

**IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION**

Criminal Appeal No.1627 of 2019
(@ Diary No.1052 of 2018)

Union of India & Ors.

.... Appellant(s)

Versus

Sepoy Pravat Kumar Behuria.

**.... Respondent
(s)**

J U D G M E N T

L. NAGESWARA RAO, J.

1. This Appeal is filed against the judgment of the Armed Forces Tribunal, Regional Bench, Lucknow (hereinafter, '*the Tribunal*') by which the order of dismissal of the Respondent dated 23.07.2012 was set aside.

2. The Respondent was enrolled in the Indian Army as Sepoy in the Unit 981 AD Regiment Workshop on 02.02.2002. He was posted at Jamnagar on 01.06.2011 and was scheduled to be on the third night duty from 04:00 hrs to 06:00 hrs. Thus, he was excused from physical training parade. On 02.06.2011, at about 07:45

hrs, he assaulted Subedar/Master Technical (Communication) Satyendra Singh Yadav, with a Talwar (grass cutting tool) without any provocation. Initially, the Respondent hit Subedar/Master Technical (Communication) Satyendra Singh Yadav on his head from behind and when Subedar/Master Technical (Communication) Satyendra Singh Yadav turned around, the Respondent hit on his forehead with the Talwar. When the Respondent attempted to give a third blow, Naib Subedar A. P. Singh intervened. Subedar/Master Technical (Communication) Satyendra Singh Yadav was immediately shifted to Gokul Hospital, Jamnagar and a surgery was conducted by a Neurosurgeon as his skull bone was fractured leading to internal bleeding and blood clotting in the brain.

3. The Court of Inquiry was convened against the Respondent by Colonel Sanjay Khanna, Commanding Officer, 48 AD Regiment on 03.06.2011 to investigate into the circumstances which led the Respondent using criminal force against Subedar/Master Technical (Communication) Satyendra Singh Yadav. Nine witnesses were examined and the Respondent declined to cross-

examine the witnesses though he was given an opportunity. The Respondent also did not make any statement in his defence. After appreciating the material on record, the Court of Inquiry recommended action to be initiated against the Respondent.

4. The proceedings for recording the summary of evidence were initiated by Lt. Col. Amarvir Singh. Twelve witnesses were examined on behalf of the prosecution between 10.06.2011 and 15.06.2011. According to the Appellants, the Respondent declined to cross-examine the prosecution witnesses. The Respondent had voluntarily given a statement that he hit the victim with a grass cutting tool without any provocation. Thereafter, on 20.10.2011, additional summary of evidence was recorded. Two additional witnesses were examined and witness No. 2 and 12 were re-examined in the presence of the Respondent. The prosecution alleges that the Respondent refused to cross-examine the witnesses though he was given an opportunity to do so.

5. By an order dated 23.07.2012, the Summary Court Martial found the respondent guilty and imposed the sentence of dismissal from service.

6. The order dated 23.07.2012 was questioned by the Respondent before the Tribunal. The Respondent contended that he was kept in close arrest from 02.06.2011 to 05.10.2011 without the permission from the Chief of the Army Staff. It was further contended that he was not given an opportunity to participate in the Court of Inquiry and during the recording of summary of evidence. He complained that the Summary Court Martial was conducted in a hasty manner. The entire proceedings before the Court Martial was completed within a period of 45 minutes. It was further argued on his behalf that the oral evidence was inconsistent with the medical evidence. The Respondent's case was that there was no incised wound on the head of the victim though the Respondent is alleged to have used a Talwar which is a sharp-edged weapon. He submitted before the Tribunal that non-compliance of the provisions of the Army Act, 1950 and the Army Rules, 1954 (hereinafter, '*the Rules*') vitiated the Summary Court Martial proceedings.

7. The Tribunal accepted the submissions made on behalf of the Respondent and held that there was an irreconcilable inconsistency between the medical

evidence and the oral testimonies of the witnesses. According to the medical certificate, the injury caused to Subedar/Master Technical Satyendra Singh Yadav was a compressed injury whereas the Respondent is alleged to have wielded a grass cutting tool which is sharp-edged. The Tribunal also found that there was no blood on the weapon and the prosecution was unable to prove that there were any finger prints of the Respondent on the weapon. The Tribunal agreed with the Respondent that the Summary Court Martial was conducted in a hasty manner. The entire enquiry was completed within a period of 45 minutes. After perusing the record of the summary of evidence, the Tribunal was of the opinion that the signatures of the Respondent appear to have been taken before the proceedings were held. The Tribunal found that the signatures of the Respondent were at the right-side corner at the bottom of every page. On some pages where the depositions of the witnesses concluded at the middle of the page, the signature of the Respondent was found at the right side at the bottom of the page. After examining the material on record, the Tribunal held that the Respondent was not afforded an

opportunity as provided in Rules 179 and 180 of the Rules. The Tribunal was of the further opinion that the procedure prescribed in Rules 115 and 116 of the Rules which deals with recording the plea of guilt of a delinquent was not followed. After a detailed discussion, the Tribunal ruled in favour of the Respondent by holding that the imposition of the penalty of dismissal was with a pre-determined mind and was arrived at without following the procedure prescribed by law.

8. We have heard Mr. R. Balasubramanian, learned Senior Counsel for the Appellants and Mr. Sudhanshu S. Pandey, learned counsel appearing for the Respondent. The Court of Inquiry was ordered against the Respondent to investigate the circumstances under which he used criminal force against Subedar/Master Technical, Satyendra Singh Yadav. The Court of Inquiry assembled on 03.06.2011. During the Court of Inquiry, the statement of the Respondent was recorded in which he stated that he was not provided liquor at 20:00 hrs on 01.06.2011 by Subedar/Master Technical Satyendra Singh Yadav. He was angry about the refusal of liquor due to which he attacked the victim by using Talwar on the

morning of 02.06.2011. Other witnesses, including the victim Subedar/Master Technical Satyendra Singh Yadav were examined in the Court of Inquiry.

