Major R. S. Budhwar

Vs

Union of India and Others

Criminal Appeal No. 1194 of 1995 with Cri. Appeal Nos. 625 and 626 of 1996

(Dr. A. S. Anand, M. K. Mukherjee JJ)

08.05.1996

JUDGEMENT

M. K. MUKHERJEE, J.:–

1.The above appeal and the two Special Leave Petitions wer directed to be heard together as they relate to one and the same incident but having regard to the facts that over that incident two separate trials were held by General Court Martial ('GCM' for short), assailing their verdicts two independent writ petitions were filed and the Delhi High Court dismissed them by two separate judgments, which are under challenge herein, we have heard them one after the other and proceed to dispose of them accordingly.

CRIMINAL APPEAL NO. 1194 OF 1995

2. While serving as a Major in the Indian Army the appellant R. S. Budhwar, along with two other officers, was tried by a G. C. M. in December 1988 for the following charge :

> "Army Act, section 69 : Committing a Civil offence, that is to say abetment of an offence specified in Section 302 of India Penal Code, in consequence of which abatement such offence with (sic) committed, contrary to Section 109 read with Section 34 of Indian Penal Code.
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> In that they together, at Filed, on or before 14 June, 1987, abetted No. 3173368H Sep (L/NK)Inder Pal Singh and No. 3174523L. Sep. Mahavir Singh, both of 8 JAT to commit murders of IC 14807N Colonel SS Sahota and IC 28739H Major Jaspal Singh of the same unit, which was committed in consequence of such abatement by the said Sep. (L/NK) Inder Pal Singh and Sep. Mahavir Singh."

3. The GCM found the appellant and one of the other two (since dead) guilty of the above charge and awarded them punishment of imprisonment for life and cashiering. Aggrieved thereby the appellant presented a petition under Section 164 (i) of the Army Act, 1950 ('Act' for short) wherein he prayed that the findings and sentences recorded against him be not confirmed. The GOC-in-C Eastern Command, however, rejected that petition and confirmed the findings that sentences of the GCM. He then filed another petition in accordance with Section 164 (2) of the Act which was rejected by the Central Government. The appellant then approached the Delhi High Court with a petition under Article 226 of the Constitution of India which was also dismissed. Hence this appeal.

4. Mr. Lalit, the learned counsel appearing for the appellant, first contended that there being not an iota of evidence in the proceedings of the G. C. M. to indicate that L/NK Inder Pal Singh and Sep. Mahavir Singh (the petitioners in the two special leave petitions) committed the murders of the two officers mentioned in the charge the High Court ought to have held that the findings of the G. C. M. as recorded against the appellant were perverse. While on this point, Mr. Lalit, however, fairly conceded that having regard to the limited scope of enquiry the High Court exercises while sitting in its extraordinary writ jurisdiction it was difficult for him to assail the finding recorded by the G. C. M. that the appellant had instigated the above two person to commit the murders on the ground that it was based on 'no evidence', but he strenuously urged that mere proof of the said fact could not in any way saddle the appellant with the offence of abetment of the commission of the murders, in absence of any evidence whatsoever to prove that they actually committed the murders, and, that too on being instigated by the appellant. The other point that was raised by Mr. Lalit was that even if it was assumed that there was some evidence to connect the appellant with the offence alleged against him as furnished by Inder Pal Singh and Mahavir Singh, even then the GCM, which functions as a Judicial Tribunal, ought not to have relied upon the same, in absence of any independent corroboration thereof, as such evidence was adduced by the two assailants mentioned in the charge, who were undoubtedly accomplices.

5. Mr. Goswami, learned counsel appearing for the respondents on the other hand contended that it could not be said that there was no evidence to connect the appellant with the charge levelled against him and, therefore, this Court would not be justified in interfering with the findings of the G. C. M. even if it, on its own appraisal, found the evidence to be insufficient or unreliable. In responding to the other contention of Mr. Lalit, Mr. Goswami first draw our attention to Section 133 of the Act which makes, subject to its provisions, Evidence Act, 1872 applicable to all proceedings before a Court Martial and contended that in view of Section 133 thereof (Evidence Act), a conviction based on the uncorroborated testimony of an accomplice could not be held to be illegal. However, Mr. Goswami submitted that in the instant case there was ample material to corroborate the evidence of the accomplices.

