

Ganesh Pandurang Vs. State

Ganesh Pandurang Vs. State

SooperKanoon Citation : sooperkanoon.com/1161675

Court : Delhi

Decided On : Aug-07-2014

Judge : Mukta Gupta

Appellant : Ganesh Pandurang

Respondent : State

Judgement :

* IN THE HIGH COURT OF DELHI AT NEW DELHI Judgment Reserved on: July 31, 2014 Judgment Delivered on: August 07 , 2014 % + CRL.A. 725/2014 GANESH PANDURANG Represented by: Appellant Ms.Inderjeet Sindhu, Adv. versus STATE Represented by: Respondent Mr.Lovkesh Sawhney, APP Insp.Ravinder Kumar, PS Darya Ganj SI Yogendra Kumar, PS Tughlak Road. CORAM: HON'BLE MR. JUSTICE PRADEEP NANDRAJOG HON'BLE MS. JUSTICE MUKTA GUPTA MUKTA GUPTA, J.

1. Ganesh Pandurang a Constable of CRPF, 73 Battalion is convicted of the murder of his colleague while being posted as Guard at 6, Akbar Road, New Delhi vide impugned judgment dated August 12, 2010 on the strength of witnesses in and outside the place of incident and the bullets being fired from his service rifle. Vide the impugned order dated August 18, 2010, he has been directed to undergo imprisonment for life and to pay a fine of ` 1000/- and in default of payment of fine to undergo rigorous imprisonment for 1 year.

2. Ganesh Pandurang assails the judgment on the ground that he was not provided legal aid and the trial was conducted at a time when he was not mentally fit to undergo the trial. He also pleads that the reliance of the learned Trial Court on the testimony of PW-3 Constable Munesh Vaish is unwarranted as admittedly he was not an eye-witness and woke up only after the firearms were shot. No finger prints were lifted from the weapon of offence. The missing links in the chain of events have not been proved hence he is entitled to acquittal.

3. No defence evidence has been led by Ganesh Pandurang. However, his response to the question why this case against you and why the PWs have deposed against you?. under Section 313 Cr.P.C. is as under:

In December 2004 while I was posted with 73 Battalion, CRPF in Guhawati, Assam, I had applied for leave about 10 days before I left my duties place as for 10 days. I had not been able to sleep and when leave was not being sanctioned, I left my duty even without informing In-charge of the Commandant. For next four months period, I remained wandered at various places and could not sleep and eat properly. I reported back on my duty on Guwahati, Assam in April 2005 and remained admitted in CRPF Hospital, Guhawati for 15 days as I was suffering from jaundice and was treated for that disease. I had been in a disturbed state of mind for last about 6 months or a month and if I fired at victim/ deceased Suresh Kumar Dogra that was a kind of blind faith superstition and it happened so though I did not intend to do it. Ct. Munesh Vaish (PW-3) was in sleep at the time of incident and he had not seen me in the act of firing and by the time he had woken up I had already left the guard room. I had not fired on the victim/ deceased Suresh Kumar Dogra and I am innocent. On the date of incident I had been on guard duty from 5 am to 7 am and have come out on duty at 7 am. Even on 17.8.05 i.e., a day before the incident I did not perform my duty which was from 7 am to 9 am and had left my duty place and went to New Delhi Railway Station, even bought a ticket for train journey to my native place. I bought that ticket for ` 290/- but then I changed my mind and came back to my place of duty and threw away that train ticket. I conveyed that fact to Asstt. Commandant whose name I do not recall now.

4. The investigation into the case was set into motion on receipt of DD No.2A Ex.PW-7/A at 7.25 AM on August 18, 2005 at Police Station Tuglak Road through the PCR that a Head Constable has been fired upon by a Constable in the Guard room at Daya Nidhi Marans place. SI Sanjeev Kumar PW-19 along with Constable Babu Ram reached the spot. In the meantime PW-18 Inspector Ravinder Kumar, Additional SHO Tuglak Road also reached the spot and recorded rukka Ex.PW-18/C on DD No.2A and got registered the FIR. HC Suresh Kumar Dogra (hereinafter referred to as deceased) of the 73rd Battalion CRPF had already been taken to the RML hospital by the PCR. The Police found blood on the floor of the Guard room where the incident took place. A black colour blanket was spread on a cot where the deceased while lying on the cot had been shot with the bullets and had been taken to the hospital along with the Dari. On another cot by the side of the first cot was lying rifle make Insas 5.56 and some empty holes of bullets on the cot and the floor. Crime team and photographer were called. The deceased was reported to be brought dead.

