

Suresh Kumar Vs. Uoi and ors.

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Court : Delhi

Decided On : Feb-11-2011

Judge : Pradeep Nandrajog; Suresh Kait, Jj.

Acts : [Central Reserve Police Force \(CRPF\) Act, 1949](#) - Section 11(1)

Appeal No. : W.P.(C) 12385/2009

Appellant : Suresh Kumar

Respondent : Uoi and ors.

Advocate for Def. : Ms.Jyoti Singh, Adv.

Advocate for Pet/Ap. : Mr.Anil Singal, Adv.

Judgement :

1. Whether the Reporters of local papers may be allowed to see the judgment?
2. To be referred to Reporter or not?
3. Whether the judgment should be reported in the Digest?

1. SI Ram Kumar was detailed as the Platoon Post Commander of the F Coy of 50th Bn CRPF in April 1994. In the month of September 1994 the unit was deployed at Moradabad, UP, when indisputably, on 20.9.1994 at around 21:00 hours he was physically assaulted by 3 constables, within the precincts of the camp. Hearing the commotion and cries of help members of the Unit gathered at

the place of incident and saw SI Ram Kumar bleeding in a ragged condition. The Officiating Commandant (OC) Insp. Pahalwan Singh ordered for a fall-in of the company and at the end of the check roll call, SI Ram Kumar was asked to identify the assailants. It is alleged that the SI Ram Kumar identified the petitioner, Ct.Suresh Kumar, Ct.Umesh Kumar and Ct.Karan Singh as the ones who had physically assaulted him. Thereafter, a signal was sent to the Commandant at the headquarters informing him about the incident.

2. On receipt of the complaint from the Officiating Commandant of the F Coy, the second in-command of the unit reached Moradabad base camp the very next day i.e. on 21.9.1994 and made an inquiry at the spot into the incident. Finding a prima facie case made out against the petitioner, Ct.Umesh Kumar and Ct.Karan Singh, he ordered a Preliminary Inquiry to be conducted and detailed Ajay Gupta A/C of 50th Bn., to conduct the same.

3. Statements of 13 persons were recorded and 8 documents were considered during the preliminary inquiry and a report submitted finding prima facie material to proceed against the 3 constables for a departmental action and also against Ct.R.B.Rai qua whom it surfaced in the preliminary inquiry that he was also a part of the conspiracy and additionally neither made an attempt to stop the assault or report the matter to senior officers and it was noted that Ct.R.B.Rai was on sentry duty.

4. Considering the preliminary inquiry report the Commandant directed joint departmental inquiry against the petitioner, Ct.Karan Singh, Ct.Umesh Kumar and Ct.R.B.Rai and framed the charge as under:-

"Article-I

That No.903063049 Const.Umesh Kumar, 911332268 Const.Karan Singh, No.861130951 Const.Suresh Kumar and No.911140743 Const.Ram Babu Rai (All under suspension) of F Coy 50 Bn, CRPF committed an act of gross misconduct in their capacity as members of the force in which on 20.9.1994 while at Dett Moradabad (UP), they hatched a conspiracy to corner their Platoon Commandar SI Ram Kumar to physically assault him. Thus each of them committed an act

which is prejudicial to good order and discipline of the force punishable under Section 11(1) of the CRPF Act, 1949.

Article-II

That No.861130951 Const.Suresh Kumar No.903063049 Const.Umesh Kumar, 911332268

Const.Karan Singh, (all under suspension) committed an act of gross misconduct and disobedience of orders in their capacity as members of the Force in which they managed to slip from the camp and consumed liquor in contravention to the orders in vogue thereby committed an act which is punishable u/s 11(i) of CRPF Act, 1949.

Article-III

That said No.861330951 Const.Suresh Kumar, No.903063049 Const.Umesh Kumar and No.911332268 Const.Karan Singh (All under suspension) of F/50 Bn. CRPF committed an act of gross misconduct in their capacity as members of the force in which they physically assaulted their Platoon Comdr. SI Ram Kumar on 20.9.94 at about 2100 hrs. while at Dstt. Moradabad (UP) and inflicted injuries on him which is an act punishable under section 11(i) of the CRPF Act, 1949.

