

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

**TA NO. 450 OF 2009
(WRIT PETITION (C) NO. 6675 OF 1999)**

A.K SINGH

...APPELLANT

VERSUS

UNION OF INDIA AND OTHERS

...RESPONDENTS

ADVOCATES

M/S. M.L CHAWLA & G.D CHAWLA FOR THE APPELLANT

MS. JYOTI SINGH

WITH

LT. CDR. VARUN SINGH 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

08.12.2010

1. Aggrieved by the General Court Martial proceedings dated 21.4.1998, whereby the appellant was sentenced to undergo rigorous imprisonment for six calendar months, to be dismissed from service and to be reduced to ranks, he has filed W.P (C) No. 6675 OF 1999 seeking relief

from such sentence of the GCM and desires to be reinstated in service with all consequential benefits. Simultaneously, the appellant has also claimed refund of the amount of Rs.40,000/- together with interest. On formation of this Tribunal, the above writ petition has been transferred for disposal. The writ petition, by converting it into an appeal under Section 15 of the Armed Forces Tribunal Act 2007, is being disposed of by this judgment.

2. The factual matrix, in a nutshell, giving rise to this appeal are: While serving as Petty Officer Writer, the appellant was posted to Base Logistics Office, Port Blair (in short, BLO (PB) under INS Jarawa with the assignment of logistics support to various ships and units, which included preparation of bills and providing cash through the Assistant Base Logistics Officer (ABLO) to various units and disbursing cash after drawal from BLO and disbursing through various units. On 30.12.1997, as usual, the appellant prepared a coin list in accordance with requirement placed by various units for disbursement of salary to the staff. On 31.12.1997, an amount of Rs.12,88,000/- was drawn from the main safe of BLO (PB). After the withdrawal of the said amount, the same was kept in the custody of Lt. Upam Singh. After putting the required amount of cash in cloth bag containers, Lt. Upam Singh noticed that there were some changes in the Coin List Register (CLR). On further checking, it was found that the

changes were made in Rs.100 denomination of NSD group and a total difference of Rs.40,000/- was detected. As earlier there was no such difference, Lt. Upam Singh asked the appellant the reason for the difference. The appellant gave a statement admitting guilt on his part, allegedly under coercion and threat. Further, he was made to understand that if he deposited the stolen amount, he would be let off. He remitted the amount of Rs.40,000/- allegedly stolen by him. A Court of Inquiry was conducted followed by recording of Summary of Evidence. Thereafter, a charge sheet was issued to the appellant, which reads:

1. Did at about 1500 hours on 30th day of December 1997 knowingly make a false document namely coin list on page 53 in the coin list register, to be used for official purposes, by writing figure 1286 in the 100 rupee denomination column against Naval Store Depot, Port Blair instead of 886 as projected by Naval Store Depot, Port Blair and thereby committed an offence punishable under Section 60(a) of the Navy Act 1957?
2. Did at about 0900 hours on the 31st day of December 1997 commit theft of imprest money amounting to a sum of Rs.40,000/- (Rupees forty thousand only) while assisting Lt. Upam Singh (04470-H), Assistant Base Logistics Officer in bagging the money for monthly payship thereby committed an offence punishable under section 379 of Indian Penal Code read in conjunction with Section 77(2) of the Navy Act 1957?
3. Did at about 0930 hours on the 31st day of December 1997, forge a document namely coin list register, by changing

the figure from 1286 to 886 on page 53 of coin list register in the column for Rupee 100 denomination with intention to commit theft of a sum of Rs.40,000/- (Rupees forty thousand only) and thereby committed an offence punishable under Section 465 of Indian penal Code read in conjunction with Section 77(2) of the Navy Act 1957?

4. Did at about 2020 hours on the 10th day of January 1998 being in lawful custody at Indian Naval Ship Jarawa, escape from the open custody and apprehended by Naval Police at Vijay Baugh at about 2100 hours and thereby committed an offence punishable under Section 71 of the Navy Act 1957?

