : *Sathir Singh v. State of Punjab*, [1977] 3 SCR 195 = [1977] 2 SCC 263. The "Confession" has to be affirmatively proved to be free and voluntary. (See : *Hem Raj v. State of Ajmer*, [1954] SCR 1133 = AIR (1954) SC 462. Before a conviction can be based on "Confession", it has to be shown that it was truthful.
- B

43. Section 25 which provides that a "Confession" made to a Police Officer shall not be proved against the person accused of an offence, places complete ban on the making of such confession by that person whether he is in custody or not. Section 26 lays down that confession made by a person while he is in the custody of a Police Officer shall not be proved against him unless it is made in the immediate presence of a Magistrate. Section 27 provides that when any fact is discovered in consequence of information received from a person accused of any offence who is in the custody of a Police Officer, so much of such information, whether it amount to a confession or not, as relates to the fact thereby discovered, may be proved. Section 27 is thus in the form of a proviso to Sections 24, 25 and 26. Sections 164, 281 and 463 of the Code of Criminal Procedure are the other provisions dealing with "Confession" and the manner in which it is to be recorded.
- C
- D
- E

44. Section 15 of the TADA Act, however, makes a special provision as to the admissibility of confession and signals a departure from the normal rule contained in Sections 25 and 26 of the Evidence Act. It provides that a confession made by an accused to a Police Officer of a particular rank or higher would be admissible in evidence and can be proved against that person subject to the fulfilment of other requirements indicated in that Section.
- F

45. According to these requirements, confession has to be made before a Police Officer not below the rank of a Superintendent of Police. Before recording the confession, the Police Officer has to explain to the person concerned that he is not bound to make the confession and that if he makes the confession, it may be used as evidence against him. The Police Officer has also to satisfy himself, after questioning the person concerned, that he is making the confession voluntarily. The Officer
- G
- H

recording the confession has also to record a certificate of having observed the requirements of law. A

46. The Act, like the Evidence Act, does not define "Confession" and, therefore, the principles enunciated by this Court with regard to the meaning of "Confession" under the Evidence Act shall also apply to a "Confession" made under this Act. Under this Act also, "Confession" has either to be an express acknowledgement of guilt of the offence charged or it must admit substantially all the facts which constitute the offence. *Conviction on "Confession" is based on the Maxim "habemus optimum testem confitentem reum" which means that confession of an accused is the best evidence against him.* The rationale behind this rule is that an ordinary, normal and sane person would not make a statement which would incriminate him unless urged by the promptings of truth and conscience. B C

47. Under this Act, although a confession recorded by a Police Officer, not below the rank of Superintendent of Police, is admissible in evidence, such Confessional Statement, if challenged, has to be shown, before a conviction can be based upon it, to have been made voluntarily and that it was truthful. D

48. In the instant case, Confession of the appellant was recorded by Superintendent of Police, Jind, on 14.12.1991, which was accompanied by a certificate by the S.P. Jind, in compliance of the requirement of Section 15 of the Act. The Confessional Statement has been proved and has been marked as Exh. PW-14/A. The relevant portion of the Confessional Statement is as under : E

"My father Sucha Singh and Om Parkash Mahajan, R/o Pipaltha purchased some agricultural land in village Pipaltha since long. After that there was dispute between them. Om Parkash was a rich man. Om Parkash got implicated my father in false cases and got challaned through police on the basis of which grudge increased. F

There is one Kala Singh @ Rukha in our village who has committed two murders in our village and he is intengled in the group of terrorists and is residing in Punjab. Kala Singh was on visiting terms with us 3-4 days. Before committing the murder of Om Parkash, Kala Singh @ Rukha had come to us. I had asked Kala Singh @ Rukha to commit the murder of Om Parkash Mahajan R/o Pipal- G H

A tha. Kala Singh @ Rukha told me that he has no need of money
 but he had to pay Rs. 15,000 to the other terrorist for committing
 the murder. I promised to pay Rs. 15,000 and Kala Singh had asked
 me to hand over Rs. 15,000 to him in Mukord Gurudwara. On
 B 18.11.1991 Kala Singh @ Rukha R/o Pipaltha accompanied by six
 terrorists, one of them was Nachhatar Singh, names of other not
 known, came to my house. Kala Singh @ Rukha had asked me to
 see as to whether Om Parkash Mahajan is present at the house or
 not. On this asking I went to the house of Om Parkash. Om Parkash
 was present at his shop. I told Kala Singh @ Rukha that Om
 C Parkash is present at a shop. Kala Singh @ Rukha alongwith his
 companion terrorist committed the murder of Om Parkash
 Mahajan by shots going at his house. Firing in the street they ran
 away on the Hero Honda Motor Cycle No. HR-32-0218 after
 taking the same from the shop of Motor cycle, I went to my home
 after making information of Om Parkash Mahajan to Kala Singh
 D @ Rukha and started drinks. On hearing the noise of fires I ran
 away from my house due to fear. That the sons of Om Parkash
 may not named me for the murder of Om Parkash, I had promised
 to pay Rs. 15,000 for the murder of Om Parkash Mahajan."

49. A perusal of the Confessional statement would indicate that three
 E or four days prior to the date of incident, which incidentally is 18.11.1991,
 Kala Singh had come to the appellant and the appellant had requested Kala
 Singh to commit the murder of Om Prakash, for which Kala Singh wanted
 Rs. 15,000 to be paid to other terrorists who would be hired for that job.
 It was on the basis of this arrangement that Kala Singh came along with
 F six other terrorists, including Nachhatar Singh, on 18.11.1991 and com-
 mitted the murder of Om Prakash. The terrorists, including Kala Singh,
 went away on the Hero Honda Motor Cycle.

50. It has been held above that Kala Singh had already been killed
 in a police encounter on 31.10.91. There was, therefore, no occasion of his
 G coming to the appellant and the appellant asking Kala Singh to commit the
 murder of Om Prakash on Rs. 15,000 being paid to him.

51. The story of *Hallucination* is repeated in the so-called Confes-
 sional Statement by saying that a Dead person came to the appellant,
 H talked to the appellant, asked the appellant to pay Rs. 15,000 so that that

"dead person" may pay it to other terrorists through whom the job of killing Om Prakash would be performed; the dead person came to the spot along with other terrorists on 18.11.91 and committed the murder of Om Prakash. The Confessional Statement further makes that dead person to ride on a motorcycle and drive away along with other terrorists on the same motorcycle. The dead also drives!

52. The Confessional Statement does not admit even substantially the basic facts of the prosecution story, inasmuch as in the Confessional Statement, no role is assigned to the appellant while in the prosecution story an active role has been assigned to him by showing that he too was armed with a gun and had gone at the spot and participated in the commission of the crime by firing his gun specially at the injured witness. The Confessional Statement is not truthful and is part of the *Hallucination* with which prosecution and its witnesses were suffering. It is accordingly discarded and cannot be acted upon.

53. A little effort on the part of the trial court would have revealed to it the falsity of the prosecution case, but it proceeded in a mechanical manner and ultimately convicted the appellant ignoring that there was a deliberately delayed FIR and the case set out therein was sought to be proved through highly interested witnesses, instead of independent witnesses, and also by bringing on record a Confessional Statement which contained false facts. This leads to the conclusion that the trial judge was sitting only to convict forgetting that judiciary holds the SCALES even, not tilted.

54. For the reasons stated above, the appeal is allowed, the judgment dated 8.2.1994 passed by the trial court is set aside and the appellant is acquitted of all the charges. He is in jail. He shall be set at liberty forthwith, unless required in some other case.

A.K.T.

Appeal allowed.