

ARMED FORCES TRIBUNAL, REGIONAL BENCH, KOCHI

O A No. 65 OF 2013

THURSDAY, THE 26TH DAY OF JUNE, 2014/5TH ASHADHA, 1936

CORAM:

HON'BLE MR. JUSTICE SHRIKANT TRIPATHI, MEMBER (J)

HON'BLE VICE ADMIRAL M.P.MURALIDHARAN,AVSM & BAR, NM, MEMBER (A)

APPLICANTS:

No. 15222760Y EX-GNR (DMT) GIRASE PRAMOD JAY SINGH,
206 ARMY AVIATION SQN (UTILITY HELICOPTER FLIGHT)
REPRESENTED BY HIS FATHER GIRASE JAY SINGH
GUMAN SINGH, AGED 56 YEARS,
S/O. LATE GIRASE GUMAN SINGH,
POST KAMPUR, TEL-SHINDKHEDA,
DIST. DHULE, MAHARASHTRA STATE – 425 408.

BY ADV. SRI. RAMESH C.R.

versus

RESPONDENTS:

1. THE UNION OF INDIA, THROUGH THE
SECRETARY, MINISTRY OF DEFENCE,(ARMY)
SOUTH BLOCK, NEW DELHI – 110001.
2. THE CHIEF OF ARMY STAFF, DHQ P.O.,
INTEGRATED HQRS., MINISTRY OF DEFENCE,
SOUTH BLOCK, NEW DELHI – 110 011.
3. THE GENERAL OFFICER COMMANDING,
HQ ANDHRA, TAMILNADU, KERALA & KARNATAKA,
AREA, (D&V), C/O. 56 APO.
4. THE OFFICER-IN-CHARGE,
HQ KARNATAKA & KERALA SUB AREA (AWES), C/O. 56 APO.
5. NO.WS-01451M, CAPT SNEHAL KALANGE,
LOGISTICS OFFICER, 206 ARMY AVIATION SQN (UH),
BANGALORE – 560 025.
6. NO. IC-57695 M LT COL R.B. MANTENA,
ADJUTANT, 206 ARMY AVIATION SQN (UH),
BANGALORE – 560 025.
7. THE COMMANDING OFFICER,
206 ARMY AVIATION SQN (UH), BANGALORE – 560 025.

BY ADV. SRI. K.M. JAMALUDHEEN, SENIOR PANEL COUNSEL.

ORDER

Shrikant Tripathi, Member (J):

By the instant Original Application (Appeal) under Section 15 of the Armed Forces Tribunal Act, 2007, the applicant Girase Pramod Jay Singh, Ex-GNR No. 15222760Y has impugned the legality of the proceedings of the Summary Court Martial, hereinafter referred to as 'the SCM' and its final order dated 25th March 2013, whereby he was directed to suffer rigorous imprisonment for six months under Section 69 of the Army Act read with Section 354 of the Indian Penal Code and was also directed to suffer dismissal from the service. He has further prayed for holding a fresh enquiry to find out the truth.

2. In this Order we do not consider it proper to disclose the identity of the victim, so she will be referred to as 'the prosecutrix'.

3. The SCM presided over by Col. Asheesh Kashyap, Commanding Officer, 206 Army Aviation Squadron tried the applicant on the charge under Section 69 for committing a civil offence, that is to say, using criminal force to a woman with the intent to outrage her modesty, particularly under Section 354 of I.P.C.

The particulars of the charge are that, the applicant at Bangalore, on the night of 2/3 June 2012, used criminal force to a lady Captain (prosecutrix) of the same Squadron, by grabbing her left upper arm and forcing himself upon her intending thereby to outrage her modesty. The applicant pleaded not guilty to the charge. During the trial, as many as seven witnesses were examined by the prosecution to prove the aforesaid charge. PW1 is the prosecutrix, who narrated the entire story in detail and accordingly proved the same.

4. PW2, Lt. Col. Rajesh Babu Mantena, had arrived at the place of occurrence on being informed of the incident by the prosecutrix over phone. The prosecutrix is said to have narrated the story to this witness. Even the accused also informed him as to how the incident took place. This officer inspected the place of occurrence and noted the following material aspects appearing at the place of occurrence.