6. In the context of the rival stands of the parties the crucial point that falls for our consideration is whether there is any evidence to prove that Inder Pal Singh and Mahavir Singh committed the murders of Col. S. S. Sahola, the Commanding Officer and Major Jaspal Singh, Second-in-Command of 8, JAT Unit (hereinafter referred to as 'CO' and '2IC' respectively) on June 16, 1987 as alleged by the prosecution. If this question is to be answered in the negative, then the fact that there is evidence to prove that the appellant had instigated them to commit the murder – which is concerned by Mr. Lalit also – would be redundant; and, resultantly, the impugned order of the G. C. M. would have to be quashed. To find an answer to the above question we have carefully gone through the evidence adduced during the G. C. M. proceedings. On perusal of the evidence of Mahavir Singh (PW 10) and Inder Pal Singh (PW 16), the two accomplices, who, admittedly were the most important witnesses for the prosecution, we find that they first spoke of the orders they had earlier received from the appellant and others to commit the two murders. In narrating the incident of the fateful day, both of them stated that at or about 12 noon they went towards the office of CO and 2IC with arms and ammunitions. After moving some distance together, Mahavir Singh went towards the office of CO and Inder Pal Singh towards that of 2IC. According to Mahavir Singh, enroute he met L/NK Ranbir Singh (PW 21) who asked him why he had come there. Mahavir Singh then fired one round towards him, who immediately caught hold of the muzzle of his (Mahavir's) rifle. Mahavir Singh next stated that at that point of time, rapid fire came from the drill shed side towards the CO's jonga which was standing there. Simultaneously, he (Mahavir Singh) fired one round which injured Ranbir's hand and he fell down. The version of Inder Pal Singh (PW 16) as

regards the firing is that when he reached the office of the 2IC he found that he was not there. He then went towards the office of the Adjutant. On the way he heard sounds of firing. When he reached the office of Adjutant he could not see clearly as to who were inside as the room was dark and windows were covered with curtains. Through the window he saw a Captain sitting inside and talking to some one, who might be 2IC. He then fired several rounds in the air. In the meantime Mahavir Singh came there and told him to run away. Then both of them ran towards the jungle.

7. Drawing our attention to the above statements of the two accomplices, Mr. Lalit argued that as neither of them admitted to have committed the murders it must be said that the finding of the G. C. M. that the appellant was guilty of the charge levelled against him was perverse – being based on 'no evidence'. We are unable to accept the contention of Mr. Lalit for, later on in his evidence P. W. 10 fully supported the charge levelled against the appellant – though PW 16 did not – and there is other circumstantial evidence on record to substantiate the prosecution case.

8. On being examined further during trial PW 10 testified :–

> "It is correct that I along with L/NK Inder Pal Singh had killed the CO and 2IC on the orders of accused No. 1 (the appellant)."
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> He further stated :
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> "It is correct that accused No. 1 (the appellant) had asked me a question as to with what aim I was trying to implicate him in this case and I had replied that I was not trying to implicate him in any case and he had given a task which I had accomplished."
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> Then again when asked about what he knew about the loss of grenades of the Unit he said the grenades were stolen to kill CO and 2IC. He also stated that he has already been sentenced to be hanged for committing the murders of CO and 2IC for obeying the orders of Major Sahib (the appellant). Again in cross-examination he testified that his job was to eliminate CO and 2IC. The other piece of his evidence, which clearly indicates that he had committed the murders on the instigation of the appellant, reads as under :
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> "On 18 June 87, after 1600 hrs. I and L/NK Inder Pal Singh surrendered to Hav Nav Rattan of my unit near Kambang Bridge. We have also surrendered our arms to him. We were made to sit in a 1 Ton vehicle of our unit. After some time one Capt. of 16 Madras along with a guard of 3-4 OR came to the 1 Ton vehicle, 2 or 3 OR sat with us in the vehicle. The guard Commander remained outside the vehicle. The first officer of my unit to come the site of surrender was Maj Lamba. He had come in a RCL and it was parked ahead of 1 Ton vehicle. We wished him Ram Ram while his vehicle crossed 1 Ton vehicle. He replied by saluting but did not speak anything. After about half an hour of our surrender, accused No. 1 came to us to the 1 Ton vehicle. He was looking as if he had come running and he was persprining. When he came close to us, we wished him Ram Ram. He came further close to us and patted me on my back and said "Shabash Kam Kar Diya, Chettri Sahib or Doctor Sahib Ko Kiyon Ragar Diya" meaning thereby, "well done, the job has been done, why Chettri Sahib and Doctor Sahib killed."

