

A soulful 'Appeal' by the Human Rights Activists of India

We, the citizens of the Republic of India, express our deep concern and sorrow at the confirmation of capital punishment upon Prof. Devender Pal Singh Bhullar and subsequent dismissal of his review petition by the Supreme Court vide the judgment dated 22.3.2002 and 19.12.2002, by a three judge bench of the Supreme Court of India, comprising, Mr.Justice M.B.Shah, Mr.Justice B.N. Aggarwal and Justice Arijit Pasayat in a case under

TADA and there after dismissal of the review petition as well as curative petition by the same bench. Having faith in the might of the God and voices of Justice loving persons, we make a heartiest "Appeal" to all concerned for campaigning for seeking clemency to Devender Pal Singh and for commutation of the death sentence to Life Imprisonment. In this connection, we humbly draw your kind attention to some significant facts that would prove that the accused does not deserve 'death penalty'.

Devender Pal Singh Bhullar, is a 39 years old lecturer of Electronics Engineering in Punjab. In January 1991,

his father was made 'disappear' by the Punjab police. The family was perpetually harassed by the police. Bhullar then decided to escape from India for safer place. He went to Germany and sought asylum, which was denied by the German government. He was finally deported to India and handed over to the Indian police at Indira Gandhi International Airport, New Delhi on 19.1.1995. Upon reaching India, he was arrested and charged with carrying forged passport and false documents punishable under sections 419, 420, 468 and 471 of IPC and section 12 of Passport Act. After he allegedly made a so-called confession during his police remand to DCP, Delhi, he was booked in a case relating to a car bomb blast in New Delhi in 1993 and his involvement in the attempt to assassinate Mr Maninderjit Singh Bitta, the then President of All India Youth Congress(I). Although Mr Bitta escaped with minor injuries, some of his guards and associates died. It was alleged that the act was committed by four persons who were named as accused in the case. Besides, Mr.Bhullar, Mr. Daya Singh Lahoria and two other persons were named in the case. Mr.Daya Singh Lahoria was acquitted by the trial Court for lack of evidence. The two other accused were not brought to trial as their whereabouts were not known.

Mr.Bhullar was tried by the designated court-I, Delhi, under TADA (Terrorist And Disruptive Activities Act). He faced the trial for six years. He was sentenced to death by the designated judge, Delhi on August 25, 2001 simply on the basis of an alleged confession recorded by a Deputy Police Commissioner during the police remand, which he contended later, was obtained by coercion and torture. The prosecution miserably failed to prove its case beyond reasonable doubt and failed to produce reliable witnesses. There was no eye-witness in the case, nor anybody identified Devender

Pal Singh as the person who planted the bomb in the car. Simply the police officials who recorded the confession were produced by the prosecution and the trial court convicted the accused purely on the basis of that confession. The said 'confession' was allegedly made by the accused during the police remand when a day was left to expire his police remand and he subsequently denied of having made any such confession. He also did not make any confession before the magistrate or any court. It is a matter of common knowledge in Indian criminal jurisprudence that confession recorded by a police officer, on its own is not admissible, because there is overwhelming evidence of pressure and intimidation by the police upon the accused during police remand. By convicting Devender Pal Singh Bhullar and awarding death sentence on the basis of the said confession, the trial court as well as Supreme Court not only committed a grave error of law, but also diverted itself from the usual practise and procedure laid down in other judgments under TADA. The judgement, according to many experts in Criminal Law, is erroneous, unjust, too harsh and based on evidence that is not even normally acceptable by the courts.

Interestingly, while other petitions challenging the conviction under TADA filed by other persons are eating dust for years, the hearing of Mr.Bhullar's case in the Supreme Court came for hearing within a very short period. It was presumably because, the accused was a sikh and the matter became politically important for the judges. From the tone and tenor of the judgment, it becomes crystal clear that the judgment is biased and in so many words, the judges have categorically expressed their bias that they were influenced by the psedo-monster of global terrorism propagated after the attack on World Trade Center, possibly to muffle concerns over controversial decisions taken on political rather than judicious reasons.

ARGUMENTS SEEKING CLEMENCY:-

1.

Because, the most important point which should not be lost sight of, is that the senior most judge of the bench, Justice M.B.Shah acquitted the accused of all the charges vide a dissenting judgment. But the two judges, Justice B.N. Aggarwal and Justice Arijit Pasayat passed the majority judgment and after confirming the death sentence, wrongly brought the present case within the ambit of "rarest of rare case" which clearly proves the bias of the judges. The view taken by the court is absolutely irrational because of the non availability of corroborative evidence to prove a 'defective' confession. In one word, the judgement is erroneous. It has resulted in blatant violation of fundamental right of the accused to have a fair and impartial trial.

2.

Because the reasoning of the apex court that "proof beyond reasonable doubt should be a guideline, not a fetish", is contrary to the basic principle of criminal jurisprudence that the prosecution has to prove its case beyond reasonable doubt and any flaw or loose string may give benefit of doubt to the accused. The view taken by the court that procedure is only "a handmaiden and not the mistress of law" sounds to cover up the failures of prosecution

case. No person having knowledge of criminal law can appreciate such a view. Another important question of law arose that when the co-accused, named in the alleged confessional statement has been acquitted by the trial court, how the person who allegedly made the 'defective' confession can be convicted? Can a statement be read in part? Mr. Justice M. B. Shah rightly held that "the police failed to corroborate the confessional statement Devender Pal Singh Bhullar is said to have made before them. This despite the fact that the accused retracted that statement. And the independent witnesses produced by the police contradicted the confessional statement ascribed to the accused. Moreover, the police, in contravention of the law, failed to send the confessional statement at the earliest opportunity to the magistrate concerned."

3. Because, the fact that there was no eye-witness or direct evidence to connect the accused with the crime except the 'confession' allegedly made by the accused to the police officer and that too not produced before the magistrate with due diligence, deserved benefit of doubt in favour of the accused.
4. Because imposition of death penalty is a violation of fundamental human rights of life and the right not to be subjected to cruel, inhuman or degrading punishment. Both these rights are recognized in the Universal Declaration of Human Rights, International Covenant on Civil and Political Rights (ICCPR), other international and regional human rights instruments. Article 6(2) of the ICCPR states: "In countries which have not abolished the death penalty, sentence of death may be imposed only for the most serious crimes." All national and international human rights organisations strongly oppose the awarding of capital punishment to Devender Pal Singh Bhullar.
5. Because the alleged attempt to assassinate Maninderjit Singh Bitta cannot be called a 'terrorist act' as per Section 3 of the TADA Act, 1987. If at all it was committed, it was a criminal offence with intention to kill a particular person and not to create terror in the society, thus provisions of TADA have been wrongly applied in the present case.

In the premises, we, the undersigned, seek clemency for Devender Pal Singh Bhullar and request that you may kindly commute the death sentence to Life Imprisonment in exercise of your constitutional power conferred upon this highest office of the country.

Yours Truly,

(AMAR SINGH CHAHAL)
President

LAWYERS FOR HUMAN RIGHTS INTERNATIONAL