

**IN THE ARMED FORCES TRIBUNAL, PRINCIPAL BENCH  
NEW DELHI**

**T.A NO. 183 OF 2010  
(WRIT PETITION (C) NO. 11192 OF 2005 OF DELHI HIGH COURT)**

JAI PRAKASH RANA

.... APPELLANT

VERSUS

UNION OF INDIA AND OTHERS

.... RESPONDENTS

**ADVOCATES**

**MR. S.M DALAL FOR THE APPELLANT**

**DR. ASHWINI BHARDWAJ**

**WITH**

**LT. COL. NAVEEN SHARMA**

**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. The petitioner, by filing this Writ Petition in Delhi High Court, challenged the General Court Martial proceedings dated 29<sup>th</sup>

April, 2003, whereby the petitioner was held guilty of offences under Sections 52(a) and 63 of the Army Act. On formation of this Armed Forces Tribunal, this case has been transferred to this Tribunal. Therefore, by virtue of Section 15 of the Armed Forces Tribunal Act 2007, the writ petition is converted into an appeal.

2. The facts in brief, as set out by the petitioner (hereinafter the appellant), are: The appellant served the Army with devotion and sincerity for about 29 years. On 10.8.2003, at about 4.30 AM, an FIR was lodged before the Sadar Police alleging theft of Rs.2,35,202/- from Regimental Treasury Chest (RTC), wherein the said amount was kept in a plastic sealed bag. The police submitted final report stating that they could not find any clue. Subsequently, a GCM was convened for the trial of the petitioner in respect of the alleged offences. The charge against the petitioner reads:

**First Charge**

Army Act Section 52(a)

**COMMITTING THEFT OF PROPERTY BELONGING TO A MILITARY INSTITUTION.**

in that he,

At Agra, on night 09/10 August 2003, committed theft of Rs.2,35,202/- (Rupees two lakh thirty five thousand two hundred two only), the property belonging to the Shatrujeet

CSD Canteen from the Regimental Treasury Chest of Headquarters 50(I) Parachute Brigade.

**Second Charge**

Army Act Section 63

**AN ACT PREJUDICIAL TO GOOD ORDER AND MILITARY DISCIPLINE.**

in that he,

AT Agra, on 10 Aug 2003, improperly instructed No. 13759244X Paratrooper Surat Singh of Headquarters 50 (Independent) Parachute Brigade Camp, to report to IC 34857A Col J P Singh, Officer Commanding Troops HQ 50 (Independent) Parachute Brigade that Rs 2,35,202/- (Rupees two lakh thirty five thousand two hundred two only), belonging to the Shatrujeet Unit Run Canteen was stolen by Ex Havildar Jaipal Singh Rawat from the treasury chest of the said Brigade in consequence to which the said Paratrooper Surat Singh reported accordingly.

The petitioner pleaded not guilty to the charges. Based on the evidence, the GCM found the petitioner not guilty of the second charge, but held him guilty of the first charge with the variation that the words "from the Regimental Treasury Chest of Headquarters 50 (Independent) Parachute Brigade" shall be read as "from the Subedar Major's Office in 50 (Independent) Parachute Brigade Camp" and sentenced him to undergo rigorous imprisonment for two years and six months and to be dismissed from service. His statutory complaint under Section 164(2) was rejected, confirming the findings and sentence arrived at by the GCM. Hence the present appeal.

3. According to counsel for the appellant, the appellant was falsely implicated in the case and actually the offence was committed by certain other persons, with whom the petitioner was in no way connected. There is not even an iota of evidence to fasten the culpability of the appellant since not even a single witness whispered about his involvement in the alleged offence. The appellant was held guilty on the basis of the confessional statement alleged to have been made by the appellant at the time when he was under custody. The statement cannot be considered as a voluntary statement, since that was obtained under threat and coercion. The evidence establishes the fact that the alleged voluntary statement was obtained under duress and on administering some drug. His retracted confession is not corroborated by any material on record. Furthermore, the trial is barred by the principle of *stare decisis*, as earlier on the report of theft, a crime was registered and a thorough investigation was made, wherein the police could not identify the accused. Subsequently, final report was submitted and the same was accepted by the concerned officer.

