



**IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPEAL NO. 190 OF 2011**

Union of India & Ors.

... Appellants

Versus

Wing Commander M.S. Mander

... Respondent

J U D G M E N T

ABHAY S. OKA, J.

FACTUAL ASPECT

1. The respondent, along with four other officers of the Air Force, were tried by a General Court Martial (for short 'GCM') for various offences. The first charge was of committing an offence punishable under Section 302, read with Section 149 of the Indian Penal Code (for short 'IPC'). The second charge in the alternative was of the commission of offence punishable under Section 302 of IPC. There was also a charge of the commission of offences punishable under Sections 325 and 342, read with Section 149 of IPC. There was also a charge of indulging in unbecoming conduct and committing acts prejudicial to

good order. Thus, there were charges under Section 45 (Unbecoming conduct), Section 65 (committing an act prejudicial to public order) and Section 71 (committing civil offences) of the Air Force Act, 1950 (for short 'AFA'). Thirty-five prosecution witnesses were examined before the GCM. The GCM found the respondent and co-accused guilty of the offence under Section 304 Part II, read with 149 of IPC. Even the charge for the offence under Section 342 of IPC and charges under Sections 45 and 65 of the AFA Act were held as proved. The GCM sentenced the respondent to undergo rigorous imprisonment for five years and to be cashiered. The Chief of the Air Staff confirmed the conviction. He remitted the sentence of five years to imprisonment for two years in civil prison, but he confirmed the sentence of cashiering. As regards the co-accused, he remitted the entire sentence of imprisonment and cashiering. However, past service for two years was forfeited for the purpose of promotion and the enhancement of pay and pension. They were reprimanded. The respondent challenged his conviction and sentence by filing a writ petition. After the constitution of the Armed Forces Tribunal (for short, 'the Tribunal'), the writ petition was transferred to the Tribunal. By the impugned judgment dated 14th May 2010, the petition filed by the respondent was allowed and the respondent's conviction was set aside. Consequential reliefs except back wages were also granted.

2. The deceased was signalman UD Garje. On 3rd March 1998, it is alleged that the deceased was sent to repair the telephone at the residence of Flight Lieutenant Mr. S. Verma (accused No.3). It is alleged that the deceased misbehaved with accused No.3's wife. Accused No.3 reported the incident to the respondent, who, in turn, reported the incident to the station commander. It is alleged that the station commander informed the respondent to enquire about the matter before taking any action. Therefore, the respondent asked accused No.3 to secure the presence of the deceased. However, the deceased did not turn up. Therefore, the deceased was asked to be brought by sending someone personally. The allegation against the respondent is that as the deceased gave evasive answers, he directed that the deceased should be confined to the Guards' room. The allegation against the respondent is that for confining the deceased to the Guards' room, he was taken in a gypsy vehicle driven by him in which accused Nos.3 and Flying Officer I.S. Shahab (accused No.4) were sitting. Even the accused No.2- Flight Lieutenant A.N. Menon was sitting in the Gypsy. The allegation is that the deceased jumped out of the vehicle and started running. The officers in the Gypsy followed him. While running, the deceased fell into a ditch. He suffered wounds and was taken to a hospital. This incident is of 6th March 1998. He died in the hospital on 7th March 1998.

SUBMISSIONS

3. Learned senior counsel appearing for the appellants has taken us through the evidence of material prosecution witnesses. He submits that only the first two charges (Section 302 read with Section 149 of IPC and in the alternative Section 302 of IPC) have been discussed by the Tribunal, and there is no consideration of the other three charges held as proved against the respondent. He has mainly relied upon evidence of PWs 4 to 9 and 27, PW-10, 12, 13 and 16. He has also relied upon the medical evidence and the testimony of PWs 20, 33, 34 and 35. Learned senior counsel submitted that PWs 4 to 10 and 12 identified the respondent. He pointed out that PW-8 deposed of having seen the respondent walking in the garden with a stick in his hand and entering the Air Crew Rest Room (ACRR). He deposed that thereafter the shutter was pulled down. He heard some noises after that. He pointed out that PW-9 also stated that he had seen the respondent entering ACRR. After that, he saw one person running from ACRR towards the airport. He heard shouts of “pakdo”. He tried to catch the person on the instructions of the accused. After that, he saw the accused Nos. 3 and 4 catching the said person who was a civilian and taking him towards the gypsy. Even PW-7 deposed that he saw the respondent starting the gypsy vehicle and simultaneously accused Nos. 3 and 4 catching a man in civilian cloths. He pointed out that other witnesses

