

Om Prakash Vs. Union of India (UOI) and Ors.

Dipak Misra & N.V. Ramana, JJ.

IN THE SUPREME COURT OF INDIA

Date of Judgment: 09.07.2015

Section 302,304 Part-II IPC &

Section 15 Armed Forces Tribunal Act,2007

Issue

Appeal against the judgment and affirmation of conviction and order of sentence passed by the Armed Forces Tribunal.

Relevant Extract

The facts necessary to be exposited for adjudication of this appeal are that on 3rd of April, 2006, a 'Barkhana' was organized at 85, Armoured Regiment to bid farewell to the outgoing Risaldar, Major Madan Lal. At the Barkhana venue some heated arguments took place between the Appellant and Risaldar, Nand Lal Prasad, PW5, and in course of argument said Nand Lal Prasad slapped the Appellant. However, the matter was defused with the intervention of Major Raj Nandan, PW4, who instructed Lance Dafadar Anil Kumar, PW6 and Lance Dafadar Murari Singh, PW7, to take the accused to his living barracks of Headquarter Squadron.

As per the prosecution version during the altercation and assault between the accused and Nand Lal Prasad, deceased Dafadar Ram Pratap had tried to intervene and was abused by the accused. After the accused had left for the barracks of the Headquarter, about 12.30 a.m., Sowar Balwinder Singh, PW6, came to the line after finishing his duties allotted to him, and after entering the room switched on the light and found Dafadar Ram Pratap was lying in a pool of blood and blood was also oozing out from his mouth. He was immediately shifted to the Army Hospital where he was

declared dead. About 1.30 a.m. on 4.4.2006, information was received from the police station Babina by the 85, Armoured Regiment that a person belonging to their regiment had surrendered at the police station and stated that he had stabbed one person with a knife. On receipt of the said information, the concerned J.C.O. was sent to the police station where he saw that Dafadar Om Prakash was present. After receiving the information from the J.C.O., the Commanding Officer, Col. Rajiv Chib, PW27, along with Lt. Col. Atul Kumar Bhat, PW15, reached the police station Babina about 1.50 a.m. and enquired from the accused about the details to which he confessed that he had stabbed the deceased. Thereafter, an F.I.R. was lodged by the Adjutant Captain Abhishek, PW3, and the accused was handed over to the Military Police. As the narration would further unfurl, the proceedings of the General Court Martial (GCM) under the Army Act was initiated by order dated 8.10.2006 passed by Major General A.K. Singh, General Officer Commanding, 31st Armoured Division.

Be it noted, the accused was charged for the offences Under Section 302 of Indian Penal Code for intentionally causing death of Ram Pratap of his unit, but subsequently stood convicted for culpable homicide not amounting to murder under Part-II of Section 304, Indian Penal Code As is demonstrable, the prosecution in order to substantiate the charge had examined as many as 31 witnesses and during the court martial number of documents were exhibited. The Court Martial relied on Exbt. 36 which was recorded at the time of summary of evidence wherein the accused had admitted that the deceased and he were involved in a fight. He had also stated that the deceased in the room had abused him and tried to kick him but failed in the attempt and when the accused stood up on 'charpai' the deceased boxed

him on the face and at that time he pushed him back with both hands as a result of which he fell on the box and was hurt on his back. As the statement further proceeds, the deceased left the room and came back within five minutes. The accused, in the meantime, had picked up the knife from the locker and kept it on the box. While he was sitting in the 'charpai' the deceased came into the room and caught hold of the neck of the Appellant and pulled him towards his own locker. The Appellant got hold of the knife and stabbed the deceased on the chest so that he would leave his neck.

Apart from the aforesaid, a confessional statement made by the accused to Col. Rajiv Chib, Commanding Officer of the regiment, PW27, at police station that he had stabbed the deceased was also given credence to. The testimony of Lt. Col. Atul Kumar Bhat, PW15, who had witnessed the confession was also taken into consideration. In addition, during the court martial the corroborating statement of Court Witness No. 7 Naib Subedar J.M. Sharma, wherein the accused had stated to CW-7 at Police Station on 4th of April, 2006 about the incident that was caused due to anger and intoxication, was also exhibited. The GCM also believed that part of the testimony of CW-7 wherein he had stated that from the condition of dress worn by the accused, it appeared that he was involved in a quarrel, for the accused had a minor bruise on his right temple of the head. The GCM referred to the evidence of Major (Dr.) M.C. Sahoo, PW1, and Dr. R.K. Chaturvedi, PW28, who had deposed that the stab wound injury inflicted on the chest of the deceased was sufficient in ordinary course of nature to cause death. The GCM also took certain circumstances, namely, that the deceased was lying on the floor in a pool of blood; that the accused was found lying on the 'charpai' in the room in an injured condition; that he was present in the room and eventually held

thus: Even though the accused had no intention to kill the deceased, the accused should be knowing the consequences of his action. The accused should be conscious, that by stabbing at chest, which is a vital part of a human body, the injured person is likely to die, due to the effect of such injury. A man expects the natural consequences of his action. By causing such bodily injury on Dafadar Ram Pratap, the accused should be knowing that death is the likely consequence of that injury even though accused never intended to kill Dafadar Ram Pratap. Hence the court finds him Not Guilty of committing a civil offence that is to say Murder contrary to Section 302 of Indian Penal Code but Guilty of committing a civil offence that is to say, culpable homicide not amounting to murder under Part-II of Section 304 of Indian Penal Code.