5. Rifle in question along with magazine with capacity of 20 rounds was seized. 9 empty bullets, 4 lying on the cot which was there by the side of the cot of the deceased and 5 lying on the floor were seized, 7 of the empty cartridges were bearing inscription KF04 5.56 and 2 bore the inscription KF01 5.56 on its base. 9 live rounds were lying in the magazine of the rifle which were taken out, 6 bearing the inscription KF04 5.56 and 2 bearing KF015156 and 1 bearing OFS-00 5.56. Sample of blood, blood stained concrete and sample concrete earth were also lifted.

6. Personal search of Ganesh was conducted and 2 live bullets were found in his pant pocket, 1 bearing inscription KF04 5.56 and the other KF015.56. HC Arul Dass PW-12 produced the record showing that the rifle in question was allotted to Ganesh Pandurang as per in and out arms and ammunition register. Record was seized vide seizure memo Ex.PW-18/B. As per the record the rifle and 3 magazines and 60 rounds had been issued to Ganesh on August 11, 2005. The register with the signature of Ganesh was also seized. The duty register was also seized. As per the duty roster on August 18, 2005 Ganesh was on duty from 5 AM to 7 AM and the said register bore his signature.

7. The post-mortem of the deceased was conducted by Dr. Bharat Verma PW-8 who exhibited his report as PW-8/A. He found following injuries on the body of the deceased:

1. Firearm entry wound, 0.5 cm x 0.4 cm x pleural cavity deep, over left side of chest, 9 cms below left nipple and 10 cms from the midline with abrasion collar 1 cm x 0.7 cm over left side of the entry wound.

2. Firearm entry wound, 0.5 cm x 0.3 cm x peritoneal cavity deep, over left side of abdomen, 17 cms below left nipple and 13 cms from midline, with abrasion collar, 0.5 cm x 0.4 cm, below the wound.

3. Firearm entry wound, 0.4 cm x 0.4 cm x cavity deep over left side of abdomen, 18.5 cms to the left of umbilicus, with abrasion collar 0.4 cm x 0.3 cm to the left & below the wound.

4. Firearm entry wound, 0.5 cm x 0.4 cm X cavity deep over left side of abdomen, 5 cms below & 15 cms to the left of umbilicus with abrasion collar of size 0.3 cm x 0.2 cm to the left and below the wound.

5. Firearm entry wound, 0.7 cm x 0.5 cm x peritoneal cavity deep, over left side of abdomen, 8 cm from midline & 7 cm below the umbilicus.

6. Firearm entry wound, 0.5 cm x 0.4 cm x cavity deep over left abdomen, 12 cms lateral to midline and 4 cms medial to anterior superior iliac spine with abrasion collar 0.3 cm all round the wound.

7. Firearm entry wound, 0.5 cm x 0.5 cm x cavity deep, over left pubic area, 4 cms from the midline.

8. Firearm entry wound, 0.5 cm x 0.5 cm x cavity deep, 3 cms lateral to midline x 13 cms below xiphisternum, with abrasion collar 0.8 cm x 0.7 cm to the left and below the wound. Tattooing present in an area of 15 cm x 12 cm over left side of abdomen.

9. Firearm entry wound, 0.4 cm x 0.3 cm x cavity deep, over left side of abdomen, 4 cm above & 3 cm lateral to umbilicus with abrasion collar 0.7 cm x 0.7 cm to left

of wound.

10. Firearm exit wound, 2.6 cm x 1.4 cm x cavity deep, 5 cms lateral and 3 cm above left nipple, with exudation of fat from the wound

8. Dr. Bharat Verma also opined that the cause of death was shock and hemorrhage due to rifled fire arm injury. All injuries were ante-mortem in nature and fresh in duration fired by near range. Injuries Nos. 1 to 9 were sufficient to cause death in ordinary course of nature both individually and collectively. He took the blood samples and 6 deformed bullets from the body of the deceased and sealed with the seal of the hospital and handed over to the investigating officer. This witness has not been cross-examined by the learned amicus curiae and hence his testimony has gone unchallenged.

9. PW-4 Constable Ram Ji has deposed that on August 18, 2005 he was on duty at 6 Akbar Road from 6 AM to 8 AM. At about 7.15 AM he heard the bang of fire and so he rushed towards the guard room. On the way Ganesh present in the Court met him. He asked him to alert the guard on which he told him that he himself had fired and killed the deceased. He returned back to his position. After some time local Police officers of CRPF arrived and the deceased was taken to the hospital.

