

A EX-GUNNER VIRENDER PRASAD

v.

UNION OF INDIA & ANR.

(Criminal Appeal No. 2035 of 2012)

B MARCH 18, 2020

[S. A. BOBDE, CJI, B. R. GAVAI AND SURYA KANT, JJ.]

Army Act, 1950:

- C s. 69 – Civil Offence of murder – Court martial – Accused found guilty of murder and sentenced to life imprisonment – Conviction and sentence affirmed by Armed Forces Tribunal – Appeal to Supreme Court – Held: Conviction is affirmed – However, in the peculiar facts of the case, sentence of life imprisonment reduced to the period already undergone i.e. period of more than 14 years.

Code of Criminal Procedure, 1973:

s. 433-A – Applicability of – Held: s. 433-A is applicable to a case tried for offence u/s. 69 of Army Act, 1950.

E Dismissing the appeal, the Court

HELD: 1. There is no reason to interfere with the findings of fact recorded by the Court Martial as confirmed by the Armed Forces Tribunal (AFT) thereby, holding, that the appellant was liable to be convicted for the offence punishable under Section 69 of the Army Act, 1950 for committing a civil offence of murder. [Para 4] [969-C]

2.1 Section 433-A of Cr.P.C would also be applicable to a case tried for offence under Section 69 of the Army Act, 1950 and a person who has been imposed with a life sentence cannot be released unless he has actually served 14 years' of imprisonment, without taking into consideration the remissions earned by him in jail. [Para 7] [970-A-B]

Union of India and others v. Sadha Singh (1999) 8

H SCC 375 : [1999] 4 Suppl. SCR 28 – relied on.

2.2. The appellant was posted in Kashmir area, at a time when the State was undergoing the threat of terrorism at its peak. The appellant, after the incident, immediately came out of the tent, surrendered himself, and gave an explanation that he had fired the rifle under a delusion that there was a terrorist attack. The conduct and behaviour of the appellant in the jail, as could be seen from the Certificate issued by the Superintendent, District Jail, has been excellent. The appellant has actually served the sentence of 16 years and 6 months as on 6.1.2020. If the benefit of remission is given to him, the period would come to 20 years and 5 months. As such, he has served the sentence for a period of more than 14 years and as such, the bar of Section 433-A Cr.P.C. would also not be applicable. [Para 9] [970-D-E]

2.3 In the peculiar facts and circumstances of the case, the sentence already served by the appellant is much more than proportionate to the offence proved against him. [Para 10] [970-F]

Santa Singh v. The State of Punjab (1976) 4 SCC 190 : [1977] 1 SCR 229 ; Gopal Singh v. State of Uttarakhand (2013) 7 SCC 545 : [2013] 4 SCR 104 – relied on.

<u>Case Law Reference</u>		
[1977] 1 SCR 229	relied on	Para 6
[2013] 4 SCR 104	relied on	Para 7
[1999] 4 Suppl. SCR 28	relied on	Para 7

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 2035 of 2012

From the Judgment and Order dated 16.02.2012 in T.A. No. 284/2010 (W.P.(C) No. 17581/2006), Order dated 10.04.2012 in M.A. No. 193/12 & M.A. No. 194/12 in T.A. No. 284/2010 (W.P.(C) No. 17581/2006) of the Armed Forces Tribunal, Principal Bench, New Delhi.

Vikramjit Banerjee, ASG, B. K. Pal, Reena Pandey, N. K. Karhail, Anshul Gupta, Om Prakash Shukla, Siddhartha Sinha, Prashant Rawat, Abhishek Mahajan, A. K. Sharma, Mukesh Kumar Maroria, Advs. for the appearing parties.

A The following Judgment of the Court was delivered:

JUDGMENT

1. The present appeal takes an exception to the Judgment and Order passed by the Armed Forces Tribunal (hereinafter referred to as "AFT") in T.A.No.284 of 2011 whereby, the appeal of the present B appellant against the order of Court Martial dated 21.08.2004 was dismissed.

2. The brief facts of the present matter are as follows:

- The present appellant was enrolled in Signals Corps and was C posted to HQ & Radar Battery of 20 Surveillance and target acquisition regiment since 01.10.2002. The appellant was deployed at Peer Badeswar Radar Post and reported to the post on 12.05.2003. The deceased Gunner-Sushil Kumar was of the same unit i.e. 20 Surveillance and target acquisition regiment and was working as Radar Operator and was stated to be on good terms with the appellant. On D the date of incident i.e. 30.06.2003, the present appellant shot the deceased Gunner-Sushil Kumar, while, in a state of sleep.

