
(2006) 04 GAU CK 0062
In the Gauhati High Court
Case No : Govt. Criminal Appeal No. 2 of 2003

State of Manipur	Vs	APPELLANT
Demkhothang Touthang Demthang Thuthang Kuki		RESPONDENT

Date of Decision : 28-04-2006

Acts Referred:

Penal Code, 1860 (IPC) — Section 307, 326

Citation : (2006) 3 GLT 257

Hon'ble Judges : P.G. Agarwal, J

Bench : Single Bench

Advocate : Jalal Uddin, for the Appellant; S. Lakhikanta Singh, for the Respondent

Judgement

P.G. Agarwal, J.—This appeal by the State of Manipur is directed against the order of acquittal re- corded by the learned Addl. Sessions Judge, Manipur East on 13.11.2002 in Sessions Trial No. 10/2002.

2. In the above sessions case, the Respondent-accused Demkhothang Jouthang, hereinafter referred to as the accused, was tried for commission of an offence u/ s 307 IPC. The Respondent accused is a Sepoy under the Manipur Rifles. (6th Bn. M.R.) and at the relevant time he was posted at MPR Head Quarter, Ukhul. The prosecution allegation is that on 4.3.93 at about 8.30 p.m. accused fired shots from his service rifle causing grievous hurt to Mosses Tangkhul, a Sepoy in the said battalion.

3. During trial the prosecution examined as many as 14 witnesses and the defence examined two witnesses and on conclusion of trial the learned Sessions Judge acquitted the accused person. This being an appeal against an order of acquittal, we may briefly note the scope and ambit of the powers of the High Court which have crystallized into settled position of law in a catena of decisions of the Apex Court. In the case of Sita Ram Durga Prasad Vs. The State of Madhya Pradesh, , the Apex Court held:

High Court has full power to review at large the entire evidence on which the order of acquittal was founded and to reach the conclusion that upon the evidence the order of acquittal should be reversed. High Court should give proper weight and consideration to such matters as:

- (1) the views of the trial judge as to the credibility of the witnesses;
- (2) the presumption of innocence in favour of the accused, a presumption certainly not weakened by the fact that he had been acquitted at his trial;
- (3) the right of the accused to the benefit of doubt; and
- (4) the slowness of an appellate court in disturbing finding of fact arrived at by a judge who had the advantage of seeing witnesses.

4. In the case of Kalyan and Others Vs. State of U.P., , the Apex Court held:

The settled position of law on the powers to be exercised by the High Court in an appeal against acquittal is that though the High Court has full power to review the evidence upon which an order of acquittal is passed, it is equally well settled the presumption of innocence of the accused is further reinforced by his acquittal by the trial court. Normally the views of the trial court as to the credibility of the witnesses must be given proper weight and the High Court should be slow in disturbing a finding of fact.

5. We may also note the caution given by the Apex Court in Bhagwan Singh and Others Vs. State of Madhya Pradesh, which reads as follows:

The High Court possesses full powers to review the evidence, but generally should not interfere with the order of acquittal. Miscarriage of justice should be avoided. If two views are possible in the evidence, the view which is favourable to the accused should be adopted. But if it is found that the trial court completely ignored the basic principles of criminal law, the High Court would be justified in reversing the acquittal order.

6. So far the incident of 4.3.93 wherein the victim sustained bullet injuries on his person is concerned there is evidence of Mongeri Tangkhul, P.W.1; Ningam Tangkhul, P.W.2; Deputy Commandant Laxmi Prasad Chhetry, P.W.3; Kh. Jugin Singh, P.W.4; eye witness M. Mangoljao Singh, P.W.5; the victim Mossess Tangkhul, P.W.7 and K. Khukhansuan Paite, P.W.10. There is another eye witness Thangbul Kuki, P.W.11. From the evidence on record, we find that at the relevant point of time the accused was detailed for sentry guard duty at Sentry Post No. 1 and the victim was taking his meal by sitting on his bed inside the Guardroom.

7. P.W.7 has deposed that the accused had borrowed a sum of Rs. 1400/- from him in the month of September, 1992. But as the accused had not repaid the same, in the morning of the date of occurrence, he asked the accused to return back the money whereupon the accused assured to return back the money on that day itself along with interest. At about 8 p.m. while P.W.7 was taking dinner on his bed, the accused suddenly appeared with his service rifle by opening the

door of the barrack and fired upon him through his service rifle 303 causing bullet injury on the left iliac crest. P.W.7 sustained injury on the left buttock and right middle finger. P.W.7 fell down whereupon the accused tried to fire again. But in the meantime, P.W. 5, P.W. 10, P.W.11 and others arrived there whereupon the accused ran out from the barrack. But these witnesses chased him and overpowered him. P.W.7 was taken to the hospital where he was examined by Dr. Ngaran Ragui, P. W.6.

