

IN THE ARMED FORCES TRIBUNAL, PRINCIPAL BENCH
NEW DELHI.

T.A.No. 355 of 2009

[Arising out of WP(C)No. 7876 of 2009 of Delhi High Court]

Ramendra Pal Singh

...Petitioner

Versus

Union of India & Ors.

...Respondents

For the Petitioner :

Mr. C.M.Khan, Advocate

For the Respondents:

Mr.Anil Gautam, Advocate.

C O R A M:

HON'BLE MR. JUSTICE A.K.MATHUR, CHAIRPERSON

HON'BLE LT.GEN. S.S.Dhillon, ADMINISTRATIVE MEMBER

J U D G M E N T

22.7.2011

Justice A.K.Mathur, Chairperson

1. This Writ Petition has been transferred from the Delhi High Court.

2. The petitioner by this writ petition has prayed that the order passed by Respondent dated 26.2.2004 and 26.2.2007 may be quashed and respondent may be directed to reinstate the petitioner in service with all consequential benefits.
3. The petitioner was enrolled in the Army on 15.7.1998. Thereafter he completed his recruitment training and joined '18 Grenadiers', at Srinagar on 20.2.2000 and was posted to Coy. Since the date of his appointment, the petitioner was performing his duties with utmost devotion and sincerity and has also attended the UN Mission to Sierra Leone. During November/ December, 2002, unit was located in field and was deployed in 'OP Parakaram' at Ferozpur. He was court martialled for charge of murder.
4. The case of prosecution was that on 2.12.2002 at about 0935 hrs, complainant heard 6 to 8 shots fired from the direction of Vill. Hazara Singh Wala and he immediately activated the quick reaction team of the unit. It is alleged that PW-2 Subedar Gopi Ram Punia had informed him that the petitioner

accused had shot dead Subedar Jagat Singh with his 7.62 mm SLR with 6 to 8 rounds and had run away. The same was confirmed by one Bahal Singh. It is alleged that petitioner accused surrendered his weapon along with loaded magazine, voluntarily, without any resistance. On the basis of this FIR No..436 u/s 302 IPC PS-Sadar, Ferozpur Cantt. was registered against the accused on 2.12.2002. The deceased Subedar Jagat Singh was taken to medical hospital wherein he was brought dead as '*battle casualty found dead*'.

5. It is alleged by the petitioner that on 29.11.2002, he came to know telephonically through his brother that his mother was seriously ill and required to be admitted in the hospital. Petitioner tried hard to get leave to help his ailing mother. As per the prevailing policy the request for leave was to be processed through chain of command i.e. Section Commander, Platoon Commander and Senior Junior Commissioned Officer of the Company and the leave is finally sanctioned by Company Commander. Therefore, he was told that he should meet Subedar Jagat Singh, the Senior JCO of

his Company with regard to his leave for few days to see his ailing mother. He requested the deceased i.e. Subedar Jagat Singh for grant of leave but he refused to grant leave to the petitioner. Therefore, at about 1030 hours on 30.11.2002, the petitioner approached PW-3 Major Balwan Singh, MVC who had been performing duties of Company Commander 'D' Company of 18 Grenadiers and who was also assigned the duties of Adjutant at the relevant time for leave. However, Major Balwan Singh, MVC instructed Havildar Satyanarayan to prepare the leave documents of the petitioner and also told him that anybody coming for interview should be in possession of requisite documents. Thereafter, on 30.11.2002 at about 1430 hrs, PW-4 Lt. Arun Kumar along with Major Balwan Singh, were going after having lunch when the petitioner approached them regarding his leave. Major Balwan Singh, directed the petitioner to meet PW-4 Lt. Arun Kumar for sanctioning of his leave. On 30.11.2002, the petitioner directly approached the Coy Commander, PW-4 Lt. Arun Kumar who was apprised by the petitioner about the