- The appellant contended that he shot the deceased in a delusion of a militant attack, wherein he was firing in retaliation. According to E the appellant, he had no control over his senses. In the said incident, the appellant fired a complete magazine of rifle ammunition, which resultantly caused the death of the deceased. The appellant thereafter, came out of his tent and surrendered himself to his Senior Authorities and confessed his guilt. Thereafter, investigation was carried out and police registered the case and submitted a challan before the Chief Judicial Magistrate, Rajouri. However, on the request of the Army F Authorities, the challan and the appellant along with all the seized items was handed over to Army Authorities for trial. The appellant was charged under Section 69 of the Army Act for committing a civil offence of murder, contrary to Section 302 of the Ranbir Penal Code. A Court Martial was conducted and in all 15 witnesses including a Psychiatrist G was examined. In the Summary General Court Martial, the appellant was found to be guilty of murder and was sentenced to life imprisonment and was dismissed from service.

- Thereafter, the appellant challenged the said Judgment and Order H of conviction passed by the Court Martial, before the Ministry of Defence and the Chief of Army Staff by filing petition under Sections 164(2) and 165 of Army Act. The same was dismissed by the Union

of India vide order dated 22.05.2007. Thereafter, the appellant preferred a writ petition in Delhi High Court, which was subsequently transferred to the AFT on its formation. The AFT, dismissed the said appeal filed by the present appellant vide the impugned order. Hence, the present appeal. A

3. We have heard Mr. B.K. Pal, Ld. Counsel for the appellant and Mr. Vikramjit Banerjee, Ld. Additional Solicitor General, for Union of India. B

4. We have perused the material placed on record. Upon perusal of the judgment and order of conviction passed by the Court Martial and confirmed by the AFT, we find no reason to interfere with the findings of fact recorded by the Court Martial as confirmed by the AFT thereby, holding, that the appellant was liable to be convicted for the offence punishable under Section 69 of the Army Act for committing a civil offence of murder. C

5. However, insofar as the sentence is concerned, we find, that the case of the appellant deserves to be considered. D

6. This Court in the case of *Santa Singh vs. The State of Punjab*¹ has observed thus:

“The reason is that a proper sentence is the amalgam of many factors such as the nature of the offence, the circumstances — extenuating or aggravating — of the offence, the prior criminal record, if any, of the offender, the age of the offender, the record of the offender as to employment, the background of the offender with reference to education, home life, sobriety and social adjustment, the emotional and mental condition of the offender, the prospects for the rehabilitation of the offender, the possibility of return of the offender to a normal life in the community, the possibility of treatment or training of the offender, the possibility that the sentence may serve as a deterrent to crime by the offender or by others and the current community need, if any, for such a deterrent in respect to the particular type of offence. These are factors which have to be taken into account by the court in deciding upon the appropriate sentence....” E

7. The same view has been consistently followed in various judgments of this Court. The recent one being, *Gopal Singh vs. State* F

¹ (1976) 4 SCC 190 G

- A *of Uttarakhand*². No doubt, that this Court in the case of *Union of India and others* vs. *Sadha Singh*³ has held, that Section 433-A of the Code of Criminal Procedure, 1973 ("Cr.P.C." for short) would also be applicable to a case tried for offence under Section 69 of the Army Act, 1950 and a person who has been imposed with a life sentence cannot be released unless he has actually served 14 years' of imprisonment, without taking into consideration the remissions earned by him in jail. In other words, if a person is convicted for life, unless he has actually served 14 years' sentence, he will not be entitled to be considered for release by giving him benefit of remissions earned by him.
- C 8. Taking into consideration the various factors, that are taken into consideration by this Court in *Santa Singh* (supra), we find, that the case of the present appellant deserves to be considered favourably.
9. Undisputedly, the appellant was posted in Kashmir area, at a time when the State was undergoing the threat of terrorism at its peak.
- D The appellant, after the incident, immediately came out of the tent, surrendered himself, and gave an explanation that he had fired the rifle under a delusion that there was a terrorist attack. The conduct and behaviour of the appellant in the jail, as could be seen from the Certificate issued by the Superintendent, District Jail, Dehradun, has
- E been excellent. The appellant has actually served the sentence of 16 years and 6 months as on 6.1.2020. If the benefit of remission is given to him, the period would come to 20 years and 5 months. As such, he has served the sentence for a period of more than 14 years and as such, the bar of Section 433-A Cr.P.C. would also not be applicable.
- F 10. In the peculiar facts and circumstances of the case, we are of the view, that the sentence already served by the appellant is much more than proportionate to the offence proved against him.
11. In that view of the matter, while dismissing the appeal we direct that the appellant be forthwith released from custody.

Kalpana K. Tripathy

Appeal dismissed.

² (2013) 7 SCC 545

³ (1999) 8 SCC 375