8. P.W.6 examined P.W.7 on that evening itself and found the following injuries:

- (1) Penetrated injury size about "x" below the left iliac crest.
- (2) Lacerated wound 1"x2"x1"x1" left buttock.
- (3) Laceration 1"x" right middle finger.

The nature of the injuries were grievous. All the injuries are grievous in nature. The injuries could be by single bullet if the victim keep his right middle finger just nearby left iliac region. The injuries might have been caused from close distance. At the time of examination there were severe bleeding injuries on the above injured portion.

The injured was referred to Imphal for further treatment.

9. P.W.5 has deposed that at the relevant point of time, he was sitting inside the guard room along with P.W. 10, P.W. 11 and P.W.7 who was taking meal by sitting on the bed. They saw the accused entering into the guard room through the main door holding his service rifle in his hand and, thereafter, the accused fired a round from his service rifle on P.W.7. P.W.7 fell down. All of them jumped into action and the accused ran out from the room. They saw bleeding injury on the left thigh and buttock of P.W.7. They chased the accused and apprehended him near the engine operation room and disarmed him.

10. P.W. 10 and 11 have also given identical statement supporting the evidence of P.W.5 and P.W.7.

11. Thus, we find there are four eye witnesses to the occurrence and all of them have deposed that at the relevant point of time they were inside one room and there was electric light in the room. They saw the accused entering into the room and firing shot causing injury on the thigh and buttock of P.W.7. Their oral testimony as regards the injury is supported by the medical evidence both as to the site and nature of the injury as well as the weapon used.

12. P.W.4 is the Supervisory Officer and it was he who used to detail the persons for sentry duty. He has stated that the accused was detailed for sentry duty at Gate No. 1 from 8 p.m. to 10 p.m. and while he was taking rest in the barrack around 8.30 p.m. he heard noise towards the guard room and came out rushing to the sentry post at Gate No. 1 and found the accused missing from the post. Later on he found that the accused had been detained by the MR personnel near the verandah. He also saw injuries on the person of P.W.7.

13. P.W.3 is the Deputy Commandant. On receipt of the information, he came to the place of occurrence and found P.W.7 lying injured with bullet injury and on enquiry he was told by P.W.7 that he has been shot by the accused. The injured was removed to hospital for treatment and the accused was handed over to the police. Thus, we find that there is tale tell evidence on record that the incident as alleged by the prosecution did take place and time and place and the manner stated by the prosecution.

14. So far the incident of firing and causing injury to P.W.7 is concerned, we find that even the defence witnesses have supported the same and they have deposed that on the date of occurrence at about 8.30 p.m. there was a firing and P.W.7 sustained bullet injuries. So far the other aspects of evidence of D.W.1 and D.W.2 is concerned, we will revert to the same at a later stage.

15. In this case, we find that the rifle which was given to the accused as well as the empty case and projectiles were examined by P.W. 14, Scientific Assistant in the Forensic Science Laboratory and after examining the above on a comparison microscope it was found that the empty cartridge was fired from the rifle. Exhibit-P/16 is the report.

16. The learned Counsel for the Respondent has submitted that the service rifle was not produced before the Court and, as such, the report of the Forensic Science Laboratory expert cannot be relied upon. Non-production of the seized rifle is not material. Moreover, we find that an explanation has been given by P.W.14 himself that the rifle in question was stolen or found missing from their laboratory after the examination and, as such, it could not be returned to police. The evidence of P.W. 14 read with Exhibit-P/16 clearly establish that the shot in question was fired from the rifle of the accused.

17. In a case of appeal against acquittal, the Apex Court, on several occasions, has observed that the High Court should give proper weight and consideration to the view of the Trial Court on the question of fact and if the grounds on which the Court below has based its order are reasonable and plausible, the High Court should not disturb it. If any authority is needed on the subject one can look into the case of Ram Kumar Vs. State of Haryana,

18. The judgment under appeal is a short one running into four pages only and the Trial Court has held that the evidence of P.W.I is not reliable as this witness was on sentry duty on Gate No. 2 which is situated at a distance of about 80 feet. As stated above, there were four persons sitting in the same guard room where the incident of firing took place and strangely enough in the entire judgment the Trial Court has not mentioned a single word as to why the testimony of these four eye witnesses cannot be accepted or why it should be discharged. As a matter of fact, not to speak of the other witnesses, even the evidence of the victim has not been considered and there is no whisper in the judgment as to why this man who had sustained injury at the hands of the fellow guard will depose falsely or falsely implicate him. We find that the Trial Court had

adopted a short cut method to dispose of the case and failed to consider the prosecution evidence at all.

