

IN THE ARMED FORCES TRIBUNAL, PRINCIPAL BENCH
NEW DELHI.

ORIGINAL APPLICATION No. 26 OF 2009

Nk/Rajesh M.R. ...Petitioner

Versus

Union of India & others ...Respondents

For the Petitioner : Mr.D.S. Kauntae, Advocate

For the Respondents: Dr. Ashwani Bhardwaj, Advocate

C O R A M:

HON'BLE MR. JUSTICE A.K.MATHUR, CHAIRPERSON

HON'BLE LT.GEN. M.L.NAIDU, ADMINISTRATIVE MEMBER

JUDGMENT

1. Petitioner by this petition has challenged the order of the Court Martial dated 1st March, 2008 as well as order

confirming the finding of the same. The petitioner was found guilty under Section 302 of Ranbir Penal Code and sentenced to life imprisonment and dismissal from service.

2. Brief facts which are necessary for disposal of this petitioner are that petitioner shot one deceased Nk/Wel Ratheesh Kumar by a service rifle on 19th March, 2007 at around 8.00 p.m., as a result of this the deceased succumbed to the injuries. An FIR of this incident was filed on 19th March, 2007 at about 8.50 p.m. The investigation was taken-up by the Investigation Officer PW-15 Sub-Inspector Bashir Ahmad, Police Station, Kupwara. The petitioner was sent for Court Martial and the Court Martial, after holding the regular trial, convicted the petitioner under Section 302 of Ranbir Penal Code and sentenced to life imprisonment and dismissal from service.

3. Petitioner joined 203 Engineer Regiment as a Sepoy and he was elevated to the rank of Naik. He was permitted to proceed to 28 Infantry Division Camp to undergo 'Map Reading Standard-I' classes conducted by the said unit which commenced w.e.f. January, 2007 to March, 2007. Petitioner left his permanent place of duty to attend the aforesaid classes/course by the movement order dated 16th January, 2007 without having any service weapon and ammunition. By another movement order dated 7th February, 2007 seven personnel were also detailed for the same course.
4. While undergoing the classes at about 2015 hours a sound of two bullets were heard by few personnel in the barrack No. T-239, where the aforesaid group was camping on 19th March, 2007, in which No. 15311672X Nk Ratheesh Kumar died and a report of the incident was filed at Police Station Kupwara, Distt. Baramula and the

post mortem of the case was conducted by Dr. Aijaz Ahmed Bhat (PW-14), Asstt. Surgeon of District Hospital, Kupwara (J&K).

5. On the basis of these allegations prosecution examined as many as 17 witnesses and got large number of documents exhibited. Learned counsel for the petitioner took us to the evidence of all the witnesses and pointed out that prosecution has failed to prove that the petitioner was carrying a service weapon. He has also submitted that there is no *men srea*, there was no motive whatsoever for causing the death of the deceased and alternatively submitted that since both the accused and the deceased were taking drinks this could have happened under the influence of the drinks.
6. Learned counsel also seriously challenged the so called extra judicial confession before PW-9 and in this

connection he invited our attention to various decisions of the Apex Court held in *Prakash Kumar v. State of Gujarat* [2007 (4) SCC 266]; *Kalyani Baskar v. M.S. Sampooranam* [2007 (11) SCC 261]; *State of Rajasthan v. Kashi Ram* [2006 (12) SCC 254]; *Gagan Kanojia & Anr. V. State of Punjab* [2006 (13) SCC 516] and he has also submitted that the circumstantial evidence was not so clinching so as to implicate the accused and in that connection he invited our attention to the decision of the apex court held in *Ram Singh v. Sonia & Ors.* [2007 (3) SCC 1].

7. As against this learned counsel for the respondent has submitted that there is a sufficient evidence to show that accused was carrying the service weapon and they relied on the testimony of PW-2 and PW-5. Learned counsel also submitted that the finding given by the Court Martial

authorities is fully justified. There is no ground to interfere with the conviction of the accused.

8. We bestowed our best of the consideration on rival submission made by both the parties and perused the record.
9. **PW-2 Naik K. Sadagopan**, who was the eye witness, has deposed that he and the accused had gone for Map Reading-I test at Headquarter, 28 Infantry Division from 19th January, 2007 to 19th March, 2007. Both of them used to stay together in same room during Map Reading-I Course. There were total of seven personnel of 203 Engineer Regiment, which included deceased & petitioner and other persons viz. Lance Havildar Anbunavalan, Lance Havildar D Prasanth, Nk Natarajan and Naik Venkataramana.

