

(2019) 12 SC CK 0026
In the Supreme Court Of India
Case No : Criminal Appeal Nos. 3, 4 Of 2015

Union Of India & Ors

APPELLANT

Vs

Dafadar Kartar Singh & Anr

RESPONDENT

Date of Decision : 09-12-2019

Acts Referred:

Army Rules, 1954 — Rule 23
Army Act, 1950 — Section 69, 120
Indian Penal Code, 1860 — Section 456

Citation : (2019) 12 JT 181 : (2019) 17 Scale 441 : AIR 2020 SC 187 : (2020) 2 SCC 437 : (2020) 110 AllCC 217 : (2020) 2 MLJ(Cri) 185

Hon'ble Judges : L. Nageswara Rao, J; Hemant Gupta, J

Bench : Division Bench

Advocate : A.K. Srivastav, Meenakshi Grover, Balendu Shekhar, Arvind Kumar, B. V. Balaram Das, Vineet Bhagat

Final Decision : Allowed

Judgement

L. Nageswara Rao, J

1. Dafadar Kartar Singh, the Respondent-herein was tried by the Summary Court Martial for a civil offence of house breaking by night. He was found guilty of the charge and was sentenced to rigorous imprisonment for seven months apart from dismissal from service and reduction in the ranks. The conviction was set aside by the Armed Forces Tribunal, Regional Bench, Chandigarh (for short, "the Tribunal"). The Tribunal directed that the Respondent shall be deemed to be in service w.e.f. 10.11.1999 till the date of his superannuation in the rank of Dafadar. He was also held to be entitled to all allowances for the said period and pensionary benefits. These Appeals are directed against the said judgment of the Tribunal.

2. The Respondent was serving in the 74th Armoured Regiment at Panagarh, West Bengal in the year 1998. He was residing in the residential quarters at the SBI Lines. Sowar Kishore Kumar Yadav who was also staying in the same

residential quarters was hospitalized on 14.10.1998 due to which his wife Smt. Sudesh was staying alone in the residential quarters. As Smt. Sudesh was alone, her neighbor's son- Master Jaynendra alias Bittoo was requested to stay with her. Around midnight of 14/15.10.1998, Smt. Sudesh heard some sound of breaking of a bottle from the toilet of her house and noticed the movement of a person in the toilet. She saw a person wearing a light coloured sleeveless vest and a kuchha coming out of the toilet. He switched off the lights in the lobby and the toilet. Smt. Sudesh tried to wake up Bittoo. In the meanwhile, the intruder walked up towards the door of the bed room and stood in the door-way. She could see the intruder in the light of the bed room. He switched off the light of the bed room and came inside the bed room. Bittoo woke up and saw the intruder and started screaming "Koi Aadmi Hai". Then Smt. Sudeh also screamed at which the intruder ran out of the bed room closing and bolting the bed room from outside. Smt. Sudesh heard Smt. Mithilesh, mother of Bittoo, enquiring from outside as to what was the matter to which Bittoo replied that somebody has come into the house. Thereafter, people gathered at the main entrance and opened the locked room and entered inside the bed room and started enquiring about the incident. Some people also inspected the toilet to find out as to how the intruder sneaked into the house. Smt. Sudesh came out of the house and saw Lance Naik A. Hussain, Havildar K.K. Thakaran and Naik Ramesh Yadav amongst other people who gathered outside the quarters. She immediately recognized the intruder standing along with other people who gathered there and pointed to the Respondent saying that he was the man who broke into the house. Risaldar Pritam Singh visited the house of Sowar Kishore Kumar Yadav to investigate the incident at 1400 hrs. on 15.10.1998 on receipt of complaint of house breaking. He spoke to Smt. Sudesh who explained to him the details. He inspected the window of the toilet and found the lower portion of the window had been removed and was lying near the drain block and the frame of the window was broken. The broken ends of the detached portion of the window lying on the ground indicated that it was broken recently. He inspected the toilet to find that the bottle which was containing acid was lying broken in the toilet. He then called the official photographer and the photographs of Respondent and the site were taken. The Respondent had abrasions on his right upper arm on the lateral side and the left upper arm on lateral side.

