

**ARMED FORCES TRIBUNAL, CHANDIGARH REGIONAL BENCH AT
CHANDIMANDIR**

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Date of Institution : 06.05.2004

Date of decision : 15.04.2015

TA 468 of 2010 (arising out of Cr.WP No, 422 of 2004)

Dileep Kamdee	Petitioner(s)
Vs		
Union of India and others	Respondent(s)

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For the Petitioner (s) : Mr. Rajeev Anand, Advocate

For the Respondent(s) : Mr. SK Sharma, Sr. PC.

Coram: Justice Surinder Singh Thakur, Judicial Member.
Air Marshal (Retd) SC Mukul, Administrative Member.

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ORDER
15.04.2015

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Surinder Singh Thakur, J. (Oral)

1. The petitioner herein was convicted for the offence Under Section 69 of the Army Act read with Section 307 of IPC and sentenced to undergo rigorous imprisonment for a period of six years and dismissal from service. The sentence was awarded by the General Court Martial on 9.01.2004, which was confirmed on 26.03.2004. While confirming the Impugned Order, it was reduced to 3 years by the General Officer Commanding 33 Armoured Division. The petitioner was lodged in Central Jail Ferozpur to serve out the sentence.

2. The aforesaid findings and orders were challenged by the petitioner (accused) by way of filing Criminal Writ Petition No 422 of 2004 in the High Court of Punjab and Haryana, which was later transferred to this Tribunal vide order dated 21.01.2010 for adjudication, on commencement of the Armed Forces Tribunal Act, 2007 and thus registered as TA No 468 of 2010.

3. The brief facts germane to this petition can be stated thus. Army No JC – 373765H Nb Sub (ORL) Ravi Kumar (victim) at the relevant time, was Havildar in 33 Arty Bde Signal Company, now referred as the 'complainant'. On 14.12.2001, he was functioning as officiating senior JCO, as Maj Jadon, OC Signal Company was detailed to attend the law cadre at Hissar. The complainant was senior most left in the Coy (company). Due to militant attack on Parliament House on 13 Dec 2001, order was received from Headquarters to strengthen the existing security detail. Thus, double guard was detailed at the company and a QRT comprising of 2 personnel, namely Signalman Ramesh Chand and the petitioner, to be referred as the "accused" hereinafter, were detailed to perform the duties at the Brigade. Around 1730 hours, the complainant went to the Quarter Guard of 2021 Med Regt where kote and armoury was situated and supervised issue of arms issued by Hav AK Singh kote NCO, and he himself issued 20 rounds of ammunition per individual of the QRT and made the QRT

march to guard mountain area of the company, where he briefed the QRT comprising of Signalmen Ramesh Chand and accused regarding the security instructions, and also instructed them to report to the Brigade QRT NCO.

(ii) Around 1930 hours, the complainant left the company area and went to his room. After about 15 minutes he went to JCO's club and consumed two pegs of Rum. At that time, he heard some commotion from the side of company area presuming it might be due to some personnels quarrelling with each other.

(iii) Thereafter, he went towards the company area and stood outside 'A' barrack and shouted, "*Ki aap kyon halla kar rahe ho*", towards the direction from where the noise was originating. There was nobody present outside the barrack. Then the accused came out from the barrack and told him "*aap apne aap ko bahut chatak samajte ho*". Thereafter, complainant asked the accused as to what was he doing there in the barrack with arms and ammunition when he was detailed in the QRT duty. The accused retaliated and warned "*mere diamak mat karab karo, mein kuch aur kar baitunga. Idhar se bhaag jaane*".

(iv) On this, the injured JCO left towards the club. When he crossed the gate pillar on which the lights were attached, he felt that somebody was chasing him. He stood there and looked back. He saw

that it was the accused following him, thinking that the accused was also going to attend his duties, where he was posted, but subsequently, the accused held the rifle at his waist level and fired at him. The complainant received the bullet injury on his hip and fell unconscious. After that he was not aware as to what had happened.

(v) After about 3 days when he regained his consciousness, he found himself lying in the ICU 159 GH Ferozpur, where he was operated upon and remained hospitalized for 12 days. From there he was transferred to Jalandhar Hospital accompanied with two attendants. He, however, remained in the Hospital as an indoor patient for 27 days, thereafter he was transferred to Command Hospital Chandimandir for further treatment and remained admitted there for 35 days. Then he was given 6 weeks leave and was required to report to Air Force Command Hospital Bangalore, for further treatment, where he underwent 32 days of neurological treatment. He was operated upon by the neurosurgeon and subsequently given 8 weeks' sick leave for post Operative care. After completion of 8 week sick leave, he again reported back to Air Force Command Hospital in Aug 2002.

4. The first Medical Board of the complainant took place in Aug 2002 and was downgraded to Medical Category (C) permanent for 6 months. He reported back to his unit. During his stay in the unit he

developed certain medical problems as he was unable to pass urine properly. Thereafter, he went to MH Faridkot and was again again referred to command hospital Chandimandir and down-graded to permanent category (C). He was also treated for urological centre at the hospital and operated upon and finally discharged from Command Hospital Chandimandir and advised to “catheterization” once a week.

