

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

T.A. No. 347/2010

[W.P. (C) No. 6793/2004 of Delhi High Court]

Shiv Ram Singh Badoriya .....Petitioner

Versus

Union of India & Others .....Respondents

For applicant: Sh. S.S. Pandey, Advocate.

For respondents: Sh. Ankur Chibber, Advocate with Capt.  
Alifa Akbar.

**CORAM:**

**HON'BLE MR. JUSTICE A.K. MATHUR, CHAIRPERSON.  
HON'BLE LT. GEN. M.L. NAIDU, MEMBER.**

**ORDER  
27.08.2010**

1. Present petition received on transfer from Hon'ble Delhi High Court on its formation.

2. This petition was filed by the petitioner challenging his conviction by the Court Martial whereby he was found guilty under section 376 (2) (g) of the Ranbir Penal Code and sentenced to 10 years rigorous imprisonment and dismissal from service.

3. Brief facts which are necessary for the disposal of the present petition are that on the night intervening 23<sup>rd</sup> and 24<sup>th</sup> July, 2002, petitioner Subedar Shivram Singh Badhoriya and Hav. Patil Bandu Raosaheb said to have committed rape on PW-9 Smt. Zuleikha W/o. Sh. Duriya Mohd. Chechi and report of this incident was made at the Army Post and thereafter both these persons were charged under section 376 (2) (g) of Ranbir Penal Code and sent for court martial. During the court martial about 11 witnesses were examined by the prosecution and in that PW-9 was the victim Smt. Zuleikha. She deposed that on the relevant night she was in her house with her husband, brother in law, children and a guest Salamuddin of Mannigah village. It is alleged that she heard cry of child and woke up saw that some Army men had brought her brother-in-law along with her daughter into the main hall. Accused No. 1 asked her for water and she refused to give water. Her brother-in-law went and fetched water for them. Accused No. 2 opened a bottle of liquor and poured it into the glasses. Then accused Nos. 1 and 2 drank liquor. A Sikh jawan may have also had liquor but she did not see him drinking. Accused No. 1 asked them as to who was upstairs. He was informed that the man upstairs was their guest. The guest was

brought down to the main hall by Ali Mohd. Tass and the Army Men began beating him. In the meantime, accused No. 1 asked them to move into the adjacent room because they had to shoot since there were Mujahideens. She alongwith her husband and three children went into the adjacent room. After sometime the victim, her husband and their three children were brought out into the main hall. Accused No. 1 again directed them to go inside the adjacent room. They accordingly went inside the said room. Accused No. 1 and 2 also entered the room. They said that she should say that her brother-in-law and the guests are Mujaideen. They told them that they are not Mujaideen and they have their identity cards and they shall bring them wherever they want. Accused No. 1 asked her husband to step out into the main hall with the children. Her husband stepped out of the room with two children. Accused No. 1 took her infant child from her arms and stepped into the main hall. She and accused no. 2 remained alone in the adjacent room. Accused no. 2 had a rifle. Thereafter, accused No. 2 opened his zip and loosening the Nara (drawstring) of her salwar, pulled it off, and threw it on the side. He lifted her phiren above her breasts and pressed my breasts. She was now naked and was crying and resisting him. Accused No. 2 placed

his hand on her mouth and said that in case she make any noise he shall shoot her. Thereafter, accused No. 2 had forceful sexual intercourse with her. After intercourse, he got up, held his pouches in one hand and picking up his rifle with the other hand, stepped out of the room. She somehow wore her salwar and came near the door. By this time accused No. 1 came inside the adjacent room, carrying his radio set. Accused No. 1 pressed her breasts and put her on the floor. Accused No. 1 then opened his zip and loosening the drawstring of her salwar, removed and threw it on the floor and committed forceful rape with her. While he was raping her, she lost consciousness and she did not know what happened afterwards.

4. PW-9 further deposed that she gained consciousness at about 0500 hours. She told her husband and brother-in-law that she had been raped by accused No. 1 and 2. At about 0900 hours when she again gained consciousness, she was laying in the main hall. She did not remember who had brought her to the main hall. They left their house and came to the road where they met a surrendered militant Saifuddin. Seeing her condition he asked what had happened. They told him that she had been