Article-IV

That No.911140743 Const.Ram Babu Rai of F/50 Bn., CRPF committed an act of gross misconduct, neglect and remissness in discharge of duties in his capacity as a member of the Force in which, while posted as Sentry between 2100 hrs. at Dstt. Moradabad, he, as already in connivance with three other comparators, choose to remain a silent spectator to the physical assault on his platoon Commander Si Ram Kumar by the Assailants as charged in Article-III above and failed to intervene to prevent the occurrence of the incident, which is an act punishable u/s 11(i) of the CRPF Act, 1949.

Article-V

That said No.911140743 Const.Ram Babu Rai of F/50 Bn., CRPF committed an act of gross misconduct, neglect and remissness in discharge of his duties in his capacity as a member of the Force in which while being on sentry duty from 2100 to 2300 hrs. on 20.9.94 at Dstt.Moradabad, he failed to report the matter promptly to the concerned authorities about the incident of physical assault on his platoon Commander SI Ram Kumar during his duty hours and later, even during the preliminary Enquiry he did not depose the truth which amounted to deliberate suppression of information which is an act punishable under Section 11(i) of the CRPF Act, 1949."

5. S.R.Raghav 2-IC of the 50th Bn was detailed as the inquiry officer. The charged officers were served with a notice to appear before the inquiry officer and on the preliminary date fixed for hearing, all appeared. The charges were read out and explained to the accused constables and on all pleading 'Not Guilty' he proceeded to record the testimony of the prosecution witnesses.

6. 10 witnesses were examined by the prosecution to prove the charges and 4 defence witnesses were examined by the petitioner and the co-accused in support of their defence.

7. SI Ram Kumar PW-1, deposed that in the morning of 20.9.1994 he was called by the Officiating Commandant (OC) Insp.Pahalwan Singh who enquired as to why the recently brought volleyball net was torn, upon which he informed that Ct.Suresh i.e. the petitioner had been detailed to collect the items from Battalion Head Quarters at New Delhi and he had brought a torn volleyball net as well as a malfunctioning television set. Thereupon he i.e. SI Ram Kumar summoned Ct.Suresh Kumar to the office of the OC and asked him as to why he had brought defective items from the company store to which the petitioner replied that since a voucher had been issued to him enlisting the said items he had no option but to bring the same. The OC found the reply to be an unsatisfactory excuse and reprimanded Ct.Suresh Kumar. Thereafter, he i.e. SI Ram Kumar went outside the office of the OC where the TV was being repaired in a veranda and the petitioner followed him and hurled abuses at him in a loud tone; uttering the words 'Sala' and questioned his i.e. SI Ram Kumar's authority uttering 'Who are you to question

me? And threatened 'I have seen a lot of Coy 2-ICs like you and I will see you also' and at that point of time being attracted by the commotion, Ct.Bhim Singh intervened and took the petitioner away.