“(a) There were drag marks in the drawing room which were indicating as if someone has been dragged in the drawing room.

(b) The floor of the drawing room was littered with glass pieces.

(c) I found some bruises on Captain Snehal Kalange's right arm, a scratch on the right forearm and a puncture wound on the right ring finger."

In addition thereto, he found that the toe of the left foot of the victim was torn and had also noticed small amount of bleeding in the injuries. Accordingly he took photographs of the accused from his mobile phone, which are on record as Exts. 2A to 2E.

5. PW3, Narasinha Varute, is a cousin of the prosecutrix, with whom the prosecutrix had gone for shopping and had returned on his scooter around 23.45 hours. This witness is not an eye witness of the occurrence. He has proved that he had dropped the prosecutrix near to her residence and while he was on the way to his own residence he received information from the prosecutrix regarding the incident over phone. So he returned back and the prosecutrix narrated the story. This witness proved the presence of the accused at that time.

6. PW4, Subedar Major Surjit Singh, PW5, Naik Prabir

Debnath, PW6, Subedar Major Sawai Singh and PW7, Devendra Kumar are also not eye witnesses to the occurrence. They got information regarding the incident from the prosecutrix. They further proved that the accused had also made his own statement before them regarding the incident. These witnesses are said to have acted as per the direction of PW2, Lt. Col. Rajesh Babu Mantena.

7. The accused did not examine any witness in defence, but he made his own statement narrating the incident that had taken place, according to him. The SCM believed the prosecution story and convicted and sentenced the applicant as aforesaid. The applicant moved a petition under Section 164(2) of the Army Act before the Chief of the Army Staff against the order of the SCM. But he, without waiting for the decision of the Chief of the Army Staff, filed the instant Original Application. During the pendency of the instant Original Application, the Chief of the Army Staff considered the applicant's petition and rendered the order dated 20th December 2013 confirming the decision of the SCM. Consequently, the order rendered by the SCM stood confirmed at the level of the Chief of the Army Staff.

8. Before entering into the merits of the case, we would like to narrate the prosecution story as also the defence story as are emerged out from the record of the SCM.

9. Prosecution Story:-

On 2.6.2012, at around 19.30 hours the prosecutrix had gone to the market with her cousin, PW2 Narasinha Varute, who was also working at Bangalore at that time. At around 21.45 hours she received a call from the applicant, who was performing the duty of driver of 2.5 ton vehicle and also Guard of Victoria Layout Residential Complex for guarding the Unit. The applicant is alleged to have asked the prosecutrix over phone as to what time she would be back at her residence. The prosecutrix replied that she was out for some work and would be late, so the gate should be left open and further told that nobody should wait. When the prosecutrix returned at around 23.45 hours at her residence and tried to open the main gate, which was closed, the applicant jumped out of the 2.5 ton vehicle parked in the compound, ran towards the gate and opened the same. The prosecutrix moved towards her residence, but the accused, instead of going back, followed her, so, she told him to go back to the quarters, where the guards used to sleep. But he did

not reply. When the prosecutrix reached near the door of her residence and tried to open the door, the accused asked her "Madam, where are the keys?", but she replied that she would herself open the door. When the prosecutrix was trying to open the lock, the key chain broke and fell on the ground. The accused, who was standing there, picked up the key chain and requested the prosecutrix to give the chain to him for fixing the same. But the prosecutrix, instead of doing so, asked him to go back. The prosecutrix is said to have ultimately opened the outer wooden door and the mesh door and went inside her residence and turned to close the wooden door. She then noticed that the applicant was still there with the gesture of obstructing the door being closed. On seeing this gesture of the applicant, the prosecutrix scolded him by saying "I told you to go back, why are you not leaving?" But the accused did not answer rather moved a step forward. The prosecutrix then shouted for the guard, who was sleeping in 3/2 Victoria Layout, but the applicant suddenly became violent and started trying to get inside the house. The prosecutrix, for stopping the accused to come inside, was trying to shut the mess door. But by that time the accused grabbed her left upper arm and started pushing her. After that, he entered into the drawing room and

