
(2012) 07 DEL CK 0572
In the Delhi High Court
Case No : Writ Petition (C) 4294 of 1999

Sumer Singh

APPELLANT

Vs

Union of India

RESPONDENT

Date of Decision : 23-07-2012

Acts Referred:

Citation : (2012) 07 DEL CK 0572

Hon'ble Judges : Pradeep Nandrajog, J; Manmohan Singh, J

Bench : Division Bench

Advocate : Jetendra Singh, for the Appellant; Ruchir Mishra, Advocate with Dy. Cmdt. Bhupinder Sharma, BSF, for the Respondent

Final Decision : Dismissed

Judgement

Pradeep Nandrajog, J.—On March 13, 1998 the 22nd Bn. BSF was deployed at Ganpathyar, Srinagar (J&K) and at about 23:00 hours a lady Sheelaji Bhat, residing in a flat on the 3rd floor of a building which was at a stone throw distance from the barracks where the jawans of 22nd Bn. were stationed, raised a hue and cry that a male force personnel had intruded in her flat. This attracted persons in the neighbourhood to rush to the flat. The intruder fled. It was found that somebody had tampered with the distribution box from where electricity was distributed to the various flats in a manner that Sheelaji Bhat's flat was rendered without supply of electricity. Somebody rushed up to the BSF camp. The 2-IC of the battalion learnt about the incident and since passion in the locality had been roused, and a force personnel of BSF was the culprit, he correctly took the decision to direct all force personnel to fall in line so that Sheelaji Bhat could conduct a test identification. He ordered so. Information was received by the Commandant of the battalion and thus even he, rightly so, rushed to the camp and reached when the troops were lining up. Sheelaji Bhat identified appellant Sumer Singh as the culprit. Sumer Singh was found drunk. Taking cognizance of the cognizance report which was later on prepared and after hearing Sumer Singh the Commandant directed record of evidence to be prepared and before

that listed out the charges against Sumer Singh; being three in number : (i) At 23:00 hours on March 13, 1998 committing offence of lurking house trespass in the house of Sheelaji Bhat daughter of late Jai Lal Bhat; (ii) Using force with intent to outrage the modesty of Sheelaji Bhat, and lastly (iii) of being found to be in a state of intoxication. The 2-IC of the battalion was appointed as the officer to record the evidence and he proceeded to do so. 13 witnesses, out of whom 3 were civilians; 2 neighbours of Sheelaji Bhat and one the lady herself were examined. 10 witnesses were jawans of B.S.F. As regards Sheelaji Bhat she deposed as per the indictment and reiterated having identified appellant as the culprit at the test identification parade. The other two civilian witnesses deposed of having responded to the summons for rescue shouted by Sheelaji Bhat and having detected electricity supply to Sheelaji Bhat's flat being disconnected and they having informed the BSF personnel. 10 force personnel examined as witnesses inter-alia deposed to the test identification parade conducted at which Sheelaji Bhat identified the writ petitioner as the offender and that on the night in question the petitioner was in his barrack and after having consumed alcohol had left the barrack for a short duration stating that he was going out as he was feeling vomity.

2. Petitioner made a statement after he was cautioned as per BSF Rule 48(3) in which he admitted consuming liquor in the barracks and having left the barrack room, but he claimed having done so not because he was feeling vomity, but stated that he went to the urinal. He stated that on the way he vomited and hence returned back to the bathroom. He claimed that after he returned to the room he heard sound of whistle and the 2-IC as also the Commandant directing the force personnel to fall in line. He claimed that Sheelaji Bhat firstly pointed to Ct.Balbir as the culprit, but immediately denied and then identified him as the culprit.

3. Considering the record of evidence, the Commandant of the Unit opined that it was a fit case to try the petitioner at a Summary Security Force Court and thus in his capacity as the commandant sat as the Presiding Officer of the Court and after notifying a date on which petitioner had to appear, conducted Court proceedings by firstly reading out the indictment to the petitioner, who pleaded not guilty to the first two charges but guilty to the third.

4. At the Summary Security Force Court trial 11 out of the 13 persons who were examined during record of evidence were examined and needless to state PW-1 was Sheelaji Bhat deposed as per the indictment. She deposed that after petitioner entered her flat he caught her by the hair and tried to drag her. She could recognize him. She managed to free herself and managed to reach the window so that she could shout for help, at which petitioner caught her by the neck and muffled her voice. She managed to free herself and the petitioner escaped. She shouted for help and as rescue came she narrated the incident. Electric wiring to her house was found tampered and at the test identification parade she identified the petitioner as the offender.

5. We may highlight that testimony of Sheelaji Bhat before the Court is substantially the same as what she stated at the Record of Evidence. The petitioner cross-examined Sheelaji Bhat and the only question put was : Whether it was possible for anyone to jump from the third storey of a building and to which she replied that as a matter of fact the petitioner did so.

