

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

**T.A NO. 557 OF 2009
(WRIT PETITION (C) NO. 5505 OF 1999)**

NO. 13747652W EX. RFN (P/A NK) RAJINDER SINGH
EX. 6 JAK RIFLES
SON OF LATE SHRI SANT RAM
RESIDENT OF VILLAGE AND POST OFFICE NETRU
TEHSIL JAISINGHPUR, DISTRICT KANGRA (H.P)
PRESENTLY UNDERGOING R.I IN DISTRICT JAIL, DHARMASHALA
DISTRICT KANGRA (H.P).

THROUGH: MR. N.L BAREJA, ADVOCATE

.. PETITIONER

VS.

1. UNION OF INDIA THROUGH ITS SECRETARY
MINISTRY OF DEFENCE, SOUTH BLOCK
DHQ P.O., NEW DELHI-110 011.
2. CHIEF OF THE ARMY STAFF
ARMY HEADQUARTER, SOUTH BLOCK,
DHQ P.O., NEW DELHI-110 011.
3. GENERAL OFFICER COMMANDING (GOC)
57, MOUNTAIN DIVISION
C/O 99 APO.
4. THE OFFICER IN CHARGE RECORDS,
THE JAK RIFLES, JABALPUR (MP).

5. THE COMMANDING OFFICER,
6, JAK RIFLES,
C/O 56 APO.
6. THE COMMANDING OFFICER
18, RASHTRIYA RIFLES, C/O. 56 APO.

THROUGH: MR. ANKUR CHIBBER, ADVOCATE
WITH LT. COL. NAVEEN SHARMA

.. RESPONDENTS

CORAM

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

JUDGMENT
05.05.2010

1. The petitioner is challenging the Summary General Court Martial (in short, the SGCM) proceedings, findings and sentence awarded to him on 1.6.1998, wherein he was found guilty and sentenced to five years rigorous imprisonment and dismissal from service. The petitioner also seeks to be reinstated in service with all consequential backwages and benefits as due to him.

2. The petitioner is aggrieved because the SGCM was politically motivated, the entire proceedings of the SGCM suffered from various legal infirmities and was prejudiced and biased against him. Amongst the many illegal actions indulged in by the SGCM, it has grossly erred in the fact that while it acquitted the petitioner of the one and only charge of rape under Army Act Section 69 read with Section 376 of the Indian Penal Code, it arbitrarily, abruptly and without any logic, held him guilty of attempt to rape. The petitioner contends that he has neither been charged of attempt to rape and neither were such charges framed against him; and nor were the proceedings conducted to prove the charge of attempt to rape against the petitioner. Therefore, in one stroke, his sixteen years of unblemished record of service has been washed away and he was reduced to the rank of Sepoy, sentenced to five years rigorous imprisonment and dismissed from service.

3. The brief facts leading to the present case are that: The petitioner, while posted with his unit, i.e. 6, JAK Rifles, was deployed in counter insurgency area in Manipur for combating militancy and terrorism in the State. He had completed three years with the battalion in the area of Manipur and in April 1998, approximately at which time the unit was about to move out of Manipur, this so called incident against him was fabricated. The petitioner, along with some other

colleagues of his, was deployed to perform an operational task of road opening on 4.4.1998. In fact, the petitioner was the Second in Command of a party of one JCO and twenty soldiers, who were deployed for this task. They left the unit at 5 a.m and took precautionary positions close to Village Keiren Phabi, so that the military convoy could pass through safely without being ambushed. After the convoy had passed, at approximately 2.30 in the afternoon, he observed some unusual activity in the school building in the village and went to enquire into such suspicious movements. Enroute he met Rifleman Satdev Singh, who accompanied him. In the verandah of the said building, the petitioner and his colleague observed that a lady was playing with her child. Thereafter, the petitioner made some enquiries from the lady, but those enquiries were not very fruitful because the lady did not know Hindi. The petitioner searched the room and thereafter exited. All this time, his colleague, Rifleman Satdev Singh, stood outside the building. The petitioner also stated that he was in the room barely for two to three minutes. In the evening, at approximately 5.00 p.m, on completion of their task, all the army personnel left Village Keiren Phabi and went back to the unit. At approximately 7.30 p.m, the complete party was called and asked whether there had been any untoward incident in the village during their tenure of duty, to which the petitioner and all others had replied that there was no unusual incident to the best of their knowledge. The next day, i.e. on 5th April, the petitioner was