pressed her mouth with one of his arms and with the help of the other arm and fore arm held her from around the neck from behind and started to push her inside. The prosecutrix at that time continued to hold on the handle of the mess door and tried herself to get out of the room. But after some time she lost her grip, so she fell towards the accused, who was pulling her. Consequently she fell down. The accused also lost his balance as also his grip on the prosecutrix. It is also alleged that the prosecutrix, after falling down, noticed a borosil glass tumbler on the sofa, which she picked up and broke the same and tried to use the broken glass in her self defence, but could not use the same effectively, as it was in her left hand. The applicant, who had also fallen right behind, again pressed her mouth and tried to pull her with his right upper arm. He, however, removed his hand from her mouth and grabbed her waist. At that time, he was also pinning her both arms. The prosecutrix then started to shout for help. At this time also, the accused pressed her mouth with his one arm and tried to drag her towards the kitchen. The prosecutrix was trying to go ahead towards the main door while the applicant was trying to drag her towards backwards. The applicant then grabbed her with her legs and made her totally immobilise. After this the applicant, suddenly started saying "Madam, aap to

officer ho, Aapko koi kya kar sakta hai. Mujse galti ho gayi. Mujhe maaf kar do. Kisi ko bhi kuch nahim batana". When the applicant was saying this, his chin was on the prosecutrix's left cheek and his hand was on her waist. Then he moved his hands from the waist to the upper body. At that time too, he was holding her tight. When the prosecutrix noticed that she had no way to save herself, she said that "Theek hai, main kisi ko kuch nahim bataongi, Aap yahan se chale jao" and repeatedly gave false assurance to him. Consequently the applicant let her free and moved towards the main door. When he opened the main door the prosecutrix pushed him out and locked the door. Then she informed her cousin PW3, Narasinha Varute, over phone and also PW2, Lt. Col. RB Mantena regarding the incident.

10. The defence story:-

The accused has alleged that on 2/3 June 2012 at about 23.49 hours the prosecutrix came along with a civilian, who went away after leaving the prosecutrix. She then came to the gate and tried to open the same. The accused, who was also standing nearby, came there and opened the gate. The prosecutrix then went inside. When she was going to her room, she was swaying. When she was

opening the lock of her room, the key fell down, so the accused picked up the key and opened the lock of the door. After opening the lock, the accused was opening the door, at that time the prosecutrix was about to fall, so the accused grabbed her hand, but the prosecutrix asked "Why did you hold my hand?" Then he left her hand. The prosecutrix then started to say "Tu aisa hai, waisa hai". The accused then told the prosecutrix that "Madam you were an officer and I am doing no such thing". On hearing this, the prosecutrix told, "Okay Pramod go". After that the prosecutrix pulled the accused by his right collar and grabbed him by his right waist and uttered twice, "Pramod I will not tell anyone". The accused told that "Madam let me go, I will also not tell anyone". But the prosecutrix told that she did not trust the accused. After that the accused went away. The accused has further stated that after 10 – 15 minutes, Lt. Col. RB Mantena came there and hit him on his stomach three to four times and told that "Madam ka muuh dabaya. Pure unit ke samne bolna". The accused clarified that he had held the prosecutrix's hand because she had consumed alcohol and was about to fall. But no medical examination of the prosecutrix was carried out. When asked about the injuries sustained by the prosecutrix, the accused replied that he did not understand as to how she sustained

the injuries. The accused further stated that the witnesses examined during the trial were not truthful and have made the statements in favour of an officer.

11. The prosecution story, as indicted herein before, has been fully supported by the prosecutrix in her statement recorded during the proceedings of the SCM. Except her statement, there is no other direct evidence to support her version. The other witnesses, viz. Pws. 2 to 7, have stated what the prosecutrix told them immediately after the occurrence and also what the accused stated regarding his version.

12. The accused did not examine any defence witness, but he narrated his own version of the story, which we have reproduced herein before as the defence story.

13. We have heard Mr. Ramesh C.R. For the applicant and Mr. K.M. Jamaludheen for the respondents and perused the record.

14. Mr. Ramesh C.R. submitted on behalf of the applicant that the prosecution was liable to prove the charge beyond all reasonable

doubts. If the circumstances of the case created doubts regarding the truthfulness of the prosecution story, the accused was entitled to the benefit of doubt. According to the learned counsel for the applicant, the injuries and broken pieces of glass were manufactured at the instance of PW2 to create evidence in the case. Neither PW2, Lt. Col. Rajesh Babu Mantena nor any other officer got the prosecutrix medically examined for ascertaining the injuries, if any, she had sustained and also for ascertaining as to whether or not she was under the influence of alcohol at the time of the incident and if so what was the degree of influence. This omission has resulted in washing off a material piece of evidence regarding the consumption of alcohol by the prosecutrix, which ultimately caused serious prejudice to the defence.

