ARMED FORCES TRIBUNAL, PRINCIPAL BENCH
NEW DELHI

TA NO. 139 of 2009
(WRIT PETITION (C) NO. 256 of 1995)

JAGVIR SINGH ...APPELLANT

VERSUS

CHIEF OF THE ARMY STAFF ...RESPONDENTS

ADVOCATES

MR. VIRENDER KUMAR FOR THE APPELLANT

MR. ANIL GAUTAM
WITH
LT. COL. NAVEEN SHRMA FOR THE RESPONDENTS

CORAM :

HON'BLE MR. JUSTICE S.S.KULSHRESTHA, MEMBER
HON'BLE LT.GEN. S.S.DHILLON, MEMBER

J U D G M E N T
01.12.2010

1. This writ petition was brought before the Delhi High Court for quashing the Summary Court Martial (SCM) proceedings being void ab initio. Simultaneously, reinstatement in service with backwages after setting aside the conviction and sentence for the offence under Army Act Section 63 was also sought. On formation of this Tribunal, the writ petition was transferred for disposal and it being converted into an appeal under

Section 15 of the Armed Forces Tribunal Act 2007, is disposed of by this judgment.

2. The facts, in brief, giving rise to this appeal are: The appellant was posted to 512 ASC Battalion on 9.12.1991. He was given the duties of Driver of a 4 ton lorry of B Company. On 31.12.1993, he was assigned to carry engine assembles of 257 EME Workshop along with another vehicle from Nasirabad to Jodhpur. Enroute, he consumed liquor, though he was dissuaded by his co-driver. On his way, he picked up a stranded army person, Hav. R.S Rajpur of 1566 Pioneer Company attached with 1804 Pioneer Company. While he kept on driving in Jodhpur city, his vehicle collided with a civil truck. On account of his rash and negligent driving, both the vehicles suffered severe damage and damaged another ambassador car. The appellant thereby caused damage to the tune of Rs.3,18,264/-. A first information report was lodged before the Udai Mandir Police Station and a Court of Inquiry was ordered to investigate into the accident. After recording summary of evidence, a charge sheet was issued to the appellant, which reads:

ARMY ACT SECTI0N 63

AN ACT PREJUDICIAL TO GOOD ORDER AND MILITARY DISCIPLINE

in that he,

at Jodhpur, on 31 Dec 93, so negligently drove Veh BA No.91D 89819W Ly 4 Ton Tata, the property of the Government as to cause the said Veh to be damaged to the amount of Rs.3,18,264.00

The appellant was tried by the SCM and it found the appellant guilty of the offence under Army Act Section 63 and he was sentenced to (i) forfeit all arrears of pay and allowance and other public money due to him at the time of his dismissal; (ii) to suffer rigorous imprisonment for four months by confinement in civil prison; and (iii) to be dismissed from service. His pre and post confirmation petitions were rejected. Hence this appeal.

3. Counsel for the appellant has contended that the case against the appellant is a fabricated one. The appellant has not driven the vehicle in a rash and negligent manner. The charges levelled against the appellant are based on no evidence. The appellant was not afforded full opportunity to defend his case. The plea of guilt allegedly made by the appellant was wrongly recorded by the GCM. Furthermore, the appellant was not given the assistance of a legally qualified person to defend his case. Rule 115(2) was not even adhered to, before recording the plea of guilt. Suffice it to say that at the relevant column, a note of the certificate, which was attached

with the proceedings, was given. Showing the certificate separately for want of space would not create any doubt about its authenticity. Moreover, only limited questions were asked by the appellant to the witnesses and not even touched to the merits of the case, which itself is sufficient to conclude that since the appellant pleaded guilty and so infer that on account of appellant pleading guilty, no further cross examination was made by him. Whatever be the allegation, the prosecution was not able to establish its case.

4. The appeal was resisted by the respondents contending, inter alia, that there is evidence on record to prove the case against the appellant. It is clear from the evidence that the appellant was rash and negligent while driving the vehicle. Further, the appellant was not denied the opportunity and he was afforded full opportunity to defend himself and by cross examining the prosecution witnesses.

5. Before proceeding to analyse the evidence adduced by the prosecution in support of its case, it shall be useful to take a stock of the situation, which would be construed to be rash and negligent. What constitutes negligence has been analysed in **Halsbury's Laws of England (4th Edition) Vol. 34** as follows:

> "Negligence is a specific tort and in any given circumstances is the failure to exercise that care which the circumstances demand. What amounts to negligence depends on the facts of each particular case. It may consist in omitting to do something which ought to be done or in doing something which ought to be done either in a different manner or not at all. Where there is no duty to exercise care, negligence in the popular sense has no legal consequence, where there is a duty to exercise care, reasonable care must be taken to avoid acts or omissions which can be reasonably foreseen to be likely to cause physical injury to persons or property. The degree of care required in the particular care depends on the surrounding circumstances, and may vary according to the amount of the risk to be encountered and to the magnitude of the prospective injury. The duty of care is owed only to those persons who are in the area of foreseeable danger the fact that the act of the defendant violated his duty or care to a third person does not enable the plaintiff who is also injured by the same act to claim unless he is also within the area of foreseeable danger. The same act or omission may accordingly in some circumstances involve liability as being negligent although in other circumstances it will not do so. The material considerations are the absence of care which is on the part of the defendant owed to the plaintiff in the circumstances of the case and damage suffered by the plaintiff, together with a demonstrable relation of cause and effect between the two."