PW-2 deposed that on relevant he went for a test around 0800 hrs after that he came back at 1500 hrs. He went for a lunch to Military Engineering Services 874 Engineer Work Section Mess. After finishing his lunch he came to his room. Lance Havildar Anbunavalan briefed everyone in the room about their respective duties i.e. Lance Havildar D. Prasanth's first duty from 1800 hrs to 2000 hrs; Naik Natarajan, second duty from 2000 hrs. to 2200 hrs.; accused third duty from 2200 hrs. to 2359 hrs. After that everyone dispersed and he went to his bed and slept. He got up at around 1745-1750 hrs. and saw the accused and the deceased were preparing meat, Lance Havildar D Anbunavalan, Naik Natarajan were preparing tea. He went outside to wash the utensils and he saw accused going towards his bed after talking to Lance Havildar D. Anbunavalan. Deceased asked Lance Havildar D. Anbunavalan that what was accused asking him about? Lance Havildar Anbunavalan replied that

accused told him that he would not go for the duty. Then the deceased asked accused that why couldn't he go for the duty? The deceased told the accused that he was senior to him in service, therefore, he is going for the duty then why couldn't he go for the duty? However, accused opened his shoes and sat on his bed. Then they started talking in Malayalam and he could not understand what they were saying. Naik Natarajan then informed Lance Havildar Anbunavalan from his bed that he is proceeding for his duty and left the room. After 5-10 minutes, Lance Havildar Anbunavalan ordered the accused and the deceased not to argue any more on this topic of duty and the accused shall proceed for duty as per detailment. Both the accused and the deceased kept sitting at the same place cooking the meat and continued talking about the duty. Then, two civilians came to our room after having their dinner and sat on the bed. It was snowing heavily outside.

After approximately 5 minutes, he heard the sound of firing from a small arm weapon of INSAS Rifle. As he heard the sound of firing and saw accused holding his weapon in his hand, he ran outside. Accused was standing little ahead of his bed holding his rifle straight in front. They were staying on the first floor of the building and as he came out and was about to climb down the stairs, heard the sound of second round of firing of rifle. He immediately went down to ground floor and ran towards the fencing of 528 Army Supply Corps Battalion compound. He heard the noise of someone shouting from the room where he was staying. He heard that person shouting in Tamil "what have you done sir" (Enna Pannittenga Sir)?

Then, he informed Major Saheb about his identity and told him he is from Engineer Regiment. There he saw

Lance Havildar Anbunavalan and Lance Havildar D Prasanth standing next to the accused outside the room. The accused was held by his arms by one Subedar Saheb and Sentry. The accused was saying to Subedar Saheb that "Galti Ho Gaya, Nashe Mein Tha, Maaf Kar Do" (It was a mistake, I was drunk, forgive me). Then other officers also arrived and four of us i.e. Lance Havildar Anbunavalan, Lance Havildar D Prasanth, Naik Natarajan were taken to RR room and he does not know about the status of the accused after that. Next day i.e. on 20th March, 2007 police came on the spot.

Lance Havildar D Prasanth and he were taken by the police to the site of incident and the inspector of police seized the weapon and the rounds and he took the signatures on the paper as a token of receipt for taking the weapon and rounds.

After that witness (PW-2) was cross-examined and he has stated that except Lance Havildar Anbunavalan all of them had gone for the Map Reading Test with their personal weapons. He also deposed that all the weapons with ammunition were kept in the room and the room was locked from outside and the keys were with Lance Havildar Anbunavalan. He deposed that when he ran out of the room after the first round was fired, he could only see the accused holding his INSAS rifle towards the direction of the deceased. He deposed that there was a time gap of 5-7 seconds with the first and second round. He deposed that accused is a bad tempered person and he was already drunk.

10. **PW-3 Havildar C Jayaseelan** of Garrison Engineer 874 Engineer Work Section deposed that on 19th March, 2007 between 2000 hrs to 2015 hrs. Lance Havildar Anubunalavan came running to me and called me

outside the television room. Anbunalavan informed him that when he is going for dinner and reached near the canteen, he heard the sound of firing from the room, where they were staying and they immediately rushed to control the situation.

PW-3 immediately rushed to his Senior Junior Commissioned Officer Subedar Major Shankaran who was staying in JCO's Mess and told him about the incident and then Senior Junior Commissioned Officer, Lance Havildar D Anbunavalan and he immediately went to Administrative Officer, Officiating Garrison Engineer Captain RK Saini and informed him about the firing in the attached room.

PW-3 deposed that he saw the accused standing with his hands up on the road where everyone had gathered and officers were enquiring something from the accused. What exactly they were asking is not known.

PW-3 also deposed that in the movement order of the seven personnel of 203 Engineer Regiment, who had come for MR-I Test, the detailment of personal weapons was not endorsed in it.

11. **PW-5 Lance Havildar D Prasanth** who is also one of the seven personnel, who were occupying the same room and detailed for Map Reading Test, also deposed that on hearing the sound of firing from upward direction, he just got to one side and after a few seconds he heard the sound of second round of firing. Immediately he heard someone running on wooden floor and rushing down from the stairs. A person followed by two more, who he could not see as it was too dark on the stair case. Then, he peeped inside the door and saw the accused with rifle INSAS in his hand pointing towards the body lying on the ground. From outside

itself he asked the accused as to what has happened to which he replied in a loose manner "nothing".