5. Court of Inquiry was conducted into incident and summary of evidence was also recorded whereby the accused was indicted and ultimately General Court Martial proceedings were conducted after due approval.

6. The accused was charged under the aforesaid sections, tried and finally convicted and sentenced as aforesaid.

7. The Learned Counsel for the accused vehemently argued that there was no eyewitness to the alleged incident; there was no *mens rea* and the prosecution has also failed to prove it. The prosecution also did not produce any ballistic report in order to connect the weapon of the accused with the commission of the offence. Further there are contradictions/infirmities in the statement of the injured. No opportunity of hearing was afforded by the Commanding Officer to the accused.

8. On the other hand, the learned counsel for the respondents submitted that the facts of the case reveal *mens rea* which the

accused nurtured against the victim at the relevant time and further that the injury in question is connected with the weapon fired by the accused. There is proper corroboration of the material particulars and the statement of the victim cannot be lightly brushed aside and further that the doctor has categorically stated about the bullet injury having been received by the victim which could have been proved fatal, but for timely medical help. It is also ventilated that proper procedure as per the Army Act and in accordance with Law and also the principles of natural justice were adopted. It is also submitted that authorities after considering the plea of the accused, considerably reduced the sentence passed upon him. Since there is no infirmity in the impugned order thus no interference is required.

9. We have carefully examined the rival contentions and have scanned the evidence on record.

10. The injured complainant was examined as PW-1. He has given the details of the alleged incident as stated above. He stated that 20 rounds along with rifle were issued by him to each and every personnel who were deputed QRT duty including the accused. He also stated about the fact that when he was standing at the spot from where the noise was coming and noticed the accused with rifle and ammunition. On having confronted him as aforesaid, he chased the complainant and fired at him from the official weapon and the bullet

hit the complainant and fell unconscious. He is categorical about the accused having been identified as the assailant. PW-1 was subjected to meticulous cross-examination and even in the cross-examination, nothing material could be extracted from him which could make his statement a suspect. He specifically stated that the accused had fired at him with INSAS rifle 5.56 mm. To a Court question, he also confirmed the fact that he saw the only accused standing behind him and none-else. In the cross-examination, he again reiterated that he had issued the ammunition required for that rifle leaving no doubt about the involvement of the accused beyond doubt.

11. PW-3 is Sub Maj ShishRam Yadav, identified the accused before the GCM. He also categorically stated that at the relevant time, around 2000 hrs, he was in his room in the JCO's mess and heard the rifle shot. Thereafter, he came out and noticed the complainant lying on the ground, crying and the accused was standing behind him at a distance of 5-7 Meters. He asked the accused as to what had happened, on this he stated "maine goli mari hai" (I had fired). He also disclosed that there was one more round in the rifle chamber. Thereafter, he took the rifle from the accused and took out the bullet from the chamber of the weapon. The accused was found to have 18 live rounds with him. He put the round along with the remaining 18 rounds and took the accused along with rifle with 19 live rounds and

went towards the Brigade Camp Lines. He further stated that he saw QRT commander Havildar BS Bhamare coming towards him, to whom he handed over the rifle with 19 rounds/cartridges and the accused was taken to the QRT. He also told Sub Brijendra Singh to take complainant Nb Sub P Ravikumar (PW-1) to 173 MH Faridkot. He telephoned from the duty clerk's office, 33 Arty Bde to 114 Med Regt ofrs mess, where a party was going on. The phone call was attended by Maj Ajit Dhaka, DQMG to whom he informed about the entire incident. Complainant was sent to 129 GH Ferozepur. He also confirmed the fact that there were two globe lights on the gate pillars where this incident alleged to have taken place and the visibility was sufficient to identify a person nearby.

12. In the cross-examination he specifically stated that it was possible to identify a person from a distance of 5-7 meters. He also stated that the accused was standing near the gate. According to him, he took about 3-4 minutes to reach the site of incident. On the question put by the Court, he further affirmed that the accused was standing with the rifle Bagal Shastra position and did not see anybody else at the place of incident other than the accused. He also stated that the accused had handed over to him INSAS 5.56 mm rifle.

13. PW 4 (Havildar Bhaware) was Havildar (Survey) in 33 Arty Bde camp. On the relevant date, he was detailed as the Bde QRT Gd Cdr.