10. PW-2 HC Mohd. Nizamuddin who was also posted at 6 Akbar Road on the said date deposed that on August 18, 2005 at about 7.15 AM he was getting ready for duty when he heard the bang of firing. He rushed and saw Ganesh and on inquiry Ganesh informed him that he shot the deceased. He saw deceased lying in a pool of blood. He came out of the room and informed officers on wireless and deceased was removed to the hospital on the same day. Copy of duty register was seized from him. He produced the original register in the Court.

11. Though Ganesh is purported to have made confession to Constable Ramji and H.C. Mohd. Nizamuddin, the same is not admissible in evidence being made before police officers. However, the fact that immediately after the incident H.C. Mohd. Nizamuddin sent information on wireless is relevant and admissible in evidence under Section 6 of the Evidence Act.

12. PW-3 Constable Munesh Vaish is another important witness who deposed that on August 18, 2005 he was on duty at 6 Akbar Road. He was sleeping. The deceased was in-charge of the Guard. At about 7.15 AM he heard the bang of fire and was awakened. He saw Constable Ganesh Pandurang had fired at the deceased. When he asked Ganesh Pandurang not to do so he put the arm near his cot and left. He raised the alarm Major ko maar diya major ko maar diya. On this Head Constable Nizamuddin reached. Ganesh told that he killed the deceased.

13. Indubitably, even as per the prosecution case neither PW-2 nor PW-3 nor PW-4 is an eye witness to the occurrence, however PW-3 Constable Munesh Vaish was sleeping in the room and on hearing the noise of fire he got up and that time he saw only two persons in the room i.e. Ganesh Pandurang with the rifle and the deceased having been shot on the cot. The factum of this witness seeing Ganesh only in the room besides the deceased is so proximate that though not an eye witness his evidence is one which forms the part of the same transaction without any lag of time and thus is relevant.

14. The prosecution has also proved the motive behind the commission of offence. PW-13 Ragubir Singh, Deputy Commandant CRPF appeared in the witness box and deposed that he had conducted an enquiry against Ganesh Pandurang as he had deserted from duty and remained absent for 4 months in December 2004. He also deposed that Ganesh Pandurang reported back to duty on April 26, 2005 and in the departmental enquiry HC Suresh Kumar appeared as a departmental witness and his statement was recorded in the presence of accused Pandurang who was granted an opportunity to cross examine this witness. He had concluded the enquiry on August 03, 2005 and prepared the report holding that the charges were found proved against Ganesh Pandurang. Thus, the prosecution has also proved the motive of Ganesh in committing the murder of HC Suresh Kumar.

15. The prosecution has produced PW-12 Havaldar Arul Dass who has exhibited the copy of the register issuing rifle with the ammunition to Ganesh vide Ex.PW-12/A. FSL report Ex.20/A has proved that the rifle 5.56 MM issued to Ganesh was a firearm from which test fire was conducted successfully. 9 empty cartridges of

5.56 MM recovered from the spot bore identical pin marks as that of the test fired cartridges from the rifle of Ganesh. Even the rifle marks present on the 6 fired deformed bullet remnants recovered from the body of the deceased were identical to the test fired bullets. Hence it was opined that the bullets recovered from the body of the deceased were fired through the rifle 5.56 MM recovered from Ganesh. Thus, from the evidence on record in the form of witnesses and the scientific evidence, the prosecution has proved beyond reasonable doubt that Ganesh Pandurang committed the murder of Constable Suresh Kumar Dogra.

16. This brings us to the main grounds on which Ganesh assails the impugned judgment i.e. lack of legal aid and his being mentally not fit to face the trial. In the present case the prosecution has examined 20 witnesses. Ganesh was provided an Amicus Curiae Shri Vivek Bhardwaj, Advocate, when Mr.S.D.Singh, Advocate filed his vakalatnama on March 06, 2006 and thus Shri Vivek Bhardwaj, Advocate was discharged. The said counsel appeared for two dates however, he failed to appear on July 21, 2006 and August 19, 2006 when the matter was fixed for arguments on charge. On September 15, 2006, Ganesh requested that his counsel be discharged and he be provided with a government counsel. So Shri Vivek Bhardwaj, Advocate who was present in the Court and had earlier been appointed as Amicus Curiae was reappointed to represent Ganesh during trial. On hearing learned counsels, charge was framed. Ganesh pleaded not guilty. The dates of trial were fixed as November 16, 17, 20, 21, 22, 23 and 23, 2006 for prosecution evidence. On November 16, 2006 no witness was present thus the matter was taken up on November 17, 2006 when PW-1 was examined and discharged. For recording of rest of the witnesses the matter was posted for December 11, 12 and 13, 2006. On December 11, 2006 PW-2, PW-3 and PW-4 were examined and they were duly crossexamined by Shri Vivek Bhardwaj, Amicus Curiae. PW-4 was subsequently recalled for further cross-examination in terms of the order dated February 08, 2010 and was cross-examined by Shri Pawan Mittal, Amicus Curiae. On December 12, 2006 PW-5 and PW-6 were examined. On December 13, 2006 PW-7 was examined; PW-8 on February 06, 2007; PW-9, PW-10 and PW-11 on February 07, 2007 and PW-12 on May 07, 2007. Even PW-15 was cross-examined by Shri Vivek Bhardwaj, Advocate. All these witnesses were examined in the presence of Shri Vivek Bhardwaj, Amicus