9. We have perused the original record relating to the summary of evidence which was recorded between 10.06.2011 to 15.06.2011. The signatures of the Respondent are found on the right-hand side at the bottom of each page, at the same place on each page. The manner in which the signatures of the officer who recorded the summary of evidence and the other officers were put on certain pages would clearly show that the signature of the Respondent was taken in advance on blank papers. The statement of the Respondent was recorded under Rule 23 (2) of the Rules. Lt. Col. Amarvir Singh who recorded the summary of evidence certified that the summary of evidence containing 40 pages were recorded by him in the presence of the Respondent and that Clauses (1), (2), (3) and (4) of Rule 23 have been complied with while recording the summary of evidence. Even on this certificate, whereas the signature of Lt. Col. Amarvir Singh is at the center of the page, the signature of the Respondent is found at the right-hand side at the

bottom of the page. The second half of the page is left blank. A bare perusal of the recording would indicate that the signatures of the Respondent were obtained and filled up with the depositions of the witnesses later. The contention of the Appellant that the summary of evidence was recorded in the presence of the Respondent is not acceptable. We have also perused the additional summary of evidence which was recorded on 20.10.2011. The original record discloses that the signatures of the Respondent were taken earlier as there is a huge gap on certain pages between the place where the depositions have ended and the place where the signature of the Respondent is found. The certificate given by the officer recording additional summary of evidence on 20.10.2011 actually ends with his signature at the center of the page and the signature of the Respondent was found at the bottom of the page without anything being written in between.

10. After the judgment was reserved, the learned Senior Counsel appearing for the Union of India, handed over the original record pertaining to the Court of Inquiry. The proceedings of the Court of Inquiry were conducted

between 04.06.2011 and 08.06.2011 during which the statements of the Respondent and the other witnesses were recorded. The signature of the Respondent is found on the left-hand side at the bottom of each page. The statement of witness No.3, Naib Subedar A. P. Singh ends at the middle of page No.9 of the original record. The signature of the Respondent is found at the left-hand side at the bottom of the said page. Major Hemant Juneja, who was the Presiding Officer of the Court of Inquiry appears to have signed at the bottom of each page on the right-hand side. On some pages where the deposition ended at the center of the page, signature of Major Hemant Juneja is found. Resultantly, on some pages, the signature of the Presiding Officer i.e. Major Hemant Juneja is found at the appropriate place i.e. immediately after the deposition has ended, as well as at the right-hand side of the bottom of the page.

11. The Summary Court Martial was held on 23.07.2012. The Respondent was charged for committing an offence under Section 326 of the Indian Penal Code, 1860 by causing grievous hurt to Subedar/Master Technical Satyendra Singh Yadav. We agree with the Tribunal that

the entire Summary Court Martial was held in a hasty manner. The enquiry commenced at 12.45 p.m. and concluded at 1.30 p.m. and the sentence was imposed at 2.30 p.m.

12. It is clear from the record that Respondent was not given an opportunity to cross examine the witnesses whose statements were recorded in the summary of evidence. The proceedings of Court of Inquiry, recording of summary of evidence and the Summary Court Martial have been conducted without following the procedure prescribed by the Act and the Rules.

13. The Tribunal examined the evidence on record to hold that the prosecution failed to establish the guilt of the Respondent. The irreconcilable inconsistency between the medical evidence and ocular testimony, lack of scientific evidence like finger prints on the weapon and the absence of blood on the weapon have been taken into account by the Tribunal to hold that the charge against the Respondent was not proved.

14. It is trite law that judgments of acquittal should not be disturbed unless there are substantial or compelling reasons. The substantial or compelling reasons to discard

a judgment of acquittal were examined by this Court in ***Ghurey Lal v. State of Uttar Pradesh***¹ which are as follows:

" 1.....

- i) The trial Court's conclusion with regard to the facts is palpably wrong;*
 - ii) The trial Court's decision was based on an erroneous view of law;*
 - iii) The trial Court's judgment is likely to result in "grave miscarriage of justice";*
 - iv) The entire approach of the trial Court in dealing with the evidence was patently illegal;*
 - v) The trial Court's judgment was manifestly unjust and unreasonable;*
 - vi) The trial Court has ignored the evidence or misread the material evidence or has ignored material documents like dying declarations/ report of the Ballistic expert, etc.*
 - vii) This list is intended to be illustrative, not exhaustive.*
- 2. The Appellate Court must always give proper weight and consideration to the findings of the trial Court.*
- 3. If two reasonable views can be reached - one that leads to acquittal, the other to conviction - the High Courts /appellate Courts must rule in favour of the accused."*

15. Applying the law laid down by this Court as stated above, we are of the opinion that the judgment of the Tribunal should not be interfered with.

¹ (2008) 10 SCC 450

16. We have carefully examined the evidence. A view that the respondent is guilty is possible on a scrutiny of the oral evidence. However, the relevant factors taken into account by the Tribunal present another probable view. It is settled law that if two views can be reached, the one that leads to acquittal has to be preferred to the other, which would end in conviction. That apart, there is a clear violation of Rules 179 and 180 of the Rules and the respondent was deprived of an opportunity to defend himself.

17. For the aforementioned reasons, the judgment of the Tribunal is upheld and the Appeal is dismissed.

.....J.
[L. NAGESWARA RAO]

.....J.
[HEMANT GUPTA]

**New Delhi,
November 06, 2019**