

ITEM NO.115

COURT NO.2

SECTION II

S U P R E M E C O U R T O F I N D I A
R E C O R D O F P R O C E E D I N G S

Criminal Appeal

No(s). 2331/2010

RAJESH M.R.

Appellant(s)

VERSUS

UNION OF INDIA & ORS.

Respondent(s)

(with appln. (s) for exemption from filing c/c of the impugned order and office report)

WITH

Crl.A. No. 1449/2010

(With Office Report)

Date : 13/05/2015 These appeals were called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE T.S. THAKUR
HON'BLE MR. JUSTICE R.K. AGRAWAL
HON'BLE MRS. JUSTICE R. BANUMATHI

For Appellant(s)

Mr. Venkita Subramonium T.R., Adv.
Ms. Sindhu T.P., Adv.
Mr. Rajendra Beriwal, Adv.
Mr. P. V. Dinesh, Adv.

Mr. A. Venayagam Balan, Adv.

For Respondent(s)

Mr. R.Balasubramanian, Adv.
Ms. Niranjana Singh, Adv.
Mr. Santosh Kumar, Adv.
Mr. Pranav Kumar, Adv.
Mrs. Anil Katiyar, Adv.
Mr. B.V.Balram Das, Adv.UPON hearing the counsel the Court made the following
O R D E R

The appeals are dismissed in terms of the signed order.

Signature Not Verified

Digitally signed by
(Shashi Sareen)

Shashi Sareen

Date: 2015.06.30

(Veena Khera)

Court Master

Court Master

08:55:26 IST

Reason:

(Signed order is placed on the file)

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IN THE SUPREME COURT OF INDIA

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL No. 2331 OF 2010

RAJESH M.R. ... Appellant
Versus
UNION OF INDIA AND ORS. ... Respondent

(With Criminal Appeal No. 1449 of 2010)

O R D E R

These appeals arise out of an order dated 11.02.2010 passed by the Armed Forces Tribunal, Principal Bench, New Delhi whereby Original Application No.26 of 2009 filed by the appellant has been dismissed thereby affirming his conviction for an offence punishable under Section 302, Ranbir Penal Code and sentence of life imprisonment awarded to him.

The appellant, it appears, was deputed for Map Reading Standard-I between January, 2007 to March, 2007 at 28 Infantry Division Camp. A movement order dated 16 th January, 2007 was issued to him in that regard. By another movement order dated 07.01.2007 seven other personnel were also detailed for the same course. Naik Ratheesh Kumar was one of those seven. The prosecution case is that on 19.03.2007 at around 8.00 P.M. the appellant shot Naik Ratheesh Kumar by a service rifle issued to the appellant. An FIR about the

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incident was filed on 19.03.2007. Investigation was concluded by the Investigating officer PW 15 Sub-Inspector Bashir Ahmad of Police Station, Kupwara but the appellant was eventually tried by the Court Martial for the offence of murder punishable under Section 302, RPC. At the trial before the Court Martial, the prosecution placed reliance upon the deposition of PW 1 Havildar Thomas T.Mathew who proved certain documents relevant to the case. PW 2 Naik Sadagopan was examined as an eye-witness to the incident. So also, PW 3 Havildar C.Jayaseelan of Garrison Engineer 874 engineer work Section, PW 4 Major MK Venkatesh, PW5 Lance Havildar D.Prasanath who was also one of the seven personnel

undergoing the course and who was occupying the same room as the deceased and the appellant PW 6 Lance Havildar D.Anbunavalan and PW 8 Naik K.Venkataramana were all examined as witnesses to prove the incident. The prosecution in addition relied upon the deposition of PW 9 Naik Subedar S.K.Konar's according to whom the accused had confessed his guilt before him. Reliance was also placed by the prosecution upon the report of the forensic science laboratory to show that EX. B-441/07 issued to the appellant had been fired from and was in working condition and that the fired cartridge had been fired from the said rifle.

On a careful appraisal of the evidence assembled by the prosecution, the Court Martial came to the conclusion that

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the prosecution had successfully brought home the guilt of the appellant who was accordingly convicted under Section 302, IPC and sentenced to undergo imprisonment for life. Aggrieved, the appellant preferred Original Application No.26 of 2009 before the Armed Forces Tribunal at New Delhi which application as noticed earlier was heard and dismissed by the Tribunal upholding the conviction of the appellant and the sentence awarded to him. The present appeal by special leave under Section 31(1) of the Armed Forces Tribunal Act questions the correctness of the aforementioned judgment and order passed by the Tribunal and that passed by the Court Martial.

We have heard learned counsel for the parties at considerable length who have taken us through the record including the order passed by the Tribunal and the deposition of the witnesses examined at the trial. From the evidence on record, the following circumstances stand proved:

The appellant was detailed for undergoing Map reading Course at 28, Infantry Division between 19.01.2007 to 19.03.2007. In addition to the appellant there were seven

others including deceased Rateesh Kumar, Naik K.Sadagopan,
Havildar C.Jayaseelan, Lance Havildar D.Prasanth, Lance
Havildar D.Anbunavalan, Naik Naik Nataraj and Naik
K.Ventaramma were also detailed for the same course. All
these personnel were living together in the same barrack. On