The charges having been proved, the GCM convicted the appellant to undergo rigorous imprisonment for six calendar months, to be dismissed from naval service and to be reduced to ranks. Both, his pre and post confirmation petitions, were also rejected.

3. Counsel for the appellant contended that there was no proper investigation into the alleged theft and the whole episode was fabricated only to harass the appellant. The alleged stolen amount was not recovered from the appellant. The GCM was held contrary to law denying fair opportunity to the appellant to defend himself. None of the prosecution witnesses having seen the appellant stealing either the amount or having recovered the amount from him, the finding arrived at by the GCM was illegal. Furthermore, the sentence awarded by the GCM is disproportionate

to the gravity of the offence alleged to have been committed by the appellant.

4. Counsel for the respondents, on the other hand, contended that on receipt of the coin lists projected by various dependent units, Lt. Upam Singh directed the appellant to workout cash requirement in the CLR. While doing so, the appellant inflated the figure of Rs.100/- denomination of NSD (PB) by writing “1286” in the place of projected figure of “886”, thereby increasing the total cash required by Rs.40,000/-. On 31.12.1997, in between 0900 and 1000 hours, ABLO, alongwith the appellant, withdrew bulk cash of Rs.9,61,954/- from the main safe of Lt. Cdr. Basudeb Nag, Base Logistics Officer (BLO) for monthly payslip. After withdrawing the cash from BLO, Lt. Upam Singh and the appellant returned to ABLO’s office and started bagging cash for payment to various units. After making payment to the concerned officers of the two units viz. Naval Transmitting Station (NTS) and Naval Ships Repair Yard (NSRY), ABLO noticed that the appellant had not inked the entries relating to these units in the CLR. So, the ABLO started inking the entries. While doing so, she noticed certain corrections made in Rs.100/- denomination column in NSD group. On re-checking, having noticed discrepancies, she called the appellant and questioned him. The appellant went back to his table with the

register stating that he would re-check and come back. Since he did not come back, the ABLO went to him and inquired about the difference. It was stated by him that the calculator was showing a different reading every time. However, he later confessed to have removed the amount in question from the table of ABLO and made alterations in the CLR. The ABLO, in her statement before the GCM, gave a detailed account of the incident, as is evident from Annexure A3. In fact, the confession was made in front of BLO, ABLO and Lt. Cdr (Special Duties Regulating) Ranbir Singh Dhankar, Deputy Naval Provost Marshal, Andaman & Nicobar Islands. During preliminary investigation, the appellant, on his request, was taken to Ajay Baugh and Vijay Baugh in order to retrieve the stolen money. Later, on 31.12.1997, at about 1800 hours, the appellant returned the stolen amount of Rs.40,000/- against a receipt in the presence of Rajendra Singh, Store Chief Petty Officer and Bishan Singh Jat, Master-at-Arms in ABLO's office.

5. Further, counsel for the respondents pointed out that the charges against the appellant were based on concrete evidence. The appellant had, during the preliminary investigation itself, confessed of having stolen the money. No coercion was exerted, as alleged by the appellant, to bring out the truth. During GCM, sufficient opportunity was

afforded to the appellant to defend his case. That apart, falsification of documents to inflate the coin list to facilitate theft and further fudging of the record to cover up the same proved that the theft was committed by the appellant alone. The court martial was conducted in an impartial manner following all norms of law and principles of natural justice. The charges against the appellant were found to be proved after going through complete legal procedure and based on concrete evidence. Summing up, it was pointed out that the appellant made the extra judicial confession before the witnesses, whose testimony remained in tact.

6. We have given our thoughtful consideration to the submissions made by learned counsel for the parties. We have also had the benefit of perusing the original records of the summary of evidence as well as the proceedings of the GCM. However, it would be appropriate to evaluate the evidence adduced in the case. In support of its case, the prosecution examined PWs 1 to 8 and the defence chose not to examine any witnesses. CWs 1 and 2 were examined as Court witnesses.