8. Pertaining to the incident which took place in the night he deposed that in the night at around 20:30 hours, he was sitting in his barrack with SI C.Albert when Ct.Umesh Kumar visited his barrack and whispered to him that a girl had been arranged and was standing outside in the grounds. He ignored the utterance of Ct.Umesh Kumar, who was reeking of alcohol, and asked him to leave the room. Thereafter when he had taken dinner he and SI C.Albert went out for a walk in the ground outside the barracks, where they saw 3 accused namely, Ct.Suresh Kumar, Ct.Umesh Kumar and Ct.Karan Singh walking in front of them. After a short walk he and SI C.Albert sat on the stairs leading to the barracks and the said 3 accused went behind a 1 ton vehicle parked about 15 yards away from the staircase. He sent Ct.Anil Kumar who was standing in the veranda at that time to summon the mess IO L/Nk Shambhu Prasad who arrived shortly and was sent back to the mess with directions to make arrangements for some extra milk for him and SI C.Albert. That he saw the sentry on duty, Ct.R.B.Rai having a conversation with the said 3 accused near the 1 ton vehicle. Soon thereafter the petitioner approached SI C.Albert and whispered something in his ear as a result of which SI C.Albert got up and went towards the recreation room. As he sat alone Ct.Karan Singh approached him and asked him why was he sitting to which he replied: 'Just like that'. Suddenly, without any rhyme or reason Ct.Karan Singh swung his right leg and hit him on the left side of his face and as a result of the impact of the kick he had a momentary blackout, but recovered to see the petitioner and Ct.Umesh Kumar pounce on him and shower punches at him from all sides. He screamed out of agony and cried for help. The sentry on duty Ct.R.B.Rai was standing very close by but did not intervene to help, rather stood as a silent spectator. On hearing the commotion some personnel from the barracks rushed out and 2 of whom HC R.M.Bharti and Ct.Ramesh Chand saved him from the assailants and removed him towards the staircase. On the way to the barrack he met Insp.Pahalwan Singh to whom he narrated the incident and upon which Insp.Pahalwan Singh immediately ordered a company Fall-in and directed him to go to his room and relax and compose himself, since he was bleeding profusely.

After a while, he was called by Insp.Pahalwan Singh to the ground and was asked to identify the assailants. He had immediately named the petitioner i.e. SI Suresh Kumar who had already fallen out and was talking to the OC, and identified Ct.Umesh Kumar and Ct.Karan Singh by bringing them out of the line. After the identification, the OC dismissed the check roll call and ordered him and the assailants to go for a medical check up. The assailants resisted going for the medical check up and agreed only after the OC threatened to handcuff them and forcibly take them to the hospital.

9. It is pertinent to note that nothing relevant was asked to the witness during cross-examination by the petitioner as also the other co-accused.

10. Insp.Pahalwan Singh PW-2 deposed in sync with PW-1 in regard to his role deposed to by PW-1 in his testimony. Additionally he stated that on 20.9.1994 at about 20:30 hours he heard SI Ram Kumar shout for help. On his way to the spot he met SI Ram Kumar who disclosed to him that he had been physically assaulted by Ct.Suresh Kumar, Ct.Umesh Kumar and one other constable whose name he could not recall. He asked SI Ram Kumar to go to his room since he was in a bad condition and ordered the CHM (Company Havalder Major) to conduct a check roll call as he thought that the assailants would try to hide and would be identifiable by being absent in the check roll call, however all personnel were present. He asked the Coy in general as to who had assaulted SI Ram Kumar at which Ct.Suresh Kumar shouted in an aggressive tone: 'Who has beaten him, nobody has beaten SI Ram Kumar'. He then asked Ct.Suresh Kumar to fall-out of line and when Ct.Suresh Kumar came close to him, he smelt alcohol because of which he grew suspicious of Ct.Suresh Kumar and started questioning him. In the meantime, since he had summoned SI Ram Kumar to the ground, he arrived and thereupon he asked him to identify the assailants, at which SI Ram Kumar immediately named Ct.Umesh Kumar and said that he did not remember the names of the other 2 assailants. On being asked to point out the other 2 assailants, SI Ram Kumar brought out Ct.Karan Singh and Ct.Umesh Kumar both of whom were stinking of alcohol. He further deposed that HC R.M.Bharti had come forward and disclosed that he had saved SI Ram Kumar from the 3 accused constables i.e. Ct.Suresh Kumar, Ct.Umesh Kumar and Ct.Karan Singh who were beating SI

Ram Kumar. In his cross examination by the petitioner the only relevant question asked was regarding previous antecedents of the petitioner, to which Insp.Pahalwan Singh replied that the petitioner had been involved in a prior incident of insubordination at Jharoda Kalan where a complaint was received reporting groupism being created against the guard commander lead by the petitioner who had even got signatures of various personnel on a document indicating consumption of liquor etc. by the guard commander.