4. The appeal was resisted from the side of the respondents contending that on 10.8.2003, a theft of Rs.2,35,202



had taken place from the Regimental Treasure Chest in the office of the Subedar Major 50 (Ind) Para Bde. The matter was reported to the police by lodging an FIR, which was registered as Crime No. 337 of 2003 under Sections 457 and 380 of the Indian Penal Code. A Court of Inquiry was held at HQ 50 (Ind) Para Bde. on 10.8.2003, which was subsequently cancelled. Thereafter, a fresh Court of Inquiry took place on 19.8.2003 considering the gravity of the incident. In that Court of Inquiry, the petitioner and L/Nk. S. Singh made a confession with regard to his involvement in the theft. On the basis of such Court of Inquiry, summary of evidence was recorded and the petitioner was tried for the aforesaid offence. The petitioner made confession voluntarily and subsequently he retracted from his confessional statement. There was ample evidence to fix the culpability of the petitioner. Moreover, the trial of the petitioner is not barred by the principle of *stare decisis*.

5. In the context of the submission of final report, it is submitted by counsel for the petitioner that though a full-fledged investigation was conducted, the police could not identify the culprit and it was not open to the authority to have carried out further investigation by resorting to the provisions of Army Rule 180 by holding a subsequent Court of Inquiry. The only method available

to the authorities was to approach the Station House Officer by moving an application to obtain directions from the concerned Magistrate to permit them to conduct further investigation in the matter. In the absence of such an application, when a final report was submitted, the matter should be deemed to have been concluded.

5. Suffice to say that in this case, a Court of Inquiry was held to prima facie find out the involvement of one or more Army personnel in the alleged crime. It is submitted that the powers for holding Court of Inquiry under Army Rule 180 has no link with that of the submission of the final report. It may also be construed to be holding of inquiry. There is no inhibition under any statute from collecting evidence in Court of Inquiry. Army Rule 180 makes it obligatory to afford an opportunity to a person whenever the inquiry affects his character or military reputation of being present throughout the inquiry and of making any statement and of giving any evidence and of cross examining any witness whose evidence, in his opinion, affects his character or military reputation and producing any witnesses in defence of his character or military reputation. Therefore, Army Rule 180 should be given a meaningful interpretation. A plain reading of Army Rule 180 makes it clear that

whenever an inquiry affects the character or military reputation of a person subject to the Act, he shall be afforded full opportunity of (i) being present throughout the inquiry and making any statement; (ii) giving any evidence he may wish to make or give; and (iii) cross examining any witness whose evidence, in his opinion, affects his character or military reputation. The power given to the authorities under the Army Act deserves a wider application. The investigation, in other words, is a supervisory power conferred under the statute on the authorities for holding Court of Inquiry. If the character or military reputation of any person is going to be affected, he is entitled to a fair inquiry. The submission of final report by the police and its acceptance would not come in the way of holding of any Court of Inquiry. When Section 173(8) of the Code of Criminal Procedure permits further investigation and if it is made by adopting Army Rule 180, the formation of Court of Inquiry would be in the nature of further investigation and there is no inhibition for the same.

6. It is next contended on behalf of the petitioner that it is a case based on confession which is not corroborated by any of the independent witnesses and such retracted confession is not sufficient to hold the petitioner guilty of the alleged offence.



However, from the side of the respondents, it is contended that there is no necessity of corroborative evidence in the case of retracted confession when there is evidence on record that the confession was made by the accused in writing and there was no threat or coercion in obtaining such statement.

