

Chandra Pal Singh Vs. General Officer, Commanding-in-chief, Headquarters Central Command, Lucknow and Others

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Court : Allahabad

Decided On : Aug-01-1997

Reported in : 1998(1)AWC53

Judge : G.P. Mathur, J.

Acts : [Army Act, 1950](#) - Sections 133 and 164(2); Army Rules, 59 and 60; [Code of Criminal Procedure \(CrPC\) , 1973](#) - Sections 161, 161(3), 164 and 207; [Constitution of India](#) - Article 226

Appeal No. : Writ Petition No. 3138 of 1980

Appellant : Chandra Pal Singh

Respondent : General Officer, Commanding-in-chief, Headquarters Central Command, Lucknow and Others

Advocate for Def. : U.K. Dhavon, Adv.

Advocate for Pet/Ap. : K.C. Tandon, Adv.

Judgement :

G.P. Mathur, J.

1. This petition under Article 226 of the [Constitution of India](#) has been filed for quashing the finding and sentence of the General Court Martial and the order rejecting the petition under Section 164(2) of the Army Act.

2. The petitioner was tried by General Court Martial for stabbing Sepoy Driver Rabari Bhagwan Bhai Dhanna Bhai (for short Rabari) of his centre on 4.3.1978. The case of the prosecution, in brief, was that the petitioner was a member of the Staff of the Unit Regimental Police in March, 1978. At about 18.00 hours on 4.3.1978 he persuaded Sepoy Driver Rabari of his centre to accompany him to Gaya town by falsely representing to the latter that he (petitioner) was on regimental police duty. Both of them first went to a fair organised in the town. At about 21.00 hours, Sep. Rabari suggested that they should return to the centre. The petitioner, however, persuaded Sep. Rabari to go with him to Sarai Mohalla (local red light area) for the allowed purpose of checking whether anybody from their unit was present in that area. After reaching there, the petitioner left Sepoy Rabari near a pan shop and he went away. He returned after about half an hour in a drunken state. The petitioner then took Sep. Rabari near the house of a prostitute and asked him to go inside the house and fetch the prostitute. Sep. Rabari refused to comply with his wishes but the petitioner tried to physically pushed him into the house and asked him repeatedly to go there. Sep. Rabari tried to run away from there. The petitioner caught hold of him, took out a knife from the pocket of his trousers and stabbed him on the right side of his abdomen. Sep. Rabari started bleeding profusely and fell down. The civilians present in the area gathered around and questioned the petitioner about the incident but he asked them to run away. On their not leaving, he stabbed two of them. Meanwhile Sep. D. N. Trivedi arrived on the scene who conferred with the petitioner and then both of them fled away. Sep. Rabari was rushed to Pilgrim Hospital. There he was examined by Dr. M. I. Mallik who found him grievously injured and in an unconscious state. His life was saved by surgical operation and treatment. The petitioner and Sep. Trivedi were traced out and were arrested by the civil police. Sep. Trivedi handed over the knife to the police saying that the petitioner had stabbed one military personnel with it. The defence of the petitioner in the Court Martial was that on 4.3.1978. Sep. Rabari had gone to the town with L/N. K. Terkey and he was stabbed by one Naresh Giri, an employee of prostitute Manju,

when he tried to enter her house. The petitioner had gone to the town for buying vegetables and Sep. Trivedi had accompanied him. There they met Sep. Rabari in the company of two civilians ; one of whom was Bucha a pimp. At the insistence of Sep. Rabari they all took liquor. Thereafter Sep. Rabari and civilians went to the house of a prostitute and the petitioner along with Sep. Trivedi returned to Gaya Tractor House where the former had some work. After sometime, they learnt about a quarrel involving a military personnel. The petitioner then went in that direction and found Sep. Rabari lying in front of the house of the prostitute Manju with a knife pierced in his abdomen which was taken out by Sep. Trivedi. The petitioner and Sep. Trivedi lifted Sep. Rabari and proceeded towards P. S. Kotwall but enroute some police men arrested them.

3. In the court martial, a number of witnesses including Sep. Rabari, Sep. Trivedi, Sub. P. C. Dutta, Dr. Mallik, Sub-Inspectors Arvind Kumar. Mithlesh Kumar and Upadhaya were examined on behalf of prosecution. The petitioner examined L/N. K. Terkey, Istiaq Ahmad alias Bucha. The petitioner was given full opportunity to cross-examine the witnesses of the prosecution and also to lead evidence in his defence. The petitioner declined to make a statement under Rule 59 (b) of the Army Rules. The Court Martial recorded a finding that the petitioner is guilty of the charge and sentenced him (a) to suffer rigorous imprisonment for one year and (b) to be dismissed from service, by the order dated 3.8.1979. The finding and sentence of the General Court Martial were confirmed by the General Officer Commanding, M. P.. Bihar and Orissa area on 29.8.1979. It was promulgated to the petitioner on 15.9.1979, and he was transferred to the Central Jail, Gaya, to serve out the sentence. The petitioner preferred a petition dated 17th January, 1980 under Section 164(2) of the Army Act to the General Officer Commanding-in-Chief, Central Command, Lucknow which was dismissed and the dismissal order was communicated vide letter dated 21st May, 1980.

4. Shri K. C. Tandon, learned counsel for the petitioner has submitted that the statement of Sep. Rabari was recorded by the investigating Officer of the case in the hospital under Section 161, Cr. P.C. but the copy of the said statement was not supplied to the petitioner and thereby there has been a breach of the principle underlying Section 207, Cr. P.C. He has further submitted that by virtue of Section

133 of the Army Act, the Indian Evidence Act has been made applicable to all proceedings before a Court Martial and in case the statement of the victim had been supplied to the petitioner, he would have got an opportunity to cross-examine him with reference to his statement under Section 161, Cr. P.C., which was recorded at the earliest stage. It is urged that the petitioner was deprived of a valuable right to contradict the victim with reference to his earliest statement as the copy of the same was not given to him. In support of this proposition, learned counsel has placed reliance on Goddam Jayarami Reddi and another, AIR 1959 AP 325.

