

SUPREME COURT OF INDIA

Ajay Kumar Singh

Vs.

The Flag Officer Commanding-In-Chief & Ors.

Crl.A.No.325 of 2012

(T.S.Thakur,CJI., R.Banumathi,J.,)

13.07.2016

JUDGMENT

R.Banumathi,J.,

1. Delay condoned and leave granted in SLP (Crl.) No.8037-8038 of 2012.

2. Appellant-Ajay Kumar Singh (AK Singh), Ex-Seaman, First Class (appellant in Criminal Appeal No.325 of 2012) and Umesh Kumar Singh (UK Singh), Ex-Radio Operator (Special), First Class (appellant in Criminal Appeals No.471-472 of 2013) have assailed the judgments of Armed Forces Tribunal, Chennai in T.A. No.139 of 2010 dated 11.11.2010 and T.A. No.11 of 2011 dated 05.01.2012 and order dated 17.02.2012 passed in Review Petition No.2 of 2012 in and by which the tribunal affirmed the conviction of the appellants under Sections 342 and 392 IPC read with Section 77(2) of the Navy Act, 1957 and modified the sentence of imprisonment to that of the period already undergone by them. Appellant Dharendra Kumar Singh (DK Singh), Ex-Leading Seaman, Physical Trainer, Second Class who was acquitted by the tribunal with pensionary benefits, has preferred separate appeals seeking direction for reinstatement and other monetary benefits. These criminal appeals though assail separate judgments of Armed Forces Tribunal, Chennai, as the appeals arise out of the same bank robbery incident, all the appeals were heard together and are disposed of by this common judgment.

3. Brief facts which led to filing of these appeals are as follows: Mr. N.K. Marwaha, Branch Manager of Andhra Bank, Extension Counter, situated at Utility Complex, INS Virbahu filed a complaint on 04.06.1998 at Malkapuram Police Station alleging that at about 7.20 p.m. while settling the accounts for the day along with Nallamuthu Dass, the cashier, noticed two persons entered the bank stating that they wanted to open a bank account and the third person entered after them. Of three persons, two were armed with two countrymade pistols, a khukri and an iron rod and they together threatened the manager and cashier to open iron safe. Manager-Marwaha and cashier opened the iron chest and the culprits removed Rs.2,54,376/- from the cash tray of the iron safe and kept the same in the blue colour rexin bag which they were carrying. They removed the money, the three persons locked the manager and the

cashier inside the strong room of the bank before escaping in a metallic blue Bajaj Chetak scooter alongwith the blue colour cash bag. During the commission of the offence, the culprits were concealing their identity by wearing helmets with visors and masks. After forcing open strong room where they had been locked, the manager filed a complaint on 04.06.1998 before Malkapuram Police Station based on which first information report was registered in Crime No.34 of 1998 under Sections 392 and 342 IPC read with Section 25 (1-A) of the Arms Act. The Naval Police had taken over the investigation; but they were unable to make headway into identity of the accused persons despite recovery of the scooter and other articles on 23.07.1998. The investigation was then handed over to the civil police. After further investigation, civil police arrested appellants AK Singh and UK Singh on 30.07.1998. Appellant DK Singh was arrested at Howrah Railway Station on 24.07.1998 and thereafter brought to Visakhapatnam on 28.07.1998. On 30.07.1998 all three persons were remanded to custody in central jail, Visakhapatnam. Based on the statement of the accused persons, certain recoveries were made. On 17.08.1998, identification parade was conducted and PWs 14 and 18 identified the appellants.

4. The Commissioner of Police, Visakhapatnam vide letter dated 28.10.1998 advised the Flag Officer, Commanding-in-Chief, Eastern Naval Command, Visakhapatnam to try the accused persons by Court Martial. Therefore, the appellants were transferred to naval custody under the provisions of Section 475 Cr.P.C. read with Criminal Courts and Court Martial (Adjustment of Jurisdiction) Rules, 1978 and the matter was investigated afresh by the Commanding Officer, INS Circars. After completion of investigation, chargesheet was filed against the appellants on 26.06.1999 under Sections 392 and 342 IPC read with Section 77 (2) of the Navy Act and Section 25(1-A) of the Arms Act read with Section 77(2) of the Navy Act:-(i) for committing a robbery of Rs.2,54,371/- at the Andhra Bank Extension Counter at INS Virbahu; (ii) for wrongful confinement of the bank manager and cashier; (iii) for possession of country made pistol and three rounds of ammunition whilst committing the offence; and (iv) that accused had remained absent without leave. The Court Martial was convened on 16.07.1999 and the appellants were tried before the Court Martial.