specifically asked as to whether he had conducted a search of any house/school building while on duty at Keirenphabi the previous day. The petitioner admitted that he had carried out a search because he had observed some unusual activities in one of the houses and that he along with Rifleman Satdev Singh had gone to investigate such suspicious movement. Immediately thereafter, the petitioner was placed under arrest and was informed that he was suspected of having raped Smt. Ningthoujam Ongbi Pramodevi (hereinafter referred to as the victim), wife of Shri N. Basanta Singh, a civilian of Village Keirenphabi. On the basis of such allegation, a first information report was presumably lodged on 4th April at 9.30 p.m at Police Station, Moirang. According to the petitioner, this was a totally politically motivated allegation against the backdrop of the visit of the 'Raksha Mantri' to the State of Manipur during the same period. As is usual, the local people and the media are accustomed to creating a hue and cry during such visit so as to put pressure on the politicians who visit the State and same had happened in this case also. GOC 57 Mtn. Division, who was the GOC of the petitioner, was present with the 'Raksha Mantri' on this particular day and would have been pressurised by the 'Raksha Mantri' to take action because on 5th April, the very next day of the incident, Maj. Gen. SJB Sharma, GOC 57 Mtn. Division flew in and got the facts of the case and it was during this visit that the petitioner was allegedly called by the GOC and made to confess his guilt in front of him. Such visits by the GOC are not

normal and only go to prove the political motivation/pressure which was the backdrop in this incident.

4. The petitioner states that there are several inconsistencies in such allegation of rape/attempt to rape. First and foremost is that this was the first time he had come to this village, a fact which was clearly brought out by Nb. Sub. Jagdish (PW 8) during his testimony. It is unlikely that during his first visit to this village, he would commit such an act. As earlier stated, the petitioner had spent barely two to three minutes inside the hut and it is unlikely that he could have indulged in the crime in such a short period of time, especially when he had never met/known the lady in question ever before. The fact that no resistance was offered by the victim nor did she shout for help and in fact, according to her, she placed herself in a compromising position by turning her posterior to him. These facts have emerged from the statement of the victim herself, who had also stated that the petitioner aimed his weapon at her son when her son attempted to enter the room. Within a period of two to three minutes, it was not possible to search the room, physically overcome the victim, pull down his trousers and commit an act of rape while simultaneously aiming his weapon at the small boy. All this was just concocted to implicate some Army person, to make it a big political issue and embarrass the Raksha Mantri during his visit. Furthermore, the politicisation is

evident from the fact that after the incident almost 300 civilians got together to decide as to whether a case/complaint was to be lodged or not. During this political meeting, the victim also addressed the meeting and told them that unless justice was given to her, she would commit suicide. It is a well known fact that the “meira phabis” (or the ladies political movement) is the dominant political factor in Manipur politics and it is they who organise all protests/agitations and political turmoil and this was done while their group held a meeting in the village supposedly in the evening of 4th April and decided to lodge a complaint at Police Station Moirang. Before doing so, they had even rung up the Superintendent of Police for lodging the FIR. Therefore, it is evident that the thrust and focus of the village has been on creating a furore/turmoil for political purpose rather than ensuring any justice for the so called victim. As per the victim’s own statement, she washed the ‘phenek’ (local substitute for ‘sari’) and also had a bath at approximately 4.00 p.m the same day, thereby deliberately washing off the evidence. The truth is that in fact, there was no evidence and she was merely giving the excuse of having washed it away. The husband of the victim himself admits in his testimony that he had been told to have sex with his wife prior to her medical examination on 6th April and accordingly he did have sex with his wife at 4.00 a.m on 6th April. This definitely indicates a conspiracy to malign the petitioner. This is further borne out by the medical report and the forensic report,

both of which are inconclusive and do not indicate the commitment of any crime. In fact, the medical report negates the charge of rape. If any additional proof of politicisation of this case was required, it was provided during the GCM proceedings, when, despite the fact that judicial notices were sent for procuring the attendance of the witnesses, they collectively stayed away from testifying before the GCM until they collectively chose to come after approximately eight to ten days of persistent endeavors by military/civil authorities.

