IN THE ARMED FORCES TRIBUNAL, PRINCIPAL BENCH
NEW DELHI

O.A NO. 35 OF 2010

EX. SOWAR JASVIR SINGH
NO. 15500516 OF 82 ARMOURED REGT
(PRESENTLY IN CENTRAL JAIL, HISSAR)
S/O. SHRI KALICHARAN SINGH, R/O VILLAGE BHADERA,
POST BABSHAH, DISTT. ETAH (UP)

THROUGH: MR.INDERJIT SINGH, ADVOCATE

.. **APPLICANT**

VS.

1. UNION OF INDIA, THROUGH SECRETARY,
MINISTRY OF DEFENCE, SOUTH BLOCK,
DHQ PO, NEW DELHI – 110 011.

2. CHIEF OF THE ARMY STAFF
SOUTH BLOCK, NEW DELHI – 110 011.

THROUGH: MR.ANKUR CHIBBER, ADVOCATE
WITH MAJ. AJEEN KUMAR

.. RESPONDENTS

CORAM

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

JUDGMENT
29.01.2010

1. This appeal is against the order passed by the Chief of Army Staff dated 14.9.2009, whereby the order passed by the District Court Martial (in short, the DCM) sentencing the petitioner to undergo rigorous imprisonment for two years for the offence under Section 354 of the Indian Penal Code (the Code, for brevity) was confirmed and as a consequence of which, the petitioner was dismissed from service.

2. The facts of the case, in brief, as unfolded by the petitioner are: The petitioner was enrolled in the Army as a Combatant (Sowar) on 1.4.2005. After completion of his military training, he was posted to 82 Armoured Regiment. On 6.12.2008, when the petitioner was on guard duty at the Officers Mess 82 Armoured Regiment, PW 1 (Col. Navin Kamal Singh Brar) along with his wife (PW 2) went out for a walk asking the petitioner to take care of their daughter viz. Ms. Anahat Brar, who

was aged 4. After some time, the child told the petitioner that she was feeling urge for urinating. The petitioner helped the child by pulling down her trousers. After the child had passed urine, the petitioner again helped her to pull up the trousers. Thereafter, the child kept playing and on return of her parents, she thereafter alleged to have complained that the petitioner had pulled down her trousers and put his hand on her genitals. The medical check up was subsequently made, but did not reveal any injury on her genitals nor did she make complaint of any pain in that area on being asked during medical check up. The petitioner was tried by a DCM under Section 69 of the Army Act read with Section 354 of the Code. The DCM found the petitioner guilty of the charge and sentenced to undergo rigorous imprisonment for two years and also to be dismissed him from service.

3. Counsel for the petitioner has pointed out that the DCM failed to appreciate the evidence and the materials on record. It arrived at the conclusion merely on conjectures and surmises. These points

were highlighted by the petitioner in the petition filed by him before the appropriate authority under Section 164(2) of the Army Act. Without looking into those aspects, the second respondent confirmed the findings of the DCM. It is contended that even if the evidence adduced by the prosecution is accepted to be true on its face value, it would not make out any offence against the petitioner. PWs 1 and 2, the parents of the victim, were not eye witnesses to the incident. Therefore, no reliance can be placed on their testimony. They derived knowledge about the incident only as narrated by the victim. PW 5 Risaldar Major Karan Singh, was also not an eye witness to the incident. The extra-judicial confession alleged to have been made by the petitioner before him cannot be relied upon as it was coined by him for substantiating the accusation against the appellant. While placing reliance on the testimony of the child witness, the DCM failed to appreciate the fact whether the child witness could understand the questions put to her in the correct perspective. The statement of the victim that the accused-petitioner had touched her genitals cannot be

read in isolation when there is explanation by the accused that the child wanted to urinate and he simply helped her to remove the trouser.

4. The appeal has been resisted by the respondents contending, inter alia, that the statement of PW 7, the prosecutrix, finds corroboration from the testimony of PWs 1 and 2, her parents. PW 2 stated in her statement that on the fateful day both PWs 1 and 2 went out for evening walk and when they returned, they were told by their daughter, the prosecutrix, about the incident. The close proximity of the time would confirm the incident. Moreover, there was no reason for the victim to make an untrue version of the incident to her parents. Her testimony is not appearing to be a tutored one and it would prove that even at the earliest opportunity, the victim stated to her parents that the accused had touched her genital parts. Moreover, this part of the statement made by the victim finds corroboration from the statement of PW 5 that the place where she urinated was not pointed out by him. From the statements of PWs 1 and 2, it is clear that on the

fateful evening they had gone for evening walk leaving the child under the care of the accused and when they came back after about fifteen minutes, they were told by their child about the incident which had taken place in their absence. There is nothing on record to disbelieve their version. There was no reason for PWs 1 and 2 to falsely implicate the accused and to defame their own family. So also, the child (PW 7) was found capable of understanding the questions put to her during the course of the Court of Inquiry. She clearly stated that the accused had touched her genitals. No other overt act had been reported. The accused though gave the explanation of pulling down the trouser when the child wanted to urinate, the evidence of the prosecutrix is to be given pre-dominance, when it gets corroboration from the statement of her parents, to whom she narrated the entire incident soon after their return to the guest house after evening walk. The evidence of other witnesses renders support to the prosecution case (see **Tamuzuddin** v. **State (NCT of Delhi)** – 2009 (15) SCC 566). Therefore, there are cogent reasons, supported by evidence, to fix culpability of the accused for the

offence under Section 354 of the Code. In such a situation, we do not find any reason to interfere with the conviction awarded to the petitioner.

5. What remains to be considered is the sentence awarded to the petitioner. Counsel for the petitioner has submitted that the sentence awarded is not commensurate with the offence alleged against the petitioner. He admittedly pulled down the trouser of the victim. No injury on the private parts was noted either by PWs 1 and 2 or PW 3. Therefore, a lenient view is craved by the petitioner in the award of sentence. On the other hand, on behalf of the respondents, it is stated that the accused-petitioner does not deserve any leniency since he was found to have been committed the offence under Section 354 of the Code.

6. We are of the view that since the victim had not sustained any injury and she did not attribute any further overt act on the part of the accused and her statement is confined only to the mere touching by the accused on her genitals, it would not be inappropriate if a lenient view is taken with regard to the sentence. We, therefore, reduce the sentence from two years rigorous imprisonment to one year rigorous imprisonment.

7. The appeal is partly allowed. While upholding the conviction of the appellant under Section 354 of the Indian Penal Code awarded by the DCM, the sentence of two years rigorous imprisonment is reduced to one year rigorous imprisonment.

(S.S DHILLON) (S.S KULSHRESHTHA)

MEMBER MEMBER