

PETITIONER:
STATE OF KARNATAKABY H.A.L. AIRPORTPOLICE, BANGALORE

Vs.

RESPONDENT:
THANGARAJ

DATE OF JUDGMENT12/07/1995

BENCH:
REDDY, K. JAYACHANDRA (J)
BENCH:
REDDY, K. JAYACHANDRA (J)
PUNCHHI, M.M.

CITATION:
1995 AIR 2124 JT 1995 (7) 516
1995 SCALE (4)353

ACT:

HEADNOTE:

JUDGMENT:

THE 12TH DAY OF JULY, 1994

Present:

Hon'ble Mr. Justice M.M.Punchhi
Hon'ble Mr. Justice K. Jayachandra Reddy

Mr. K.H. Nobin Singh, Adv. for Mr.M.Veerappa, Adv. for the
appellant.

Mr. C.V. Francis, and Mr.G.Prakash, Advs. for the Respondent

J U D G M E N T

The following Judgment of the Court was delivered:

IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPEAL NO. 432 OF 1988

State of Karnataka
by H.A.L. Airport
Police, Bangalore
V.

Thangaraj

J U D G M E N T

K. JAYACHANDRA REDDY. J.

This appeal by the State of Karnataka is filed against the judgment of the High Court setting aside the judgment of the trial court and acquitting the respondent, the sole accused in the case, of the offence under Section 302 I.P.C.

The accused and the deceased Krishnamurthy were working as Security Guards in Hindustan Aeronautics Limited, Bangalore ('H.A.L.' for short). On 26.3.1981 the accused was on duty for second shift at Trolley gate and he was required to do duty at two points i.e. Trolley Gate and Ammunition Store and accordingly at about 11.45 P.M. he was on duty at Ammunition Store. Prior to him P.W.19 Nataraj, a Security Guard, was doing his duty at Ammunition Store and he was relieved by the accused. P.W.19 was having M.O.14, the musket and also five live cartridges with him while on duty and on being relieved he gave them to the accused who was

doing his duty there. The deceased Krishnamurthy left his house at about 10 P.M. to go to his duty and came to H.A.L. P.W.12 Maniekyam, Subedar in the Security department allotted the duties to the deceased and P.W.10 Joseph and P.W.11 Arjunan. They alongwith the deceased and another security guard Markanda Rao went in the bus driven by P.W.10. When the bus went for a little distance, the deceased asked to stop the bus and he got down from the bus and took casurina sticks, M.O. 4, with him the bus. The bus came to the West Cross Barrier and Markanda Rao was posted for his duty there and thereafter the bus came to Ammunition Store. The deceased Krishnamurthy got down and took out the casurina sticks from the bus and kept them on one side. He told P.W.11 who was with him that the guard on duty at that time was not to be seen there and P.W.11 told him to look around. Then the deceased gave his beat book, Ex.P.13 to P.W.11 for making signature and when P.W.11 was standing at the first step in the passage of the bus for signing the entry he heard the sound of firing and immediately Krishnamurthy fell on the ground. Thereafter the accused came and pointed the musket at P.W.11 and told him that he would not spare him also and then he pointed the rifle at P.W.10 and asked him to put off the engine of the bus. Accordingly, P.W.10 put it off. Then the accused went to the Ammunition Store and P.W.10 started the bus and he and P.W.11 came to the main gate. In the meantime the accused himself telephoned to P.W.12 and told him that he has shot at the third shift guard Krishnamurthy and that ambulance should be sent immediately. P.Ws. 10 and 11 also came just then and told P.W.12 about the shooting. P.W.12 passed on this information to P.W.16, S.V.Mannaji Rao, the Assistant Security Officer. Who in turn informed P.W.13, K.K. Muddappa, the Security Officer. Thereafter P.Ws. 12, 13, 16 and 18, Papanna (Security Jamadar) came to the Ammunition Store and they saw the accused standing with the musket in his hand. These persons asked the accused to put down the musket and immediately he was caught by P.Ws. 12 and 16 and on telephone and the pouch, M.O. 16 containing four live cartridges and one case of used cartridge were found. They immediately took the accused to H.A.L. Airport Police Station. P.W.13 gave his complaint and produced the accused before the police who arrested him and attached the musket and cartridges. The F.I.R. was registered and investigation commenced. After inquest, the dead body of the deceased was sent for post-mortem. The doctor, who conducted the post-mortem, found an entrance fire-arm injury on the frontal portion of the neck with the corresponding exit injury and he opined that the deceased died because of that injury. After completion of the investigation, the charge-sheet was laid. The prosecution examined 24 witnesses and out of them, P.Ws. 10 and 11 figured as eye-witnesses. P.Ws. 9, 12, 13 and 16 spoke about the other circumstances. When examined under Section 313 Cr.P.C. the accused pleaded not guilty and stated that he has been falsely implicated and that on the date of occurrence he was assigned the duty of guarding at the Trolley Gate and he remained there till midnight and went to the house at about 3 A.M. and when he was sleeping in his house, the police came and took him. The learned trial Judge particularly relying on the evidence of P.Ws. 9 to 12 and 19 held that the accused who was posted on guard duty at Trolley Gate, was also later on relieved from there and taken to Ammunition Store and posted on guard duty and as spoken to by the eye-witnesses he shot at the deceased and accordingly convicted him. The High Court, however, went into the question whether the prosecution has established that at the

