

(2011) 01 DEL CK 0302

In the Delhi High Court

Case No : Writ Petition (C) 8499 and 9000 of 2005

Const. Jaibir Singh

APPELLANT

Vs

Union of India (UOI)
 Ex. Ct. Satpal Singh Vs Union of
India (UOI) and Another

RESPONDENT

Date of Decision : 20-01-2011

Acts Referred:

Citation : (2011) 01 DEL CK 0302

Hon'ble Judges : Suresh Kait, J;Pradeep Nandrajog, J

Bench : Division Bench

Advocate : Kuldip Singh, Inderjit Singh and Sanjay Bhardwaj, for the Appellant;
R.V. Sinha and A.S. Singh, for the Respondent

Final Decision : Dismissed

Judgement

Pradeep Nandrajog, J.—Pertaining to an incident which took place at the BSF Camp at Cooch Behar on 11.5.2003, 3 constables of BSF were issued a charge as under :

The accused No. 88433879 CTB.A. Rao (accused No. 1), No. 90006608 CT Jaibir Singh (accused No. 2) and No. 90006597 CT Satpal Singh (accused No. 3) of 109 Bn BSF attached with 1st Bn BSF are charged with :

(FIRST CHARGE) USE OF CRIMINAL FORCE BSF ACT Sec 20 (a) In that they, At SHQ BSF Cooch Behar, Azad Nagar campus at about 2000 hrs on 11/05/03 struck with their fists on the face and neck of No.80005104 HC (CHM) Nizamuddin of 109 Bn BSF

SECOND CHARGE INTOXICATION BSF ACT Sec 26 In that they, At SHQ BSF Cooch Behar Azad Nagar Campus at about 2000 hrs on 11/05/03 found in a state of intoxication.

2. As per BSF Act and the Rules Deputy Commandant V.K. Singh was required to prepare the record of inquiry and he proceeded to do so and submitted the same

to the Commandant but could not be taken to the logical conclusion, as claimed by the Respondents, and in respect whereof we would be noting the appropriate pleadings while deciding the controversy raised on the record of inquiry being prepared for a second time.

3. Sh.G.P. Dass Deputy Commandant was required to re-conduct the proceedings pertaining to recording of evidence which he did and submitted the same to the Commandant. It be noted that 7 witnesses were examined all of whom were cross examined by the charged officers. The charged officers were thereafter permitted to make a statement, which they declined to make and only one, Const.B.A. Rao stated that he would produce 3 witnesses in defence, which he did. The record of evidence was submitted to the Commandant who decided that the 3 charged officers should be tried by a Summary Security Force Court. Acting as the Court the Commandant redrew the charge sheet, contents noted hereinabove, and recorded the plea of the charged officers on the two charges. All three admitted the second charge but pleaded not guilty for the first.

4. Thereafter, the prosecution led evidence and the 7 witnesses whose statements were recorded during Court of Inquiry proceedings were summoned.

5. It may be noted here that an opportunity was given to the accused to avail the services of a defence assistant, which they avail by requiring Deputy Commandant Sh. Raj Kumar to act as the friend of the accused and record produced, in original, before us shows that Deputy Commandant Raj Kumar acted as the friend of the accused when the first proceeding was conducted by the Court on 5.4.2004 and as recorded in the proceedings of said date.

6. Though learned Counsel for Const. Jaibir Singh, Sh. Kuldip Singh Advocate concedes that there is sufficient incriminating evidence indicting the accused and therefore he does not desire to urge any submission thereon, Sh. Inderjit Singh learned Counsel for Const. Satpal urges to the contrary and thus we proceed to note, in brief, the evidence recorded by the Summary Security Force Court.

7. The charge shows that the Petitioners and Const.B.A. Rao, who we find has not challenged the punishment inflicted on him, had allegedly assaulted HC (CHM) Nizamuddin, it would be appropriate for us to note the testimony of HC Nizamuddin before we note the testimony of the other witnesses.

