

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% Judgment Reserved On: 9th November, 2010
Judgment Delivered On: 18th November, 2010

+ **W.P.(C) 2420/2010**

GOVT. OF NCT OF DELHI & ORS. Petitioners
Through: Ms.Latika Chaudhary, Advocate

versus

SUKHBIR SINGH & ORS. Respondents
Through: Mr.Sachin Chauhan, Advocate

CORAM:

HON'BLE MR. JUSTICE PRADEEP NANDRAJOG

HON'BLE MR. JUSTICE SIDDHARTH MRIDUL

1. Whether the Reporters of local papers may be allowed to see the judgment?
2. To be referred to Reporter or not?
3. Whether the judgment should be reported in the Digest?

PRADEEP NANDRAJOG, J.

1. It is not in dispute that respondents HC Sukhbir Singh, Ct.Rajender Singh and Ct.Shankar Lal were a part of a police team headed by SI Raj Kumar and of which Ct.Bhanwar Singh was a member had taken on remand one Yakub Khan, lodged at the Central Jail, Tihar for being produced in the Court of Civil Judge and Judicial Magistrate, Barmer. The day on which Yakub Khan had to be produced before the learned Civil Judge and Judicial Magistrate was 18.7.2005. On 19.7.2005 in a local newspaper 'Rajasthan Patrika' a news item appeared that the police party had permitted Yakub Khan to take food with his wife and children in a restaurant followed by permitting Yakub Khan to spent time with his wife in a room at K.K. hotel in Barmer. It is obvious that the news was sensational and upon the same being coming to the

knowledge of the authorities concerned at Delhi, a preliminary inquiry was held by Insp. Rishi Dev who went to Barmer and recorded the statements of Sh.Muralidhar and Mool Chand who ostensibly confirmed to him that police officers from Delhi had brought Yakub Khan, his wife and children to their lodge. All took meals together. One Ramesh Kumar and Girdhari Ram purportedly informed him that the officers of Delhi Police had permitted Yakub Khan to spend time with his wife in a room in the hotel/lodge run by them. Insp.Rishi Dev checked from the Court the time when the case in which Yakub Khan was produced and the time when Yakub Khan was lodged at the jail in Barmer and found an abnormal time gap between the two. He contacted the reporter of the newspaper concerned who stood by the version printed in the news item dated 19.7.2005. Accordingly, he submitted a preliminary report in which the five police officers were indicted by him for not only permitting an under-trial prisoner to eat food with his wife and family in a hotel and thereafter spend time with his wife in a room in another hotel but also permitting the under-trial prisoner to meet his family at a park opposite Barmer Court Complex as also the fact that the police officers used a private jeep provided by the family of the under-trial prisoner.

2. A charge-sheet was served upon the five police officers as per which they were charged of four misdemeanours, being: (i) permitting Yakub Khan, an under-trial prisoner to meet his family members at Mahavir Park located opposite the Court Complex, Barmer; (ii) permitting Yakub Khan to eat food with his wife and family members at Brahmin Lodge Restaurant situated at Station Road, Barmer; (iii) permitting Yakub Khan to stay with his wife in Room No.106, K.K.Hotel, Station Road, Barmer; and (iv) using a private jeep provided by the family members of Yakub Khan

for transporting Yakub Khan from the court complex to the restaurant/hotel and up to Barmer Jail.

3. Needless to state the charge was denied and hence an inquiry officer was appointed. 10 witnesses were examined by the inquiry officer. Ct.Ajay Kumar PW-1 proved DD entries Ex.PW-1/A and Ex.PW-1/B establishing SI Raj Kumar along with guards taking accused Yakub Khan to Barmer from Central Jail No.2 to Tihar and the entry pertaining to Yakub Khan being lodged at Barmer Jail at 2:40 PM on 18.7.2005 after he was produced in the Court of the Civil Judge cum Judicial Magistrate, Barmer. HC Virender Singh PW-3 proved Ex.PW-3/A and Ex.PW-3/B being command certificates and the order of remand evidencing requirement of Yakub Khan to be produced at Barmer as also the return report submitted by SI Raj Kumar. Ct.Bharat Bhushan PW-8 proved Ex.PW-8/A evidencing Yakub Khan being lodged at Barmer Jail at 2:00 PM on 18.7.2005, the Jail Register Entry Ex.PW-8/A having an overwriting. 2:40 PM was converted to 2:00 PM. Lalit Vyas PW-9, LDC in the Court of the Civil Judge cum Judicial Magistrate deposed that on the basis of production warrants Yakub Khan was produced in Court at about 11:15 AM and that the escort party left the Court premises at about 12:00 noon.

