
(2007) 04 DEL CK 0031

In the Delhi High Court

Case No : Writ Petition (C) No. 23127 of 2005

EX. Sepoy P. Vincent

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 20-04-2007

Acts Referred:

Citation : (2007) 142 DLT 252

Hon'ble Judges : T.S. Thakur, J;S.N. Aggarwal, J

Bench : Division Bench

Advocate : K. Ramesh, for the Appellant; Barkha Babbar and T. Prashad, Dy. J.A.G., for the Respondent

Final Decision : Dismissed

Judgement

T.S. Thakur, J.—A writ court examining the validity of an order or sentence passed by a Court Martial does not sit in appeal over any such order. The scope of judicial review is limited to finding out whether the order or sentence suffers from any illegality, procedural irregularity or perversity of any kind. The Court may also examine whether the punishment imposed by the Court Martial is disproportionate to the gravity of the offence committed by the accused. Is there any room for this Court to interfere on any one of those grounds in the present case is the only question that falls for consideration in this writ petition.

2. The petitioner was enrolled as a Sepoy in Indian Army in January, 1994. In the year 1996, he was transferred to 25 Rashtriya Rifles, then deployed in the Counter Insurgency Theatre of military operations in the State of Jammu and Kashmir. On the fateful day of 15th January, 1997, the petitioner was a part of a platoon deployed at Sitengal Post located near village Sitengal in Tehsil Bhadarwah of district Doda. Apart from the petitioner, Naib Subedar K. Karnan, Sepoy Parasuraman, Sepoy R. Ilangovan, Lance/Naik IB Khati and Sepoy Kodandan were also a part of the said platoon, which was commanded by Capt. Anil Sen. According to the prosecution case, Sepoy R. Ilangovan, L/N IB Khati and Sepoy Parasuraman were eating their dinner which included a chicken dish

pecially arranged and cooked on the instructions of Naib Subedar K. Karnan. The petitioner who too had been invited to partake the food at the invitation of Naib Subedar K. Karnan had an altercation with L/N Jalendran's in which the latter accused the former of having used his stove pump for cooking the chicken without L/N Jalendran's permission. The matter, it appears, was resolved with the intervention of Havildar Bhaskaran, Sepoy R. Ilangovan and Sepoy Parasuraman. The accused thereafter left for his living area on the advice of the inmates of Bunker "A" where the personnel aforementioned were eating their food to avoid any untoward incident.

3. Some time later, Sepoy Kodandan who was returning from the cook house to Bunker "A" saw the petitioner standing at a short distance of about 4 yards from Bunker "A" while the rest of the party were sitting inside the said bunker. The petitioner was seen holding an AK-47 rifle which had been issued to him by Sapper Uma Shankar, PW-7 for his duty. When Sepoy Kodandan asked the petitioner as to what he was doing near the Bunker, the petitioner replied that he was on duty. The prosecution's case further is that when Sepoy Ram Dass finished his food and wanted to go out of the Bunker to wash his plate, he saw the petitioner standing outside the entrance of Bunker "A" which was covered by a old, thin and torn Hessian cloth. Sepoy Ram Dass (PW-5) asked the petitioner, who was standing with an AK-47 Rifle on hip position, to go away to avoid any further conflict to which the petitioner is alleged to have replied that Sepoy Ram Dass should not come forward as the petitioner had cocked his rifle. Sepoy Ram Dass did not take the warning of the petitioner very seriously and took one more step in order to go outside for which the petitioner furiously warned him not to take a single step further otherwise he would shoot him dead. Seeing the petitioner in an agitated mood, PW-5 Sepoy Ram Dass remained inside the Bunker. Sepoy Parasuraman who also heard this conversation moved towards the accused petitioner but before he could reach him, he was fired at by the petitioner and fell just outside the entrance of Bunker "A". The petitioner is then alleged to have fired another burst from his rifle inside the Bunker which hit Sepoy R. Ilangovan who was also trying to rush outside Bunker "A" in order to stop/control the petitioner. The firing terrorized the inmates of Bunker "A" who took cover under their beds inside the bunker. As a result of the firing, Sepoy M. Kodandan (PW-6) received a bullet injury on the upper side of his right thigh. According to the prosecution, the petitioner fired a third burst of bullets inside the bunker inflicting serious gun-shot injuries to Naib Subedar K Karnan and L/N IB Khati.

4. The prosecution case further is that upon hearing the sound of AK-47 rifle bursts, PW-1 Capt. Anil Sen and PW-2 Havildar Major Bhupinder Singh rushed towards Bunker "A". Capt. Anil Sen is alleged to have held the weapon of the petitioner outside Bunker "A" while PW-2 Have/Major Bhupinder Singh is alleged to have asked him whether he had fired from the weapon to which the petitioner replied that he had fired from his weapon and killed two persons. Company Havildar Major Bhupinder Singh (PW-2) thereupon was directed by PW-1 Capt.

