
(2012) 10 DEL CK 0090

In the Delhi High Court

Case No : Writ Petition (C) 5209 of 2010 and CM No. 16822 of 2012

Ram Prasad Saini

APPELLANT

Vs

UOI and Another

RESPONDENT

Date of Decision : 01-10-2012

Acts Referred:

Citation : (2012) 10 DEL CK 0090

Hon'ble Judges : J.R. Midha, J;Gita Mittal, J

Bench : Division Bench

Advocate : M.P. Jha and Mr. Nirmal Mittal, for the Appellant; Anurag Kasana, CGSC for R-1, for the Respondent

Final Decision : Dismissed

Judgement

Gita Mittal, J.

W.P. (C) No. 5209/2010

1. The instant writ petition assails the findings and sentence of the General Security Force Court dated 2nd April, 2009; the order dated 12th May, 2009 passed by General Security Force Court dismissing the pre-confirmation petition filed by the petitioner as well as order dated 10th February, 2010 rejecting the post-confirmation petition of the petitioner. The facts giving rise to the instant writ petition are in a narrow compass.

2. The case relates to an alleged incident on the night intervening 22nd/23rd March, 2008 when the petitioner, who was then as a serving constable and posted with the 172 Battalion, BSF, between 0200 hrs and 0215 hrs attacked his Commandant Shri Suresh Chand Yadav with a khukri (daah) resulting in multiple injuries upon him. There is no dispute with regard to the evidence in accordance with Rule 48 of the Border Security Force Rules, 1969. After completion of the proceedings, the authorities had directed convening of the General Security Force Court ("GSFC" hereafter).

3. The petitioner was tried on the following charges:-

4. The petitioner pleaded not guilty on both counts and was put to trial. Twenty one prosecution witnesses were examined. The petitioner submitted a written statement and answered questions put to him under Rule 93 of the Battalion Rules. The petitioner did not opt to lead any defence evidence.

5. After appraisal of evidence and considering the defence propounded by the petitioner, he was found guilty of both charges by the order dated 2nd April, 2009 and sentenced on the same date to rigorous imprisonment for 10 years and to be dismissed from service.

6. These findings and sentence were confirmed by the Inspector General of the BSF, South Bengal Frontier on 12th May, 2009.

7. The challenge before this court on behalf of the petitioner rests on the sole submission that the case against the petitioner is based on no evidence. It has been vehemently contended by Mr. M.P. Jha, learned counsel for the petitioner that the prosecution relied only on the evidence of Commandant Suresh Chand Yadav (examined as PW1) and that his testimony was not reliable. It is contended that the prosecution failed to establish the fact that there was sufficient light in the room to enable PW-1 Commandant Suresh Chand Yadav to recognize the petitioner as his assailant. The identification of the petitioner as a person involved in the attack is thereby assailed. The other ground of challenge to the statement made by PW-1 rests on the contention that he failed to disclose the identity of the assailant to PW-2 Constable Rajeeb Deka, the first person he met after the attack. It is contended that the failure to disclose the identity of the assailant would show that PW-1 was not sure of the person who had attacked him and, therefore, he has falsely implicated the petitioner for the commission of the offence.

8. Learned counsel for the petitioner has also challenged the recoveries attributed to the petitioner on the ground of their being planted. It is submitted that none had seen the petitioner entering or leaving the accommodation of PW-1 Commandant Suresh Chand Yadav which also suggests the innocence of the petitioner.

9. We have heard learned counsel for the petitioner at great length and examined the record of the GSFC placed by the petitioner before us. It is trite that a challenge to proceedings of the Border Security Force Court would lie if there was no evidence at all to support the findings; or if the GSFC failed to comply with the prescribed procedure or on account of violation with the principles of natural justice in the conduct of the proceedings. The petitioner's challenge pressed before us is only on the submission that there was no evidence to support the conviction of the petitioner.

10. We have been taken through the testimony of PW-1 Commandant Suresh Chand Yadav. The witness has graphically described the attack on his person on

the night intervening 22nd/23rd March, 2008. The witness has stated that as per practice, the rear door in his house was not locked as it was used early in the morning by the security aide. There is no reason to doubt this statement inasmuch as it is an admitted position that the housing accommodation is lying in a gated area manned by the BSF sentry. The witness stated that he had removed the curtains from the windows of the bedroom for fresh air, enabling moonlight to come inside the room. While sleeping, he felt a heavy blow on his head followed by further blows in quick succession. It takes time for a person who is sleeping to react to such an attack. PW-1 has stated that he could make out that one person was standing near his bed who was hitting him with something in his hands. When he tried to save himself, he suffered injury on his left hand.

11. So far as the sufficiency of light in the room is concerned, PW-1 has clearly stated that he could see as there was sufficient light on account of moonlight coming from the windows as well as the electric light which was in dining space which enabled him to see the person as well as his actions. The assailant pulled PW-1 towards him resulting in his falling on the floor. Lots of blood started oozing out from the head and left hand of PW-1 due to which the floor had become slippery. The assailant kept on attacking Commandant Suresh Chand Yadav who continued to defend himself but he was not allowed to stand up. Moving on his knees, he came out from the room and managed to stand-up with the help of shelf of an almirah located just outside the door of the bedroom. The area outside the door of the bedroom was fully illuminated with the light in dining space when he saw that the assailant was wearing camouflage dress with monkey cap on his head and his face covered with a coloured gamchha. The assailant was using a khukri to attack PW-1.