serious health of his mother and requested him to grant leave on emergent basis. On this Lt. Arun Kumar immediately granted the petitioner leave for six days with Sundays as prefix and suffix and instructed him to get his leave document prepared from the deceased i.e. Subedar Jagat Singh. Thereafter, Subedar Jagat Singh i.e. the deceased, telephonically spoke to Lt. Arun Kumar regarding leave to the petitioner and tried to create hindrance in grant of leave to the petitioner, as he told Lt. Arun Kumar that the petitioner could go on leave only after BPET Competition and pay collection on 2.12.2002. However, Lt. Arun Kumar told the deceased that since petitioner's mother was serious and he had sanctioned him 6 days casual leave, on return petitioner should bring documents with regard to sickness of his mother. At this Subedar Jagat Singh i.e. the deceased, showed his agreement to the same, but never prepared the leave documents of the petitioner despite the instructions given by Lt. Arun Kumar. On 30.11.2002, in the evening, deceased i.e. Subedar Jagat Singh, telephonically spoke to Lt. Arun Kumar

regarding the leave of the petitioner and Lt. Arun Kumar told the deceased that he had sanctioned the leave and rest he could discuss with him later. At this deceased replied, *“you do not know that these persons have the habit of approaching Company Commander, Adjutant and the Commanding Officer, and junior commissioned officer will lose the standing and have no face”*. On this Lt. Arun Kumar directed the deceased not to bother for all that and send the petitioner on leave. It is alleged by the petitioner that attitude of the deceased was to create hindrance in grant of leave and to harass the petitioner.

6. On 2.12.2008, the petitioner again requested the deceased to prepare his leave documents but was told that he would not send him on leave. At this petitioner, pleaded before the deceased and told him the nature of urgency. Despite the humble request of the petitioner, the deceased used abusive and filthy language against his sister and ailing mother, in a manner which was sufficient to give sudden and grave provocation to a man of normal prudence and intellect and therefore, he shot the deceased and was arrested on the

same day. Next day he was sent to civil jail and investigation was taken up and challan was filed against the petitioner in the civil court. Thereafter, respondent requested for case to be transferred to military for trial and accordingly the case was transferred along with petitioner who was in custody. Then necessary charges were framed against the petitioner and court martial proceedings commenced. Prosecution in support of this case examined as many as 15 witnesses, defence examined two witnesses & two court witness were examined.

7. The plea of the accused was that since he heard the abuses against himself, his sister and his mother, therefore, this gave rise to grave provocation to him and he shot dead the deceased as such he claimed for right of private defence in support of his family honour. Prosecution in order to support this case, examined as many as fifteen witnesses. Two defence witnesses and two court witnesses were also examined. The plea of the accused is that on account of abusive languages hurled against him by the deceased, it

gave rise to grave provocation to him and it caused the death of Sub. Jagat Singh, as such he is entitled to benefit of Section 300 Exception -1 IPC which reads as under:

“When culpable homicide is not murder – Culpable homicide is not murder if the offender, whilst deprived of the power of self-control by grave and sudden provocation, causes the death of the person who gave the provocation or causes the death of any other person by mistake or accident.”

8. The court martial authorities after detailed appreciation of witnesses, recorded its finding of guilty against the petitioner. So far as the question of death of deceased i.e. Sub. Jagat Singh is concerned, there is no dispute and it is also admitted by the accused that he did fire and killed the deceased i.e. Jagat Singh. Therefore, we need not go into the question of appreciation of evidence of the prosecution witnesses. However, prosecution in order to drive the case home, tried to bolster their case by producing PW-2 Sub. Gopi Ram Punia as any eye witness. We have perused the statement of PW-2 and we find that he was not an eye-witness to the incident. He himself said that after hearing the shot fired, he immediately

rushed to the scene and by that time the firing was over. Therefore, the question is whether this case come u/s 300 Exception-1 of IPC or not. Exception-1 of Section 300 as reproduced above, clearly states that “*culpable homicide is not a murder, if the offender, whilst deprived of the power of self-control by grave and sudden provocation, causes the death of a person who gave the provocation then that will not amount to culpable homicide*”. This question was not specifically raised nor dealt with by the court martial authorities. However, this question of law is well settled by the Apex Court. Hon’ble Supreme Court has gone to the extent that even if the accused has not taken a plea of right of private defence or the claim of benefit of grave & sudden provocation, if such plea arises from prosecution case then benefit should be given to the accused. In this connection reference may be made to a decision of the Apex Court given in the case of State of UP Versus Laxmi Seth (1998(1) SC page 679) where Lordship has observed that:

“The law is that burden of providing such an exception is on the accused. But the mere fact that accused adopted another alternative defence during his examination under Section 313 of the Cr.P.C. without referring to Exception No.1 of Section 300 IPC is not enough to deny him of the benefit of Exception, if the court can cull out materials from evidence pointing to the existence of circumstances leading to that exception. It is not the law that failure to set up such a defence would foreclose the right to rely on the exception once and for all. It is axiomatic that burden on the accused to prove any fact can be discharged either through defence evidence or even through prosecution evidence by showing a preponderance of probability.”

