

Supreme Court Case Analysis:

State (N.C.T. of Delhi) Vs. Navjot Sandhu @ Afsan Guru¹ **(Parliament Attack Case)**

By: Shashwat Tiwari

INTRODUCTION

The case of Afsan Guru is remarkable in the history of India being of few attacks which were held with the intent to damage the sovereignty of the state. Although the case had many nuances relating to admissibility of electronic records and the impact it may have on the judgement, the apex court at the end partially ruled in favour of the appellants vindicating one of accused of some charges and dismissing the appeal for the conviction of S.A.R Gilani and Afsan Guru. But after several deliberations the legislators sought to pass a law which makes electronic records admissible, in order to deal with the challenges of the 21st century.

FACTS OF THE CASE

- A) On 13th December, 2001, five heavily armed persons entered the premises of Parliament House complex and killed the security personnel on the duty.
- B) The gun battle between the terrorists and the security guards went on for 30 minutes which led to the death of all the five terrorists and 13 guards and In the gun battle that lasted for 30 minutes or so, these five terrorists who tried to gain entry received fatal injuries (9 persons including 8 security personnel and 1 gardener succumbed to the bullets of the terrorists and 16 persons including 13 security men received injuries.)
- C) Jaish-E-Mohammed, one of the banned terrorist organisation under section 35 of Unlawful Activities (prevention) Act , 1967 claimed the responsibility of the dastard act and following the investigations for seven days the accused which were suspected to have a possible involvement were also affiliated to the same organisation. The four

accused were Mohd. Afzal, Shaukat Hussain, S.A.R. Gelani and Afsan Guru (Navjot Sandhu).

- D) After the investigations which went on for a short period of 17 days the investigating agency filed the report under section 173 of Cr.P.C and named four accused. The four accused were Mohd. Afzal, Shaukat Hussain, S.A.R. Gelani and Afsan Guru (Navjot Sandhu).
- E) Accused were charged under various sections of Indian Penal Code (for short 'IPC'), the Prevention of Terrorism Act, 2002 and the Explosive Substances Act by the designated Special Court. The designated Special Court presided over by Shri S.N. Dhingra and tried the accused on the charges. The trial went on for six months and as much as 80 witnesses were examined from the prosecution side and 10 witnesses were examined from the side of defence. It is recorded that around 330 documents were exhibited by the court in the case.
- F) The three accused, namely, Mohd. Afzal, Shaukat Hussain Guru and S.A.R. Gilani were convicted for various offences under **Sections 121, 121A, 122** read with Sections 302 & 307 of Indian Penal Code (IPC). Also Section 120B IPC and sub-sections (2), (3) and (5) of Section, sub-Sections (2), (3) & (5) of Section 3 of POTA and Section 4(b) of the same act and Section 3 & 4 of Explosive Substances Act.

DECISION OF THE SPECIAL COURT

The three accused, namely, **Mohd. Afzal, Shaukat Hussain Guru and S.A.R. Gilani** were convicted for the charges that were imposed under various acts including IPC, POTA and Explosive Substance Act. Accused 1 & 2 namely Mohd. Afzal and Shaukat Hussain were also convicted under Section 3 and 4 of POTA. Accused No.4 namely Navjot Sandhu (Afsan Guru) was acquitted of all the other charges except Section 123 IPC which is “Concealing with intent to facilitate design to wage war” for which she was suppose to undergo Rigorous Imprisonment for five years and fine.

The other three accused were given death sentences for the offences committed by them under Section 302 (murder) read with Section 120-B IPC (party to criminal conspiracy) and Section 3(2) of POTA. The amount of Rs.10 lakhs recovered from the possession of two of the accused, Mohd. Afzal and Shaukat Hussain, was forfeited to the State under Section 6 of the POTA.

CONFIRMATION OF THE HIGH COURT

Appeals by the parties

- The four accused filed a appeal against the verdict of the designated special court, in the High Court and the state also filed an appeal for the enhancement of Life sentence awarded to sentence of death in relation to their convictions under **Sections 121, 121A and 302 IPC**.
- The state also filed an appeal to convict one of the four accused which was earlier vindicated of all the charges except section 123 of IPC.