4. Relevant would it be to note that from the testimony of the aforesaid witnesses it was sought to be established that Yakub Khan, lodged at Tihar Jail, was taken from Delhi for production in the Court of the Civil Judge cum Judicial Magistrate, Barmer on 18.7.2005. SI Raj Kumar was the senior-most police officer, one Head Constable and three Constables constituted the escort party. They were the other four charged officers. Yakub Khan was produced in Court at about 11:15 AM and the police party left the Court at 12:00 noon. The prisoner was lodged at the Barmer Jail at 2:40 PM

i.e. with a gap of 2 hours and 40 minutes and further that an attempt was made to interpolate the jail register at Barmer by overwriting '0' over the numeral '4'. The obvious intention being to reduce the time gap between the prisoner leaving the Court and being lodged in the prison.

5. Muralidhar PW-4, a waiter at Brahmin Lodge, Station Road, Barmer did not support the prosecution and resiled from what was purportedly recorded as his statement by Insp.Rishi Dev inasmuch as he denied that the wife and family members of Yakub Khan had taken food at Brahmin Lodge on 18.7.2005. He deposed before the Inquiry Officer that the five charged officers had brought some prisoner at the Lodge and after consuming lunch they left. Mool Chand PW-5, the owner of the Lodge deposed in harmony with his waiter. Additional information deposed to by him was that his Lodge was on the route between the Jail and the Court and was about half kilometer away from the Court.

6. Relevant would it be to note that PW-4 and PW-5 talked about a prisoner and not Yakub Khan. They categorically denied that the wife and family members of the prisoner had taken food at the Lodge.

7. Ramesh Kumar PW-6, the owner of K.K.Hotel completely resiled from his purported statement recorded by Insp.Rishi Dev and deposed that one Wasan had booked a room in his hotel, entry Ex.PW-6/B whereof was made in the register by his Manager and that after about 40 minutes his Manager told him that Wasan had left the hotel as he and his friends wanted to consume liquor in the room for which permission could not be given. He categorically denied Yakub Khan and his wife being permitted to stay together in the room in his hotel. Girdhari Ram PW-7, the Manager of K.K.Hotel supported the version of his master i.e. Ramesh Kumar.

8. Relevant would it be to note that Ramesh Kumar and Girdhari Ram just did not stand by what was purportedly recorded by Insp.Rishi Dev as their statements.

9. Insp.Rishi Dev deposed that he conducted the preliminary inquiry and submitted the report Ex.PW-2/C. He deposed that the reporter Sh.Ratan Dave had met him and had confirmed the fact reported by him and as published in the newspaper i.e. Ex.PW-2/B on 19.7.2005. He deposed that there was an overwriting in the jail register at Barmer and in respect whereof the in-charge of the register could render no satisfactory explanation.

10. Pawan Joshi PW-10, the Editor in Charge of Rajasthan Patrika deposed that the news item was published as per report of Sh.Ratan Dave, a reporter working with Rajasthan Patrika.

11. Opining that the first and the fourth limb of the charge pertaining to Yakub Khan being permitted to meet his family members at Mahavir Park and the police escort using a private jeep provided by the family of Yakub Khan were not established, the Inquiry Officer held that the second and the third limb of the indictment stood proved.

