

(2011) 05 DEL CK 0407
In the Delhi High Court
Case No : Writ Petition (C) 1087 of 1998

Rambir Singh

APPELLANT

Vs

Union of India (UOI) and Another

RESPONDENT

Date of Decision : 24-05-2011

Acts Referred:

Citation : (2011) 05 DEL CK 0407

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

Bench : Division Bench

Advocate : Shilpa Chauhan, for the Appellant; Anjana Gosain and Akashdeep Pratp and Bhupinder Sharma, Dy. Commandant, BSF, for the Respondent

Final Decision : Dismissed

Judgement

Pradeep Nandrajog, J.—It is the common case of the Petitioner and the Respondents that one round of bullet was fired from within the precincts of the barrack at BOP Karol Krishna at about 20:45 hours on 10.5.1997. It was alleged that the Petitioner was the culprit. The incident was reported and taking cognizance of the offence report and hearing the Petitioner the Commandant of the Unit framed a charge and deputed Record of Evidence to be prepared. During Record of Evidence 8 witnesses were examined and needless to state Petitioner was given an opportunity to cross-examine the witnesses but the Petitioner did not cross-examine any.

2. Considering the Record of Evidence the Commandant decided to try the Petitioner at a Summary Security Force Court and thus trial was ordered.

3. Two charges were alleged against the Petitioner being that: (i) While deployed at BOP Karol Krishna on 10.5.1997 he was found intoxicated at about 20:45 hours; (ii) While deployed at BOP Karol Krishna on 10.5.1997, at about 20:45 hours Petitioner fired one round from his personal weapon i.e. SLR Butt No. 82, Body No. 15401182 issued to him for duty and thus endangering the life of other BOP personnel deployed.

4. At the arraignment the Petitioner pleaded not guilty and thus evidence was recorded.

5. At the trial testimony of 8 witnesses was recorded. SI L.M. Patel deposed that he was the Post Commander of BOP Karol Krishna since 3.5.1997 and that the Petitioner had been performing duties at BOP in question since the time he took over the BOP as In-charge thereof. That he i.e. SI L.M. Patel was present at the BOP on 10.5.1997 and had detailed Petitioner, Ct. P.K. Biswas and Ct. Dilbagh Singh for duties at Naka No. 3 and about 20:25 hours Ct. P.K. Biswas came to him and informed that while he was ready for Naka duty, Petitioner and Ct. Dilbagh Singh were not ready. Since he i.e. SI L.M. Patel was having dinner he told Ct. P.K. Biswas to wait for few minutes as he would look into the matter after finishing dinner but since he heard a sound of a round being fired, he went towards the place wherefrom sound of fire had been heard and made enquiries. Petitioner and Ct. Dilbagh Singh were sitting on a cot with rifles in their hands and upon his asking as to who had fired, both feigned ignorance by stating: Where has the firing taken place? He checked their rifles and upon smelling detected smell of gun powder/explosive in the barrel of the rifle of the Petitioner and found the barrel to be hot. He checked the butt number of the rifle and once again asked who had fired to which both replied that nothing had happened. He checked the chamber of the rifles of both Petitioner and Ct. Dilbagh Singh and found one round in the chamber of the rifle butt of the Petitioner. He took both rifles in his possession and deposited the two in the "kote" i.e. company arsenal without removing the live round from the chamber. That when he was checking the rifles of the Petitioner and Ct. Dilbagh Singh, Ct. Shilke, Ct. Sunil Kumar and Ct. Biswas were present in the barracks. That the barrack was lit by electricity when he was doing the aforesaid and that while carrying out the aforementioned activities he could detect smell of liquor in the breath of Petitioner and Ct. Dilbagh Singh. Thereafter he informed the Coy Commander about the incident which probably took place around 20:30 hours or so. Coy Commander Sh. O.P. Ahlawat reached the BOP at about 20:45 hours. The rifle butt of the Petitioner was taken out from the "kote" and in presence of Sh. O.P. Ahlawat live round was reaffirmed to be present in the chamber with 19 rounds in the magazine which was fitted on the rifle butt issued to the Petitioner. Besides this, 40 rounds were recovered from the bed of the Petitioner and 2 magazines having 20 rounds each were recovered from the handolier of the Petitioner. The lot of 100 rounds of 7.62 mm ammunitions were thus accounted for by the Petitioner but it was noted that they pertained to lot No. OFV 90. That at the BOP ammunition issued was of lot No. OFV 90. Thereafter O.P. Ahlawat took away both Petitioner and Ct. Dilbagh Singh. He searched for the empty fired case and recovered one about 100 yards from the barrack and on checking he noted that the same pertained to lot "OFV 84" (The witness produced the exhibit which stands recorded as being verified by the Court).