3. The Court of Inquiry was held to investigate the charge levelled by Smt. Sudesh against the Respondent. Eight witnesses were examined and the Court of Inquiry recorded a finding that Respondent broke into the house of Smt. Sudesh. However, as the intention of the house breaking was not established, the Court of Inquiry recommended that disciplinary action be initiated against the Respondent. The Respondent was medically examined by Captain C.P. Patel, Army Doctor, on 18. 10.1998 who found abrasions on his arms which were three to four days old. Summary of evidence was recorded in the presence of the Respondent in terms of Rule 23 of the Army Rules and a charge sheet was laid against the Respondent for committing an offence under Section 69 of the Army

Act contrary to Section 456 of the Indian Penal Code ("IPC") for house breaking by night. The GOC 15 Infantry Division gave sanction for trial of the Respondent by Summary Court Martial in terms of Section 120 of the Army Act, 1950. The Commanding Officer, 74 Armoured Regiment conducted the Summary Court Martial between 11.08.1999 and 10.11.1999. The Respondent pleaded not guilty of the charge. Six prosecution witnesses were examined. The Respondent gave statement in his defence at the trial and has also examined two defence witnesses. Two Court witnesses were also summoned and examined. At the conclusion of the trial, the Summary Court Martial found the Respondent guilty of the charge and sentenced him to reduction in the ranks, dismissal from service and rigorous imprisonment for seven months.

4. Challenging the order of the Summary Court Martial, the Respondent filed a Writ Petition before the High Court of Punjab & Haryana in the year 1999, which was transferred to the Armed Forces Tribunal, Regional Bench at Chandigarh ("the Tribunal"). By a judgment dated 06.02.2012, the Tribunal set aside the conviction and directed reinstatement of the Respondent without consequential benefits. The application filed by the Appellants for grant of leave to appeal to this Court was rejected by the Tribunal on 06.02.2014.

5. Before we proceed to analyse the judgment of the Tribunal in acquitting the Respondent, it is necessary to examine the evidence on record. Smt. Sudesh narrated the incident in detail. She deposed that the Respondent sneaked into her house through a window in the toilet. Master Bittoo who was aged nine years corroborated the evidence of Smt. Sudesh. Master Bittoo stated that he was asked to go to the house of Smt. Sudesh as she was alone due to the hospitalization of her husband. He reached the house of Smt. Sudesh around 8.00 p.m. on 14.10.1998. They spoke for some time and then fell asleep. The light of the bed room, bath room and the lobby were not put off. Master Bittoo was woken up by Smt. Sudesh and then he saw that the lights had been switched off. He could make out that somebody was standing near the door. He screamed that somebody was in the house. He heard his mother shouting from upstairs as to what has happened. He replied in a loud voice that somebody was in the house. Thereafter, a number of people came. After the incident, Smt. Sudesh was taken to his house where she stayed that night.

6. Lance Naik A. Hussain was among the people who reached the place of the incident. He was summoned as Court witness-1 and he deposed that he knows the Respondent who was staying in the block which is opposite the quarter of Sowar Kishore Kumar Yadav. He stated that he was suffering from ear pain on the night of 14.10.1998 and he was lying in the bed but was not able to sleep. He heard a boy shouting out for help at about 11 p.m. He took up a Talwar and went outside. He heard Smt. Sudesh and Bittoo crying out for help through the window of Smt. Sudesh's quarter informing that there was somebody in the room. He went and stood at the main door of Sowar Kishore Kumar's house. As the door was closed, he pushed opened the door with the Talwar. He was

apprehensive of entering into the house alone and so shouted out for CHM Om Prakash who stayed in the same block. Om Prakash reached the place of the incident and both A. Hussain and Om Prakash entered the house of Kishore Kumar Yadav. They switched on the lights and found that the door of the bed room was bolted from outside. They opened the door and found Smt. Sudesh and a boy in a terrified condition. Smt. Sudesh informed Lance Naik A. Hussain that she saw someone in the house but as her face was tucked into the bed sheet she did not recognize the intruder. Some people gathered outside the house. Smt. Sudesh saw the Respondent standing amongst them and she pointed towards him saying that he was the person who trespassed into her house. Lance Naik A. Hussain further deposed that there was an argument between Havildar K.K. Thakaran and the Respondent regarding the injuries on the upper portion of the arms of the Respondent. Lance Naik Hussain had also inspected the toilet and found that the window was removed. He smelt a specific fragrance of a perfume in Smt. Sudesh's quarters which was coming from the Respondent when he went closer to him to see the abrasions on his arms.