5. Before the Court Martial, twenty nine prosecution witnesses were examined. Upon consideration of evidence, the Court Martial found the appellants guilty of various charges and sentenced them to undergo various imprisonments. Additionally, all three appellants were imposed punishment of dismissal with disgrace and to suffer such other consequential penalties involved. The appellants preferred statutory appeals before the Chief of the Naval Staff in accordance with Section 162 of Navy Act 1957. The Chief of Naval Staff confirmed the conviction of the appellants and reduced the imprisonment and maintained dismissal of the appellants with disgrace from the naval service.

6. The details of charges framed against the appellants, findings of the court martial, punishment and findings of the appellate authority/Chief of the Navy Staff are as under:-
Name of the Appellant Charges Framed Findings of the Court Martial and Punishment Findings of the Appellate Authority/Chief of the Naval Staff AK Singh 1. Under Section 392 IPC read with Section 77 (2) Navy Act.

2. Under Section 342 IPC read with Section 77 (2) Navy Act.

3. Under Section 25 (1-A) Arms Act read with Section 77 (2) Navy Act. Found guilty of charges 1 and 2 under Sections 392 and 342 IPC read with Section 77(2) Navy Act and sentenced to undergo RI for sixty months; dismissal from service with disgrace and to suffer consequential penalties involved. Maintained the conviction and reduced the sentence to twenty four months; Confirmed dismissal from service with disgrace. UK Singh

1. Under Section 392 IPC read with Section 77 (2) Navy Act.

2. Under Section 342 IPC read with Section 77 (2) Navy Act.

3. Under Section 25 (1-A) Arms Act read with Section 77 (2) Navy Act.

4. Under Section 51 Navy Act. Found guilty of charges 1, 2 and 4 under Sections 392, 342 IPC read with Sections 77(2) and 51 of Navy Act and sentenced to undergo RI for ninety six months; dismissal from service with disgrace and to forfeit fourteen days mullets of pay and allowance and suffer consequential penalties involved. Maintained the conviction and reduced the sentence from ninety six months to seventy two months; confirmed dismissal from service with disgrace; forfeiture mullets of pay and allowances for fourteen days and to suffer the consequential penalties.

DK Singh 1. Under Section 392 IPC read with Section 77 (2) of Navy Act.

2. Under Section 342 IPC read with Section 77 (2) of Navy Act.

3. Under Section 60(a) Navy Found guilty of charges 1, 2,3 and 5 under Sections 392, 342 IPC read with Sections 77 (2), 60 (a) and 49 (2)(b) of the Navy Act. Sentenced to undergo RI for 120 months dismissal Maintained finding of Court Martial except on charge No.5 under Section 49(2)(b) who is found guilty of alternate charge under Section 51 of the Navy Act Act. from service with and reduced

4. Under disgrace and sentence from Section 25 (1-A) consequential 120 months to Arms Act read with Section 77 (2) Navy penalties involved. 96 months. Reduced the Act.

5. Under Section 49 (2) (b) of Navy Act. Alternatively, under Section 51 Navy Act. Charge No. 4 - Not guilty. rank to Sea I.”

7. Challenging the conviction and the punishment of dismissal with disgrace, the appellants have filed writ petitions before the Andhra Pradesh High Court which upon constitution

of the Armed Forces Tribunal were transferred to Armed Forces Tribunal, Chennai and the tribunal disposed of the appeals confirming the conviction of the appellants AK Singh and UK Singh. The tribunal disbelieved the versions of PW-14 (Manager) and PW-18 (Cashier) and held that PWs 14 and 18 could not have seen the faces of the culprits at the time of committing the crime since even according to the prosecution the accused covered their faces with masks and helmets and were conversing only by lifting the visors of the helmets. PW-15 fingerprint expert opined “that fingerprints marked as ‘A’ and ‘B’ tallied with the specimen fingerprints of appellants AK Singh and UK Singh” (Exs.P46 and P47). Based on the evidence of PW-15 V. Hanumantha Rao, Fingerprint Expert, the tribunal confirmed the conviction of the appellants-AK Singh and UK Singh and reduced the sentence of imprisonment imposed on the appellants AK Singh and UK Singh to the period already undergone by them and maintained their dismissal.