7. It was stated by PW 1 Lt. Upam Singh, who was the ABLO at the relevant time, that the appellant used to assist her in the pay office. According to her, for the monthly payship, the units were FHQ, NTS, NSD, NSRY, 3N Det, NT Pool and for 9 LCUs and money warrant of

LSTs. All dependent units prepared their own vouchers and forwarded the coin list to BLO (PB) one day in advance. This coin list was then transcribed into one register called "CLR" by the sailor in charge. He would come to her with the bag and coin list, including for additional amounts to be paid to various other ships/units. She would prepare a consolidated coin list depending upon the amount to be bagged and the additional amount and this coin list would be taken to BLO (PB) for drawing bulk cash. She would draw the bulk cash with the assistance of the Sailor In charge making entry into the register which was held by BLO (PB) and got the money bag to her office. After this, group-wise and denomination-wise, she would count the notes and handover to the sailor who used to assist her, who would then recount the money and put into different bags and tie it. This procedure was followed for all the groups and in the end, the sailor would handover all the bags to her. Whenever respective unit officer comes for collection, the sailor in charge used to be called and would recount and handover to the officer. The sailor in charge would obtain signature of the concerned officer in the CLR. It was stated by her that on the basis of CLR, she had withdrawn the amount as was stated by the appellant, but, when she noticed discrepancies/alterations in the CLR; she sought clarification from the appellant. She also deposed that

though the appellant had initially expressed his innocence, subsequently he admitted his mistake.

8. PW 2 Naseem Bano, who had assisted the appellant in the preparation of the monthly payship and totalling of the coin list, stated the day before the crucial date, she had verified the entries in the CLR and found it in order, but subsequently some alterations in figures were seen made. PW 3 Lt. Cdr. Basudeb Nag, who was BLO (PB) at the relevant time, had made preliminary investigations and searched the safe of ABLO and the imprest where the cash was put. It was stated by him that when he asked the appellant why he had made changes to the figures, he gave no positive reply. It was further stated by PW 3 that in the course of investigation, the appellant told him that he had taken the money and that he would return the same if he was given some time as he had passed on the money to Chand, LTOP. But thereafter, when Chand was brought there, the appellant changed his stand and told that he had lied when he stated that the money was given to Chand. PW 4 Lt. Kodakkattu Gopalan Nair Sreekumar stated having been participated in the investigation in the office of ABLO to ascertain the clerical error allegedly committed by the appellant. PW 5 Lt. Cdr. Ranbir Singh Dhankar, who was Deputy Naval Provost Marshal, stated that he had reached the office of BLO around 12

O' Clock and when questioned the appellant, he admitted having made the alteration in the entries in CLR. PW 6 Rajender Singh, who was Store Section in charge of BLO, gave an identical statement with regard to the appellant's confession having made the alteration and misappropriating the amount of Rs.40,000/-. PW 7 Bhupendra Singh, Master-at-Arms, stated that on 31.12.1997 at 1230 hours he was called by DNPM to BLO's office and was asked to deal with a case of misappropriation of a sum of Rs.40,000/- and told to square up the area and do the search in and out. Thereafter, the DNPM told him that the appellant had confessed of stealing the amount of Rs.40,000/-. Accordingly, all other things were done on the directive of the DNPM staff. PW 8 Suresh Chand, LTOP, who was allegedly given the stolen money by the appellant, denied of having received any money from the appellant.

