

(1999) 11 GAU CK 0026
In the Gauhati High Court
Case No : Writ Appeal No. 156 of 1994

Jhunta Ram

APPELLANT

Vs

Union of India (UOI) and Another

RESPONDENT

Date of Decision : 20-11-1999

Acts Referred:

Army Act, 1950 — Section 164, 165
Army Rules, 1954 — Rule 22, 35
Evidence Act, 1872 — Section 8
Penal Code, 1860 (IPC) — Section 201, 302

Citation : (2000) 1 GLT 367

Hon'ble Judges : Brijesh Kumar, C.J; P.G. Agarwal, J

Bench : Division Bench

Advocate : T.C. Khetri, for the Appellant; P.N. Choudhury, Addl. CGSC, for the Respondent

Final Decision : Dismissed

Judgement

P.G. Agarwal, J.—This writ appeal is directed against the judgment and order passed on 16th March, 1994 in Civil Rule No. 351/89 by a learned Single Judge of this Court. Heard Mr. T.C. Khetri, learned Counsel for the Appellant and Mr. P.N. Choudhury, learned Addl. Central Govt. Standing Counsel.

2. The facts in brief are that the Appellant Jhunta Ram was serving as a Gunner and was tried by the Court Martial for commission of murder of a fellow Jawan, namely, Lance Nayak Vishnu Dayal. The Appellant was found guilty and sentenced to imprisonment for life by the General Court Martial. The appeal preferred u/s 164(i)/165 of the Army Act was dismissed whereupon the Petitioner approached this Court in Civil Rule No. 351/89. The learned Single Judge dismissed the writ petition as devoid of any merit. Hence the present appeal.

3. Learned Counsel for the Appellant has submitted that in the present case there was non-compliance of the provision of Rule 22 of the Army Rules and the

two persons, namely, the Appellant and one Satya Vir Singh were charged for the offence of murder of Lnk Vishnu Dayal but they were prosecuted separately and this has caused prejudice to the Appellant. The records of the Court martial have been produced before us by the learned Counsel for the Union of India and on perusal of the same we find that there was full compliance of the provisions of Rule 22 as the investigations were held. As a matter of fact the Appellant participated in the said proceeding and examined defence witnesses, Brig. N. Ram and Lt. Col. R.U. Misra. One Court witness Bhim Singh was also examined and thereafter charge was read over to the accused. The objection raised regarding the General Jurisdiction of the Court Martial was also disposed.

So far holding of separate trial for the Appellant and Satya Vir Singh is concerned, there is no provision under the Army Act or the Rules that both the persons should be tried together. Rule 35 is an enabling provision where more than one accused can be tried together. Further Satya Vir Singh was tried for the offence u/s 201 IPC although initially he was also charged for the offence u/s 302 IPC but later on the said charge was withdrawn. In the entire court martial the Appellant was defended by Advocates and there is no question of any prejudice to him.

4. The law is well settled that reasons are not required to be recorded by the Court Martial at the stage of recording of finding and sentence. Reasons are not required to be recorded for order passed by the confirming authority confirming the finding and sentence recorded by the Court Martial as well as for the order passed by the Central Govt. dismissing the above confirmation petition. In the case of B.C. Chaturvedi Vs. Union of India and others, the Apex Court observed:

Judicial review is not an appeal from a decision but a review of the manner in which the decision is made and the power of judicial review is meant to ensure that the individual receive the fair treatment and not to ensure that the conclusion which the authority reaches is necessarily correct in the eye of the Court.

In the light of the above decision, let us consider whether there has been any violation of the principle of natural justice or rules of procedure and whether there is any evidence on record to support the findings of the Court Martial.

In the case of Capt. Harish Uppal Vs. Union of India (UOI) and Others, the Apex Court also negated the submission that all the procedure laid down under Code of Criminal Procedure should be fully complied with in a Court Martial. The court observed:

To accept this contention would mean that all the procedure laid down by the Code of Criminal Procedure should be adopted in respect of the court martial. The contention cannot be accepted in the face of very clear indication in the constitution that the provisions which are applicable to all the Civil cases are not applicable to cases of Army personnel. It is not a requirement of the principles of natural Justice.

As stated above, the accused was charged for committing murder of Lnk Vishnu Dayal. The fact that Lnk Vishnu Dayal was murdered on the fateful night was well established and there is no dispute on that count. The Appellant was convicted mainly on the basis of evidence of a hostile witness and also circumstantial evidence. The law is more or less well settled that even though a witness is declared as hostile the court can accept and act upon that part of the evidence which appears to be truthful. There is no legal bar to base a conviction upon the testimony of a hostile witness. It is for the Judge to decide whether witness stands thoroughly discredited or can still be believed in regard to a part of his testimony. In the instant case the Court Martial relied on the testimony of the hostile witness Satya Vir Singh. In the case of Khujji alias Surendra Tiwari Vs. State of Madhya Pradesh, the Apex Court held that the evidence of prosecution witness cannot be rejected in to merely because the prosecution choose to treat him as hostile and cross examined him. The evidence of such witnesses cannot be treated as effected or washed of the records all together but the same can be accepted to the extent their version is found to be dependable on careful scrutiny thereof. There are other circumstantial evidence also which are relied on by the trial court. The Appellant was found in possession of Rs. 5,200/- which were in possession of the deceased at the time of his killing. The accused made a draft of Rs. 3,500/- soon after the incident. Although he had not drawn any money from the Bank or received the same from him employer. The accused also sent money to Satya Vir Singh after the incident presumably for the sole intention or purpose that Satya Vir Singh may keep his mouth shut. The post crime conduct of the accused is relevant u/s 8 of the Evidence Act. Further in a case based on circumstantial evidence motive also plays an important role. From the evidence on record we find that the accused suspected that his wife is having illicit relationship with the deceased. Prosecution examined as many as 33 witnesses and they were duly cross-examined by the counsel for the Appellant. It cannot be said that this is a case of no evidence. It is submitted that the sentence imposed on the Appellant is disproportionate to the charges levelled. We are of the opinion that the Petitioner was charged with murder and as such the sentence of life imprisonment cannot be said to be punishment disproportionate to the charges levelled

6. In the result, we hold that the findings recorded by the learned Single Judge needs no interference and there is no merit in this appeal. The appeal is accordingly dismissed.