Curiae and subjected to cross-examination wherever he felt the need. However, when PW-14 and PW-17 were examined, the learned amicus curie was not present. However, thereafter Shri Pawan Mittal, Advocate was appointed as amicus curie. The new amicus curiae had started defending the appellant after the examination of PW-18 started. He moved a comprehensive application under Section 311 Cr.PC for recalling of PW-2, PW-3, PW-4 and PW-12 for their further cross-examination which was duly allowed and the witnesses were recalled. In view of the fact that the learned Trial Court permitted recalling of the witnesses whomsoever were desired after examination of the record and appointment of new amicus curiae, we are of the considered opinion that there was no denial of a fair trial to the appellant. Hence the challenge to the trial on this count being vitiated is incorrect.

17. Coming to the second limb of contention of Ganesh that he was not mentally fit both at the time of incident and while facing trial we note that in his statement under Section 313 Cr.P.C. he has taken the plea that he was in a disturbed state of mind for the last about six months and if he fired at the victim Suresh Kumar Dogra that was a kind of blind faith superstition and it happened so though he did not intend to do it. As noted above, Ganesh was referred for psychiatric evaluation to Dr. Srinivas T.R. on August 18, 2005 the date of incident itself. PW-1 Dr.Srinivas T.R. deposed that on August 18, 2008 at about 5.00 PM Ganesh was referred to him from RML for psychiatry evaluation. On mental status examination Dr.Srinivas found no active psycho pathology but occasional feeling of guilt was recorded. He exhibited his report as Ex.PW1/A.

18. As regards the mental condition of the appellant during trial, a perusal of the order sheet of the Trial Court Record would show that Ganesh moved number of applications pleading unsoundness of mind on which medical reports were called. The first such letter was written by Ganesh through the Welfare Officer Jail No.4 received in Court on March 27, 2006 on which a report was called. As per the report dated March 30, 2006 Ganesh was a known case of Paranoid Schizophrenia with persistent delusions. He was admitted in the medical room on March 03, 2006 with suicidal attempt at around 3 PM and thereafter on medication he improved. He was discharged from the medical room on March 27, 2006 when

he had fully improved, his vitals were stable and his general health was satisfactory. Charge was framed on Ganesh on September 15, 2006 and first witness was recorded on November 17, 2006. Again on reference made by the Court a report was sent opining that Psychiatrist had evaluated Ganesh on November 02, 2006 and in his opinion the patient was having no symptoms for the past 2-3 months and was maintaining well. On repeated applications of Ganesh similar reports dated December 18, 2006, February 07, 2007 and February 12, 2007 were sent by the Medical Officer, Tihar Jail. It is thus, apparent that whenever grievance was raised the appellant was duly evaluated by an expert and report as to his mental ability and general stable condition was sent. However, we are in pain to note that though the learned Trial Judge had been calling for reports as and when applications were moved, however nothing has been observed in the order sheets to note that the condition of Ganesh was satisfactory and he was fit to undergo trial.

19. Thus, after perusing the Trial Court Record and the reports received we are of the opinion that the appellant neither at the time of incident nor during trial was suffering from any mental disorder so as to unable him to stand trial or understand the consequences of his act or defend himself. Consequently we find no merit in the appeal. The judgment of conviction and order on sentence are upheld.

20. T.C.R. be returned.

21. Two copies of the judgment be sent to the Superintendent Central Jail Tihar one for his record and the other to be handed over to the appellant. (MUKTA GUPTA) JUDGE (PRADEEP NANDRAJOG) JUDGE AUGUST07, 2014 ga

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com