7. Smt. Mithilesh was examined as PW3. She is the wife of Lance Nail Shailendra Singh and mother of Master Bittoo. They lived in the first floor, directly above the quarters of Sowar Kishore Kumar Yadav. She stated that her son shouted at 11 p.m. on 14.10.1998. She called out for help and rushed to the quarters of Sowar Kishore Kumar Yadav and saw Lance Naik A. Hussain, Havildar K.K. Thakaran, his wife Smt. Sunil Devi, Naik Ramesh Yadav, Respondent- Dafadar Kartar Singh and his wife Smt. Kalpana at the door of Smt. Sudesh's quarter. Smt. Sunil Devi who was examined by the Summary Court Martial as PW5 was staying in the first floor quarter, opposite to the one occupied by Respondent- Dafadar Kartar Singh. At about 10.30 p.m. on 14.10.1998, she was stitching and her husband was sleeping in the other room. She heard somebody shouting for help at which she woke up her husband. They opened the main door to go down the stairs and they saw the Respondent running up the common stairs of the quarters. He wore a light coloured sleeveless vest and a kuchha. When her husband asked the Respondent as to what happened, Havildar K.K. Thakaran the Respondent replied that it appears there was a snake down-stairs. Smt. Sunil Devi smelt a perfume from the Respondent which she smelt again in the house of Smt. Sudesh when she went there.

8. The Tribunal examined the sketch of the quarter and the photographs that were placed before it. The Tribunal held that the site inspection note was not prepared by Risaldar Pritam Singh and Risaldar Sant Ram and the dimensions of the quarter were not on record. The main issue that was decided in favour of the Respondent by the Tribunal related to the identity of the Respondent. The contradictions in the evidence of Smt. Sudesh have been highlighted by the Tribunal to hold that the charge against the Respondent was not proved. The Tribunal found the statement of Smt. Sudesh regarding the identification of the Respondent to be inconsistent. In her testimony, Smt. Sudesh stated that she recognized the Respondent standing outside the door of her quarter immediately

after the incident. The Tribunal referred to the statement of PW1-Pritam Singh who deposed that Smt. Sudesh informed him at 6.45 a.m. of the next day of the incident that she could not recognize the intruder. The Tribunal also highlighted the fact that the evidence shows that Smt. Sudesh was well acquainted with the Respondent who was residing in an adjoining quarter. In view of the contradictions in the evidence of Smt. Sudesh, the Tribunal was convinced that the identity of the intruder inside the house of Smt. Sudesh was not proved. The minor contradictions in the evidence of Smt. Sudesh have been blown out of proportion by the Tribunal. There is a ring of truth in the evidence of Smt. Sudesh and there is no reason for her to falsely implicate the Respondent.

9. The judgments of acquittal may be reversed or otherwise disturbed only for very substantial and compelling reasons. Very substantial and compelling reasons exist when the trial court has ignored the evidence or misread the material evidence or has ignored material documents like dying declarations/report of the ballistic expert, etc.[(2008) 10 SCC 450 - Ghurey Lal v. State of U.P] The judgment of the Tribunal cannot be sustained in view of the material evidence on record not being considered at all except for highlighting the contradiction in the evidence of Smt. Sudesh. The Tribunal miserably failed to consider the other oral testimonies, especially of Master Bittoo who was in the quarters at the time of intrusion, Lance Naik A. Hussain- Court witness No.1 who reached the place of the incident, Smt. Sunil Devi and Smt. Mithilesh- mother of Bittoo. All these persons spoke about the incident and there is no contradiction in their versions. The other material on record has also been ignored by the Tribunal is the photograph of the bruises on both the arms of Respondent and the opinion of the doctor which was placed on record which lend support to the prosecution version. There is sufficient evidence on record to show that house breaking had in fact taken place. In addition, material on record clearly points to the guilt of the Respondent. After examining the evidence available on record carefully, we are convinced that the judgment of the Summary Court Martial ought not to have been interfered with by the Tribunal.

10. In view of the aforementioned, the judgment of the Tribunal is set aside and the order passed in Summary Court Martial is restored. The sentence of imprisonment is however modified to the period already undergone. The other penalties of dismissal from service and reduction to ranks are restored. Accordingly, the Appeals are allowed.