12. In returning the verdict of guilt the Inquiry Officer held that he had no reasons to disbelieve the testimony of Insp.Rishi Dev that the contemporaneous statements stated to have been recorded by him and purportedly made by Muralidhar, Mool Chand, Ramesh Kumar and Girdhari Ram were incorrect. For the reason said four persons were residents of Barmer, the same place of which Yakub Khan was a resident of, he opined that they were won over. He opined that the news item Ex.PW-2/B published in Rajasthan Patrika was a truthful version reported by Ratan Dave as to what happened on 18.7.2005. Though not so specifically stated, an

adverse inference was drawn with respect to the time being interpolated in the jail register Ex.PW-8/A. Dealing with the entry Ex.PW-6/A in the guest register at K.K.Hotel which shows that one Wasan had booked a room at 2:00 PM and had departed at 2:40 PM and the version of PW-6 and PW-7 that since he was not permitted to drink liquor with his friends, Wasan left the room, the Inquiry Officer has opined that the version of the two was unnatural and it did not stand to logic that Wasan would leave the room after 40 minutes. Though not so stated, what the Inquiry Officer intends to say is that upon a person booking a room in a hotel and thereafter disclosing the purpose of the stay being not as a temporary resident but for purposes of consuming liquor, would immediately leave if denied the permission to drink liquor.

13. When made available, the respondents challenged the negative process of reasoning to return the verdict of guilt. In the written response to the report of the Inquiry Officer they highlighted that Ratan Dave not being examined, the factual contents of the newspaper report Ex.PW-2/B could not be used as evidence. In the teeth of PW-4 to PW-7 not supporting the case of the prosecution, they contended that the Inquiry Officer erred in believing the preliminary report proved by PW-2 on the basis of the testimony of PW-2 that he had correctly recorded what was told to him by the four persons. It was highlighted that the prosecution itself relied upon the entry Ex.PW-6/A which showed that it was Wasan who had booked the room in which it was alleged that Yakub Khan was permitted to spend time with his wife. The reasoning in the inquiry report that by not producing the bill pertaining to food consumed at Brahmin Lodge, production whereof would have shown how many persons ate food, PW-4 and PW-5 had deliberately denied the wife and the family members of Yakub

Khan being present and thus requiring an inference to be drawn that they were present at the Brahmin Lodge, they questioned the reasoning as perverse and additionally for the reason it would be the duty of the officer who held the preliminary inquiry to have seized the bill book.

14. Repelling the attack to the report of the Inquiry Officer, vide order dated 27.6.2006 the Disciplinary Authority inflicted the penalty: *I, P.Dass, Deputy Commissioner of Police, III Bn., DAP, Delhi hereby order that their three years approved service is forfeited temporarily for a period of three years entailing reduction in their pay. The pay of SI Raj Kumar, No.1702-D is reduced from ₹6900/- P.M. to ₹6375/- P.M. The pay of HC Sukhbir Singh, No.7012/DAP is reduced from ₹4645/- P.M. to ₹4390/- P.M. The pay of Const.Shankar Lal, No.7741/DAP is reduced from ₹3275/- P.M. to ₹3050/- P.M. The pay of Const.Bhanwar Singh, No.2302/DAP is reduced from ₹4270/- P.M. to ₹4030/- P.M. and the pay of Const.Rajender Singh, No.7480/DAP is reduced from ₹3800/- P.M. to ₹3575/- P.M. Their suspension period is also decided as period not spent on duty.*

15. Statutory Appeal filed was turned down vide different orders for the reason the five accused had filed different appeals. However, it be noted that in each order the Appellate Authority has opined that the accused had won over the witnesses.

16. Challenge by the respondents before the Tribunal vide OA No.2373/2008 has succeeded. The Tribunal has held that in view of the star witnesses i.e. PW-4 to PW-7 turning hostile the newspaper clipping, entry in the hotel register of K.K.Hotel and the timing 2:40 PM noted when the prisoner was lodged at the jail in Barmer were insufficient and akin to no

evidence to sustain the guilt. The result is the penalty order being quashed in its entirety qua the respondents.