15. Mr. Ramesh C.R. next contended that the fact that the prosecutrix was under the influence of alcohol finds corroboration from her conduct in moving with a civilian and coming back late in the night at about 23.45 hours. It was also contended on behalf of the applicant that the sole testimony of the prosecutrix was not acceptable, especially when the accused had set up the defence that the prosecutrix was swaying under the influence of alcohol and

was about to fall, so the applicant came to her rescue and tried to protect her from being fallen to the ground. The learned counsel for the applicant lastly contended that the Commanding Officer did not act fairly, rather sided the prosecutrix, who was an officer and victimised the applicant, who was only a Sepoy.

16. The learned counsel for the respondents, on the other hand, submitted that the prosecutrix had no animus whatsoever against the applicant. She had not even any reason to concoct a false case. So her statement, which could not be shaken in any way, was rightly relied upon while passing the order and sentence against the applicant. He next contended that the sworn statement of the prosecutrix was sufficient to convict the accused. The sole testimony of the prosecutrix could not be discarded only on the ground that no medical examination was done. The injuries, as disclosed by various photographs and proved by the prosecutrix and other witnesses, could be sustained by the prosecutrix during the incident, which took place as per the manner she stated in the witness box. Any minor infirmity or discrepancy could not be taken as a ground to discard the statement of the victim.

17. We have considered the rival submissions and perused the record. The sole testimony of the prosecutrix, the victim of the crime, cannot be brushed aside on minor infirmities in her statement or in the statement of other witnesses. It is quite significant to state that the prosecutrix had not moved with any stranger in the evening of the date of occurrence. She had moved with PW3, Narasinha Varute, whom she alleged from the very beginning as her cousin, for purchasing curtains to her new accommodation, which was in Koramangala, in which she was about to shift. After the shopping, she went along with the aforesaid witness to see her new accommodation at Koramangala and after that she came back to her residence. These circumstances do not indicate in any way that the prosecutrix's conduct was unfair or unbecoming of an officer. If she proceeded with her cousin for purchasing curtains for her new residence and also visited the place of her new residence and then came back, how she could be blamed for coming late in the night. More so, there was no question of the prosecutrix being under the influence of alcohol, especially when she was not expected to take liquor in the company of her own cousin. More so, PW2, Lt. Col. Rajesh Babu Mantena, had arrived at the place of occurrence within 20 – 22 minutes of the occurrence. This witness, who was quite

senior to the prosecutrix, did not find her under the influence of alcohol. Even the other witnesses arrived at the scene of occurrence in the night on being required by PW2, nowhere stated that the prosecutrix was under the influence of alcohol. In our view, the contention raised on behalf of the applicant that the prosecutrix was under the influence of alcohol is a cooked up story for the purpose of defence, which is not proved or made probable in any way from the evidence on record. It is true that no medical examination either of the prosecutrix or of the accused was done in the night of the occurrence or on any day thereafter. But this much circumstance, in view of the aforesaid express evidence that the prosecutrix was not under the influence of alcohol, cannot be taken as a ground to disbelieve her testimony.

18. If the prosecutrix was about to fall due to being under the influence of alcohol and the applicant came to her rescue, there was no reason for the prosecutrix to launch a false case against the applicant, who was a subordinate to her. At the cost of repetition, we would like to reproduce the actual statement of the prosecutrix regarding the incident as follows:

“As I was opening the door, Gnr (DMT) Girase Pramod Jaysing asked, “Madam, where are your keys”. I asked him “What keys?” He said “To your house”. I told him “You leave, I will open the door myself”. Gnr (DMT) Girase Pramod Jaysing still did not leave. When I was opening the second lock on the door (the door had two locks on its), the key chain broke and fell on the ground. Gnr (DMT) Girase Pramod Jaysing, who was standing behind me came to my right and picked up the key chain and said, “Madam, give it to me, I will fix it”. I told him again, “You leave it, I will manage myself. You leave”. Then I took the broken part of the key chain back and opened the wooden door which opens outwards. Inside, there was a mesh door. I opened this door and went inside and turned to close the wooden door. I saw, Gnr (DMT) Girase Pramod Jaysing was still standing there, in such a way that he was obstructing the door, so that I could not close it. This time, I scolded, “I told you to go. Why are you not leaving”. Gnr (DMT) Girase Pramod Jaysing did not answer. Rather, he took a step forward. I did not understand why he did that. I had no option and shouted for the guard that was sleeping in No.3/2 Victoria Layout. I shouted “Guard !!” As soon as I shouted for the guard, Gnr (DMT) Girase Pramod Jaysing suddenly became violent and started trying to get into the house. To stop him, I was trying to shut the mesh door. By that time, Gnr (DMT) Girase Pramod Jaysing grabbed my left upper arm and started pushing me. After some time, he had got into the drawing room. He pressed my mouth with his one arm and with the other arm and forearm got me around the neck from behind and started trying to pull me inside. I was holding on to the handle of the mesh door and trying to get outside. For some time I could retain my grip, but after some

time, I lost my grip. Since I lost the grip, I fell back towards where Gnr (DMT) Girase Pramod Jaysing was pulling me.

As I had fallen down, Gnr (DMT) Pramod Jaysing also lost his balance and he also lost his grip on me. I fell on the ground on my right side. When I fell down, I saw a borosil glass tumbler on the sofa. I picked up the glass with my left hand, as I had fallen on my right side. I broke it on the ground and tried to use it in self defence. But because it was in my left hand, I could not use it effectively. As I was trying to get up, Gnr (DMT) Girase Pramod Jaysing who had also fallen right behind, again pressed my mouth and started trying to pull me with my right upper arm. Then he removed his hand from my mouth and grabbed me by my waist, also pinning both my arms. Because of this, again I could not use the broken glass in my defence and I started shouting for help. Gnr (DMT) Girase Pramod Jaysing again pressed my mouth and with his one arm was making my both arms immobile. After that he tried to drag me towards the kitchen.”

The aforesaid statement of the prosecutrix finds corroboration from the photographs, Exts.2A to 2E, which were taken by PW2 on his arrival to the place of occurrence. The photographs not only indicate the spot position regarding the presence of glass pieces and other details, but also indicate the number and nature of injuries the prosecutrix had sustained during the incident. If the applicant had come to the rescue of the prosecutrix on her fall, there was no reason

for the prosecutrix to sustain so many injuries on different parts of her body. It is true that no medical examination was done to ascertain the injuries sustained by the prosecutrix, but this omission does not go to the root of the case, particularly with regard to the injuries, which had been proved not only by the prosecutrix but also by the other witnesses who arrived at the scene of occurrence after the incident, which have been corroborated even by the photographs. In such circumstances, rejection of the prosecution story only for want of medical evidence does not appear to be proper.

19. As the occurrence took place in the night and there was no presence of any other person at that time, non-examination of any other eye witness to prove the incident is of no material importance. In our view, the sole statement of the prosecutrix duly corroborated by the photographs, Exts.2A to 2E, and the statements of the witnesses who arrived there subsequent to the incident, is worthy of credence and was rightly believed by the SCM.

20. As held by the Apex Court in **Premiya v. State of Rajasthan, (2008) 10 SCC 81, in para 10**, a victim of molestation and indignation is in the same position as an injured witness and her

testimony should receive the same weight. The case of **Aman Kumar v. State of Haryana, (2004) 4 SCC 379**, was no doubt a case of rape, but, in that case, the Apex Court held that victim is not an accomplice, so her testimony was sufficient to record conviction without corroboration.