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the fateful day Lance Havildar Abnunavalan briefed everyone
in the barrack about their respective duties. The deceased
according to PW 2 Naik Sadagopan declined to go for the duty
for which he was detailed and conveyed his refusal to Lance
Havildar D.Anbunavalan. The deceased who was senior to the
appellant appears to have joined issues with the appellant
and told him that if he (deceased) is ready to go for guard
duty even when he is senior to the appellant, there is no
reason why the appellant should refuse to do so. This
according to PW 2 Sadagopan led to some arguments between the
appellant and the deceased in Malayam which the witnesses
could not understand. Lance Havildar Anbunavalan ordered the
appellant and the deceased not to argue any more on the topic
and ordered the appellant to proceed for duty as per
derailment. This did not however stop the on-going argument
between the appellant and the deceased who kept on arguing
the issue till after about five minutes the witnesses heard a
sound of a rifle fire. According to PW-2 Naik Sadagoppan as
he heard the sound of fire and saw the appellant holding his
weapon in his hand he ran outside. The witness deposed that
the appellant was standing little ahead of his bed holding
his rifle straight in front. Sometime later the witness heard
someone talking in Tamil and saying what have you done. He
accordingly informed his officer who appears to have reached
at the spot a little later. The witness goes on to state that

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the accused was held by his arm. The accused was saying to
Subedar "Galti Ho Gaya, Nashe Mein Tha, Maaf Kar Do". (I
have committed a mistake, I was drunk, forgive me). The

statement of PW 3 Havildar C Jayaseelan is also corroborative of the above sequence of events. This witness has inter alia stated that he saw the accused standing with hands up on the road where everyone had gathered and officers were enquiring something from the appellant. The witness also stated that Lance Havildar D. Anbunavalan had come out running and called him outside the television room when he heard the sound of fire from the room where they were staying. He immediately rushed to control the situation. The deposition of PW 5 Lance Havildar D. Prasanth also suggests that the witness had seen the appellant with his rifle in his hand pointing towards the body lying on the ground. That the appellant was little tense and was saying that he will commit suicide and asking those around to leave him alone. PW 5 had snatched the rifle from his hand.

Deposition of PW 6 Lance Havildar D Anbunavalan and PW 7 Naik Natarajan and PW 8 Naik K. Venataramma have also similarly supported the sequence of events as narrated by the prosecution. Pw 9 Naik Subedar SK Konar has deposed about the appellant making a confession before him and saying that he had shot Rateesh Kuamr of his own unit.

The Tribunal has on the basis of the depositions of Dr.

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Nazir Ahmed and the report from the FSL concluded that the deceased had died of a gunshot injury and that the gun shot had been fired from the weapon issued to the appellant. Learned counsel for the appellant made a variant attempt to argue that the findings recorded by the Court Martial and the Tribunal were against the weight of evidence. He in particular submitted that according to the prosecution case two civilians were also present in the room at the time of the incident but the prosecution had not examined them nor offered any explanation for the omission. He urged that the official record regarding issue of the service weapon was

fudged and the Tribunal had failed to probe that aspect of the matter. He further argued that the appellant was not in the room at the time, the deceased was either shot or committed suicide. He urged that the appellant was entitled to benefit of doubt as the prosecution had not fully established its version.

There is in our opinion no room for any interference with the view taken by the court martial or the tribunal. The questions raised have been addressed by the court martial and so also by the Tribunal. The findings of fact recorded by the court martial and the tribunal are concurrent as to the credibility of the witnesses and the facts relevant to the prosecution case. Re-appraisal of the evidence on record

only to substitute the said findings by those that we may

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arrive at falls outside the scope of appeal under Section 31(1) of the Armed Force Tribunal which is limited to substantial questions of law of general public importance only. That apart, we do not see any perversity in the findings recorded by the court martial or the tribunal. The

evidence on record in our opinion sufficiently establishes that the appellant was present on the day of occurrence in the barrack where the deceased was shot. The evidence also sufficiently proves that the weapon used for killing the deceased was the service weapon issued to the appellant.

That there was some altercation between the appellant on the one hand the deceased on the other immediately before the incident is also sufficiently proved. That the appellant was seen holding the weapon near to the dead body of the deceased fallen to ground is also beyond doubt in the light of the deposition of the witnesses.

The confession made by the appellant subsequently and the explanation offered by him that he had committed a mistake also corroborates the sequence of events as projected by the prosecution.

It was lastly contended by learned counsel for the appellant that even though the appellant had used a service weapon to shoot at the deceased, no case was made out under Section 302. He urged that the appellant and the deceased were known to each other for more than five years before the incident. There is no evidence to show that they had any

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enmity with each other. He also argued that the incident appears to have happened in the heat of passion upon a sudden quarrel between the appellant and the deceased on account of refusal of the appellant to go for guard duty while the deceased was trying to find fault with him for doing so. He submitted that the case more appropriately fell under Section 304 Part I or 304 Part II of IPC.

The appellant does not appear to have raised any contention touching the nature of the case either before the court martial or before the High Court. There is, therefore, no discussion on that aspect in the impugned judgment. That apart, the evidence shows that the deceased was unarmed whereas the appellant was carrying his service weapon. There is no evidence or suggestion to the effect that the appellant and the deceased had a scuffle or that the argument had led to any such scuffle. More importantly, the evidence shows that one of the two rounds from the weapon had hit the floor while one had hit the neck of the deceased, leading to his instantaneous death on the spot.

In the circumstance, it is difficult to see how the gravity of the offence committed by the appellant could be mitigated to convert the offence from murder to culpable homicide not amounting to murder. The weapon used for the commission of the offence, the vital part of the body chosen for the infliction of the injury on the deceased, the number of shots fired and the circumstances in which the incident

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took place leaves no manner of doubt that the appellant had

intended to kill the deceased with the service weapon. We,
therefore, do not see any reason to alter the conviction of
the appellant from Section 302 to Section 304 (I).

In the result, these appeals fail and are, hereby,
dismissed.

.....J.
(T.S.THAKUR)

.....J.
(R.K.AGRAWAL)

.....J.
(R.BANUMATHI)

New Delhi,
May 13th, 2015