17. Conceding that in view of the testimony of PW-4 to PW-7 the case of the prosecution which was sought to be proved on the basis of direct and percipient evidence was severely dented, learned counsel for the petitioner urged that in service jurisprudence even presence of some evidence, if justifies an indictment and opined to be so at an inquiry would be sufficient. Counsel urged that it is settled law that when it is proved that a forgery has been committed and the beneficiary thereof would be the accused, said evidence would be good evidence of conduct evidencing a guilty mind for the reason only the guilty mind would result in the act of committing the forgery. It was urged that from the testimony of PW-9 it was apparent that the police had left Barmer Court Complex at 12:00 noon. It was urged that Yakub Khan was lodged at Barmer Jail at 2:40 PM, evidenced by the entry Ex.PW-8/A and the time gap of 2 hours and 40 minutes was clearly suggestive of the fact that en-route from the Court Complex to the jail, the prisoner had spent time on some activity. It was urged that it was apparent that the prisoner was permitted to spend time with his family at the restaurant and then with his wife in the room at K.K.Hotel. Learned counsel was at pains to urge that it was in the personal knowledge of the police officers to explain what were they doing with the prisoner for 2 hours and 40 minutes. Counsel urged that hearsay evidence is admissible at a departmental inquiry and thus there was no reason to disbelieve the newspaper report in view of the testimony of PW-10.

18. The question before us is whether the Tribunal was justified in holding that it is a case of no evidence. Unfortunately, the Tribunal has not dealt with the afore-noted

submissions urged by learned counsel for the petitioner and thus qua said submissions, we have no benefit of the reasoning of the Tribunal.

19. Anyhow, dealing with the submissions urged, we take the last pertaining to the newspaper report for the reason if we were to reject the same, the newspaper report would be good evidence of proof against the respondents.

20. It is a misconception that hearsay evidence of all kind is admissible at a departmental inquiry. Only proximate and direct hearsay evidence of the kind which was held admissible by the Supreme Court in the decision reported as AIR 1977 SC 1512 State of Haryana & Anr. vs. Rattan Singh would be admissible evidence at a domestic inquiry.

21. Thus, the testimony of PW-2 and PW-10 would be no substitute to the evidence of the report Ratan Dave. It is trite that proof of the facts constituting a newspaper report has to be through the mouth of the reporter and none else. It is direct and percipient evidence which was required to prove the newspaper report and not hearsay evidence. Thus, we concur with the reasoning of the Tribunal that by not examining Ratan Dave, the Department could not prove the incident through the medium of a newspaper report and that the testimony of PW-2 that Ratan Dave confirmed to him having witnessed what was the subject matter of the newspaper report would also not be legally admissible evidence even at a domestic inquiry against the respondents.

22. It is true that upon proof of forgery being committed or evidence being fabricated, nature whereof is to the benefit of an accused, an adverse inference pertaining to a guilty mind can be drawn for the reason a conduct of an accused is admissible evidence. The conduct of contrivance and fabrication suggests a guilty mind. But, the same has to

be upon proof of fabrication being resorted to or interpolation being made.

23. Mere cutting of the timing recorded in the jail register and 2:40 PM being converted to 2:00 PM would be insufficient to hold or infer that the charged officers were responsible for the same. At the forefront stands the fact that the jail register was maintained at Barmer Jail and the Delhi Police could hardly exercise any influence over the jail staff at Barmer. Secondly, and unfortunately, the Inquiry Officer who saw the original register has nowhere recorded that the overwriting was in a different pen. From the photocopy produced before us, we cannot form an opinion as to whether the cutting was contemporaneous or subsequent. Had the Inquiry Officer being vigilant and if he had noted the cutting and the overwriting with a different pen, something of substance favourable to the petitioner would have emerged. In the absence of any such information the normal presumption would be that the Inquiry Officer found no mismatch in the pen used. Lastly, the author of the entry, who was the best person to explain on the subject being not examined compels us to hold that even within the standard of proof required to be achieved at a domestic inquiry, from the fact of an overwriting without anything more, no adverse inference can be drawn against the respondents. We may hasten to add that the concept of some evidence being sufficient proof to draw an adverse inference cannot embrace trivial pieces of evidence requiring packing by way of surmises and conjectures to draw an inference of guilt. There has to be some measure of substance in the evidence where from a reasonable person would reasonably draw a reasonable inference of the existence of a fact.