12. The testimony of PW-1 that he pulled the gamchha from the assailant's face with his right hand could not be challenged in the cross-examination. The witness has categorically stated that he had identified the assailant as Constable Ram Prasad Saini (the present petitioner). The witness has further stated that he had challenged the petitioner but of no avail. The witness escaped from the clutches of assailant with difficulty and called out to the sentry.

13. Scrutiny of the cross-examination by the defence counsel would show that the clear testimony of the witness could not be assailed in the cross-examination.

14. We find that the witness has also explained that he was bleeding extensively and was considerably weak as a result. He was even unable to walk and had to take the support of the wall while escaping from the clutches of the assailant. It is in evidence that PW-1 was unable to knock on the door to call for his sentry on account of weakness and he had to sit down on the cemented platform. The sentry was the first person who reached PW-1 and PW-1 asked him to wake up W/C Pandey and also to give him a glass of water. The Guard Commander - HC Karam Singh reached the witness and enquired as to what had happened. The witness told him that the petitioner had entered his room; attacked him and ran away thereafter. This testimony is corroborated by the statements of the other

persons named by PW 1 - Commandant Suresh Chand Yadav.

15. The testimony of the witness is entirely cogent and wholly reliable. The sole ground of challenge to his testimony is the submission by learned counsel for the petitioner that he did not disclose the petitioner's name to the sentry. The incident and the condition of PW-1 who had suffered grievous attack has to be visualized in order to do complete justice in the matter. The victim had been subjected to serious "khukri" attack. It is in evidence that he was extensively bleeding and was extremely weak. He could move only with support. He had asked the sentry to call for other officers and even requested for a glass of water. The witness has made a disclosure to the Guard Commander who questioned him as to what had happened. The same statement has been repeated to other persons as well. It would be unfair to disbelieve the victim merely because he has not detailed the incident to the first person he met thereafter. The anxiety of PW 1 is apparent as he urgently told the constable to call for responsible seniors given the seriousness of the attack.

16. The petitioner is unable to point out any reason as to why PW-1 Suresh Chand Yadav would falsely implicate him in the instant case. More so when PW-1 was the victim of such a heinous and serious attack in which he could have lost his life.

17. No contradiction in the testimony of PW 1 Suresh Chand Yadav is pointed out. The evidence of PW 1 is sufficient for maintaining the conviction. In our view, no ground for disbelieving the testimony of PW-1 Suresh Chand Yadav has been made out by the petitioner.

18. The camouflage cap as well as a gamchha stained with blood were recovered from the dining space. The name of the petitioner "R.P. Saini" was found written inside the camouflage cap which was recovered by the police authorities at the instance of and in the presence of the petitioner. At the instance of the petitioner and his pointing out, the khukri which was the weapon of offence was recovered from inside the bushes near a tree near the football ground in the presence of Sub-Inspector C.N. Bhutia of police station Malda. The other wearing apparels of the petitioner which included one camouflage full shirt, one camouflage full pant, one white vest, one pair of khaki woollen socks and one pair of brown canvas shoes, were recovered from the nearby pond at the disclosure and pointing out of the petitioner.

19. The conduct of the petitioner after the incident also suggests his culpability. It is in the testimony of PW-12 Head Constable Janak Singh that on the intervening night of 21st/22nd March, 2008, he was deputed to bring the petitioner. He searched for the petitioner along with PW-5 Constable Dev Raj and PW-9 Constable Satish Kumar but they did not find him in his bed. The entire BSF camp was extensively searched. When this search party went back to the training company barracks at about 0315 hrs, this time they found the petitioner in his bed. This witness also deposed about the voluntary disclosure made by the

petitioner leading to the recovery of the aforementioned articles at his instance.

20. The prosecution led evidence of PW-10 Dr. Rajiv Kumar Malik, an expert witness who testified about the injuries suffered by the victim Commandant Suresh Chand Yadav. PW-10 has deposed that PW 1 was bleeding severely and the injuries were grievous in nature and caused by sharp edged weapon. The doctor has also stated that the condition of the victim was critical as the injuries were life threatening in nature.

21. The evidence of PW-16 Dr. Sandip Ghosh, as an expert witness, was also led who stated that on examination he found blood stains on all the items including khukri, the weapon of offence. In this background, the finding of the guilt by the GSFC by its order dated 2nd April, 2009 as well as its confirmation by the order dated 12th May, 2009 cannot be faulted on any legally sustainable ground. The challenge to the dismissal of the post confirmation petition by the order dated 10th February, 2010 is also misconceived and is hereby rejected.

22. At this stage, learned counsel for the petitioner challenges the sentence of the petitioner submitting that the punishment which has been imposed is extremely harsh. The petitioner was serving in a disciplined force and brutally attacked his commandant.

We find that the order of sentence dated 2nd April, 2009 has considered the conduct of the petitioner as well as his previous convictions. Given the gravity of offence, GSFC and the authorities have found the sentence imposed upon the petitioner as justified. We see no reason to interfere with the same.

For all these reasons, we find no merit in this writ petition which is hereby dismissed.

CM No. 16822/2012

In view of the orders passed in the writ petition, this application does not survive for adjudication and is hereby dismissed.