6. Relevant would it be to note that SI L.M. Patel was cross-examined by the Petitioner and the questions put to him were:

- (i) Has any entry been made to my having taken liquor or checking of ammunition?
- (ii) Does barrel become hot by firing just one round?
- (iii) At what time was my rifle checked?
- (iv) Why only the rifle of Ct. Dilbagh Singh and my rifle was checked?

7. The answer given to the 1st question is that no entry was made pertaining to Petitioner having taken liquor but that a general duty entry was made regarding firing of one round. To the 2nd question he answered in the affirmative by clarifying that the barrel would be slightly hot. The 3rd question he answered by stating that he heard the sound of fire at about 20:30 hours and checked the rifle within 2-3 minutes thereof. To the 4th question he stated that he had checked the rifles of both Petitioner and Ct. Dilbagh Singh. He stated that since others in the barrack were not having rifles in their hands the question of checking other rifles did not arise.

8. Ct. P.K. Biswas appeared as PW-2 and deposed in sync with the testimony of PW-1 and confirmed that in his presence the rifle butt of Petitioner and Ct. Dilbagh Singh was checked and that smell of gun powder was detected only in the rifle butt of the Petitioner.

9. Relevant would it be to note that PW-2 was not cross-examined in spite of opportunity given.

10. Ct. Dilbagh Singh appeared as PW-3 and stated that he along with the Petitioner were in the barrack. They and Ct. P.K. Biswas were detailed for Naka duty. He had finished his meals and was going to fill water in his water bottle when he heard sound of a fire and run back to the barrack and saw Petitioner standing in the verandah. He asked him who had fired. Petitioner told him that he i.e. the Petitioner had fallen down and the rifle had fired one round. At that point of time SI L.M. Patel and a few other jawans reached the spot.

11. We note that Ct. Dilbagh Singh was not cross-examined.

12. Ct. Sunil Kumar PW-4, Ct. M.B. Shilke PW-5 and Ct. R.N. Singh PW-6 corroborated the testimony of PW-1 and PW-2 and deposed that after the firing took place, gun powder smell was detected only in the barrel of the rifle butt of the Petitioner.

13. All witnesses were not cross-examined by the Petitioner in spite of opportunity granted.

14. Dy. Commandant O.P. Ahlawat appeared as the 7th witness and deposed facts in sync with the testimony of PW-1 with reference to the stage PW-1 deposes of facts when information was conveyed to the Dy. Commandant.

15. Ct. M. Pichhai appeared as the 8th witness and deposed on a matter of expert knowledge that a 7.62 mm SLR can fire only if there is a round in the

chamber of the rifle and if the trigger is pressed and that the question of the SLR firing on its own even if it falls on the ground does not arise.

16. Petitioner made a statement in defence in which he stated and we intend to reproduce in verbatim certain relevant part thereof; he said: "On 10.5.1997, Ct. Dilbagh had fired with my weapon rifle SLR butt No. 82. Ct. Dilbagh Singh is related to Sh. O.P. Ahlawat Dy. Commandant and Sh. Ahlawat is trying to implicate me to save Ct. Dilbagh Singh. At about 20:45 hours on 10.5.1997 when Sh. O.P. Ahlawat arrived from Baliya at BOP Karol Krishna he immediately started beating me with sticks. All the witnesses who have deposed before the Court are not deposing correctly because of the pressure by Sh. O.P. Ahlawat DC..... It is possible that the round that has been fired may have been fired by somebody else. It is not necessary that the round has been fired from my rifle." Thereafter Petitioner examined a witness in defence Nk. A.G. Khan but unfortunately for the Petitioner even he deposed in sync with the testimony of SI L.M. Patel and Ors.

17. Suffice would it be to note that to no witness of the prosecution was any suggestion given that Dy. Commandant O.P. Ahlawat had assaulted the Petitioner and that the witnesses were speaking a lie at the behest of Dy. Commandant O.P. Ahlawat. That apart, what is relevant to be noted is that in the first part of his defence statement the Petitioner clearly and categorically stated that on 10.5.1997 Ct. Dilbagh had fired with his weapon rifle SLR butt No. 82. Later on, a few sentences thereafter, the Petitioner stated that it was possible that the round had been fired by somebody else.

18. The admission by the Petitioner that it was the SLR issued to him which was the weapon used to fire is relevant, and the attempt to shift that Ct. Dilbagh Singh was the culprit is an obvious ruse.