9. CW 1 B.S Jat, Master-at-Arms of INS Jarawa, who was examined as a Court witness, stated that on 31.12.1997, he had participated in the investigation in BLO's office with regard to the missing of Rs.40,000/-. It was stated by him that the appellant gave Rs.40,000/- to make good the loss but he was not prepared to disclose the name to whom he passed on the money. When he requested Lt. Upam Singh to accept the money, she was reluctant to receive it directly from the appellant but

insisted to accept money from naval police. Thereafter, the amount was handed over to Lt. Upam Singh, ABLO against giving receipt thereof. CW 2 Devan Nandan Biswas stated that he arranged Rs.19,000/- from the bank and gave it to K. Kumar, LEMR to hand it over to the appellant as he urgently required money.

10. It is stated by learned counsel for the appellant that it was a case of no evidence. Actually it was the responsibility of PW 1 Lt. Upam Singh to account for the money which she had withdrawn. The money was never brought to the desk of the appellant and there was no occasion of the appellant to steal four bundles of notes of 100 rupee denomination. The ABLO and other authorities ensured deposit of money from the appellant, but that would not be sufficient to convict the appellant when substantive evidence in the case is not reliable. This case rests squarely on circumstantial evidence. The inference of guilt can be justified only when all incriminating facts and circumstances are found to be incompatible with the innocence of the accused or the guilt of any other person. Reliance may be placed on the decisions in **Hukam Singh v. State of Rajasthan** (AIR 1977 SC 1063), **Eradu and others v. State of Hyderabad** (AIR 1956 SC 316), **Earabhadrapa v. State of Karnataka** (AIR 1983 SC 446), **State of U.P v. Sukhbhasi and others** (AIR 1985 SC 1224), **Balwinder Singh**

v. **State of Punjab** (AIR 1987 SC 350), **Ashok Kumar Chatterjee v. State of M.P** (AIR 1989 SC 1890). It was also laid down by the apex Court that where the case depends upon the conclusion drawn from circumstances, the cumulative effect of those circumstances must be such as to negative the innocence of the accused and bring the offences home beyond any reasonable doubt (see **C. Chenga Reddy and others v. State of A.P** (1996(10) SCC 193), **Pandala Veera Reddy v. State of A.P and others** (AIR 1990 SC 79), **State of U.P v. Ashok Kumar Srivastava** (1992 CrLJ 1104), **State of Rajasthan v. Raja Ram** (2003(8) SCC 180), and **State of Haryana v. Jagbir Singh and another** (2003(11) SCC 261)).

11. There is no dispute with regard to the fact that the appellant was posted as Petty Officer and assigned the duty of making entries in the CLR on the basis of demands from the dependent units. He was under obligation to carry out entries in the CLR on the basis of the demands projected by the respective dependent units. The allegation against the appellant was that with intent to defraud, he altered and falsified the entries with pencil and on the basis of such false entries, he withdrew Rs.40,000/-. In this regard, it may be useful if we refer to the statement of PW 1 Lt. Upam Singh. It is clear from her statement that on 31.12.1997, at around 0900-0910 hours, the appellant brought the CLR on her table and told that

an additional requirement of Rs. 3 lakhs came. She thereupon made out the consolidated coin list for the amount which was to be drawn in bulk from BLO (PB). This was done with the help of the appellant. Then they went to the BLO to draw the bulk cash. After making necessary entry in the register held by ABLO, they brought the money to the table to be bagged according to the requirement. Then she started counting the money and bagging group-wise according to requirements. She gave the money to the appellant and he re-counted and put in the respective bags. Thereafter, he handed over the bags to her and left. After some time, again he came back and took away the CLR. Around 0945-0950, the NTS group came for payment. She called the appellant and after re-counting the money, the bag was handed over to them. Thereafter, the NSRY group came for payment and after following the same procedure, the bag was handed over to them also. At that time, the CLR was lying open on her table. She found that the pencil entries in the CLR were not inked. On re-checking, she detected the difference of 400 notes of 100 denominations in total. When he was asked how the difference came, though he initially denied of having done anything, subsequently he admitted having taken an amount of Rs.40,000/- by making adjustment in the entries. With regard to making entries in the CLR with pencil, the testimony of this witness remained intact. Further, the

appellant had no explanation with regard to the false entries he made in the CLR. PWs 2 and 3 were categoric in regard to the rubbing/erasure he made to the entries in the CLR. These inculpatory circumstances appearing against the appellant have not been explained by him. The interpolation appeared to have been made soon after the withdrawal of the money. The appellant could not explain why such interpolation was made in the CLR. In this regard, it would be appropriate to refer to Section 106 of the Evidence Act, which reads:

“106. Burden of proving fact especially within knowledge.— When any fact is especially within the knowledge of any person, the burden of proving that fact is upon him.”