Anil Sen to take care of the petitioner and check the weapon. This was done by Havildar Bhupinder Singh, PW-2 who found that the same contained 19 live rounds in the magazine and one additional round in the chamber. Capt. Anil Sen then ordered the inmates of Bunker "A" to come out and not use any weapon. At this moment, L/N Jalendran's, PW-6 also came out stumbling, crying and shouting on the death of his brother Sepoy R. Ilangovan and holding his rifle AK-47 with his hands down and the barrel pointing to the ground. Capt. Anil Sen is alleged to have taken this weapon also into his custody and informed the Commanding officer SV Kumar who arrived from the Tactical Headquarters at Bhadarwah. The injured, i.e. Naib Subedar K Karnan, Sepoy Parasuraman, Sepoy R Ilangovan, L/N IB Khati and Sepoy M Kodandan were evacuated to the room adjacent to Capt. Anil Sen's living room. A proper check of all the weapons was carried out in which it was confirmed that firing had taken place only from the weapon of the accused petitioner. On the directions of the Commanding Officer, both the accused and L/N Jalendran's were taken into custody by Quick Reaction Team (QRT) and brought to Tactical Headquarter by him. Capt. CR Kiran Naik (PW-4) who followed the Commanding Officer attended the casualties and declared that three persons, namely, Naib Subedar K Karnan, Sepoy Parasuraman and Sepoy R Ilangovan were dead. First Aid was however given to L/N IB Khati and Sepoy Kodandan who were shifted to Sub District Hospital, Bhardarwah. Post-Mortem of the dead was conducted by Dr. Omkar Bhagat (PW-10) in whose opinion, the deaths were due to bullet injuries causing massive haemorrhage and cardio respiratory arrest. A First Information Report was lodged by the unit with the Police Station at Bhadarwah. The police visited the spot and took photographs. The weapon, live cartridges and fired cases recovered from the site of incident after seizure and sealing were sent to Forensic Science Laboratory, Jammu where these items were subjected to a thorough examination by the Ballistic expert Mr. RS Jamwal (PW- 13). The report of the Ballistic expert confirmed the use of the weapon issued to the petitioner.

5. The petitioner was in due course charged with an offence of murder and an offence of attempt to murder and tried and found guilty on both counts by a General Court Martial. At the trial before the General Court Martial, the prosecution examined Capt. Anil Sen as PW-1, Havildar Major Bhupinder Singh as PW-2, Lance/Havildar V. Bhaskaran as PW-3, Capt. CR Kiran Naik as PW-4, Sepoy Ram Dass as PW-5, Sepoy M. Kodandan as PW-6, Sapper Uma Shanker as PW-7, L/Nk K Jalendran's as PW-8, Nk Bijender Singh as PW-9, Dr. Omkar Bhagat as PW-10, Mr. Sonallah Naik as PW-11, Mr. Shadi Lal Manhas as PW-12 and Mr. RS Jamwal as PW-13.

6. The petitioner's defense as presented before the Court Martial was that L/N Jalendran's had abused the petitioner and pushed him furiously accusing him of having taken his stove pump for cooking the chicken. It was further alleged by him that L/N Jalendran's had become violent and kicked the Tiffin of the petitioner as a result of which the food had fallen on his dress. According to the petitioner, he had cleaned his dress, picked up his rifle and was going out for his

duty when L/N Jalendran?s moved towards him in an uncontrollable state and tried to snatch his rifle. Seeing this, Sepoy Parasuraman had tried to intervene and separate the accused and L/N Jalendran?s along with other inmates to defuse the situation. The petitioner"s further case was that it was in this melee that his rifle which was an automatic weapon with burst firing got fired resulting in injuries to Naib Subedar K Karnan, Sepoy R. Ilangovan, Sepoy Parasuraman, L/ N IB Khati and Sepoy M Kodandan who were all in the Bunker at that point of time. His further case was that he had picked up the rifle and handed over to Capt. Anil Sen stating that the firing had taken place inside the room. It was also alleged that the accused had assisted in evacuation of casualties.

7. The General Court Martial preferred over the story of the defense version given by Lance/Havildar V. Bhaskaran (PW-3), Sepoy Ram Dass (PW- 5) and Sepoy M. Kodandan (PW-6) who were eye witness of the entire incident and who had narrated the sequence of events in all detail and in the opinion of the Court Martial withstood the test of cross-examination. The Court declared the petitioner guilty of the two charges in the following words:

2. The court has analysed the entire evidence on record carefully. The version of Sep. Ram Dass (PW-5) has gained the total confidence of the court and he has narrated the whole incident prior to firing of rifle shots by the accused, during the shooting and subsequent to the act of the accused. PW-3, PW-5 and PW-6 who are the eye witnesses of the entire happenings and they have narrated the sequence of events in all details and successfully withstood the test of cross-examination. The evidence of Captain (RMO) CR Kiran Naik (PW-4) has given the details of injuries sustained by the two individuals. The accused has been specifically identified to be the firer causing injuries/hurt. The examination of PW-1, PW-2 and PW-9 has also established the conduct of the accused immediately after his act of firing.