5. Learned counsel for the respondents began by stating that the petitioner was now attempting to give his crime a political backdrop in order to escape the noose. The presence of the petitioner at the site, in the house and in conversation with the lady has been established beyond any doubt and this admitted position cannot be denied. PW 2 (Rifleman Satdev Singh) has even testified that the petitioner entered the room and was alone with the victim for a few minutes. There was no reason for the petitioner to go down to the school building and the so called suspicious activity is a last minute fabrication because should he have gone down to investigate any suspicious activity of terrorists/militants, he would have informed his superior officer and would have taken adequate protection along with him so as to overcome such terrorists/militants. In actual fact, he was proceeding alone to the house and

coincidentally enroute requested Rifleman Satdev Singh to accompany him. The manner in which these two soldiers went to the house and their casual attitude do not indicate such visit being made in connection with any military duty, but was with the sole purpose of satisfying his lust. The petitioner did not indicate what the unusual activity was and neither did he report it to anyone.

6. The aspect of politicisation is being over-played because it is a very convenient excuse in such militancy prone areas. It needs to be appreciated that in these remote areas where Army presence is dominant, it requires the collective will of the entire village to lodge a complaint against the Army and thereafter to pursue it. Accordingly, it is not out of place for the villagers to get together to decide on the next course of action. "Meira Phabis" are a body of local ladies and their discussing the next course of action in this particular case is not illegal or unusual and the petitioner cannot hide behind this flimsy excuse of 'politicisation'. There was nothing unusual in the report being lodged with the police station and neither was there anything wrong in their ringing up and informing the Superintendent of Police about such rape/attempt to rape.

7. PW 1 (Rifleman Satdev Singh), who accompanied the petitioner to the school building, very clearly confirms that not only did the petitioner go down to the house but also that he had gone into the room with the victim. He has further testified that in the evening of the same day, i.e. 4th April, when the entire party was called to enquire whether any untoward incident had occurred in the village that day, he had enquired from the petitioner as to what had happened that day and the petitioner had told him not to talk unnecessarily. It is PW 1 who informed the Commanding Officer that the petitioner had gone to the house of the lady, based on which testimony the petitioner was arrested and placed in military custody.

8. PW 2 (Rifleman Ashok Singh) saw both the petitioner and PW 1 go to the building and return after a short time. He also had informed his Commanding Officer about these two persons going to the house of the victim. PW 3 (Birbendra Singh, Inspector, Moirang Police Station) has stated about the sequence of events on the evening of 4.4.1998 when at 2130 hours the victim, wife of Shri N. Basanta Singh of Village Keiren Phabi had come to the police station along with members of the local club and lodged a complaint about rape. Accordingly, he lodged the First Information Report under Section 376 of the Indian Penal Code and seized the 'phenek' of the victim and sent it for chemical

examination. On 5th April, he sent the victim for medical examination, but only the vaginal swab could be done because it was a holiday and the actual medical examination was done on 6th April. He has also stated that a few days after this incident, the Commanding Officer of 6 JAK Rifles along with a few soldiers had come to the police station to record the statement of the victim and during this visit, the Commanding Officer had called the victim and asked her if the person who committed the offence was present inside the room. Thereafter, the victim had identified the petitioner. Sometimes later, the case was handed over to the Army for investigation.

9. PW 4 (Dr. Meera Devi, Department of Forensic Medicine and Assistant Police Surgeon, Government of Manipur) had done the medical examination on the victim on 6th April 1998. She confirmed that there were no marks or signs of external injury on any part of the victim's body and that there was no discharge or injury to the vagina and that the lady was accustomed to sexual intercourse and was already three months pregnant. She confirmed that she did not find any signs of use of force or struggle on the lady. PW 4 also confirmed that she was informed by the victim that she had had sexual intercourse with her husband on the nights of 5th and 6th of April 1998 i.e. the night before the medical examination.