12. When there is consistent evidence from the side of the prosecution with regard to making entries with pencil in the CLR and after payment he departed from the earlier practice of inking them. There is no explanation from his side for not inking those entries. His explanation is confined to a deposit of Rs.40,000/-. In the absence of any explanation or evidence to the contrary, the act of the appellant should be deemed to have been made wilfully with intent to falsify the accounts.

13. Further, there are the consistent statements of PW 1 Lt. Upam Singh, PW 3 Lt. Cdr. Basudeb Nag and PW 5 Lt. Cdr. Ranbir Singh Dhankar with regard to the confession made by the appellant admitting his guilt. The testimony of these witnesses could not be assailed by the appellant. In the given circumstances, it is to be ascertained as to what extent such extra judicial confession can be relied upon. As to extra judicial confessions, two questions may arise. They are: (i) whether they were made voluntarily? and (ii) were they true? As the section enacts, 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. If we go through the evidence of the witnesses referred to above, it could be seen that they have categorically stated that only on interrogation the appellant gave the confession statement. No force or threat was used against him. Much thrust was laid that the appellant was under close custody at the time of interrogation and, therefore, such confession alleged to have been made by him has no meaning. All the witnesses have made it clear that the interrogation and the refund of the money took place within 12 hours and till that time, the appellant was in close custody. The facts and circumstances of this case leading to the confession made by the appellant

do not even remotely cause any doubt on the veracity or voluntariness of the confession. In this case, there is nothing on record to show that the appellant made the confession under any threat or promise. The evidence of PWs 1, 3 and 5, before whom the appellant made the extra judicial confession, remained consistent. Counsel for the appellant, however, contended that there were contradictions in the testimony of these witnesses. We do not find any discrepancies in their statements which could be termed as contradictions. Reliance may be placed on the decision in **State of A.P v. Kandagopaludu** (2005(13) SCC 116). The extra judicial confession was made before PW-1 Lt. Upam Singh, PW-3 Lt. Cdr (SDW) B. Nag and PW-5 Lt. Cdr. (SDREG) RS Dhankar. The appellant has not been able to prove that they had any animosity towards him. The veracity of these witnesses is beyond doubt. Reliance may be placed on the decision in **Mohammed Azad @ Samin v. State of West Bengal** (AIR 2009 SC 1307).

14. As was stated above, the appellant has not been able to show under what circumstances, the entries were changed in the coin register before the withdrawal of money. The appellant, with intent to misappropriate money, made interpolation in the CLR. From the facts and circumstances of this case and the evidence on record, the only inference

that can be drawn is that the appellant, no doubt, made false entries in the CLR. The burden cast on the appellant with regard to the wrong entries made in the CLR has not been discharged. Therefore, we are of the view that the charge with regard to theft is established. We hold that Charges 1 to 3 have been established and the findings of the GCM do not require any interference.

15. As far as Charge No. 4 is concerned, there is no such cogent or convincing evidence to prove it.

16. In view of the aforesaid discussion and looking to the gravity of the charge, i.e. he being custodian of records was expected to keep accurate accounting, his intentional act for the offences would be construed to be a serious offence. Therefore, we are of the view that no leniency is required to be given.

17. The appeal is dismissed.

(S.S.DHILLON)
MEMBER

(S.S.KULSHRESTHA)
MEMBER