The QRT comprise of 4 person, besides him along with two persons from Bde Sig Coy. Around 1800 hrs, on the same day, at the Guard mounting area, both the accused and Signelman Ramesh Chand reported to him with arms and ammunition. After the guard mounting, he briefed the entire QRT guard. He further stated that the QRT JCO, Sub Brijendra Singh briefed him to keep the QRT at one place and remain alert. Due to the winter season, the cook house had opened early so he sent the QRT personnel one by one for having dinner. Around 1930 hrs, he sent the accused and another person for the dinner at the respective cookhouses. As almost the entire QRT had taken the dinner, then he left for having his dinner around 2000 hrs. When he was having his dinner, according to him, he heard some noise; he came out to find out as to what had happened. He noticed some persons running from the camp cookhouse towards Brigade Camp JCO's mess. He also went in the same direction and saw Sub Maj SR Yadav PW-3 along with the accused on the way. PW-3 aforesaid handed over to him (PW-4) INSAS rifle 5.56 along with the ammunition box with the direction to arrest the accused. He asked as to what had happened; on this he replied that the accused had shot Nb Sub P Ravikumar (PW-1). The accused was escorted to the line. He looked frightened. When he asked the accused as to what had happened, the accused told him that he had shot Nb Sub P Ravikumar. The aforesaid witness also counted the rounds which Sub Maj SR Yadav had given to

him. These were 19 in number. Lt Col Narendra Pal, Camp Commandant of 33 Arty Bde camp, also reached the sight and ordered him to put the accused in the Qtr Guard of 40 Med Regt. Thereafter he took him to the cell of the guard room. At that time, he was accompanied by one JCO of the Sig Coy, Sub Nair, and handed over the rifle INSAS 5.56 MM and 19 rounds of the ammunition to the JCO Sub Nair. In the cross-examination, he stated that the accused belonged to a different Sub unit and had drawn weapon and ammunition on his own name from his sub unit, and as such he was responsible for his arm and ammunition. So when the accused went for his dinner, he carried his arms and ammunition with him. Further corroboration is also made by PW-5 Hav AK Singh of 33 Arty Bde Sig Coy, who stated that rifle bearing Regn No 15671484, Butt No 05, 5.56 INSAS MM was issued to him with 20 rounds, which were identified by him during the trial.

14. The aforesaid testimonies are also corroborated by PW-7 Signalman Ramesh Chand, PW-9 Signalman N Viju as well as PW-11 Maj Y Jadon.

15. PW-6 is Maj Sameer Kumar Regimental Medical Officer 282 Medical Regiment. At the relevant time, said doctor was posted as DMO at 173 at Faridkot. He testified that around 2100 hrs he was informed by duty nursing assistant that a patient with gunshot wound was brought to the casualty ward. On reaching MH and on examining

the injured who was brought by Sub Brijender Singh and Naik Om Parkash of 33 Arty Bde Sig Coy, he noticed that the injured had sustained gunshot wound having shot by a sentry on duty. The victim was placed on DIL at 2100 hrs and subsequently transferred to 159 GH Ferozepur. The nature of the injury noticed on the victim was wound of entrance on his gluteus (Buttocks) muscle and a wound of exit around the perinal area (the anus). There was a subsequent wound of the right side of the thigh which in his opinion probably could have been due to a bony splinter.

16. He also confirmed that the history given by the persons accompanying the victim revealed that it was a gunshot wound. He opined that in a gunshot wound the wound of entrance is a small hole whereas the exit is a large gaping area as was in this case. He produced and exhibited Medico-legal register of 173 MH Faridkot in original of 14th Dec 2001. He identified his own signature thereon. According to him, the bullet had hit the vital part of the body and further opined that it was possible that the injured could have died of the injury caused by gunshot wound. He also stated that if the bullet hits a bone on the body, the bone could break and the piece of the bone could come out due to kinetic energy and cause further injury. He further stated that the injury caused to PW-1 in the right thigh

could probably have been due to the splintering of the bone, such an injury could have been caused only due to gun-shot wound.

17. On analysing the evidence aforesaid led before the General Court martial, we find that the complainant was not confronted with the FIR in question to show any material contradiction or omission as ventilated and further in the cross-examination nothing has come on record which materially contradicts the FIR alleged to have been made. The complainant has very minutely stated about the incident and he also stated that after receipt of gunshot injury, he fell unconscious. The delay, if any, as pointed out by the learned counsel for the accused in the facts and circumstances of the case, cannot be held to be fatal to the prosecution case. The statements of other witnesses are of a conclusive nature and tendency leaving no doubt to suspect any other person than the accused as real culprit. The element of *mens rea* in this case is writ large.

18. On critical examination of the aforesaid evidence, there is absolutely no doubt that it was the accused and the accused alone who had fired at the victim (PW-1) with his service rifle and further it is also proved on record that 20 rounds of ammunition were issued along with the weapon in question to him. After incident, he was immediately apprehended as aforesaid, and 19 live cartridges were recovered along with the weapon from his person. He did not render

any explanation about the 20th round. Therefore, he is proved to be the assailant beyond doubt. Further the ingredients of attempted murder punishable under Section 307 IPC stand fully met which is of the category falling in Section 69 of the Army Act. As such, in our considered opinion, the accused was rightly convicted and sentenced for the offence(s). There is no merit as such appeal/petition is dismissed.

(Justice Surinder Singh Thakur)

(Air Marshal (Retd) SC Mukul)

15.04.2015

raghav

Whether the judgment for reference is to be put on internet? Yes / No.