19. The Court returned the verdict of guilt and taking into account that in the past the Petitioner had been inflicted 3 penalties, firstly on account of being found in a prescribed place in the camp area without a pass, second being on account of being found in a state of intoxication and third being when he visited a local market and indulged in a fight; taking a serious view of a round being fired within the precincts of the barracks and needless to state the firing could have endangered life or limb of the personnel nearby, penalty of dismissal from service has been inflicted upon the Petitioner. Statutory petition filed has been rejected.

20. Learned Counsel for the Petitioner would urge that best evidence in the form of a forensic examination of the used cartridge lifted from the scene of the offence not being brought on record, merely because the cartridge could be used from the SLR in question issued to the Petitioner would be insufficient evidence to conclude that the rifle issued to the Petitioner was the one from which the cartridge was fired.

21. It is not a criminal trial for an offence of bodily harm using a firearm.

Through the testimony of 6 witnesses of the prosecution we have credible evidence that it was the SLR of the Petitioner which was the weapon through which the shot had been fired and evidence thereof was smell of gun powder detected as also the barrel of the rifle being hot.

22. That apart, as noted hereinabove, at the first stage of his defence statement the Petitioner admitted that it was his rifle which was used for firing the shot. His version was that Ct. Dilbagh was the culprit.

23. We note that Ct. Dilbagh Singh has been examined as PW-3 and no such suggestion was given to Ct. Dilbagh Singh. We hasten to add that since Ct. Dilbagh Singh was sitting with the Petitioner and both were drunk as per the case of the prosecution, his version is also a little inchoate and had to be so. Though with a lesser role of being drunk in the company of the Petitioner, Dilbagh Singh was obviously a scared witness.

24. It was then urged that the testimony of PW-1 would reveal that the cartridge lifted from the spot pertained to ammunition manufactured in the year 1984 evidenced by the mark thereon "OFV 84" and that DW-1 admitted case of the prosecution that the ammunition issued to the Force Personnel was "OFV 90" i.e. manufactured at the Ordnance Factory in the year 1990. Therefrom counsel seeks to urge that the prosecution had to link the possession of the live cartridge with the Petitioner and this not having been done counsel urges that it cannot be said that it stands proved that the used cartridge was the one fired from the rifle issued to the Petitioner.

25. The argument ignores the fact that the testimony establishes that the rifle of the Petitioner was having a barrel which was heated and smell of ammunition was detected therefrom soon after the shot was fired. It ignores the first part of the defence statement made by the Petitioner wherein he stated that it was Ct. Dilbagh Singh who fired the shot from his rifle.

26. It is apparently a case where the Petitioner was somehow or other in possession (unauthorized) of an ammunition pertaining to the year 1984 and he fired the same.

27. In this connection it assumes importance that the rifle of the Petitioner was found cocked and 1 out of the 20 bullets in the magazine issued to him was lodged in the chamber of the SLR rifle.

28. The Petitioner was not supposed to cock his rifle inside the barracks. In fact, the Petitioner could not even cock his rifle while on patrol duty save and except when a situation of alarm would come into being.

29. On the issue of shot being fired, we note that within the domain of admissible evidence and the requirement of standard of proof, there is credible evidence that it was the rifle of the Petitioner which was used to fire the shot in question.

30. As regards the plea that qua the charge of Petitioner being intoxicated there is no medical evidence, we would certainly concur that the department could have done a better job by getting examined the Petitioner with respect to his having consumed alcohol and not have felt satisfied with the ocular testimony of witnesses who stated that they could smell alcohol in the breath of the Petitioner.

31. Assuming that said aspect has not been proved, the effect thereof would be that part I of the charge would fail and not part II thereof.

32. The plea that Ct. Dilbagh was a relation of Dy. Commandant O.P. Ahlawat therefore the latter has contrived against the Petitioner is rejected by us for the reason no suggestion was given to any witness of the prosecution and much less to Dy. Commandant O.P. Ahlawat of his being so related.

33. Last contention urged is that the penalty levied is shockingly disproportionate to the gravity of the offence.

34. The evidence is of unauthorizedly firing from within the precincts of the barracks and certainly the act is grave for the reason it had the potentiality of endangering the life or the limb of the person nearby.

35. It is settled law that past service record can be taken account of both for purposes of mitigating on the quantum of penalty as also on the appropriateness of the sentence to be levied keeping into account repeated misadventures by a person concerned.

36. We have noted hereinabove 3 past instances of misconduct committed by the Petitioner and we note that the service rendered by the Petitioner till penalty was levied was less than 9 years.

37. Our conscious is not shocked at the penalty levied and thus regretfully for the Petitioner we dismiss the writ petition but refrain from imposing any costs.

38. Record of the Security Force Trial shown to us in Court has been returned to counsel for the Respondent.