5. Sri U. K. Dhavon, learned counsel for the respondents has submitted that the petitioner has no legal right for being supplied with copies of the statement of the witnesses as recorded under Section 161, Cr. P.C. and, therefore, it is not open to him to contend that he has been deprived of any right to confront a witness with his earlier statement. There is no dispute that the petitioner being an army personnel is subject to the [Army Act, 1950](#). Chapter X of the Act deals with Courts Martial and Chapter XI deals with Procedure of Courts Martial. Section 133 of the Act provides that the Indian Evidence Act shall, subject to the provisions of the Act, apply to all proceedings before a Court Martial. There is no provision in the Army Act which may make Code of Criminal Procedure applicable to proceedings before a Court Martial. Section 207 of the Code of Criminal Procedure no doubt provides that copies of the statements recorded under Section 161(3) of all persons whom the prosecution proposes to examine as its witnesses shall be furnished to the accused. Since the Code of Criminal Procedure is not applicable in Court Martial proceedings, the petitioner cannot claim any right to be supplied with copies of the statements of the witnesses as recorded under Section 161. If the Legislature intended that copies of the statements be furnished to an accused person before a Court Martial, it would have made a specific provision to that effect. The legislative intent can be gathered from the fact that though the provisions of the Indian Evidence Act have been made applicable by virtue of Section 133 of the Army Act but no such provision had been made with regard to Code of Criminal Procedure. Therefore, the petitioner cannot make any grievance of the fact that copies of statement of witness as recorded under Section 161, Cr. P.C., were not supplied to him. For the same reason, he cannot make a complaint

of the fact that he has been deprived of his right to contradict a witness with reference to his earlier statement. The contention raised by the learned counsel has, therefore, no substance.

6. Sri Tandon has next urged that the charge against the petitioner was that he stabbed Sep. Rabari on 4.3.1978 but in his statement Sep. Rabari stated that the incident happened on 3.3.1978 and the question put to the petitioner was to the effect that the court would like to know whether the incident took place on 3rd or 4th March, 1978. It is urged that court presumed that the incident happened on 4th March, 1978 and the provisions of Rule 59 (b) of the Army Rules were thereby violated. Rule 59 (b) of the Army Rules read as follows :

'(b) the accused may then make a statement giving his account of the subject of the charge against him. The statement may be made orally or in writing but no oath shall be administered to the accused. The court or the Judge Advocate, if any, may question the accused on the case for the purpose of enabling him to explain any circumstances appearing in his statement or in the evidence against him, The accused shall not render himself liable to punishment by refusing to answer such questions, or by giving answers to them which he knows not to be true : but the court may draw such inference from such refusal or answers as it thinks just.'

A perusal of the rule would show that the court may question the accused for the purpose of enabling him to explain any circumstances appearing in evidence against him. The word 'evidence' is important and it obviously means the entire evidence adduced by the prosecution. A number of witnesses had been examined on behalf of the prosecution and they had deposed that the incident took place on 4th March, 1978. The medical examination and the statement of Doctor Mallik conclusively proved that Sep. Rabari was produced in the hospital on 4.3.1978. Even if Sep. Rabari committed a mistake and gave the date of incident as 3rd March in his statement, there was other evidence both oral and documentary on record which showed that the incident took place on 4th March. 1978. Therefore, there was nothing illegal if the said date was also mentioned while questioning the petitioner.

The learned counsel has also urged that there has been a violation of Rule 60 of the Army Rules as the summing up of by the learned Judge Advocate contains many misdirections and non-directions amounting to misdirections on account of which there has been a miscarriage of justice. A copy of summing up by the learned Judge Advocate has been filed as Annexure 5 to the writ petition. I have gone through the summing up and I do not find any misdirection or non-direction on any relevant point. The learned counsel has not been able to point out any such error in the summing up which may indicate that the same was not in accordance with Rule 60.

7. It has been next urged that the petitioner had sent a petition under Section 164 of the Army Act to the General Officer Commanding-in-Chief but the same was rejected by Deputy Assistant Adjutant General who had no authority to do so and therefore the order passed is wholly without jurisdiction. The submission made has no substance. Annexure 9 to the writ petition is merely a communication of the order passed on the petition made by the petitioner which will be clear from the language used therein. It mentions 'your petition quoted above has been considered and rejected.' It has been signed by Major A. K. Srivastava, Deputy Assistant Adjutant General for Chief of Staff. The communication shows that it has been sent from Headquarters Central Command, Lucknow. It is noteworthy that in the writ petition. it is nowhere asserted that the petition under Section 164(2) of the Army Act made by the petitioner has not been considered by the authority having the jurisdiction to do so. Even in the grounds no such plea has been taken. In absence of any such assertion in the writ petition, it is not open to the petitioner to contend that his petition has not been disposed of by the competent authority.

8. Lastly, it is urged that no reasons have been given for the findings and sentence awarded to the petitioner and, therefore, the same is illegal. The Army Act and the Rules do not require reasons to be given for the findings and sentence awarded by Court Martial. This has been settled by a Constitution bench in *S. N. Mukherji v. Union of India*. AIR 1990 SC 1984. Therefore, non-recording of reasons do. not render the findings and sentence imposed upon the petitioner illegal.

9. No other point was urged.

10. The writ petition lacks merit and is hereby dismissed. No cost.

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