10. PW 5 (the victim), who was allegedly raped by the petitioner on 4.4.1998, has testified that the petitioner caught her and forcibly pulled her inside the house, twisted her arm and threatened her by pointing his gun at her and forced her into the forward leaning position whereafter he pulled down the zipper of his trouser and raped her. All along she has stated that she did not raise a hue and cry because she was scared as the Army man had weapons and that her children were sleeping in the next room. However, her elder son (five years old) attempted to enter the room but went back when the petitioner pointed his gun at him. PW 5 confirms that she washed her clothes after being raped and also spoke to the complete village about the incident and thereafter lodged a complaint with the Police Station at Moirang.

11. PW 6 (Panchami Singh), was the neighbour of the victim and it was to his house that the victim fled after being raped. When she initially came to his house on 4th April at around 3.00 p.m, she told him that the Army men were present in her house and that she was afraid. Thereafter, she told about the fact that she had been raped and also pointed towards an Army jawan who was standing about 100 ft. away, stating that he was the jawan who had raped her.

The remaining testimony corroborates the fact of the village meeting and their subsequent move to the police station to lodge the complaint.

12. PW 7 (N. Basanta Singh, husband of the victim) states that on returning home at about 4.00 pm, he was informed by his wife about the incident and that they went to search for the Army men but by that time the Army men had left. His remaining testimony is like that of others. However, he does state that his wife told him that she had been advised that she should have sexual intercourse with him one night before the medical examination and accordingly they had had sexual intercourse at about 4.30 a.m on 6th April.

13. PW 8 (Nb. Sub. Jagdish Raj of 6 JAK Rifles) was in charge of the Army personnel who went to Village Keire Phabi on 4.4.1998. His testimony primarily revolves round the fact that he has not seen any soldier going to the village. He also testifies that the petitioner had gone to this village for the first time. He has also stated that after 2.00 p.m on 4th April, he had seen the petitioner at least three to four times at his place of work and had not seen him enter the village and that the behaviour of the petitioner was normal, even on the evening of 4th April. PW 9 (Smt. Ningoleima Devi), wife of PW 6 of the same village, is the lady to whom the victim for the first time reported being raped. PW 10 is Prembasu, aged

5 years, who is the son of PW 5 and 7. He has testified to the fact that the two Army jawans had come to their house on the afternoon of 4.4.1998 and that one of them had dragged his mother inside the room and pointed his gun towards his mother and that his mother had instructed him to go and call some men from the village.

14. While the medical examination of PW 5 (the victim) as well as the forensic report do not indicate the committing of any crime, the presence of the petitioner at the scene of the incident has been proved beyond doubt by PWs 1, 2, 5, 6 and 10. Not only did the petitioner have no justifiable reason to be present in the hut where the victim was sitting, but the fact that he entered the room and was alone with the victim (PW 5) for however brief a time has been proved by Rifleman Satdev Singh (PW 1) who accompanied him to the site and PW 10 (son of the victim). The testimony of the victim (PW 5) of what transpired in the room has also been adequately corroborated by her son (PW 10).

15. Circumstances were sufficiently proved and completed the chain cumulatively and unerringly pointed towards the guilt of the accused for the offence of rape. The washing of 'phenek' or the plea regarding not proving of semen stains would not render the other evidence to be of no value. Reliance may

also be placed on the principle of law enunciated in **Pawan v. State of Uttaranchal** (2009(15) SCC 259).

15. Though the petitioner had objected to the conversion of charge from Section 376 to Section 376 read with Section 511 of the Indian Penal Code, throughout he was aware of the basic ingredients of the offence for which he is now held guilty. He got fair chances to defend himself against the alleged offence of rape. No prejudice was caused to him. Moreover, when the victim of rape was categorical in her assertions, the accused had the opportunity to cross examine her. In view of Section 464 of the Code of Criminal Procedure, it is possible for this Tribunal in appeal to convict the accused for an offence for which the charge stood modified and converted to Section 376 read with Section 511 of the Indian Penal Code instead of Section 376 of the Indian Penal Code. Reliance can be had from the decision in **Radha Mohan Singh alias Lal Saheb and others v. State of U.P** (2006(2) SCC 450).

16. We, therefore, affirm the findings of guilt of the accused for the offence of rape under Section 376 of the Indian Penal Code instead of attempt to rape under Section 376 read with Section 511 of the Indian Penal Code and do not

find any need to interfere with the sentence awarded by the SGCM. The appeal is accordingly dismissed.

(S.S DHILLON)
MEMBER

(S.S KULSHRESTHA)
MEMBER