DECISION OF THE DIVISION BENCH OF HIGH COURT

- The High Court dismissed the appeals of Mihd. Afzal and Shaukat Hussain and confirmed the death sentence awarded to them. The court also confirmed their death sentence with respect to Section 121 and confirmed the death sentence. However the court allowed the appeals of other two accused which are S.A.R. Gilani and Navjot Sandhu (Afsan Guru) and thereby acquitted them of all charges.
- The judgment of High Court has given rise to seven which were filed in the Hon'ble Supreme Court of India in the following manner; (i) Two appeals filed by Shaukat Hussain Guru, (ii) One appeal filed by Mohd. Afzal, (iii) Four appeals filed by the State/Government of National Capital Territory of Delhi against the acquittal of S.A.R. Gilani and Navjot Sandhu.

ISSUES TO BE CONSIDERED

Confessions of the co-accused

- The court while examining the confession of the co-accused should have taken following propositions into consideration which were laid down in Ahmed anr. v. State of Rajasthan [2003 (9) SCC 673] " In regard to the use of such confession as against a co-accused, it has to be held that as a matter of caution, a general corroboration should be sought for but in cases where the court is satisfied that the probative value of such confession is such that it does not require corroboration then it may base a conviction on

the basis of such confession of the co-accused without corroboration. But this is an exception to the general rule of requiring corroboration when such confession is to be used against a co-accused.”

The nature of corroboration is of a **general nature** as used against both the maker and the co-accused, unless the court concluded that such corroboration should be on **the material facts** of the particular case and a generalised idea or proposition cannot be adopted and applied in every case as the facts of each case differ. In the present scenario confession against the maker and the co-accused is absolutely general in nature it does not lay perfect grounds for the Court in the appropriate case to base the conviction on the confession of the co-accused without even general corroboration.

- “The voluntariness and reliability of confession should be matter tested by the court. The admission of such confession would also be subject to the observance of the other provisions of Section 32 of POTA which are in the nature of procedural safeguards aimed at ensuring that the confessions are made by the accused in an atmosphere free from threat and inducement” as in the judgement of Ahmed v. State of Rajasthan.

Call records and its authenticity

- One of the major issues raised from the side of the accused was the inadmissibility of the electronic records (mobile phone call records) which the prosecution has produced for consideration in the appeal, the counsel on behalf of the accused raised the issue of credibility and reliance on the telephone records which were produced by the prosecution. The records lose their credibility because there was no certificate produced by the prosecution which is necessary for admitting any electronic record under **Section 65B(4) of the Evidence Act**.
- In the absence of the certificate issued under **sub-Section (2) of Section 65B** of the Indian Evidence Act, the information provided by the electronic record **cannot be adduced** in evidence and also in absence of a “competent” witness accustomed with the functioning of the computers during the time printouts were taken the secondary evidence under Section 63 is also **inadmissible**.

- The apex Court concluded that the **cross-examination** of competent witness acquainted with the functioning of the computer during the relevant time and the manner in which the printouts of the call records were taken was sufficient to prove the call records

COMMENT

'Science and law, two distinctive professions and with the evolution of society both have comfortably mixed and supplemented each other in various manner and has also ensured a fair process as well as justice being delivered. On one hand, scientific evidence holds out the possibility of extremely accurate fact-finding and a elimination of uncertainty by providing objectivity which often accompanies legal decision making. But at the same time, scientific methodologies, from the modern times **include risks of uncertainty** that the legal system is reluctant to undertake.

The above analysis categorically states the idea that though the Indian evidence law cannot be said to be outdated in the wake of new scientific challenges, as suitable amendments have been incorporated, however much remains to be done to make it comprehensively adequate to face any modern challenges that have time and again arose.

Therefore it is imperative to bring in new laws and reduce the writings of judicial pronouncements in order to bolster the Indian legal system that, the accused, in any case can take the support of any technical glitches which may help his acquittal even after committing the crime. Also there is a need for an overhaul in the entire justice system by adoption of E-governance, internet supervision and internet friendly environment in the Judiciary. E-Governance to the judiciary means, use of information and communication technology to smoothen and accelerate case progression to reach its logical end within the set time frame with adequate transparency and accountability so that nothing is left untouched and every aspect of the case even if relating to internet, electronic record or its admissibility is taken into consideration.