relevant time the accused was on duty at the Ammunition Store and commenting that the beat book maintained by P.W. 19 regarding the duty at Ammunition Store has not been produced, observed that the same gives rise to suspicion about the prosecution case. The High Court, in the first instance, considered the evidence of P.W.12 who spoke about the phone call and extra-judicial confession and doubted the same for certain reasons and held that the same reasons would also apply to the evidence of P.Ws. 10 and 11 and therefore their evidence should be rejected. These are the main findings of the High Court which are vehemently assailed by the learned counsel for the appellant, the State of Karnataka.

To prove that the accused was posted for guard duty at the Ammunition Store with a musket alongwith a pouch containing five live cartridges, the prosecution relied on the evidence of P.Ws. 9,13,18 and 19. These are all independent witnesses and there is no reason whatsoever to doubt their veracity. P.W.9, K.Narasimhalu, was working as Subedar in the security department at the relevant time. He deposed that on 26.3.1981 he was on duty from 3 P.M. to 11 P.M. One of the duties he was to perform was of taking the roll call of guards, assigning the duties to them and maintaining the records. He deposed that he called upon all the guards for the purpose of roll call and took the roll call and then assigned duties to all of them. He assigned the duty of guarding Ammunition Store to P.W.19, Nataraj from 3 P.M. to 11 P.M. Another shift of guards started at 4.15 P.M. and that would be working till 0.15 A.M. P.W.19 knew the deceased as well as the accused who were also working as security guards. According to P.W.9, the accused took charge of his post of duty at Trolley Gate at 4.15 P.M. P.W.9 went around at 10.15 P.M. and he found the accused on duty at Trolley Gate and he made the entry in the beat book and he accused with him and went to the Ammunition Store and asked him to take charge of the ammunition from P.W.19 and relieve him. Accordingly the accused took charge and relieved P.W.19. P.W.9 further deposed that the accused who was put on duty at Ammunition Store was also given a 410 musket with five live cartridges and P.W.19 while handing over the charge to the accused also handed over the musket and five cartridges. The main criticism against the evidence of this witness is that in the beat book there is no entry to the effect that the accused was posted at two points on that day. Because there is no corresponding entry, the High Court discarded his evidence. The evidence of P.W.9 is clear that for some reason or other he took the accused and posted him near the Ammunition Store and took P.W.19 with him. We are unable to see any reason as to any the evidence of P.W.9 should be discarded merely on the ground that there is no entry in the beat book. His evidence is also corroborated by the evidence of P.W.19. He gave all the details in his deposition as to how he was relieved from his duty at the Ammunition Store by P.W.9 and the accused took charge and he also handed over the musket and five live cartridges. His evidence is also discarded by the High Court on the ground that there is no written record as to the handing over of the charge. Regarding the recovery of the musket and four live and one used cartridges from the pouch which was in the custody of the accused, there is the evidence of P.Ws. 13 and 18 which is supported by P.W.12. According to the prosecution, P.W.12, Subedar in the security department received the phone call from the accused confessing that he had killed the deceased and P.W.13, the Security Officer was informed immediately. P.W.13 started in a car and at the