24. Now, PW-4 and PW-5 have deposed that the Delhi Police Officers had brought a prisoner to their lodge for food. To this extent they have supported the prosecution. Now, leaving a Court Complex at 12:00 noon and taking food en-route to jail and the time gap required to be explained being 2 hours as per the jail register and ignoring the overwriting the time being 2 hours and 40 minutes, there is a self-explanation of why was time consumed for the prisoner to be lodged at the jail. It may be noted that it is not the charge that the police officer permitted the prisoner to eat food at a lodge. Even otherwise, we take judicial notice of the fact that when prisoner are taken on a remand, they i.e. the prisoners and the escort police party stops at eateries to take food during breakfast, lunch or dinner time. Thus, no adverse inference can be drawn from the fact that since Yakub Khan left the Court Complex with police escort at 12:00 noon and was lodged at the prison (taking the time of lodging being 2:40 PM) the time gap is unexplainably long suggestive of Yakub Khan being permitted to spend time with his wife in a room at K.K.Hotel.

25. The undisputed position is that the entry Ex.PW-6/A relied upon by the police evidences Wasan as the person who booked a room at K.K.Hotel. Wasan has not been examined as a witness. The version of PW-6 and PW-7 that Wasan left the hotel after 40 minutes on being denied permission to drink liquor is not a preposterous version or for that matter is not an unreasonable version to be disbelieved and adverse inference drawn. It does happen that a person checks into a hotel and has a problem compelling the person to leave. On what basis should we doubt the version of PW-6 and PW-7 that Wasan checked out on being denied permission to take liquor? We have none. As regards the reasoning of the Inquiry Officer

that the time of check in and check-out was unreasonable, we find it interesting that Wasan had booked the room at 2:00 PM and the departure entry shows the time at 2:40 PM. 2:40 PM is the time claimed by the prosecution when the prisoner was lodged at the jail at Barmer. The strange coincidence suggests that either the timing 2:40 recorded at the jail was incorrect and was corrected by overwriting or the time 2:40 PM stated to be the departure time recorded in the hotel register was incorrect. Thus, the time of departure 2:40 PM at the hotel could well be 2:30 PM. In various judicial pronouncements pertaining to criminal matters we come across the oft lamented judicial lament of Indians, for unexplainable reasons, doing things un-officiously. As a community we are not too much particular about time and it appears that in India everybody has enough time to spare. Be that as it may, nobody looks up the watch to remember the time for ordinary activities. Thus, we see no improbability, requiring an adverse inference to be drawn, when PW-6 and PW-7 stated that Wasan left the room within 40 minutes of booking on being denied the permission to drink liquor.

26. Before concluding we may note that even at a domestic inquiry it would be impermissible to sustain a verdict of guilt on negative reasoning alone and without there being some evidence of a positive nature around which negative inference can be used to strengthen the positive evidence.

27. We are compelled to concur with the conclusion arrived at by the Tribunal that the indictment is based on no evidence.

28. However, we cannot concur with the direction issued by the Tribunal that the order levying penalty has to be set aside in its entirety.

29. As noted herein above the order levying penalty also deals with the period of suspension of the respondents. By quashing the order in its entirety the direction in the order passed by the Disciplinary Authority that the period of suspension would be treated as not spent on duty has been mindlessly quashed. Issue of suspension has to be seen with reference to the gravity of the allegations constituting the charge and not whether the charge stood demolished. It may be noted that the charge fell on account of the fact the witnesses of the prosecution turned hostile and not on account of the fact they were proved to be dishonest witnesses. Surely, there was sufficient material before the Disciplinary Authority to suspend the respondents.

30. Thus, we dispose of the writ petition by partially modifying the impugned order passed by the Tribunal. The order passed by the Disciplinary Authority pertaining to the period of suspension undergone by the respondents as not being on duty is upheld. The remainder of the order as also the orders passed by the Appellate Authorities pertaining to the levy of penalty passed by the Tribunal is upheld.

31. No costs.

(PRADEEP NANDRAJOG)
JUDGE

(SIDDHARTH MRIDUL)
JUDGE

NOVEMBER 18, 2010
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