raped by Army men the previous night. He told them to go to the police or wherever else they wanted. He then went away. Her husband and brother-in-law brought her to Sarkuli Post along with all her children. At Sarkuli Post, a Captain Sahab asked her what had happened. She told him that accused No. 1 and 2 had raped her. He advised them to go to the police. They told him they do not have the strength to go to the police. She said that she was having severe abdomen pain and a burning sensation in her private parts. She further deposed that after being raped she had bleeding and since the salwar she was wearing soiled with blood, she changed her salwar when she left her house for the post. Another Sahab reached the post and asked her whether she can identify the Army men who had raped her. She answered in the affirmative and said that she is not able to move because of the pain and if he bring them here, she will identify them. She also told the Sahab that her brother-in-law can also identify the Army men who had raped her. The Sahab advised them to go to the police but she refused saying they do not have the strength. Her brother-in-law identified two Army men who committed rape on her. She was then administered intravenous glucose at Sarkuli Post. After three-four days, she was taken to some Miss for

treatment and the Miss asked her what happened. She told her that she had been raped by Army men. She told her that she is very weak and being poor do not have the strength to go to police. She requested her to give medicines. She asked her to get some test conducted and thereafter conducted her internal examination and said that her condition is not good and declined to give treatment. She gave some prescription for medicines which was administered to the victim. She also deposed that she had given a blood stained salwar to the officer at Kilometer 8 Post along with phiren.

5. PW-9 Victim was cross-examined extensively by defence counsel. In the cross-examination she stated categorically that she was subjected to gang rape by these two Army men i.e. accused No. 1 and 2. On the basis of prosecution story both the accused persons were charge sheeted under Section 376 (2) (g) of the Ranbir Penal Code and they were sent for court martial.

6. In the court martial, prosecution examined PW-9 who is the victim and PW-5, PW-6, PW-8 and PW-11 were the

witnesses to corroborate the incident. PW-3, PW-4, PW-5, PW-8 and PW-11 were the persons who accompanied this patrolling party.

7. PW-5 Lance Nk. Rajesh Kumar in his deposition stated that both accused were member of patrolling party. He further deposed that he can identify Subedar Shivram Singh Badhoriya and Hav. Patil Bandu Raosaheb. Accused persons were present in the Court. He also deposed that at about 1900 hours on 23<sup>rd</sup> July, 2002 they were informed on Chatrapati Post that they were to go on operation. After dinner their platoon left the Post for Bridge Post, Kalaroos. The battalion reached Bridge Post at about 2000 hours on 23<sup>rd</sup> July, 2002. Accused No. 1 was the Platoon Commander and accused No. 2 was from the Platoon. On reaching Kalaroos, accused NO. 1 and Havildar Sukhdeep Singh went to Company Commander's Major Nangare Parag Keshavrao, for briefing. After briefing they had a fall-in and accused No. 1 and Havildar Sukhdeep Singh told them that they will lay an ambush. At about 2030 hours on 23<sup>rd</sup> July, 2002 they boarded a 2.5 ton vehicle and moved out to ambush location. The Road Opening Party was closed along the way. Major Nagare

Parag Keshavrao was sitting in the body of the vehicle. Another vehicle was moving ahead of our vehicle. At Kanipura bridge they dropped one party led by Naib Subedar Jairam Chaudhari. Party was dropped on the road near the Masjid of village Narizab and the vehicle drove off. Accused No. 1 was briefing them when the vehicle returned. Accused No. 1 briefed them about their location. He further deposed that their ambush party comprised of 01 JCO and 10 Other Ranks. Their party then moved towards Kanipura Bridge. Just short of the bridge, they returned to the shop near the Masjid of Village Narizab. They saw a house at a distance with lights on. Accused No. 1 said that they shall first search the house. Accused No. 1 told Havildar Sukhdeep Singh, accused No. 2, Sepoy Azad Shirke and him to accompany him to the house. The remaining party were told to stay at the shop until they returned. They had been informed that their Ambush party was to be split into two, one led by accused NO. 1 and the other to be led by Havildar Sukhdeep Singh.

8. PW-5 further deposed that they moved towards the house and on reaching there, Havildar Sukhdeep Singh and Sepoy Azad Shirke were told by accused No. 1 to stay outside.



Accused No. 2 knocked the door and he pushed it open. Accused No. 1, accused No. 2 and he entered the house. In the hall of the house, one lady, her three children and her husband were sleeping. Accused No. 2 and he went upstairs and woke up two males, a guest and the lady's brother-in-law, and a small girl child. They brought them down to the main hall. When they entered to the hall, Havildar Sukhdeep Singh was present in the hall. All of them were wearing BPJ with pouches and were carrying their weapons. Accused No. 2 was not wearing BPJ. He was only wearing pouches. When they entered the house the light was on. There was no house in neighbourhood. Then they began questioning the civilians about why the light was on. Accused no. 1 asked the lady for water and her brother-in-law went and fetched it. Accused No. 1, accused No. 2 and Havildar Sukhdeep Singh drank water. They questioned the civilians individually in the hall and came to know that the guest was the relative of the brother-in-law's wife from another village whereas the lady, Smt. Zuleikha and her husband were refusing to identify him to be their relative. He along with accused No. 2 and Havildar Sukhdeep Singh beat the guest and saw his identity card. The lady, her husband alongwith four children were ordered by accused No. 1