main gate he picked up P.W.12 and on the way he also picked up P.W.16, Assistant Security Officer and P.W.18, the Security Jamadar and they went to the Ammunition Store and halted at a distance of 50 feet. All of the, saw the accused standing near the gate of Ammunition Store with a rifle in his hand. P.Ws. 12 and 16 managed to catch hold of the accused and took the rifle from the hands of the accused and also recovered the pouch containing four five and one used cartridges. They also saw the dead body of the deceased Krishnamurthy lying there. It can be seen that all these steps were taken immediately after receipt of the phone call and that is the consistent prosecution case from the beginning. The F.I.R. was promptly given on that very night at about 1.45 A.M. and the accused also was produced. In the F.I.R. all these details are mentioned. But the plea of the accused, as mentioned above, is of total denial and he stated that he was sleeping in his house wherefrom he was taken to the police station. This on the face of it is false. Yet, the High Court discarded the evidence of P.Ws. 12,13,16, 18 and 19, all responsible officers, initially having doubted the prosecution case that the accused was put on duty at the Ammunition Store at the relevant time solely on the ground that there was no entry in the beat book. We have carefully considered the reasons given by the High Court and we are of the view that they are wholly unsound.

When once it is accepted that the accused was at the relevant time on duty at the Ammunition Store and that musket, M.O. 14 and four live and one used cartridges were recovered from him almost immediately, then this circumstance itself would be sufficient to connect the accused with the guilt because the dead body of the deceased Krishnamurthy was admittedly lying near the gate of Ammunition Store.

Further, we have the evidence of two eye-witnesses P.Ws. 10 and 11. P.W.11, Arjunan, was working as Security Jamadar for the last 23 years. He knew the deceased and the accused. On 26.3.1981 he reported for duty at about 11 P.M. and accordingly informed P.W.12, the Subedar who ordered him to take two guards with him in the bus and post them at the points of their duty. The bus driven by P.W.10 was waiting at the main gate. He himself and the two security guards namely the deceased and one Markanda Rao sat in the bus. On the West Cross Barrier the guard Markanda Rao got down and the bus stopped near the Ammunition Store, where the deceased got down. The deceased came near the bus again and told P.W.11 that no guard was to be seen near the Ammunition Store. Then the deceased gave the beat book to P.W.11 who stood on the first step of the passage of the bus with the beat book in his hand. He signed the beat book and gave it to the deceased. Just at that time he heard the sound of firing and saw the deceased falling down immediately on his back. The accused came near the door and pointed the rifle at P.W.11 as well as at P.W.10, the Driver and asked him to put off the engine of the bus. Then the accused went to the Ammunition Store. P.W.11 asked P.W.10 to start the bus immediately and they came to the main gate and both of them immediately informed P.W.12, the Subedar. P.W.11 further deposed that the incident took place between 11.55 P.M. and 12 midnight. He also identified the musket, M.O.14, which was in the hands of the accused. He was cross-examined at length. He, however, admitted that he had not signed the beat book of the accused on that night. He added that he did not go to the police station as he felt giddy. We do not find anything significant in his cross-examination which affects his veracity. P.W.10 amply corroborates the