19. On the other hand, we find that the entire order of acquittal has been recorded on the basis of the evidence of D.W.1 and D.W.2 who are also persons of the same battalion. D.W.1 has deposed that while he was in his barrack he heard shooting sound of about 30 rounds. He rushed out and took his position but he did not fire any round. Later on he heard alarm and came to know that P.W.7 had sustained injury on his thigh and he also attended to the victim. P.W.7 was, thereafter, shifted to the District Hospital, Ukhrul for treatment. The witness has stated about two different types of sentry duty of the accused person but this is not material as we find that according to the prosecution version, the accused was detailed for sentry duty from 8 p.m. to 10 p.m. D.W.2 on the other hand has deposed that while he was inside the campus of the battalion, he heard sound of shooting. He ran inside and later on he came to know about the injury of P.W.7. According to this witness, the accused was on sentry duty from 5 p.m. to 8 p.m. We, thus, find that the evidence of these two witnesses is not at all relevant and material and they contradict each other. According to D.W.2, the duty of the accused was over by 8 p.m. whereas the incident took place at about 8.30 p.m. The Trial Court held that P.W.1 was on sentry duty at Gate No. 2 and he could not have seen the incident of firing. But on the other hand the Court below relied on the evidence of D.W.1 who was inside another barrack and who was not present in the guard room where the incident took place. Moreover, these two witnesses came up with a new story that there was a firing of around 30 rounds which is not supported by any other witness. As a matter of fact, there was no suggestion even to that effect to the prosecution witnesses. We, thus, find this to be connection and after thought. Moreover, D.W.1's evidence is contradictory. He claims that there was no electricity in the campus at the time of occurrence and it was quite dark there. But still he claims that he saw the accused doing his duty as a sentry guard. The other witnesses including P.W.4 have categorically stated that there was a generator working and there was electric light all around. We find force in the submission of the learned Public Prosecutor that it was a wireless station and it cannot work without power and even if there was no power from the electric light, power is maintained at the station with the help of generator. We have, therefore, no hesitation to hold that D.W.1 and 2 are cooked up witnesses and their statement have no evidentiary value and they cannot be relied upon at all.

20. The learned Trial Court seems to have swayed by the two witnesses and the learned Court has quoted DW 2's statement to the effect "the accused Dimkhothang has been falsely charged in this case." The Trial Court tried to substantiate the above statement by referring to the decision of the Apex Court in the State of Haryana Vs. Ram Singh, wherein it was observed:

the evidence tendered by the defence witnesses cannot always be termed to be tainted one - the defence witnesses are entitled to equal treatment and equal

respect as that of the prosecution.

21. The above statement of D.W.2 is his opinion and not his evidence and as per their own admission, D.W.1 and 2 were not present at the place of occurrence when the incident took place and naturally they cannot be a witness to the occurrence or they cannot demolish the prosecution witnesses. As stated above their claim that there was a firing of about 30 rounds is altogether a false and fabricated one.

22. In view of what has been stated above, we find that the appreciation of the evidence by the Trial Court is palpably wrong and erroneous and as a matter of fact, it suffers from the malice of non-reading of the evidence. From the evidence on record there is no scope for culling up two different views or conclusions. The evidence of the eye witnesses who were present in the camp at the relevant time is quite consistent and reliable and it has been fully supported by the medical evidence on record as well as by the evidence of the Scientific Assistant, P.W.14. The witnesses were cross-examined at length but nothing has come out to show that they are deposing falsely or that they had invented a story although no such occurrence took place.

23. In view of what has been stated above, we have no hesitation whatsoever to hold that the impugned judgment passed by the Trial Court is a perverse judgment wherein the findings, if any, arrived at by the Court are against the weight of the evidence on record. The impugned judgment needs to be set aside which we do hereby.

24. In the present case, the accused has been charged u/s 307 IPC and the prosecution is required to establish that the accused had the intention to cause death or that the injury inflicted was capable of causing death in the normal course of nature. It is well established that the accused had used his service rifle to cause the injury. However, we find that the injury was caused on the thigh of the P.W.7. The accused is a trained police personnel adapted in handling firearms and, as such, if he had the intention to cause death of P.W.7; he would have fired at the vital organs like head or chest. There is also no medical evidence on record that the injury sustained by P.W.7 was life threatening.

25. In the above circumstances, no offence u/s 307 IPC as such is made out. However, the injury sustained by P.W.7 amounts to grievous hurt and, hence, the offence committed by the accused is one u/s 326 IPC. We, therefore, convict the accused u/s 326 IPC and sentence him to imprisonment for three years and to pay a fine of Rs. 5,000/-, in default to further imprisonment for two months.

26. The appeal accordingly stands disposed of. Send down in records to Addl. sessions Judge, Manipur East who shall take in account into custody to none out the sentence.