8. Appearing as the second witness of the prosecution HC Nizamuddin deposed that in April 2003 he was appointed CHM of "G" Coy of 109 Bn. BSF and reached the station headquarters on 20.4.2003 on attachment duty. The Coy performed guard/security duties at the station headquarter BSF Campus. On 11.5.2003 at about 15:30 hours he found Const.B.A. Rao, Const. Chaudhary, Const. Dinesh and Const. Ram Niwas absent and once again found Const.B.A. Rao absent at 18:30 hours. He reported non-availability of Const.B.A. Rao since he was to be on duty and hence he replaced Const. Gangadhar on duty. In writing he reported Const.B.A. Rao's absence from duty. Soon thereafter Const.B.A. Rao arrived and when he enquired from him as to where he was since 15:30 hours, Const.B.A.

Rao started arguing with him which was witnessed by SI Madan Singh (PW-4). Const. Jaibir Singh joined and he along with Const.B.A. Rao restarted the argument. He could smell alcohol from their mouth. On being asked by SI Madan Singh he and SI Madan Singh reported the matter to Officiating Coy Cdr.A.S. Cheema (PW-3) and after lodging the report he returned to his bed in the barrack and was preparing to proceed to take meals when Const.B.A. Rao approached him menacingly and enquired as to what he had reported to the Officiating Coy Cdr. He told him what he had reported at which Const.B.A. Rao pushed him using his fist and open palm at his neck and chin. Const. Jaljit Ram separated Const.B.A. Rao from him by extracting him from the clutches of Const.B.A. Rao. He moved towards the place where dinner was to be served and as he moved out of the cabin he was accosted by Const. Jaibir Singh and Const. Satpal Singh (i.e. the Petitioners) who obstructed his way by standing on the way with their hands on their hips. He retreated towards his cabin when Const.B.A. Rao once again pushed him towards the wall and as a result he hit the wall and simultaneously blows with fists were showered on his shoulders and neck. Insp.A.S. Cheema the Officiating Coy. Cdr. came running and at that time Const.B.A. Rao disappeared but the other two accused remained. He narrated what had happened to Insp.A.S. Cheema at which point of time Const. Satpal Singh told Insp.A.S. Cheema as to how had he entered the barrack of jawans and contemptuously uttered "AAPNE EK KATHUE KO CHM LAGA RAKHA HAI AAP ISHKO KAB TAK BACHAYEAGA HUM TO ISHKO GHAR TAK NAHIN CHORENGE?". Insp.A.S. Cheema tried to pacify Const. Jaibir Singh and Const. Satpal but in vain. When Insp.A.S. Cheema was going towards the telephone near the entrance of the barrack, Const. Satpal inflicted fist blows on him i.e. HC Nizamuddin at which Insp.A.S. Cheema immediately returned to rescue him and took him towards the telephone whereupon Const. Satpal followed and caught him by his neck and squeezed his neck. At that point of time SI Subramaniam (PW-1) came and rescue him. On the orders of SI Madan Singh he was asked to bring duty register and as he proceeded to his bedding, Const. Jaibir Singh inflicted fist blows on him. The three accused were thereupon sent to the Base Hospital for medical examination and on their return at 23:45 hours after medical examination were placed under guard with HC Vijay Kumar stationed to keep a watch on them as they were under influence of alcohol. In spite of HC Vijay Kumar being on guard, Const.B.A. Rao and Const. Jaibir managed to attack him once again when Const. Satpal Singh switched off the light (to facilitate the attack) HC Vijay Kumar intervened and in spite thereof Const.B.A. Rao and Const. Jaibir managed to repeatedly kick him with their legs. He started bleeding and managed to extricate himself and escape. He was taken to the MI Room where he was rendered medical aid.