From the aforesaid established facts which are founded on proper appreciation of the evidence by the forums below, and we are inclined to think rightly, it is quite vivid that the chain of circumstances is complete. We have concurred with the analysis of the evidence after critically scrutinizing the evidence of the prosecution witnesses. What has weighed with the forums below is that the Appellant was present in the room and had escaped. The circumstances that really weigh against the Appellant are that he had indulged in an altercation in the party; that he was in a drunken state and he was alone present in the room; and that he had escaped by the rear door and his presence at the police station at an odd hour and his absence at the "fall in parade". Learned Counsel for the Appellant had endeavoured, to argue that other persons were present in the room and for the said purpose he has shown some lines from here and there but the evidence read in entirety established beyond any shadow of doubt that the accused was

alone in the room. He being present at the police station and not being present at the "fall in parade" are circumstances which would go against him. He has not been able to give any explanation about his presence at the police station and the factum that on being informed by the Head constable the army officers arrived at the concerned police station. There can be no cavil over the proposition as has been laid down by this Court, that the circumstances from which the conclusion of guilt is sought to be established must be conclusive in nature. In the case at hand the series of circumstance clearly establish the guilt of the accused and the minor discrepancies that have been pointed out by the learned Counsel for the Appellant, really do not create any kind of dent in the testimony of the prosecution witnesses to treat them as reproachable and remotely do not destroy the prosecution version.

Apart from the aforesaid evidence, we have to consider the evidentiary value of Exhibit 36, the statement recorded at the time of summary of evidence Under Rule 23 of the Rules. The said Rule deals with procedure for taking down the summary of evidence. Rule 23 of the Rules being pertinent is reproduced below:

Procedure for taking down the summary of evidence.-

(1) Where the case is adjourned for the purpose of having the evidence reduced to writing, at the adjourned hearing evidence of the witnesses who were present and gave evidence before the commanding officer, whether against or for the accused, and of any other person whose evidence appears to be relevant, shall be taken down in writing in the presence and hearing of the accused before the commanding officer or such officer as he directs.

(2) The accused may put in cross-examination such questions as he thinks fit to any witness, and the questions together with the answers thereto shall be added to the evidence recorded.

(3) The evidence of each witness after it has been recorded as provided in the rule when taken down, shall be read over to him, and shall be signed by him, or if he cannot write his name shall be attested by his mark and witnessed as a token of the correctness of the evidence recorded. After all the evidence against the accused has been recorded, the accused will be asked: "do you wish to make any statement? You are not obliged to say anything unless you wish to do so but whatever you say will be taken down in writing and may be given in evidence." Any statement thereupon made by the accused shall be taken down and read to him, but he will not be cross examined upon it. The accused may then call his witnesses, if he so desires, any witnesses as to character.

(4) The evidence of the witnesses and the statement (if any) of the accused shall be recorded in the English language. If the witness of accused, as the case may be, does not understand the English language, the evidence or statement, as recorded, shall be interpreted to him in a language which he understands.

(5) If a person cannot be compelled to attend as a witness, or if owing to the exigencies of service or any other grounds (including the expense and loss of time involved), the attendance of any witness cannot in the opinion of the officer taking the summary (to be certified by him in writing), be readily procured, a written statement of his evidence purporting to be signed by him may be read to the accused and included in the summary of evidence.

(6) Any witness who is not subject to military law may be summoned to attend by order under the hand of the commanding officer of the accused. The summons shall be in the form provided in Appendix III.

As we have seen from the statement recorded in the said proceeding, all the safeguards were followed.

As in **Bachan Singh v. Union of India and Ors.(2008) 9 SCC 161**, the record of the Court Martial produced before us by the learned Additional Solicitor General would reveal that the GCM was held against the Appellant on different dates at Udhampur. The record would disclose that the Appellant had made voluntarily written confessional statement before the GCM admitting the allegations levelled against him in the charge-sheet. On bare perusal of the GCM, it becomes quite clear that the proceedings were recorded by the GCM in the presence of the Appellant, his defending officer and other witnesses. The statements of Major S.K. Sareen, Smt. Vidya Devi, Veena Kumari, Tara Chand, Rattan Singh, Prabhu Ram, Major S.B. Ambel, Pritam Singh, Capt. A.K. Chowdary, Major Amin Chand Bhattee were recorded by the GCM on behalf of the prosecution in support of the charge in the presence of the Appellant. The Appellant was afforded full opportunity of crossexamining the witnesses but he did not avail of the said opportunity.

It appears from the record that despite giving warning to the Appellant to the effect that he was not obliged to make any confessional statement, the Appellant made written confessional statement on 22-10-1980. The Appellant made additional statement in addition to first summary of evidence on 10-9-1981 in the presence of witnesses, namely, IC-25616Y Major S.L. Gautam, independent witness and Major Amin Chand, officer recording summary of evidence. It appears from the record that second additional

summary of evidence recorded on 10-9-1981 was in compliance with the Army Rules 23(1), 23(2), 23(3), 23(4) and 23(6) in which the Appellant did confess his guilt.

Learned Counsel would submit that there was a confession which was retracted in the proceeding before the GCM. But what we have noticed is that the GCM has relied on the statement made vide Ext. 36. On a studied scrutiny of the statement of the accused, we find that the Appellant was asked whether he was inclined to make a statement and also apprised that he was not obliged to say anything unless he wanted to say. That apart, a warning was given to him that whatever he would say would be taken down in writing and given in evidence. Thus, there was no compulsion. It was a voluntary statement and the meat of the matter is that it had been done under a statutory Rule and has been proven to the hilt before the GCM. We repeat at the cost of repetition, nothing has been elicited in the cross-examination or brought on record which will make the statement hollow and unreliable. In view of our aforesaid analysis, we find no merit in the appeal and accordingly the same stands dismissed.

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