3. In view of law and evidence on record, the court is satisfied beyond any reasonable doubt that the accused is "guilty" of Second Charge."

8. It then sentenced the petitioner to suffer imprisonment for life and dismissal from service. Aggrieved the petitioner has filed the present writ petition after exhausting the statutory remedies available to him.

9. Appearing for the petitioner, Col. K. Ramesh made a solitary submission before us. He urged that the finding of guilt recorded by the Court Martial was perverse in nature. According to him, the Court Martial had erroneously come to the conclusion that the petitioner was responsible for the firing incidence. He submitted that it was L/N Jalendran?s who had initiated the fight and started firing in a state of inebriation. According to Major Ramesh, the Army Authorities had taken L/N Jalendran?s into custody apart from the petitioner because they did not, at the time of the incident, know as to who had actually fired and killed the deceased defense personnel. He submitted that the version given by the petitioner in defense that the firing had taken place in a scuffle that followed the

altercation between L/N Jalendran's and the petitioner was a probable version and that the Court Martial had taken a perverse view by declaring the petitioner guilty without taking into consideration the totality of the circumstances in which the incident had occurred.

10. Per contra, it was argued on behalf of the respondent that the evidence on record comprising the statements of the eye witnesses including those who were injured in the incident was overwhelming and clearly established the sequence of events in which the incident had taken place. The fact that the weapon held by L/N Jalendran's had not been got tested from the forensic expert was wholly immaterial keeping in view the defense of the petitioner that the firing had taken place only from his weapon although according to his version, it had occurred on account of the scuffle and was Therefore involuntary. It was also argued that the scope of judicial review in a case of the present kind was limited to finding out whether there was any evidence which, if believed, could sustain the conviction. The Court could not sit in appeal and re-appraise the entire evidence or substitute its own finding for that recorded by the Court Martial. There was, in the present case, considerable evidence to support the order of conviction of the petitioner and even if one were to re-appraise the entire material, the conclusion that the petitioner alone was responsible for the firing was wholly inescapable.

11. We have given our anxious consideration to the submissions made at the bar.

12. The law regarding the scope and the extent of judicial review is fairly well settled by a catena of decisions rendered by the Supreme Court. A writ court while reviewing any such decision does not act as a court of appeal. Judicial review is limited to finding out whether there was any illegality or procedural irregularity in the decision making process. Perversity in the decision including proportionality of the sentence having regard to the gravity of the offence is also recognized as a ground for judicial review by the pronouncement of the Apex Court.

13. Coming then to the case in hand, the charge against the petitioner has been held proved upon appreciation of the evidence adduced by the prosecution. This evidence comprised statements of witnesses who were not only injured in the firing incident but also those who were saved by providence. Deposition of these witnesses including PW-1 Capt. Anil Sen, clearly shows that the petitioner was the perpetrator of the crime. The argument that L/N Jalendran's had fired from his weapon is unsupported by any material on record. As a matter of fact, there is credible evidence to show that the weapon held by him when checked was found to contain all the bullets loaded in the same and that the same had not been fired from. On the contrary, the weapon issued to and held by the petitioner when seized from his custody and checked was found to have been fired from. Even the opinion given by the forensic expert clearly established that the bullets that killed three and seriously wounded two other personnel in the bunker had been fired from the weapon held by the petitioner. So much so, the petitioner's version that the firing had taken place from his weapon in a scuffle that ensued

the altercation between himself and L/N Jalendran?s leaves no manner of doubt that the weapon used for the commission of the crime was the one issued to and held by the petitioner. It completely eliminates the possibility of L/N Jalendran?s firing from his weapon or his weapon having been used for that purpose. In the light of these circumstances which are firmly established and also the testimony of the witnesses who have withstood the test of cross-examination, it is difficult to attribute any perversity to the view taken by the Court Martial. So long as there is evidence which can upon appreciation be accepted by a competent court to base a conviction on the same, a writ court examining the validity of the said order would not substitute its own view for that of the Court Martial even assuming that any such contrary finding was possible. The argument that L/N Jalendran?s had been held in custody for a long time by the authorities which showed that he was seen as the perpetrator has not impressed us. In the first place, there is nothing before us to conclusively prove that L/N Jalendran?s had indeed been held in custody for a long period of 8 months or so as alleged by the petitioner but even if initial arrest of L/N Jalendra and his continuation in custody for some time is accepted as a fact, the Explanation offered by the respondent that the said custody was meant to prevent the situation from escalating into a more serious catastrophe cannot be rejected. In any event, the Court Martial having appreciated the evidence and accepted the testimony of the eye witnesses and other witnesses who were examined at the trial, the very fact that L/N Jalendran?s was held in custody for some time would not be sufficient to justify reversal of that opinion.

14. In the result, this petition fails and is hereby dismissed but in the circumstances without any order as to costs.