6. The 2-IC tendered, as PW-2 the evidence recorded at the record of evidence. The two civilian witnesses who were examined during record of evidence were not examined at the trial and the remaining 10 witnesses were BSF officers who deposed either of reaching the place of the incident and seeing the electricity supply to Sheelaji Bhat's flat disconnected or to the test identification parade conducted. And suffice would it be to state that such witnesses who deposed that at the test identification parade Sheelaji Bhat identified petitioner, no questions were put during cross-examination with respect to said testimony. It needs to be noted that only one witness IRLA No.65690 Tejender Singh introduced a discordant note when he stated that initially Sheelaji Bhat pointed out some other person as the culprit, but immediately retracted when said person was asked to remove his cap and thereafter pointed out petitioner as the culprit.

7. At the trial, petitioner made a statement in defence which is substantially the same as what he claimed at the record of evidence.

8. Holding petitioner guilty of the two charges to which he had pleaded not guilty and in view of the plea of guilt pertaining to the third charge, verdict of guilt was returned resulting in penalty of dismissal from service being inflicted.

9. Statutory remedies having failed, instant petition was filed.

10. First challenge to the proceedings is that the 2-IC and the Commandant were the witnesses to the incident and thus neither could the 2-IC be the officer appointed to record the evidence and nor could the Commandant preside at the Summary Security Force Court.

11. Now, the incident of house lurking and molestation of Sheelaji Bhat was not witnessed by the 2-IC and the Commandant. The role of the two officers was, the former directing all force personnel to fall in line so that a test identification parade could be conducted, and the latter being present when the TIP was conducted. It may be true that the two would have witnessed the TIP proceedings but it needs to be highlighted that they were not the witnesses of the prosecution and suffice would it be to state the requirement of Rule 46 of the BSF Rules is to attach an accused to another battalion pending trial where the Commandant of the Unit is a witness in the case against the accused.

12. The second submission urged was that as per the prosecution the electricity supply to the flat of Sheelaji Bhat was disconnected; the incident took place at around 23:00 hours i.e. at around midnight; when it was dark and thus Sheelaji Bhat could not have possibly recognized the petitioner who was not known to her and dovetailing to this argument was the testimony of PW-12 at the trial that

Sheelaji Bhat initially identified some other person as the culprit but immediately thereafter identified the petitioner as the culprit.

13. We have troubled ourselves to extract, in brief, Sheelaji Bhat's testimony for the reason it brings out that after the culprit entered her flat, he reached within an arm-length distance and caught her by the hair. There was a scuffle. She freed herself and ran to the window to shout for the help. The intruder chased her and tried to muffle her voice. There was another scuffle. She freed herself and shouted. The intruder ran away. It is apparent that Sheelaji Bhat did not have a fleeting glimpse of the intruder. She saw him over a period of time. That Sheelaji Bhat had reached the window to shout for help and the intruder had tried to muffle her at the window, and there being evidence that the area was serviced with electricity would mean that there was sufficient illumination at the window, from the light outside, where a lady could recognize an intruder. As regards reliance upon the testimony of PW-12 that Sheelaji Bhat had initially identified some other person as the intruder, suffice would it be to state that Sheelaji Bhat did not say so and that no suggestion was put to her that she initially identified somebody else as the intruder but later on corrected herself. No such suggestion was given to Ct. Binod Prasad PW-3, HC Ram Prakash PW-4, Ct. Bashir Ahmed Bhat PW-5, Ct. Rajendran PW-6, Ct. Ram Kishan PW-7, Ct. Dalbeer Singh PW-8 and L/Nk.Shabbir Khan PW-9 who deposed that Sheelaji Bhat identified the petitioner as the intruder at the test identification parade. Only PW-12 IRLA Tejender Singh introduced said fact. We do not know why, but may be to help the petitioner, to whatever extent he could. We simply highlight that the victim and as many as 8 force personnel have deposed in sync with respect to Sheelaji Bhat identifying petitioner as the culprit and not identifying him as the culprit after faltering.

14. These are writ proceedings and not appellate proceedings and thus we are not to re-appreciate the evidence.

15. We note that in the writ petition various other points with respect to the accused being entitled to a lawyer's assistance and with respect to proceedings under Rule 45 of the BSF Rules have been pleaded, but no submissions qua them were advanced at the hearing.

16. As regards the penalty levied, no submissions were advanced of the same being disproportionate to the gravity of the offence, but we would simply note that a force personnel lurking into the house of a lady, grappling with her and outraging her modesty is a misdemeanor which would certainly attract the penalty where the force personnel is made to shed his uniform i.e. removed or dismissed from service. The writ petition is dismissed but without any order as to costs for the reason the petitioner is without a job.