7. In support of its case, the prosecution examined PWs 1 to 17. PW 1 Nk. Hakam Singh of 6<sup>th</sup> Battalion, parachute Regiment has stated that on 9.8.2003, at around 0900 hours, while he was standing outside the QM Store, L/Nk. Surat Singh reached there. He asked for out-pass for a day to see a girl at Delhi for the purpose of his marriage. Platoon/Hav. Madan Singh, who came there at that time, was told about the matter and he told him that the matter would be brought to the notice of Sub. Maj. Surinder Singh Khatri. At that time, the appellant also came there and when he was told about this, he assured that he could arrange a suitable match for him. Nothing material, either with regard to theft or confession made by the appellant, has come out from his evidence. PW 2 Sub. Bhagwan Singh has stated about deposit of the sale proceeds to the tune of Rs.2,35,202 in the RTC and that on the next day, i.e. 10.8.2003, the bag containing the said amount was found missing. His statement was confined to the deposit of the



sale proceeds from CSD Canteen Store. PW 3 Nk/Clk Rajbir Singh has stated about the initiation of the Court of Inquiry for identifying the person involved in the theft. PW 4 Sub. Maj. Sundar Singh, who is the material witness in this case, has confirmed that Nk. Sub. Bhagwan Singh deposited the amount with the RTC in a bag. Normally, as per practice, he has not opened that bag. On 10.8.2003, at around 0530 hours, the duty JCO, Nb. Sub. Murari Lal and duty NCO Hav. Sisodia came to his house and apprised him that the gate of the office was found open, but the RTC was intact. They also informed him that the sentry on duty, L/Nk Surat Singh had seen 3-4 persons running through the main gate and he alerted the QRT. From his statement, identity of the person(s) involved in the theft could not be established. PW 5 Nb. Sub. Murari Lal gave an identical statement that at around 0415 hours, Hav. Sisodia, duty NCO woke him up and told him that QRT had been alerted. He thereafter met Hav. Maj. Shamsheer Singh. The Guard Commander told him that at around 0400 hours L/Nk Surat Singh had seen four persons running away through the main gate. From his evidence, it is clear that theft had taken place and 3 – 4 persons were seen by the sentry on duty running away through the main gate. However, these persons could not be identified. PW 6

Lt. Col. Basavaraj, who was also posted at the relevant time in 50 Independent Parachute Brigade Camp, stated about the telephonic message received from Maj. Surinder Singh Khatri on 10.8.2003 at around 0900 hours informing him about the theft of canteen money from RTC. He was also apprised that between 0200 and 0400 hours, L/Nk. Suraj Singh had seen four persons running through the gate. It was further stated by this witness that L/Nk Surat Singh had in confidence informed the Officer Commanding Troops about the involvement of ex Nk. Jaipal Singh Rawat. This witness further stated that COI was set up for enquiring about the theft. Before the COI, the appellant made a confession with regard to his involvement in the alleged theft. When the appellant was asked as to whether he had given the confession voluntarily, he stated that whatever confession he had made was not voluntary, because at that time he was under the influence of some drug which was administered on him in a cup of tea. It appears from this evidence that the appellant retracted from his earlier confessional statement and stated that it was not made voluntarily. He was at that time under the influence of some drug administered to him in a cup of tea. A person has, no doubt, a profound right not to be convicted of an offence which is not established by evidential standard of proof

beyond reasonable doubt. But this witness has created some doubt as to whether to accept the alleged confession or reject it when the appellant himself had stated that the confession was obtained under the influence of some drug. This established that the confession made by the appellant was not voluntary. PW 6 has, therefore, created doubt about the authenticity of the confessional statement made by the appellant.

8. Law cannot afford any favourites other than truth. To constitute reasonable doubt, it must be free from any emotional response. Here, in this case, whatever the witness had stated, that itself substantiates the doubt that at a later stage, the appellant had retracted from his confession. PW 7 Nb. Sub. John Bosco has stated that in October 2003 at around 2000 hours, the Adjutant of his unit asked him to get the medical examination of the appellant done. He got the medical examination completed around 2230 hours. Thereafter, the appellant was taken to Training Room within his unit. This witness alongwith the other sentries remained outside the room. At about 2300 hours, Lt. Col. N.P Singh came out of the Training Room where the appellant was sitting. This witness was called inside the room. A captain along with two JCOs questioned the appellant. This enquiry continued till 0500 hours in the morning.