8. In so far as DK Singh is concerned, the tribunal held that there is no satisfactory evidence to establish his guilt and acquitted him giving him benefit of doubt. The tribunal directed that DK Singh’s period of arrest till the date of sentence by the Court Martial shall be counted for the qualifying service to enable DK Singh to get his pension. The tribunal however held that DK Singh shall not be entitled to any monetary benefit like backwages etc. for the interregnum period except that the same is counted for qualifying service for getting pension. Being aggrieved by declining the relief of reinstatement and other monetary benefits, DK Singh has preferred Criminal Appeals arising out of SLP (Crl.) No. 8037-8038 of 2012.

9. Learned counsel for the appellants and appellant DK Singh who appeared in person reiterated the pleas urged before the court martial and the tribunal and submitted that great injustice has been done to the appellants in not following the procedure established by law inasmuch as there was non-compliance of the provisions of Section 5 of the Identification of Prisoners Act, 1920 in taking the fingerprints of the appellants. It was submitted that the photographs of the appellants were taken and were shown to the PW-14 (manager) and PW-18 (cashier) to enable them to identify the appellants-accused without which, it would not have been possible for PW-14 and PW-18 to identify them since even according to the prosecution version when they entered the bank in order to conceal their identity, they were wearing helmets and visors. It was submitted that the Court Martial and the Tribunal committed serious error in appreciating the evidence and material on record.

10. Per contra, learned counsel for the respondents submitted that the case of the appellants have been extensively dealt with by the tribunal and all the questions of law and fact have been considered at length and the tribunal has passed a reasoned order wherein all the issues raised by the parties have been considered and the impugned order warrants no interference. In so far as appellant-DK Singh it was submitted that acquittal in the criminal case does not entitle him for reinstatement as he was not honourably acquitted but was given benefit of doubt and cannot claim reinstatement as of right.

11. We have carefully considered the rival contentions and perused the impugned judgments and material on record.

12. PW-14 (Manager) and PW-18 (Cashier) have clearly spoken about the occurrence that on the date of incident on 04.06.1998, three persons entered into the bank and threatened PW-14 and PW-18 by showing gun and committed robbery in the bank. Before the Court Martial, PW-14 and PW-18 have identified the three appellants as the culprits who committed robbery in the bank. PW-14 and PW-18 have also spoken about the identification parade held in the prison and that they have identified the appellants in the test identification parade.

13. The tribunal disbelieved the evidence of PW-14 and PW-18 and their identification of the appellants on the ground that they could not have seen the faces of the culprits at the time of commission of offence, since even according to the prosecution, the appellants were covering their faces with masks and helmets with visors and they lifted the visors only while conversing with the bank personnel and tribunal held that there was no possibility of PW-14 (Manager) and PW-18 (Cashier) seeing the faces of the accused. The tribunal further relied upon the representation made by the appellants to the Metropolitan Magistrate that they had been photographed by the police to enable the eye-witnesses (PWs 14 and 18) to identify them in the test identification parade and on those findings, the tribunal disbelieved the evidence of PW-14 and PW-18 insofar as the identification of the appellants.