Further, in **Rathnashalvan** v. **State of Karnataka** (2007(3) SCC 474), the apex Court held as follows:

> 7. Section 304-A applies to cases where there is no intention to cause death and no knowledge that the act in all

probability will cause death. The provision is directed at offences outside the range of Sections 299 and 300, IPC. The provision applies only to such acts which are rash and negligent and are directly cause of death of another person. Negligence and rashness are essential elements under Section 304-A. Culpable negligence lies n the failure to exercise reasonable and proper care and the extent of its reasonableness will always depend upon the circumstances of each case. Rashness means doing an act with the consciousness of a risk that evil consequences will follow but with the hope that it will not. Negligence is a breach of duty imposed by law. In criminal cases, the amount and degree of negligence are determining factors. A question whether the accused's conduct amounted to culpable rashness or negligence depends directly on the question as to what is the amount of care and circumspection which a prudent and reasonable man would consider it to be sufficient considering all the circumstances of the case. Criminal rashness means hazarding a dangerous or wanton act with the knowledge that it is dangerous or wanton and the further knowledge that it may cause injury but done without any intention to cause injury or knowledge that it would probably be caused.

8. As noted above, "rashness" consists in hazarding a dangerous or wanton act with the knowledge that it is so, and that it may cause injury. The criminality lies in such a case in running the risk of doing such an act with recklessness or indifference as to the consequences. Criminal negligence on the other hand, is the gross and culpable neglect or failure to exercise that reasonable and proper care and precaution to guard against injury either to the public generally or to an individual in particular, which, having regard to all the circumstances out of which the charge has arisen it was the imperative duty of the accused person to have adopted."

In **Naresh Giri** v. **State of Madhya Pradesh** (2008(1) SCC 791), after considering the entire law on the subject, the apex Court held thus:

> "13. According to the dictionary meaning 'reckless' means 'careless', 'regardless' or 'heedless' of the possible harmful consequences of one's acts. It pre-supposes that if thought was given to the matter by the doer before the act was done, it would have been apparent to him that there was a real risk of its having the relevant harmful consequences; but, granted this, recklessness covers a whole range of states of mind from failing to give any thought at all to whether or not there is any risk of those harmful consequences, to recognising the existence of the risk and nevertheless deciding to ignore it."

A negligent act is an act done without doing something which a reasonable man guided upon those considerations which ordinarily regulate the conduct of human affairs would do or act which a prudent or reasonable man would not do in the circumstances attending it. A rash act is a negligent act done precipitately. Negligence is the genus, of which rashness is the species. It has sometimes been observed that in rashness, the action is done precipitately that the mischievous or illegal consequences may fall, but with a hope that they will not.

6. In support of its case, the prosecution examined **PW 1 Sub Shivram** has stated to have seen the appellant being escorted to a

jeep/jonga (Vehicle No. BA 92B 530652). According to him, on 31.12.1993, he visited Military Hospital, Jodhpur on hearing of the accident. At about 2215 hours, he saw the appellant to have been brought in a jeep/jonga. From the way he walked, he noticed that the appellant was under the influence of liquor. In cross examination, however, he stated that he had noticed the movement of the appellant hardly from a distance of 4 metres. **PW 2 Nb. Sub. Prem Ram** gave an identical statement having regard to the fact that the appellant was under the influence of liquor. He had closely watched his movements while he was brought under escort in jonga and taken him to the Quarter Guard. **PW 3 Hav. D.R Sharma** stated that he had taken the accused to the Quarter Guard In-charge. **PW 4 Hav. C.P Singh** escorted the appellant to the MH, Jodhpur for medical examination in the jonga vehicle. **PW 5 Maj. A Chottaraj**, who was the duty Medical Officer, examined the appellant. He has stated that on examination, the appellant was smelt of alcohol from his breathe. **PW 6 Aslam Khan,** who was the driver of the civil truck – RRQ 1190. He has stated that two civil trucks were coming from the opposite direction on the left side on Jodhpur-Ajmer road. Suddenly he saw one Army 4 Ton Tata vehicle overtaking the two civil trucks and before applying the brake of his truck, the 4 Ton Tata hit against his vehicle. **PW 7 Hav. R.S Rajput** has stated to have boarded the vehicle

driven by the appellant. **PW 8 Sep/MT Radhakrishnan** is a formal witness. **PW 9 Sub Inspector Vikram Singh**, who investigated case and registered the case. **PW 10 Maj. B.L Chaudhari** is a formal witness. **PW 11 Hav. Clk. Ashok Kumar** produced the documents relating to the case. PW 12 Capt. M.S Adhikari saw the accident taking place and further stated that by the way of talking and actions, it could make out that the driver of the vehicle was drunk. He took the appellant to the Company Commander and that the appellant smelt of liquor.

6. From the evidence of these witnesses, the prosecution has been able to prove that at the time of accident, the appellant was under the influence of liquor. PW 6 Aslam Khan made it clear that the appellant, had overtaken two civil trucks and hit against the civil truck which was driven by him. Therefore, from the evidence, it is clear that the appellant was rash and negligent while driving the vehicle.

7. However, counsel for the appellant contended that there is no evidence to fix the quantum of loss caused to the Government. There is no dispute with regard to the fact that the accident had taken place. Further, the quantum of compensation for the damages would not relieve the appellant from the culpability which stands established against him.

Furthermore, the appellant pleaded guilty. The plea of guilty was in the form of admission, which constituted an offence. That apart, the appellant was obviously inebriated at the time when the accident took place. The evidence shows that the appellant was not in a position even to keep balance while overtaking the trucks. Therefore, from these facts, inference as to the guilt of the appellant could be drawn.

9. We do not find any merit in the appeal. In the result, it is dismissed.

(S.S DHILLON)
MEMBER

(S.S KULSHRESTHA)
MEMBER