11. SI C.Albert, PW-3, deposed in sync with PW-1 in regard to his role deposed to by PW-1 and additionally stated that while they i.e. PW-1 and he were sitting on the staircase, Ct.Suresh Kumar approached him and whispered that he i.e. Ct.Suresh Kumar wanted to talk about something personal and important with SI Ram Kumar and had requested him to leave the place and hence he left. Soon thereafter he heard a commotion and on his way to the ground he met SI Ram Kumar who was bleeding profusely from his lips and his vest was torn and blood stained. SI Ram Kumar could hardly speak but he managed to inform him that Ct.Suresh Kumar and others had assaulted him after he i.e. SI C.Albert had left. It would be relevant to note that on being cross examined by the petitioner, PW-3 stated that by the time SI Ram Kumar reached the place of roll call, the petitioner had already been made to stand out of line by the OC and had thus not been identified by SI Ram Kumar. He further stated that SI Ram Kumar was in a state of confusion and had named 1 or 2 other constables, but when asked to identify the assailants he had identified the accused persons.

12. HC R.M.Bharti PW-4 corroborated PW-1 to the extent that at about 21:00 hours on 20.9.1994 SI Ram Kumar was heard shouting for help. However he deposed that by the time he reached the place of incident a crowd had already gathered, and SI Ram Kumar was standing in a dazed state with a bleeding nose. He asked SI Ram Kumar as to what had happened, to which SI Ram Kumar replied that a few constables had physically assaulted him and on his enquiring about the names of the constables, SI Ram Kumar named Ct. Umed, Ct.Bharat Ram and Ct.Ashok. Interestingly, there was no constable in the Coy by the name Umed and the other 2 named constables immediately denied being present near SI Ram Kumar at the relevant time. Thereafter, OC Insp.Pahalwan Singh arrived

and asked SI Ram Kumar to identify the assailants upon which SI Ram Kumar identified Ct.Suresh Kumar, Ct.Umesh Kumar and Ct.Karan Singh. He denied having separated PW-1 from the assailants and having witnessed the incident.

13. HC Rajeshwar Ram PW-5 deposed having been present at the identification at the fall-in and stated that the petitioner had identified Ct.Suresh Kumar, Ct.Umesh Kumar and Ct.Karan Singh as the 3 who had assaulted him.

14. Ct.Ramesh Chand PW-6 deposed that he was one amongst the first few who had reached the spot and he saw the accused beating SI Ram Kumar and along with 2-3 other persons he separated SI Ram Kumar and the assailants. In his cross examination he stated that he along with HC R.M.Bharti had come to the rescue of SI Ram Kumar, however since the accused had threatened HC R.M.Bharti of dire consequences, HC R.M.Bharti refrained from deposing against them and that it was for this reason that he had not disclosed to anyone that he too was a witness to the incident.

15. Ct.Bhim Singh PW-7, corroborated PW-1 in regard to the incident of heated argument which took place in the morning of 20.9.1994 between the petitioner and SI Ram Kumar as deposed to by SI Ram Kumar.

16. Ct.V.V.Bhai PW-8, deposed that he was the sentry on duty till 21:00 hours and corroborated PW-1 to the extent that at the relevant time i.e. 20:30 hours, PW-1 and PW-3 were taking a walk in the grounds outside the barrack where Ct. Umesh Kumar was also present. He further corroborated PW-4 and PW-5 to the extent that initially SI Ram Kumar named 3 different constables as the assailants and on realising his mistake, he i.e. SI Ram Kumar identified the petitioner, Ct.Umesh Kumar and Ct.Karan Singh as the assailants.

17. L/Nk Shambhu Prasad PW-9, corroborated PW-1 to the extent of his role deposed to by PW-1 in his testimony.

18. Assistant Commandant Ajay Gupta PW-10, deposed that he had conducted the preliminary enquiry and had submitted the report 'Ex.-B' to the Commandant in which he had opined that there was sufficient material to initiate a departmental

inquiry against the accused.

19. After prosecution witnesses were examined and their evidence was put to the accused, Ct.R.B.Rai pleaded guilty but not the petitioner and Ct.Umesh Kumar and Ct.Karan Singh who stated they would lead defence evidence. They examined 4 witnesses in defence.