evidence of P.W.11. P.W.10 deposed that he was the driver in the security department in H.A.L. and he knew the accused and the deceased. On 26.3.1981 his duty commenced from 11 P.M. to 6.30 A.M. He checked the bus and kept it ready to take the personnel and drop them at their respective posts. Two security guards namely the deceased and Markanda Rao and P.W.11 boarded the bus and as directed by P.W.11, P.W.10 stopped the bus and dropped Markanda Rao first at the point of his duty and then stopped the bus at Ammunition Store where the deceased got down with a bundle of fuel sticks. P.W.11 asked the deceased to look around if the guard was present anywhere. P.W.11, however, made an entry in the beat book and posted the deceased at Ammunition Store. When the deceased was at a distance of 2-1/2 feet from the bus, P.W.10 heard the sound of firing and immediately saw the deceased falling down. Just then the accused came near the bus with a rifle and pointed the same at P.W.11 and said that he would shoot him also and when the bus was in a started condition, the accused came near P.W.10 and asked him to put off the engine and thereafter the accused went towards the Ammunition Store. Immediately he started the bus and came to the main gate alongwith P.W.11. Both of them got down and went to the office and informed P.W.12 as to what has happened. He further deposed that at about 6.30 A.M. on 27.3.1981 he and P.Ws, 11, 12 and 13 went near the Ammunition Store where his statement was recorded by the police. This witness was also cross-examined at length. Much of it was about the distance between the places namely Ammunition Store where the bus stopped etc. He admitted that there is no register maintained in his office to show the movement of the bus on that night. He denied the suggestion that the bus driven by him did not go near the Ammunition Store. It can thus be seen that the evidence of P.Ws. 10 and 11 amply establishes that it was the accused who shot the deceased dead. Then we have the evidence of P.W.12, Subedar in the security department. He deposed about allocating the duties to the deceased and that he instructed P.W.10 to take Markanda Rao and the deceased and that he instructed P.W.10 to take Markanda Rao and the deceased and drop them at their respective places of duty. He further deposed at about 12 midnight he received a phone call from Ammunition Store which was from the accused who told him on phone in Tamil that he had shot the deceased and that he should send the ambulance immediately. P.W.12 made an entry in Ex.P.12, the daily occurrence diary. Just then P.Ws. 10 and 11 returned in the bus and he was also informed by them that the deceased was shot dead by the accused. P.W.12 immediately passed on the information P.W.16, the Assistant Security Officer, who immediately alongwith P.W.13 and P.W.18 came in a car. All of them went to the Ammunition Store and parked the car at about 50 feet. They kept the head-lights on and in that light they saw the body of the deceased lying on the ground at a distance of 10 feet from the Ammunition Store and found the accused near the gate of the Ammunition Store holding a rifle in his hands. P.W.16 asked the accused to keep the rifle on the ground and accordingly he kept it on the ground and raised his hands. He was caught hold of by P.W.16 and P.W.18 went and brought the rifle and on being asked the accused told that he had kept the ammunition near the telephone and the pouch containing four live and one used cartridges was secured. All of them alongwith the accused came in the bar to the Airport Police Station and P.W.13 gave the report and the accused was handed over to the police alongwith the rifle and the cartridges. P.Ws. 13, 16 and 18 also deposed about these details as to how on

information they went to the Ammunition Store and took the accused into custody and also secured the musket and the ammunition. We do not find anything important which in any manner affects their veracity. Further as stated above, the evidence of P.W.19 establishes that the accused took charge from P.W.19 and that at the time of relieving, P.W.19 handed over the musket and the live cartridges to him. This evidence coupled with the evidence of the above mentioned witnesses would establish that the accused was on duty at the relevant time and that he was responsible for causing the death of the deceased. Thus there is overwhelming evidence given by the above mentioned independent witnesses which fully establishes the guilt of the accused. As noted above, the plea of the accused has been of total denial and he simply stated that he was in the house wherefrom he was taken to the police station, which is totally false.

In spite of overwhelming evidence mentioned above, the High Court for no valid reason rejected the same. One of the infirmities pointed out by the High Court is that there is no mention about the alleged confession of the accused to P.W.12 on phone in the complaint and therefore, according to the High Court, all this story has been built up subsequently. We see absolutely no logic in this reasoning. When several responsible officers deposed that on information they immediately went to the Ammunition Store and took the accused into custody in the manner mentioned above, there was no need at that juncture again to mention the said talk on telephone. P.W.12, however, stated that he made an entry in the daily occurrence diary and we are at a loss to know as to why the evidence of this witness should be brushed aside simply on the ground that there was no relevant entry in the beat book regarding the posting of the accused at the Ammunition Store and that some details are not found in the complaint. The appreciation of evidence by the High Court is highly unsound and absolutely no valid reasons are given for disagreeing with the findings of the trial court. We are satisfied that under the facts and circumstances of the case and on the basis of the overwhelming evidence, the only reasonable view is the one taken by the trial court.

For all the above reasons, we set aside the judgment of the High Court and restore the judgment of the trial court convicting the accused under Section 302 I.P.C. and sentencing him to undergo imprisonment for life. Accordingly the appeal is allowed.