PW-5 could identify the body of the deceased as he recognized the combat print of his clothes but did not see the face. Then, he rushed into the room and he asked what have you done. The accused was little tense and replied that "I will commit suicide, you leave, you leave me alone". PW-5 came close to him and snatched the rifle from him. Since he was saying "suicide" he kept the rifle on the bed of Naik Prasad Kumar. After keeping the weapon on the bed, he saw the blood on the ground and got scared and shouted for the help. Then, he caught the accused by his collar and continued shouting for help. Then, he saw three-four torches being flashed towards us and he called them to come and help.

On the next day the investigation officer came and seized the weapon, magazine, fired rounds and took his signatures on the receipt (Exhibit-15).

PW-6 Lance Havildar D Anbunavalan, **PW-7** Naik Natarajan and **PW-8** Naik K. Venataramna were also examined and they corroborated the incident.

PW-9 Naik Subedar SK Konar deposed that the accused confessed before him the whole guilt.

All the witnesses have deposed that they were carrying their own weapon and ammunition.

PW-9 has deposed that when he asked the accused he replied that "I shot him – Ratheesh Kumar of my own unit".

PW-14 Dr. Aijaz Ahmed Bhat has conducted the postmortem and given the report that the cause of death was fire arm injury.

12. Learned counsel for the petitioner has submitted that accused had no motive or *men srea* for killing the deceased. In every case motive may not be there. It appears that both accused and deceased were cooking meat and sharing drinks. On the day of the incident the accused had refused to go duty on that argument followed and it seems it heated up and accused took out the rifle and shot him. The whole incident seems to be taken place on a small altercation on the issue of joining the duty or not to join the duty. The very fact that accused shot the deceased point blank requires no further motive, his intention is more than explicit. The cause for dispute was to join duty or not to join duty.
13. In every case it is not necessary that motive should be proved, but, in the present case it is very clear that accused, who was armed with the rifle shot the

deceased point blank on small issue. Nothing more is required to be proved.

14. Learned counsel for the petitioner submitted that there is no evidence that accused carried his gun. This is also wrong. From the documents available on the record it clearly transpires that the accused was armed with the gun, which is apparent from Annexure-19, which bears petitioner's signature that he was given the service rifle on 17th January, 2007 and as per the evidence of the witnesses it is more than apparent that all of them were carrying their own weapons, including the petitioner. It is unthinkable that the petitioner is going to Kupwara without service rifle.
15. The oral evidence of all the witnesses coupled with Annexure-19 makes it apparent that petitioner was

carrying his service rifle, which was seized on the spot, which is proved by the evidence of the Investigation Officer and other attesting witnesses. Annexure-19 bears the signature of petitioner also.

16. The sealed packets, containing gun, live cartridges and empty cartridges, which were sent to J & K Forensic Science Laboratory, Srinagar, confirmed that the gun was serviceable and empties fired from the gun tallies with the test fired.
17. Learned counsel for the petitioner tried to dislodge this evidence by saying that the cartridges did not bear same mark. This may be so, because there are 60 rounds and each bullet has a marking. The sealed empties which were sent to laboratory confirmed with test fired cartridges as it had same marking.

Therefore, same numbers on the bullets may vary because there were 60 rounds were given, but the marking of the cartridges which were fired through the rifle for the test purpose and the marking of the questioned fired cartridges were tallied. Therefore, the Forensic Science Laboratory confirmed that the same and finding of the laboratory says:

"... .. The test fired cartridge cases were collected and compared with the questioned fired cartridge cases marked as Exhibit Nos. B-461/07 and B-462/07 under comparison Microscope and the following opinion formed.

- 1. The INSAS rifle marked as Exhibit No. B-441/07 had been fired through.*
- 2. The INSAS rifle marked as Exhibit No. B-441/07 has been found in working condition.*
- 3. The questioned fired cartridge cases marked as exhibit Nos. B-461/07 and B-462/07 had been fired through the INSAS rifle marked as Exhibit No. B-441/07.*

4. The live cartridge marked as exhibit Nos. B-443/07 to B-460/07 and the questioned fired cartridge cases marked as Exhibit Nos. B-461/07 and B-462/07 are of the same caliber i.e. 5.50 MM.

18. From this evidence the whole case is clinched that the same service rifle, which was issued to the petitioner was used in commission of the crime.
19. From this evidence it is more than evident that the prosecution has been able to bring the guilty to the hilt and there is no reason to disbelieve the prosecution's version and the evidence of the prosecution.
20. There is no dispute with regard to the legal proposition, which emerges from various decisions of Apex Court cited by the learned counsel. But, the question is whether the caselaw can be of any use in the present case or not. As we have summarized the

evidence, which clinches the guilt of the accused. We are of the opinion that the prosecution has proved the guilt of the accused beyond doubt. Therefore, there is no reason to interfere in this appeal against the order passed by the Court Martial. Consequently, we confirm the conviction and sentence of the accused and dismiss the appeal/petition.

[Justice A.K. Mathur]
Chairperson

[Lt. Genl. ML Naidu]
Member (A)

New Delhi
February 11, 2010