20. We note that nothing much emerges from the testimonies of DW-1 Nk.Gian Prakash, DW-2 Ct.Anil Kumar and DW-3 Ct.Jasmer Singh, thus we eschew reference to their testimony noting that during arguments no submission was predicated on the basis of their testimony.

21. Ct.Ashok Kumar DW-4 deposed that on 20.9.1994 at about 21:00 hours when the CHM blew the whistle signalling a check roll to be held, he had awoken Ct.Ramesh Chand who was sleeping next to him so as to go to the ground for the fall- in. He further deposed that after the check roll call, SI Ram Kumar named Ct.Bharat and Ct.Mahesh as the ones who had assaulted him, however he clarified that right after the coy fell out, SI Ram Kumar realised his mistake and identified Ct.Suresh Kumar, Ct.Umesh Kumar and Ct.Karan Singh as the assailants.

22. In view of the evidence led the Inquiry Officer submitted a report holding that the charges were established and the report dated 25.2.1995 was supplied to all the charged officers who filed a reply thereto and finding the reply not satisfactorily, vide order dated 8.4.1995 the Commandant levied penalty of stoppage of increments for a period of 3 years with cumulative effect upon Ct.R.B.Rai and penalty of dismissal from service upon the remaining three.

23. The petitioner filed an appeal against the penalty levied, which was dismissed vide order dated 8.5.1996. He rushed to file a writ petition in this Court questioning the penalty levied which was dismissed vide order dated 21.5.2008 permitting petitioner to avail the statutory remedy of revision. Thereafter, the petitioner preferred a revision against the order in appeal which was rejected vide order dated 21.8.2008. The petitioner thereafter filed a non-statutory mercy petition which was rejected vide order dated 21.1.2009.

24. Aggrieved by the orders dated 8.4.1995, 8.5.1996, 21.8.2008 and 21.1.2009 the present petition has been filed.

25. During arguments learned counsel for the petitioner challenged the penalty levied on the following grounds:- (i) That the petitioner was not given the preliminary enquiry report. It was thus urged that this has caused prejudice to the petitioner in defending himself at the departmental inquiry.

(ii) That defence witness Ct.Jasmer Singh had deposed under threat by SI Ram Kumar and that his evidence was not properly appreciated by the inquiry officer.

(iii) That no evidence was brought on record to establish the charge of conspiracy levied against the petitioner; alternatively, the Inquiry Officer failed to note material contradictions in the testimony of the witnesses.

(iv) That the petitioner was falsely implicated in the present case on account of prior enmity between the petitioner and SI Ram Kumar which is evident from the fact that SI Ram Kumar had not named the petitioner at the first instance.

(v) That disproportionate sentence was imposed upon the petitioner and his unblemished service record was not taken into consideration while affixing the penalty.

26. The first contention of the petitioner has to be noted and rejected for the reason that it is settled law that a preliminary enquiry is only a fact finding enquiry wherein the focus of the inquiry is to ascertain whether an untoward incident took place and if it is established that an incident took place, to prima facie opine upon as to who should be charged for the same. Preliminary inquiry reports are not to be furnished to the charged officers.

27. We note that pertaining to the second contention the fulcrum of the argument was that before Ct.Jasmer Singh had deposed before the Inquiry Officer he had written letters to the Officiating Commandant stating that he is under pressure from SI Ram Kumar to depose falsely and this was the reason why Ct.Jasmer Singh deposed that he knew nothing about the incident because he was sleeping and he awoke for the roll call and the fall-in.

28. It may be noted that Ct.Jasmer Singh had written another letter before he was examined as a witness in which he had informed the Commandant that the petitioner and the other co-accused were threatening him to depose falsely.

29. The issue is irrelevant for the reason Ct.Jasmer Singh deposed nothing either incriminating or exculpatory of the accused and even assuming he would have deposed in favour of the accused, the issue would still be required to be evaluated with reference to the complete evidence brought on record.