PW 7 again came to the office in that room around 0600 hours. Therein, some officer asked the appellant to write a statement and he saw the appellant writing the statement with due deliberation at around 0820 hours. That statement, which is written by the appellant, was placed before the court martial by this witness. Nowhere this witness has stated that the confession made by the appellant was in his presence. He simply corroborated the written statement made by the appellant which is in the nature of a confessional statement. That written statement, vide Exhibits 25 and 26, was also proved by him. His evidence only refers about the confession which was allegedly given by the appellant.

9. It is to be ascertained as to how far the written statement made by the appellant could be considered to be an extra judicial confession made in the presence of the witness. Suffice it to mention that extra judicial confessions are those which are made by a party to or before a private individual which includes even a judicial officer in his private capacity. It also includes a Magistrate who is not especially empowered to record confessions under Section 164 of the Code of Criminal Procedure 1973. Here the witness had seen the accused writing on a paper and that writing was handed over to him and this was construed by him to



be the confessional statement. But no where this witness has stated that this confession was made before him. In the given circumstances of the case, when the appellant did not make any statement before this witness confessing about his guilt, it cannot be construed to be an extra judicial confession and it would not lend support to the prosecution version. Even otherwise from the attending circumstances it appears that the appellant was taken to a training room at around 2230 hours, where the interrogation continued till 0500 hours. During such long interrogation, when the senior officers were present, whatever reply was given by the appellant is not on record, as PW 7 Nb. Sub. John Bosco was not present and so the reply cannot be construed to be in the nature of extra judicial confession. As to extra judicial confession, two questions arise: (i) were they made voluntarily? and (ii) are they true? A confession made by an accused person is irrelevant in criminal proceedings, if the making of the confession appears to the Court to have been caused by any inducement, threat or promise, having reference to the interrogation which continued for more than five hours. That would itself show that the appellant was kept constantly under threat and inducement by having the written statement from the appellant confessing his guilt. Where the

statement is made as a result of harassment and continuous interrogation for several hours after the person is treated as an offender and accused, such statement must be regarded as involuntary. The inducement may take the form of promise or of a threat, and often the inducement involves both promise and threat, a promise of forgiveness if disclosure is made and threat of prosecution if it is not. It would not be in the nature of confession. It follows that the confession was not made voluntarily as the appellant himself retracted from his earlier statement stating that the written statement was obtained from him under the influence of some drug. Under such circumstances, it shall not be safe to place reliance on the testimony of this witness and the so called extra judicial confession cannot be acted upon.

10. PW 8 Sub Rambir Singh stated that on 19.10.2003, at around 1700 hours, he was asked by the CO to be an independent witness while questioning the appellant and the CO asked the appellant whether he was mentally and physically fit to narrate the incident. The appellant then narrated the incident of 9.8.2003 and 10.8.2003. His statement was recorded and his signatures were also obtained. Only a bald description was made by this witness about the incident which occurred on the intervening night of

9/10.8.2003 and what was narrated/confessed by the appellant was not stated to be brought on record by the prosecution. Reliance has been placed on the written confession so given by the appellant. There appears to be discrepancies in the statement of PW 7 Nb Sub John Bosco, who stated that in the wee hours of the morning, the confession statement was written by the appellant. To the contrary, PW 8 Sub Rambir Singh, though referred about the confessional statement of 19.10.2003 at around 1700 hours, he has not stated that a part of the confession statement was made by the appellant on 18.10.2003. The prosecution has also examined L Nk Suraj Singh (PW 9) and other formal witnesses. From their statements, the culpability of the appellant and theft of the money bag are not established.