deposed that the respondent was driving the gypsy on a parallel taxi track. He submitted that the respondent, in his statement, clearly admitted that he had picked up the deceased and carried him in a gypsy vehicle for the purpose of confining him to a Guards' room. As suggested by accused No.3, he drove the gypsy to the parallel taxi track towards the married officers' quarters. At that time, the deceased jumped from the gypsy and ran towards the kutchra road and thereafter fell into a ditch. The learned senior counsel thus submitted that the first and third to fifth charges were proved against the respondent as he admitted that he wanted to put the deceased in solitary confinement.

4. The learned counsel appearing for the respondent pointed out that it is not even the case of the prosecution that the deceased was pushed out of the gypsy vehicle. He pointed out that none of the witnesses had deposed that the respondent had used any weapon or stick. None of them have alleged that the deceased was assaulted by the respondent or any other accused. The injuries sustained by him clearly show that the same were caused due to a fall in a concrete ditch. There were no injury marks on the scalp, such as lacerations or deep cuts. He submitted that the finding of fact recorded by the Tribunal is that there was no evidence against the respondent and therefore, even the other three charges cannot be sustained.

CONSIDERATION OF SUBMISSIONS

5. We have perused the evidence of the material prosecution witnesses relied upon by the learned senior counsel appearing for the appellants and the documents on record. PW-33 Dr Shiv Kochar, who conducted an autopsy on the body of the deceased, opined that there were injuries to the skull and brain, which were sufficient to cause death in the ordinary course. PW-33 stated that the deceased died due to a coma brought about as a result of antemortem injuries to the skull and brain. These injuries were sufficient in the ordinary course to cause death. He admitted that some of the injuries may be due to fall. He stated that there were no fractures in the body except at the place of surgical intervention. Though in the examination-in-chief he stated that blunt objects may have caused injury, in the cross-examination, he admitted that a floor-like hard surface is also considered a blunt object.

6. At this stage, we must note that the allegation against the respondent is that the co-accused picked up the deceased and brought him to the gypsy driven by the respondent. It is alleged that he had directed the deceased to be picked up for confining him to the Guards' room and was being carried in his Gypsy for confining him to the Guards' room. While he was being taken by the gypsy, he jumped from the rear side and started running away. It is

also undisputed that the deceased fell into a ditch and sustained injuries. There is no allegation made by the prosecution that while sitting in the gypsy or before that, any assault was made on the deceased either by the respondent or by any other accused. The injuries found on the person of the deceased cannot be attributed to the respondent.

7. We have carefully perused the evidence of the material prosecution witnesses relied upon by the appellant. It is true that PW-8 deposed that he saw the respondent walking in the garden with a bamboo stick. However, he admitted that he did not see the respondent carrying the stick to the ACRR. Moreover, the stick is not recovered. None of the prosecution witnesses deposed that the deceased was taken inside ACRR. None of the witnesses have deposed that they saw the respondent assaulting the deceased. PW-12, who was sitting in the ATC tower of the airport, saw one gypsy vehicle going towards the parallel taxi track. He claimed that through the binoculars he saw that 4 to 5 persons had come out of the gypsy and were standing in front of the gypsy. He stated that there was some "Hathapai". PW-16 claimed that while proceeding towards the ATC, he saw one person getting up from the ground and running towards the construction site. Before that, he had seen 4 to 5 persons standing next to the gypsy where they were bending down and doing something.