14. The tribunal, in our view, was not right in disbelieving the evidence of PW-14 (Manager) and PW-18 (Cashier) as to the identification of the appellants as the culprits who committed robbery in the bank. The occurrence was at 7.20 p.m. on 04.06.1998. At the time of occurrence, the bank personnel including PW-14 and PW-18 were working and settling the accounts and were about to close the bank. Since the bank personnel were still at work in the bank, it is reasonable to assume that there was enough light to do so inside the bank. The appellants who entered the bank initially asked PW-14 to open the bank account. Before however PW-14 could refuse, the appellants took out a revolver and other weapons. From the evidence of PW-14 and PW-18, it is clear that the incident lasted for a brief period during which the appellants were talking to each other. As per the evidence of PW-14 and PW-18, while the culprits were so conversing lifting their visors, they were able to see the culprits. It is obvious that the extraordinary situation, in which the incidence occurred must have left an indelible impression in the mind of the witnesses about the identity of the culprits. Be it noted that immediately after the incident, PW-14 (Manager) lodged the complaint before Malkapuram Police Station wherein he gave the descriptive particulars of the three culprits namely their age, height, colour complexion etc. and also given the details of the weapons. As noted earlier, identity of the appellants by PW-14 and PW-18 in the court is also corroborated by identification of the appellants by PW-14 and PW-18 in the test identification parade. In that view, the tribunal was not right in disbelieving the evidence of PW-14 (Manager) and PW-18 (Cashier). It is also pertinent to note that PW-14 and PW-18 had no reason to falsely implicate the appellants which aspect was not kept in view by the tribunal. To that extent, we differ from the findings of the tribunal and accepting the evidence of PW-14 and PW-18 and maintain the conviction of appellants-AK Singh and UK Singh.

15. Yet another piece of evidence relied upon by the prosecution is the recovery of weapons from AK Singh. As per the prosecution, appellant-AK Singh was arrested on 30.07.1998 and based on his confession, the weapons used in the commission of offence were recovered under Section 27 of the Evidence Act. Photographs of the weapons/material objects recovered were produced before the court martial and the tribunal has noted that the photograph of the weapon was taken on 29.07.1998 itself, as seen from the requisition for taking photo of the weapons. The tribunal therefore disbelieved the prosecution case in so far as the recovery of the weapon used at the time of committing the offence. Since we did not have the benefit of perusing the photographs, so produced, we are not expressing any view about the findings of the tribunal on this aspect.

16. To sustain the conviction of AK Singh and UK Singh, court martial as well as the tribunal relied upon the evidence of Fingerprint Expert-V. Hanumantha Rao (PW-15) who had stated that upon information to the control room on 04.06.1998, he reached the scene of occurrence at Naval Base, Andhra Bank Extension Counter, INS Virbahu at 9.00 p.m. While examining the scene of occurrence, PW-15 observed two chance fingerprints on the glass entrance door of the bank. PW-15 developed the same with his universal or white powder and marked them as "A" and "B" for the purpose of lifting them by taking photos. As the photographer was not available, PW-15 left the scene of occurrence and on the next day morning i.e. 05.06.1998 at about 0800 hrs., PW-15 took the police constable Trimul Kumar-photographer of MFSL Unit, Visakhapatnam and photographed the preserved chance fingerprints. The chance fingerprints so lifted were kept in the office of PW-15 for comparison. The police supplied the specimen fingerprints of bank officials for comparison and as per the evidence of PW-15, fingerprints of the bank employees did not tally with the chance fingerprints lifted from the entrance door of the bank. Two months later after the arrest of the appellants, specimen fingerprints of AK Singh, UK Singh and also DK Singh were sent to PW-15 for comparison. On comparison, PW-15 noted that the chance fingerprint marked "A" was identical to the specimen right middle finger impression marked as "S1" which is the specimen fingerprint of appellant-AK Singh and the said report was marked as Ex.P-46. In Ex.P-47-report, PW-15 opined that chance fingerprint marked "B" was identical to the specimen right index finger impression as "S(a)" which is the specimen finger impression of appellant-UK Singh.

17. Contention of respondents is that evidence of PW-15-Fingerprint Expert incriminates the appellants AK Singh and UK Singh. However, in proving this incriminating evidence, there seems to be lapses on the part of the prosecution. As noticed earlier, police constable Tirumal Kumar-photographer of MFSL Unit had taken the photographs of the preserved chance fingerprints. To prove the chance fingerprints lifted from the entrance glass doors of the bank, the prosecution should have proved the photographs by examining constable-Trimul Kumar and should have produced the negatives of the photographs of the chance fingerprints. This lapse in the prosecution, in our view, cannot result in acquittal of the appellants. The evidence adduced by the prosecution must be scrutinized independently of such lapses either in the investigation or by the prosecution or otherwise, the result of the criminal trial would depend upon the level of investigation or the conduct of the prosecution.