9. In view of the above testimony of P. W. 10 it cannot at all be said that he did not support the charge levelled against the appellant. It is of course true that PW 10 is an accomplice but from the proceedings of the trial we find that the Judge-Advocate in his closing address properly explained to the GCM the value of the evidence of an accomplice with reference to Section 133 and Section 114 (Illustration b) of the Evidence Act. If in spite of such explanation the GCM found the appellant guilty it could not be said that its finding perverse. This apart, the following circumstances proved through other witnesses amply corroborate the evidence of P. W. 10 :

> i) On 16 June, 1987 both Inder Pal Singh and Mahavir Singh were found going towards the main office building with rifles and some rounds of ammunitions. While Mahavir Singh went toward the office of the CO, Inder Pal Singh went towards the office of the 2IC;
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> ii) Near CO's office when NK Ranbir (PW 21) caught hold of the muzzle of the rifle of Mahavir Singh he fired one round as a result of which Ranbir sustained an injury on his hand and fell down unconscious. After regaining his senses when he went to the office of the CO he found him lying on the ground near his revolving chair gasping for breath;
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> iii) After the firing incident Mahavir Singh and Inder Pal Singh together ran away towards the jungle along with their arms and ammunition;
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> iv) Both of them surrendered on June 18, 1987 with their rifles and ammunitions which were seized and sent to Forensic Seicnce Laboratory, Calcutta for examination;
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> v) On examination it was found that ten cartridges cases were fired through one of those rifles bearing Regd. No. 9744 which was issued to Inder Pal Singh and two cases were fired through the other rifle, bearing Regd. No. 7343 which was issued to Mahavir Singh, in the morning of June 16, 1987;
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> vi) While sitting in the office of Adjutant, Major Chandal (CW 1) saw through the window Ranbir Singh holding the muzzle of a rifle. At that moment he heard another bulled being fired from the side of his back. He then ducked down on the table with face downward and saw, through the window, Inder Pal Singh firing about 10 to 15 rounds. After the firing had stopped when he came out of the office of the CO he found him lying in a reclining position against the wall and he was badly injured and gasping for breath; and
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> vii) Dr. Senewal, (PW 15) who held postmortem examination on the dead bodies of CO and 2IC found injuries on their persons which, in his opinion, were caused by bullets and resulted in their deaths.

10. When the above circumstantial evidence is considered along with the evidence of P. W. 10, the conclusion is irresistible that it is not a case of 'no evidence' but one of 'sufficient evidence'. The findings of the GCM not having been assailed in any other Court, the conviction and sentence of the appellant is well merited. We, therefore, hold that there is no merit in this appeal. It is accordingly dismissed.

CRIMINAL APPEAL NO.......OF 1996 (ARISING OUT OF SLP (CRI. NO. 2126 OF 1994) AND

CRIMINAL APPEAL NO.... OF 1994 (ARISING OUT OF SLP (CRI.) NO. 2158 OF 1994)

11. Leave granted in both the petitions, limited to the question of sentence.

12. Sep. Mahavir Singh and L/NK Inder Pal Singh the appellants in these two appeals, were tried by the General Court Martial ('GCM') for committing the murders of four Army Officers, namely, Col. S. S. Sahota, Major Jaspal Singh, Captain, B. K. Chottri and Captain A. Srivastava on June 16, 1987. Of them Col. Sahota was the Commanding Officer, Major Jaspal Singh was the Second-in-Command and Captain Chottri was an officer attached to 8JAT Unit while Captain Srivastava belonged to 302 Field Ambulance. The two appellants were also attached to the above unit. By its order dated December 10, 1988 the GCM held them guilty of the above offences and sentenced each of them to death. Aggrieved thereby they presented petitions under Section 164 (1) of the Army Act ('Act' for short) wherein they prayed that the findings and sentence of the GCM be not confirmed. Those petitions were rejected and the findings and sentence recorded against them were confirmed. The appellants thereafter filed another petition under Section 164 (2) of the Act which was also rejected. They then moved the Delhi High Court with a petition under Article 226 of the Constitution of India wherein they confined fined their challenge to the sentence imposed upon them on the ground that the GCM did not take into consideration the mitigating circumstances while awarding the punishment. In resisting the petition, the respondents contended that having regard to the fact that the appellants committed the murders of four senior officers in a planned manner they deserved the sentence of death. The High Court rejected the contention of the appellants and for that matter their writ petition with the following observations :

> "The question of sentence has to be decided by taking into account the aggravating circumstances as well as mitigating circumstances and then drawing a balance. The manner in which the crime was committed, the weapons used and brutality or lack of it are some of these relevant considerations to be borne in mind. Due regard is to be given, both to the crime and the criminal. This was a case of killing of a Commanding Officer, an officer Second-in-Command and two other officers. The Commanding Officer in an Army Regiment is like a father of his subordinates. The contention that the petitioners had good service record and had no advantage in killing these officers and they had killed these officers on instigation of Major Budhwar cannot be accepted in the present petition as without going into these aspects but assuming two views on question of sentence were possible, it is not for this Court to substitute its view for that of the authority under the Act. It cannot be held that the view of authorities in awarding death penalty was in manner perverse. We may notice that according to respondents life sentence was imposed on Major Budhwar as he was charged for abatement whereas petitioners were actual perpetrators of the crime."