30. The evidence on record establishes that an incident took place around 9:00 PM on 20.9.1994 in which SI Ram Kumar was injured. This is conclusively established by his medical examination report exhibited as 'Ex.C' during the inquiry. The only issue is and which was the subject matter of the inquiry: who were the culprits?

31. The star witness i.e. the injured complainant SI Ram Kumar has deposed as to what was the cause of the problem i.e. the incident which took place on 20.9.1994 in the morning and has thereafter deposed graphically to how he was stalked and how the accused were trying to catch him alone and the manner in which he was finally assaulted. He has deposed as to what transpired when the jawans were made to fall-in so that the culprits could be identified by him. Insp.Pahalwan Singh has corroborated SI Ram Kumar with respect to the contemporaneous statements of Ram Kumar when the heat of the moment had not cooled. As per Insp.Pahalwan Singh's testimony, when he saw SI Ram Kumar physically assaulted and shouting for help, he told him that the petitioner and Ct.Umesh Kumar and one other constable had assaulted him. He has fully corroborated SI Ram Kumar with respect to the events which transpired at the roll call and the fall-in. His testimony of petitioner's conduct; when being asked to fall-in, he shouted aggressively: 'who has beaten him, nobody has beaten SI Ram Kumar'. So uttering, petitioner came and stood by the Officiating Commandant. Now, commonsense guides us that when the constables were made to stand in lines i.e. fall-in, they knew that the purpose thereof was to enable SI Ram Kumar to identify the culprits, who would have been then asked to step out of the line. Petitioner's contemporaneous conduct evidences his guilt. Realizing that the game was up

and rather to be identified by SI Ram Kumar, he volunteered to fall-out and said conduct is akin to admission of guilt. SI C.Albert has also corroborated SI Ram Kumar and as regards HC R.M.Bharti, qua whom SI Ram Kumar had deposed as being a witness to the incident which took place at around 9:00 PM and assigned further role of rescuing him, we may note that HC R.M.Bharti denied having rescued SI Ram Kumar, but we find no contradiction which was sought to be projected, inasmuch as Ct.Ramesh Chand PW-6 deposed that he and HC R.M.Bharti had come to the rescue of SI Ram Kumar, but since the accused had threatened HC R.M.Bharti, he had refrained from deposing the truth.

32. Suffice would it be to state that far from being a case of no evidence, there is overwhelming evidence against the petitioner and we do not find any contradictions of a material nature.

33. The fourth contention of the petitioner is based upon the prior enmity between the petitioner and the complainant SI Ram Kumar resulting from the incident which took place in the morning of 20.9.1994. It was argued that because of this enmity, SI Ram Kumar has falsely implicated the petitioner. We however note that prior enmity is a double edged weapon that is to say on one hand it may be a motive for SI Ram Kumar to falsely implicate the petitioner but on the other hand it is also a possible motive for the petitioner to assault SI Ram Kumar. Suffice would it be to state that the deadlock stands resolved in view of the overwhelming evidence against the petitioner and we note that the quality of evidence is of a high degree. People who had witnessed different facets of the incident had corroborated the complainant SI Ram Kumar.

34. In regards to the fifth contention raised by the petitioner we note that although nothing has been brought on record to show a prior conviction of the petitioner, but an earlier incident of insubordination has been brought to light by OC Pahalwan Singh PW-2, which establishes that the petitioner had even in the past resorted to groupism and had attempted to influence the jawans to rebel against the Guard Commander. That apart, the evidence establishes a concerted and a persistent endeavour of the petitioner and two other jawans to stalk and beat a senior officer, with the obvious intention of seeking revenge as also to intimidate a superior

officer whose only so- called fault was that he was attempting to maintain discipline. If these kind of misdemeanours are treated likely, a strong wrong message would be conveyed that jawans can use force to over awe their superior officers and would be let off with light punishment. We do not find the penalty levied disproportionate to the gravity of the offence.

35. The writ petition is accordingly dismissed.

36. No costs.

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