9. Analyzed briefly, the testimony of HC Nizamuddin shows a first altercation instigated by Const.B.A. Rao followed by Const.B.A. Rao and Const. Jaibir committing acts of violence a little later. Further followed by the third stage of the incident which took place a little later as HC Nizamuddin was proceeding to

take food and the fourth stage was the incident which took place late night after 23:45 hours when the three accused once again acted in concert. From the testimony of HC Nizamuddin it is to be revealed that at different points of time SI Subramaniam, Insp.A.S. Cheema, SI Madan Singh and HC Vijay were present and thus it is apparent that the said four persons could not be witnessed to the entire series of incidents which transpired. Suffice would it be to state that SI Subramaniam who appeared as PW-1, Insp.A.S. Cheema who appeared as PW-3, SI Madan Singh who appeared as PW-4 and HC Vijay who appeared as PW-5 corroborated the testimony of HC Nizamuddin with respect to the various facets of the incident which they had witnessed and as deposed to by HC Nizamuddin and thus there is evidence of these four witnesses to corroborate the testimony of HC Nizamuddin in its entirety.

10. L/Nk.L.D. Nayak deposed as PW-6 and stated that at around 21:30 hours on 11.5.2003 the three accused were escorted by his guards to the MI Room for medical examination and at that time Insp.A.S. Cheema and SI Madan Singh were present. Insp.(MT) P.D. Singh deposed as PW-7 and stated that around 21:10 hours he was informed by Insp.A.S. Cheema that three personnel of his company were creating a problem under influence of liquor and he went to the barrack where he found Const. Satpal making a lot of noise.

11. It is urged by Sh. Inderjit Singh learned Counsel for Satpal that not all witnesses of the prosecution have named his client Const. Satpal and from which learned Counsel urges us to draw an inference that there is insufficient evidence to indict his client.

12. We reject the plea for the reason, as noted by us the incident of HC Nizamuddin being assaulted on the same day is a continuous chain of 4 incidents and from the statement of HC Nizamuddin it is apparent that different persons were present at different points of time when the incident took place and Const. Satpal Singh was an offender at stage 3 and 4 and obviously the witnesses who had deposed to the events of stage 1 and 2 would not be referring to him.

13. To conclude on the evidence, we drop the curtain by recording that there is overwhelming evidence against the Petitioners.

14. It is urged that there is no reason why the first record of inquiry proceedings were not taken to the logical conclusion, a plea which is neither here nor there for the reason in the counter affidavit filed in W.P.(C) No. 8499/2005, in para 2(v) a satisfactory explanation has been given and which we find has not been controverted, much less demolished by the Petitioners. The explanation reads as under :

v) That in reply to sub para v), it is stated that Shri V.K. Singh, DC, while conducting the Record of evidence, had summoned all the prosecution witnesses connected with the case and their evidence were recorded. Officer had completed the Record of Evidence and submitted to SHQ BORDER SECURITY FORCE Cooch Behar vide 1st Battalion L/No. Estt/ROE/01 BN/03/904 dated 21 June 2003. But