Hence these two appeals.

13. Drawing inspiration from the judgment of this Court in Triveniben v State of Gujarat (1989) 1 SCR 509 : (AIR 1989 SC 1335), wherein this Court has held that undue and prolonged delayed occurring at the instance of the executive in dealing with the petitions of convicts filed in exercise of their legitimate right is a material consideration for commuting the death penalty, the learned counsel for the appellants submitted that the appellants were entitled to the commutation of their sentence as it took the respondents more than three and half years to dispose of the petitions presented by the appellants under sub-section (1) and (2) of Section 164 of the Act. On going

through the record we find much substance in the above grievance of the appellants.

14. Following the death sentence pronounced by the GCM on December 10, 1988, the appellants filed their application under sub-section (1) of Section 164 on December 31, 1988 which was disposed of on February 13, 1991, that is, after a period of more than two years and one month. Thereafter the appellants moved their petition under sub-section (2) of Section 164 on March 7, 1991 and this petition was disposed of after a delay of more than one year and six months. The total-dealy, therefore, comes to more than three years and seven months; and needless to say during this period the appellants were being haunted by the shadow of death over their heads. No explanation is forthcoming for these unduly long delays and therefore, the appellants can legitimately claim consideration of the above factor in their favour, but, then, it has also been observed in Triveniben's case (AIR 1989 SC 1335) (supra), relying upon the following passage from the earlier judgment of this Court in Sher Singh v. State of Punjab (1983) 2 SCC 344 : (AIR 1983 SC 465 at p. 472, Para 20).

> "The nature of the offence, the diverse circumstances attendant upon it, its impact upon the contemporary society and the question whether the motivation and pattern of the crime are such as are likely to lead to its repetition, if the death sentence is vacated, are matters which must enter into the verdict as to whether the sentence should be vacated for the reason that its execution is delayed." that such consideration cannot be divorced from the dastardly and diabolic circumstance of the crime itself.

15. Having given our anxious consideration to all aspects of this case in the light of the above principles we feel that the appellant do not deserve the extreme penalty of death, notwithstanding the fact that two of the murders, namely that of the Commanding Officer and Second-in-Command, were diabolically planned and committed in cold blood. From the record, particularly the confessions made by the two appellants which formed the principal basis for their conviction we find that the appellants did not commit the above two murders on their own volition prompted by any motive or greed much less, evincing total depravity and meanness. Indeed, it was the case of the respondents themselves at the GCM (which has been accepted by us also in the earlier appeal, that Major R. S. Budhwar along with other Officers of the Unit of the appellants instigated and compelled them to commit the above two murders by exploiting their religious feelings. The record further indicates that initially the appellant declined to take any step towards the commission of the offences but ultimately they succumbed to the "threat, command and influence" of their superiors. So far as the murders of the other two officers are concerned we find that they became the unfortunate victims of circumstances as they happened to be present at the time of incident. Another mitigating factor which in our opinion calls for commutation of sentence is that Major Budhwar who along with another officer (since dead) masterminded the two murders were awarded life imprisonment whereas the appellants who carried out their orders have been sentenced to death. In dealing with this aspect of the matter the High Court, however, observed, as noticed earlier, that the appellants committed the offences while the officers were only abettors. In our considered view in a case of the present nature which relates to a disciplined force as the Army, the offence committed by the officers who conceived the plan, was more heinous than that of the appellants who executed the plan as per their orders and directions. It is of course true that those orders being not lawful the appellants, even as disciplined soldiers, were not bound to comply with the same nor their carrying out such order minimised the offences but certainly this is a factor which cannot be ignored while deciding the question of sentence. Another factor which persuades us to commute the sentence is the post-murder repentance of the appellants who not only surrendered before the authorities within two

days but also spoke out the truth in their confessional statements. In fact, but for their confessional statements the Officers, who were the mastermind, could not have been brought to book. None of the mitigating circumstances, as noticed by us above, were taken into consideration by the High Court. It was obliged to consider both the aggravating and the mitigating circumstances and, therefore, by ignoring consideration of the mitigating circumstances, the High Court apparently fell in error.

16. For the foregoing discussion we allow these appeals and commute the sentence of death imposed upon each of the appellants to imprisonment for life, for the conviction recorded against them. Order accordingly.