Criminal trials should not be made casualty for such lapses in the investigation or prosecution. Evidence of PW-14 (Manager) and PW-18 (Cashier) identifying the appellants and their evidence as to identity of the appellants in the test identification parade ought not to have been disbelieved by the tribunal. In exercise of power under Section 30 of the Armed Forces Tribunal Act, this Court normally does not re-appreciate the evidence and slow to interfere with the findings of the tribunal unless there is substantial question of public importance. But when it is found that appreciation of evidence in a given case is vitiated by serious error, this Court can re-appreciate the evidence and interfere with the findings. In our view, the tribunal was not right in disbelieving the evidence of PW-14 (Manager) and PW-18 (Cashier) in identifying the appellants AK Singh, UK Singh and DK Singh as culprits and their identity in test identification parade and their conviction is to be affirmed on the evidence of PW-14 and PW-18, if not on the evidence of fingerprint expert and the appeals are liable to be dismissed.

18. In so far as appellant-UK Singh, prosecution has adduced evidence to show that after the incident, he has deposited huge amount in his bank account. PW-29-Gopal Priyadarshi, Assistant, Central Bank of India stated that appellant-UK Singh is having account No.8206 in Central Bank of India, Azamgarh Branch, Uttar Pradesh and that he had deposited Rs.81,600/- on 11.06.1998. Ex. P76 is the certificate issued by the Central Bank, Azamgarh dated 07.10.1998 as per which the last balance in the account of UK Singh is Rs.1,32,670/- including an interest of Rs.570/-. PW-29 deposed that as per Ex.C-11, pay in slip, the denomination of the cash of Rs.81,600/- deposited by the accused was, one bundle of Rs.500/-(Rs.500x100=50,000/-), 316 notes of Rs.100/- (Rs.100x316= 31,600/-) total Rs.81,600/-. Appellant-UK Singh has not explained the source of such huge amount deposited in the bank on 11.06.1998 which is a strong incriminating circumstance against the appellant.

19. Facts leading to DK Singh's arrest are slightly different from those of AK Singh and UK Singh. DK Singh was serving on Board alongwith other sailors in INS Anjadip, Visakhapatnam on 04.06.1998. He collected his Genform No.358/S dated 03.07.1998 from ship INS Anjadip at Visakhapatnam and proceeded to his next duty station for POPTI 'Q' course at INS, Venduruthy, Cochin. DK Singh alongwith his wife, children and brother-in-law proceeded towards his native place by Corromandal express. On the basis of information, DK Singh was arrested at Howrah Railway Station on 24.07.1998, was kept under custody till 28.07.1998 at Calcutta and thereafter he was brought to Visakhapatnam on 28.07.1998. In Court Martial inquiry, DK Singh was found guilty and sentenced to undergo ten years rigorous imprisonment and dismissal with disgrace from navy with consequential penalties. Upon appeal, his conviction was confirmed and sentence was reduced to eight years. The tribunal acquitted appellant-DK Singh by giving him benefit of doubt. While acquitting DK Singh, tribunal directed that the appellant-DK Singh is deemed to have been retired from service with effect from 03.05.2004 on completion of qualifying service required for pension. Assailing the same, appellant-DK Singh has filed the appeal seeking for reinstatement and other consequential benefits.

20. As in the case of other appellants, tribunal disbelieved the identification of DK Singh by PWs 14 and 18. The tribunal accepted DK Singh's plea that his photograph was taken on the same date when he was placed under custody i.e. on 29.07.1998 and identification parade was conducted on 17.08.1998. The tribunal was of the opinion that there was probability for the investigating agency to have shown his photo to PWs 14 and 18. As discussed earlier, we have differed from the approach and finding of the tribunal in appreciation of evidence of PW-14 and PW-18 in identifying the appellants. However, since Union of India has not filed any appeal challenging acquittal of appellant DK Singh, we do not propose to go into these aspects.