8. After considering the evidence of all the relevant prosecution witnesses, we find that there is absolutely no evidence of the respondent or any other accused assaulting the deceased. There is no evidence to show that any act was done by the respondent with the intention of causing death or with the intention of causing such bodily injury to the deceased as is likely to cause death. As stated earlier, there is no act shown to have been committed by the respondent which has any direct connection with the cause of death of the deceased.

9. The learned senior counsel appearing for the appellants relied upon the respondent's statement before the GCM. The respondent stated that on 6th March 1998, accused No. 3 brought to his notice that the deceased had misbehaved with his wife when he had gone to repair the telephone at his residence. Accordingly, he instructed accused No.3 to inform the deceased to report to him in the squadron on that day after flying was over. The respondent sat in the garden where both accused No.3 and the deceased came. The deceased denied the incident. Considering the language used by the deceased, the respondent warned him and reminded him that the complaint against him was very serious and that he could be court-martialled and sent to jail. He stated that the deceased was evasive in his answers, and he taunted that as he belonged to the Army, Air Force personnel could not do any damage to him. After that, the appellant instructed

accused No. 3 to take the deceased to the Guards' room to lock him there. Thereafter, the accused ran out towards the vehicles parked by the side of Pen No. 14. As there was open defiance by the deceased, he had no option but to tell the officers to stop him. After that, accused Nos.3 and 4 closed in, and they, along with the others, brought the deceased. He stated that apprehending that the deceased may do something, he decided to take the deceased to the Guards' room. At that time, accused No. 5 came there, and the respondent gestured to him to get into the gypsy. After the gypsy started, the deceased claimed that he never went to accused No.3's residence, and that there may be a mistaken identity on the part of his wife. At that time, accused No.3 suggested that he should be first identified by his wife and that only after the identification, he could be taken to the Guards' room. The respondent accepted the said suggestion, and he turned the gypsy towards the parallel taxi track towards the married officers' quarters for identification of the deceased by accused No.3's wife. He stated that when he slowed down the gypsy to take a turn towards the barrier, he heard the voice of other officers calling upon him to stop the gypsy as the deceased had jumped off the vehicle.

10. It is true that the respondent stated that initially he has instructed that the deceased should be taken to a Guards' room and confined in the room. Later, he accepted the suggestion that firstly, the identification of

the deceased should be done by the accused No.3's wife. The offence of wrongful confinement under Section 340 of IPC is made out when the accused wrongfully restrains any person in such a manner as to prevent that person from proceeding beyond certain circumscribing limits. This statement of the respondent does not contain any admission on the part of the respondent that he had wrongfully confined the deceased. Initially, the respondent may have directed that the deceased be confined to the Guards' room. But actually, he was not confined in the Guards' room. Though the respondent initially intended to take the deceased to the Guards' room, on a suggestion by the accused No.3, he changed his mind and decided to take the deceased to the officers' quarters to ascertain whether accused No.3's wife could identify him.

11. We are dealing with an appeal against an order of acquittal. It is well-settled that an order of acquittal further enhances the presumption of innocence. It is equally well-settled that an order of acquittal cannot be interfered with only on the ground that another view can be taken based on the evidence on record. After having carefully perused the oral evidence, we are of the view that the findings recorded by the Tribunal are plausible findings which could have been reasonably recorded based on the evidence on record. Even assuming that another view could be taken based on the same evidence, that is no ground for interfering with the order of acquittal

especially when we find a threadbare consideration of the evidence on record by the Tribunal.

12. As the allegations of commission of offences under the IPC were not established, the respondent cannot be punished for the crimes under Sections 71,45 and 65 of the AFA.

13. Hence, we find no error in the view taken by the Tribunal and the appeal is, accordingly, dismissed.

.....J.
(Abhay S. Oka)

.....J.
(Ujjal Bhuyan)

**New Delhi;
November 06, 2024**