11. The contention of the respondents that the petitioner gave his confession in writing which alone was sufficient and it required no corroboration. From the evidence adduced by the prosecution witnesses it is clear that the petitioner gave the confession while he was under custody. Such confessional statement cannot be said to be voluntary. While acting upon such confessional statement, the GCM ought to have satisfied itself that it was made voluntarily. A confession by threat, inducement or



promise cannot be construed to be evidence against the maker of the confession. Confession should have been made with full knowledge of the nature and consequence of the confession. The apellant, without any loss of time, at the first opportunity resiled from his statement and stated categorically that it was not a free and voluntary statement and it was obtained under the influence of some medicine, which finds corroboration from the statement of PW 6 Lt. Col. Basavaraj that some medicine was given. Therefore, no reliance could be placed on such statement of the petitioner. In **Bharat v. State of Uttar Pradesh** (1971(3) SCC 950), the apex Court observed thus:

“confessions can be acted upon if the court is satisfied that they are voluntary and they are true. The voluntary nature of the confession depends upon whether there was any threat, inducement or promise and its truth is judged in the context of the entire prosecution case. The confession must fit into the proved facts and not run counter to them. When the voluntary character of the confession and its truth are accepted it is safe to rely on it. Indeed, a confession, if it is voluntary and true and not made under any inducement or threat or promise, is the most potent piece of evidence against the maker.”

It further held that a true confession made voluntarily may be acted upon with slight evidence to corroborate it, but a retracted



confession requires the general assurance that the retraction was an after-thought and that the earlier statement was true. As to what should be the legal approach of the Court called upon to convict a person primarily in the light of the confession or a retracted confession has been succinctly summarised in Bharat's case (supra). The apex Court observed:

"Confessions can be acted upon if the court is satisfied that they are voluntary and that they are true. The voluntary nature of the confession depends upon whether there was any threat, inducement or promise and its truth is judged in the context of the entire prosecution case. The confession must fit into the proved facts and not run counter to them. When the voluntary character of the confession and its truth are accepted, it is safe to rely on it. Indeed a confession, if it is voluntary and true and not made under any inducement or threat or promise, is the most patent piece of evidence against the maker. Retracted confession, however, stands on a slightly different footing. As the Privy Council once stated, in India it is the rule to find a confession and to find it retracted later. A court may take into account the retracted confession, but it must look for the reasons for the making of the confession as well as for its retraction, and must weigh the two to determine whether the retraction affects the voluntary nature of the confession or not. If the court is satisfied that it was retracted because of an afterthought or advice, the retraction may not weigh with the court if the general facts proved in the case and the tenor of the confession as made and the circumstances of its making and withdrawal warrant its use. All the same, the courts do not act upon the

retracted confession without finding assurance from some other sources as to the guilt of the accused. Therefore, it can be stated that a true confession made voluntarily may be acted upon with slight evidence to corroborate it, but a retracted confession requires the general assurance that the retraction was an afterthought and that the earlier statement was true. This was laid down by this Court in an earlier case reported in *Subramania Goundan v. State of Madras* (1958 SCR 428)."

The apex Court further observed that "a retracted confession must be looked upon with greater concern unless the reasons given for having made it in the first instance are on the face of them false".

12. From the evidence adduced by the prosecution, it is clear that the confession alleged to have been made by the petitioner while under custody was not voluntary and, therefore, such confessional statement, which was subsequently retracted by him, cannot form the sole basis for the charges levelled against him. The twin tests, demanding conviction primarily on the basis of confession, as was held by the apex Court in **Shankaria v. State of Rajasthan** (1978(3) SCC 435), are not ascertainable from the evidence on record. These twin tests are: (i) whether the confessional statement was perfectly voluntary? and (ii) if so, whether it is true and trustworthy? As has already been observed,

the confession alleged to have been made by the petitioner was not voluntary and it was not free from threat or inducement.

13. There is no evidence with regard to the commission of theft by the appellant and the prosecution case is mainly based on the so called extra judicial confession which alone would not be sufficient to hold the appellant guilty. The prosecution is required to stand on its legs. Merely convicting him on the basis of the extra judicial confession does not inspire confidence and the appellant cannot be held guilty. The impugned order is, therefore, not sustainable.

14. Consequently, the appeal is allowed. The impugned order is set aside. The appellant shall be deemed to have been discharged from service from the date of the impugned order and he shall be entitled to all pensionary benefits from the date of his discharge.

**(S.S DHILLON)**  
**MEMBER**

**(S.S KULSHRESTHA)**  
**MEMBER**