the same was returned to 1st Battalion BORDER SECURITY FORCE vide SHQ BORDER SECURITY FORCE Cooch Behar L/No. 1010/3/Estt/Disc./2003/1398 dated 25 June, 2003, with the observations that "Record of evidence be resubmitted alongwith the remarks of the Commandant and recommendation regarding mode of disposal of the Record of evidence?. Accordingly, the case was resubmitted to SHQ BORDER SECURITY FORCE Cooch Behar vide 1st Battalion L/No. Estt/ROE/01 BN/2003/1113 dated 14th July 2003. Later on SHQ BORDER SECURITY FORCE Cooch Behar vide their L/No. 1010/3/Estt.SHQ-CBR/ROE/03/2121 dated 09 Oct.2003, directed unit that with reference to Rule 51 of the BORDER SECURITY FORCE Rules 1969, the said Record of Evidence conducted by Shri V.K. Singh, DC cannot be disposed off owing to exigencies of services of the Commandant SHQ BORDER SECURITY FORCE Cooch Behar, who had already proceeded on superannuation pension and the post was still vacant and earlier issued Record of evidence orders be treated as cancelled and a fresh Record of Evidence may be conducted by observing procedure under relevant rules and the disc. Case Record of Evidence so prepared be disposed off accordingly and BORDER SECURITY FORCE Rule 36 91) may be complied with and accordingly vide SHC BORDER SECURITY FORCE Cooch Behar further vide their O. No. 1010/3/Estt/SHQ-CBR/03/13875-78 dated 17 Oct. 2003, intimated that in pursuance of Ftr HQ BORDER SECURITY FORCE NB Sig No. A/4469 dated 07 Oct. 2003 and hearing made by the than Commandant SHQ BORDER SECURITY FORCE Cooch Behar under Rule 45 of BORDER SECURITY FORCE Rules 1969. Record of Evidence of the disc case ordered vide SHQ BORDER SECURITY FORCE Cooch Behar Order No. Estt.1010/3/2003/1132-37 dated 12.05.03 in respect of No. 88433879 Const.B.A. Rao, No. 90006608 Const. Jaibir Singh and No. 90006597 Const. Satpal Singh of "G" Coy 109 Bn.BORDER SECURITY FORCE, is hereby revoked owing to exigencies of services since the concerned officer had prepared by Commandant 1st Battalion BORDER SECURITY FORCE to dispose off the disc, case at their end as already directed vide SHQ BORDER SECURITY FORCE Cooch Behar, L/No. 2121 dated 09 Oct. 2003. In compliance to the direction of SHQ BORDER SECURITY FORCE Cooch Behar the accused person were again put up for hearing on offence report before Commandant 1st Bn. BSF on 15th Oct? 2003, for committing offences u/s 20(a) i.e. using criminal force to his superior (first charge) and Section 26 intoxication (second charge) of BORDER SECURITY FORCE Act 1968. All the three accused persons pleaded "not guilty" of 1st charge and "guilty" of 2nd charge, hence competent authority issued orders to prepare record of evidence of the case by Shri G.P. Das, AC, 1st Battalion BORDER SECURITY FORCE

15. It is then urged that the first charge is vague inasmuch as the role of the accused is not assigned/described in the charge. It is urged that it has not been stated that the accused acted with a common intention or a common object or as a result of conspiracy. The plea is based as if the trial was for offences punishable under the Indian Penal Code requiring ingredients of either Section 34 or Section 149 or Section 120B IPC to be narrated in the charge.

16. A perusal of the charge clearly shows that the three accused were made aware that the charge against them was of assaulting HC Nizamuddin.

17. The plea that the Petitioners were denied a fair opportunity of defence by not permitting them to engage a lawyer of their choice is a desperate attempt to wriggle out of the situation for the reason Petitioners never indicated the choice of any lawyer to defend them. When asked to name a person who could act as a friend of the accused they informed that Dy. Cmdt. Raj Kumar should act as the friend of the accused, and as noted hereinabove, the original record produced shows that at the Summary Security Force Court proceedings all accused were represented by Dy. Cmdt. Raj Kumar.

18. From the evidence led it is apparent that the Petitioner and co-accused Const.B.A. Rao were not only angry with HC Nizamuddin for having reported their absence. The evidence also brings out that the three constables had an issue with a Muslim officer being the in-charge of the Coy. The derogatory utterance of Const. Satpal directed at the religion of HC Nizamuddin evidences the same. The evidence brings out that the accused repeatedly assaulted HC Nizamuddin and were, to use the colloquial phrase, hell bent to cause grievous injury to HC Nizamuddin. They were drunk. They persisted with insubordination in the presence of superior officers.

19. The plea that the statutory appeal has been disposed of without reasons is neither here nor there for the reason we find overwhelming evidence against the Petitioners and hardly any plea has been raised which is worthy of being considered.

20. Being members of a Disciplined Force, Petitioners' conduct is abhorable and the penalty levied of dismissal from service cannot be stated to be disproportionate to the gravity of the offence.

21. The writ petitions are dismissed.

22. We refrain from imposing cost.