21. It is fairly well settled that acquittal by a criminal court would not debar an employer from exercising power in accordance with the Rules and Regulations in force. [*vide Ajit Kumar Nag v. General Manager (PJ), Indian Oil Corporation Ltd., Haldia and Ors¹, T.N.C.S. Corpn. Ltd. and Ors. v. K. Meerabai²*]

22. Acquittal in a criminal case does not entitle a person to automatic reinstatement. In *Union of India and Anr. v. Bihari Lal Sidhana³* it was held as under:-

“5. It is true that the respondent was acquitted by the criminal court but acquittal does not automatically give him the right to be reinstated into the service. It would still be open to the competent authority to take decision whether the delinquent government servant can be taken into service or disciplinary action should be taken under the Central Civil Services (Classification, Control and Appeal) Rules or under the Temporary Service Rules. Admittedly, the respondent had been working as a temporary government servant before he was kept under suspension. The termination order indicated the factum that he, by then, was under suspension. It is only a way of describing him as being under suspension when the order came to be passed but that does not constitute any stigma. Mere acquittal of government employee does not automatically entitle the government servant to reinstatement. As stated earlier, it would be open to the appropriate competent authority to take a decision whether the enquiry into the conduct is required to be done before directing reinstatement or appropriate action should be taken as per law, if otherwise, available. Since the respondent is only a temporary government servant, the power being available under Rule 5(1) of the Rules, it is always open to the competent authority to invoke the said power and terminate the services of the employee instead of conducting the enquiry or to continue in service a government servant accused of defalcation of public money. Reinstatement would be a charter for him to indulge with impunity in misappropriation of public money.”

23. Only if the employee had been honourably acquitted, could he make a claim for reinstatement. In the case in hand, the tribunal acquitted the appellant-DK Singh:-(i) as in the case of AK Singh and UK Singh, tribunal disbelieved the identification of appellant-DK Singh by PW-14 (Manager) and PW-18 (Cashier) and (ii) the weapons that were alleged to have been recovered on the basis of confession of DK Singh on 12.08.1998 appears to have been

photographed on 29.07.1998 by the prosecution, the tribunal thus rejected the prosecution case that weapons, bag and suitcase were recovered on the basis of confession given by DK Singh. Unlike AK Singh and UK Singh' s case, DK Singh did not have incriminating fingerprint evidence at the scene of occurrence and DK Singh raised defence plea of alibi. According to DK Singh he was on duty along with four others on aboard Indian Naval Ship, Anjadip on 04.06.1998 from 0900 hours to 1300 hours and then again from 1525 hours to 0740 hours on 05.06.1998. To examine this plea of alibi, the tribunal called for the Duty Ashore Book maintained at INS Anjadip (Original of Ex. P.32). DK Singh claimed that the document entry at Sl. No.53 was tampered with and consequently, tribunal noted that there indeed was some overwriting in Sl. No.53 besides the column for the name of the individual. The tribunal concluded that prosecution had not placed any material on record to show that after finishing his duty at 1300 hours, appellant-DK Singh was allowed to avail off and thus the tribunal concluded that in the absence of evidence that DK Singh was allowed to go off after 1300 hours on 04.06.1998, the benefit of doubt must be afforded to him.

24. The tribunal came to the collective conclusion that no satisfactory evidence had been adduced by the prosecution to sustain the conviction of DK Singh and therefore the tribunal set aside the conviction giving him the benefit of doubt. From a perusal of the impugned judgment, it is clear that the tribunal has acquitted the appellant-DK Singh on the ground that the prosecution has not established the guilt of the accused beyond reasonable doubt. It is not as if, the appellant-DK Singh was honourably acquitted. It is also to be pointed out that as discussed above, that we have taken the view that the identity of the appellants by PW-14 (Manager) and PW-18 (Cashier) is credible and acceptable. Evidence of PW-14 and PW-18 identifying DK Singh as one of the culprits is a factor to be reckoned with while considering the plea of the appellant-DK Singh for reinstatement. Additionally, it is to be pointed out that as seen from the evidence of K. Rama Krishna Rao-Inspector of Police (PW-17) on 10.06.1998, DK Singh deposited Rs.90,000/- in his bank account No.3395 of SBI BR Township Branch and the explanation of the appellant for this deposit is not convincing. Having regard to our findings on the evidence of PWs 14 and 18, the acquittal of appellant-DK Singh itself becomes a debatable point. However, we do not propose to go into this aspect since the Union of India has not filed any appeal challenging acquittal of DK Singh. Appellant-DK Singh who was only granted benefit of doubt cannot seek for reinstatement and the consequential benefits and his appeal is also liable to be dismissed.

25. In the result, all the appeals are dismissed.

Judgment Referred.

¹(2005) 7 SCC 0764

²(2006) 2 SCC 0255

³(1997) 4 SCC 0385