

SACHIDANAND THAKUR
v.
UNION OF INDIA & ORS.
(Criminal Appeal No. 970 of 2007)

OCTOBER 19, 2010.

[HARJIT SINGH BEDI AND CHANDRAMAULI
KR. PRASAD, JJ.]

Penal Code, 1860:

s.302 – Murder – An army personnel, in the night shot three shots at the member of Quick Reaction Team, who has been summoned to locate the intruder – In Court Martial proceedings it was held a deliberate act of murder and accused convicted u/s 302 and sentenced to imprisonment for life, besides other penalties imposed upon him under Army Act – Conviction upheld by High Court – HELD: From the order of the Court Martial, it is evident that the appellant had fired three shots at the deceased, who was one of his colleagues in the Army, and this incident had been witnessed by several Army personnel who had been posted with the accused at that time – The fact that the shots had been fired from 8 to 10 ft. has also been borne out by the post-mortem examination – It is also clear that the empty cartridge cases lifted from the site of the incident also matched the weapon issued to the accused – It is apparent from the evidence of PW.14 that he had cautioned the accused that the person he was chasing was in fact a member of the Quick Reaction Team and that he should not fire at him, but despite this warning the appellant fired three shots – Therefore, no error can be found with the findings of fact recorded by the Court Martial and upheld by the High Court – The Court would not, in these circumstances, interfere with the same – Army Act, 1950.

A CRIMINAL APPELLATE JURISDICTION : Criminal Appeal
No. 970 of 2007.

From the Judgment & Order dated 23.12.2005 of the High
Court of Punjab & Haryana at Chandigarh in CRM 533 of 2005
B in Criminal Writ Petition No. 877 of 2004.

D.K. Thakur, D. Jha, Debasis Misra for the Appellant.

P.P. Tripathi, ASG, N.S. Sweety Manchanda, Anil Katiyar,
Anuj Bhandari, D.S. Mahra for the Respondents.

C The following order of the Court was delivered

O R D E R

D We have heard the learned counsel for the parties. The
facts leading to this appeal are as under:

The appellant was enrolled in the Indian Army in the year
of 1978 and was deputed to an Artillery regiment. On the 6th
January, 2000 he along with two other Sentries, Naik Sajimon
and Lance Naik Shajju, was on security duty as the Guard
E Commander in the Technical Battery Area of 501 AD GP (SP).
A 7.62 mm Self Loading Rifle bearing butt number 259 had
also been issued to him alongwith 20 cartridges. It appears that
there was an incident of stone throwing on the Guard Hut and
the matter was reported to the Security JCO, Naib Subedar
F Amrender Kumar. The JCO issued instructions that a Quick
Reaction Team be summoned. This Team reached the Guard
Hut at about 10.30 p.m. and the vehicle was challenged by the
Sentry on duty.

G The Members of the Team came out of the vehicle and
moved to the right and left as ordered to locate the intruder who
had thrown the stones. At this stage the accused came running
towards Naik Jityu Yadav, one of the members of the Quick
Reaction Team, followed by Naik Sajimon KT who warned him
H that the person towards whom he, (the accused) was running

was one of the members of the Quick Reaction Team and not to fire on him. Despite this information however the accused fired three shots from a distance of 8 to 10 ft. killing Naik Jityu Yadav at the spot. He was quickly apprehended by PW.14 and the Security JCO PW.6 and when questioned as to what he had done, he replied 'MAINE JO KARNA THA KAR DIYA'.

Keeping in view the aforesaid facts, the Court Martial before whom the appellant was tried, held that the shooting was a deliberate attack of murder and the appellant was accordingly guilty under Section 302 of the IPC. He was accordingly sentenced to life imprisonment along with several other penalties imposable under the Army Act 1950.

A writ petition was thereafter filed in the Punjab and Haryana High Court under Art. 226 of the Constitution of India and several issues of law and fact were raised before the Division Bench. The High Court vide its judgment dated 23/12/2005 repelled all the arguments and dismissed the writ petition and confirmed the findings of the Court Martial. A recall application was also moved before the High Court which too was dismissed on 23rd November 2005. It is in this background that the matter is before us in appeal.

Before us today Mr. D. Thakur, the learned counsel for the appellant, has pointed out that from the facts of the case it was apparent that the killing was an accident and arose from a suspicion of a terrorist attack as Ambala, being close to the Punjab State, also faced this threat. He accordingly prays that a case under Section 302 was not made out.

Mr. P.P. Tripathi, the learned A.S.G. has however submitted that the findings of fact recorded by the Court Martial were very categoric and based on a correct appreciation of the evidence and the High Court was justified in rejecting a challenge to those findings as interference by Courts in such matters was required to be minimal.

A We have considered the arguments advanced by the learned counsel for the parties and have gone through the record very carefully with their assistance. As already pointed out the only argument raised by Mr. Thakur pertains to the finding of fact with regard to the murder. We see from the order
B of the Court Martial that the appellant had fired three shots at the deceased, who was one of his colleagues in the Army, and this incident had been witnessed by several Army personnel who had been posted with the accused at that time. The fact that the shots had been fired from 8 to 10 ft. has also been
C borne out by the observations of Dr. S. Sharma (PW.16) at the time of the post-mortem examination. It is also clear that the fired cartridge cases lifted from the site of the incident also matched the weapon issued to the accused. If any doubt still existed with regard to the culpability of the appellant for murder
D it stands removed by the remark that he made when apprehended, 'MAINE JO KARNA THA KAR DIYA'.

It is also apparent from the evidence of PW.14 that he had cautioned the appellant that the person he was chasing was in fact a member of the Quick Reaction Team and that he should
E not fire on him but despite this warning the appellant fired three shots. We are, therefore, of the opinion that no error can be found with the findings of fact recorded by the Court Martial and upheld by the High Court. This Court would not, in these circumstances, interfere in the assessment.

F We accordingly find no merit in this appeal. It is accordingly dismissed.

R.P.

Appeal dismissed.