to enter the adjacent room. Thereafter, accused No. 1 and 2 also entered the same room. After about 20 minutes, the children, the lady, her husband alongwith accused No. 1 and 2 came to the hall. Havildar Sukhdeep Singh left the hall and went out. He deposed that he began searching the house. Accused No. 1 told the guest to go upstairs. He retained his identity card. After some time Havildar Sukhdeep Singh entered the hall from outside and said that we should move. Thereafter, accused No. 2, Havildar Sukhdeep Singh and he came outside. Accused No. 1 came upto the door and said that we should proceed while he would join them later. Thereafter, Sepoy Azad Shirke, Havildar Sukhdeep Singh and he returned to the shop where the remaining party was waiting. After about 30 minutes, Sepoy Unakant Rajaram Katkar said that accused No. 1's weapon is with him. Havildar Sukhdeep Singh, accused No. 2, Sepoy Azad Shirke and he then returned to the house. They called accused No. 1 and he came outside. They told accused No. 1 that they should leave but he directed us to return saying he would catch up after some time. They then returned to the shop, leaving accused No. 1 at the house. After about 10 minutes accused No. 1 reach the shop. They remained at the shop for the rest of the night. Accused No. 2 returned to the

house to hand over the identity card to the civilians. Thereafter, they returned to the shop. At first light, entire ambush party moved towards Bridge Post.

9. The statement of PW-11 Sepoy Shirke Azad Ramdas also corroborates same thing. He also added that something wrong was done at the house. He deposed that at about 2230 hours on 23<sup>rd</sup> July, 2002, accused No. 2 saw a light in a house and said that they should search this house. Accordingly, accused No. 2, Lance Naik Rajesh Dogra, accused No. 1, Havildar Sukhdeep Singh and he, in this order of march, moved towards the house. Accused No. 2 entered the house with accused No. 1. Accused No. 1 directed Havildar Sukhdeep Singh and him to remain outside. After about 15 to 20 minutes Lance Naik Rajesh Dogra also entered the house. After another 15 to 20 minutes Havildar Sukhdeep Singh entered the house while he remained outside. After 15 to 20 minutes, he peeped inside and saw accused No. 2 sitting with a bottle of liquor on the floor. Accused No. 1 was standing while Havildar Sukhdeep Singh was sitting on the stairs inside the house. Lance Naik Rajesh Dogra was standing next to the pillar in the main hall. He also saw a

civilian male, a woman and children sitting on the floor covering themselves with a blanket. After about 15 to 20 minutes, Havildar Sukhdeep Singh came outside. On coming out he said that wrong things are being done inside, we will all be caught and shall be put to shame.

10. PW-8 Duriya Mohd. Chechi, husband of victim who also deposed about commission of offence done by accused persons. Similarly, same is the effect of PW-6 Ali Mohd Tass, brother-in-law of the victim. Evidence of these three witnesses who were at the relevant point of time and outside the house more or less corroborates the version given by the victim that such kind of treatment was met out to her. In this background, Court Martial have found the petitioners guilty.

11. Learned counsel for the petitioner has tried to highlight that the victim was not sent for medical examination and her clothes i.e. blood stained salwar and phiren was also not sent for forensic test. No identification parade was conducted and direct evidence is lacking in the matter. He further argued that victim was the consenting party.

12. In view of the primary evidence of PW-9 that she was subjected to sexual intercourse by accused No. 1 and 2 and same being corroborated by the evidence of her husband, her brother-in-law and other members of patrolling party accompanying the accused persons at the time of operation clinches the issue. This consistent evidence only led to one conclusion and only conclusion that she was subjected to sexual intercourse by the accused persons and there is no reason to disbelieve her testimony notwithstanding that she was not medically examined. In this background, we are satisfied that the Court Martial Authorities have rightly appreciated the testimony of witnesses and there is no reason for us to interfere in the matter. Consequently, we do not find any merit in the petition. Same is dismissed. We confirm the conviction and sentence of the accused.

13. Learned counsel for the petitioner submitted that accused has already completed 10 years of punishment and he is not being released. On perusal of the record, it reveals that there are two orders on the record which shows the Authorities have

already informed Jail Superintendents, Agra and Aurangabad that accused had remained in Military custody for 195 days and he may be given benefit of this period. Therefore, there is no reason to issue any direction to the Respondents. Consequently, petition is dismissed.

**A.K. MATHUR**  
**(Chairperson)**

**M.L. Naidu**  
**(Member)**

**New Delhi**  
**August 27, 2010.**