21. Relying upon the decision in **Major Singh's case (supra)**, the Apex Court held in **Rupan Deol Bajaj v. Kanwar Pal Singh Gill and another (1995) 6 SCC 194**, that slapping on the posterior of prosecutrix amounted to "outraging of her modesty", for it was not only an affront to the normal sense of feminine decency, but also an affront to the dignity of the lady - "sexual overtones" or not, notwithstanding. While holding so, the Apex Court took into account the dictionary meaning of the word 'modesty' and held in paragraph 14 as follows:

"14. Since the word 'modesty' has not been defined in the Indian Penal Code we may profitably look into its dictionary meaning. According to Shorter Oxford English Dictionary (3rd Edn.) modesty is the quality of being modest and in relation to woman means "womanly propriety of behaviour; scrupulous chastity of thought, speech and conduct". The word 'modest' in relation to

woman is defined in the above dictionary as "decorous in manner and conduct; not forward or lewd; shame fast". Webster's Third New International Dictionary of the English Language defines modesty as "freedom from coarseness, indelicacy or indecency; a regard for propriety in dress, speech or conduct". In the Oxford English Dictionary (1933 Edn.) the meaning of the word 'modesty' is given as 'womanly propriety of behaviour, scrupulous chastity of thought, speech and conduct (in man or woman); reserve or sense of shame proceeding from instinctive aversion to impure or coarse suggestions'."

22. It may not be out of context to mention that the case of **Rupan Deol Bajaj v. Kanwar Pal Singh Gill and another (supra)** had come before the Apex Court out of a proceeding instituted under Section 482 Cr.P.C. The matter was, however, tried later on as per the law and after the final decision, the matter was brought again before the Apex Court in appeal as **Kanwar Pal S. Gill v. State and another, (2005) 6 SCC 161**. The Apex Court held in para 4 that the accused (KPS Gill) slapped on the posterior of the prosecutrix in the presence of some guests. The court further held that the act on the part of the accused would certainly constitute the ingredients of Section 354 IPC.

23. The aforesaid principles have been reiterated in **Ramkripal v. State of Madhya Pradesh, (2007) 11 SCC 265**. In that case, the Apex Court held that modesty in section 354 IPC is an attribute associated with female human beings as a class. It is a virtue which attaches to a female owing to her sex. While laying down so, the Apex Court opined that the ultimate test for ascertaining whether modesty has been outraged is whether the action of the offender is such, as could be perceived as one which is capable of shocking the sense of decency of a woman.

24. The acts of the applicant as disclosed by the prosecutrix in the witness box undoubtedly amount to the assault on the victim with the intention to 'outrage her modesty' within the meaning of section 354 of the Indian Penal Code, which is also a civil offence, as defined in the Army Act.

25. The applicant was provided adequate opportunity to defend himself and also to explain the circumstances that had appeared against him in the prosecution evidence. He was even provided the opportunity to adduce evidence in defence. He had

been provided the services of an officer of the rank of Lieutenant Colonel, who acted as his friend. The learned counsel for the applicant could not point out any illegality or irregularity in the proceedings of the SCM, which could be said to have resulted in causing injustice to the applicant. There is no personal allegation against the Commanding Officer, who presided over the SCM. In our view, he was quite independent and impartial and had no personal interest in the matter. His credibility could not be held to be doubtful only on the ground that the prosecutrix was an officer.

26. For the reasons stated herein before, the charge under Section 354 of the Indian Penal Code read with Section 69 of the Army Act against the applicant was rightly found proved beyond all reasonable doubts by the Summary court martial.

27. The learned counsel for the applicant submitted that the applicant has already served out approximately five months out of six months' imprisonment inflicted by the SCM, so the sentence be reduced to the period already undergone. In our view, this submission has much substance. No useful purpose will be served if

the applicant is again sent in jail, especially when he had also been dismissed from the service in addition to the sentence of imprisonment. The ends of justice would be met if the sentence of six months' rigorous imprisonment is reduced to the period already undergone.

28. The Original Application is partly allowed. The conviction of the applicant under section 69 of the Army Act read with Section 354 I.P.C. is affirmed. The sentence of dismissal from service is also affirmed. The sentence of rigorous imprisonment for six months is reduced to the period already undergone. The sentence stands modified accordingly. The applicant need not surrender. The bail bonds and personal bond furnished by the applicant are cancelled and the sureties are discharged.

29. There will be no order as to costs.

30. Issue free copy of this order to both sides.

Sd/-
VICE ADMIRAL M.P. MURALIDHARAN,
MEMBER (A)

Sd/-
JUSTICE SHRIKANT TRIPATHI,
MEMBER (J)

tm.

/True copy/

Prl. Private Secretary