9. Therefore, in the present case the learned counsel has submitted that except everything being right, the question is whether the accused is entitled to benefit of grave and sudden provocation or not.
10. There is no direct evidence and only plea of the accused as given by him on 19th February 2004 is that:

“in 2002 I availed casual leave from 15 Feb 02 to 18 Feb 02 and 24 March 02 to 02 April 02, part of annual leave from 19 June 02 to June, 2002, from 11 Aug 02 to 04 Sep 02 and 30 Oct 02 to 13 Nov 02 and all leaves were availed on orders duly sanctioned. In the month of Oct, 2002, I was working at a MI Room at Ferozepur when Gdr Bhagat Singh met me and asked me to have lunch with him at his family quarters. I refused but on his insistence agreed and we had lunch together. On 01 Nov, 2002, I was proceeding on leave when Gdr Bhagat Singh requested me that I should visit his home and if possible bring some money from his home. During his leave, I visited the house of Gdr. Bhagat Singh but I could not collect any money from his house as the main family members were not available. I came back from leave and

informed Gdr. Bhagat Singh accordingly. On 16 Nov 2002, I was going to rear location, when Gdr. Bhagat Singh asked me whether I could spare some money for him. I told him that I am having about Rs.1,000/- which was lying in my box in the rear at Ferozepur. He requested me that if I could lend the same to him and I agreed to lend. He then requested me that if the said amount could be handed over to his family at Ferozepur. I reached the rear location and told Hav. Mahender Singh the rear NCO, if he could send some one to hand over Rs.1,000/- from me to the family of Gdr. Bhagat Singh, he declined that he had none with him who could do this job. At about 1600 hrs, I went to the residence of Gdr. Bhagat Singh and handed over Rs.1,000/- to the wife of Gdr. Bhagat Singh. When I was returning back to my unit, I met Sub Jagat Singh enroute. I wished him 'Ram-Ram'. He asked me as where I was coming from. I told him about the purpose of my going to Gdr. Bhagat Singh residence. On the same evening I returned to unit OP location. At about 2000 hrs, I rang up A Coy to inform Gdr. Bhagat Singh about handing over the money to his wife. Sub Jagat Singh attended the phone and I requested him that if I could talk to Gdr. Bhagat Singh. However, I found that Sub Jagat Singh was not in a receptive mood and he started shouting at me. On being asked what wrong I have done, JCO told me that why I was roaming in the family quarters. I told him the purpose of my visiting Gdr Bhagat Singh's house. On this he told me that if Gdr. Bhagat Singh tells me to sleep with his wife, will I do that. On this I requested the S/JCO not to pass such remarks. I further told him that I had visited the residence of Gdr. Bhagat Singh at his own request due to compelling reason only. But the JCO was unsympathetic and he threatened me that he will see to it that I am sorted out. Thereafter, I spoke to Gdr. Bhagat Singh and informed him that I had handed over the money to his wife. At about 0830 hrs on 29.11.2002, two civilians, myself and Gdr. Deepak Kumar were working at CO's residence at Hussainiwala. Hav. Pradeep Kumar who was the incharge of the Jazz band came and passed the message that as per orders received from Battalion HQ, the members of the Jazz band could avail balance of leave left to their credit. He also told us to have our leave document prepared from our respective Companies

if we want to proceed on leave. I told Hav. Pradeep Kumar that he should speak to NSA Nb Sub Tara Singh for providing our relief. Thereafter I went and met Nb Sub Tara Singh and requested him to relieve us so that we could proceed on leave. He told us that since there is nobody available with him so he did not relieve. Then I went to Jazz band barrack. I saw Nk Tulsi Ram and Gdr Gopal Das preparing to go on leave. They told me that since their uniform could not be ready for interview they have been allowed to proceed without interview of the Commanding Officer. After lunch I went back for working. At about 1430 hrs Gdr. Surender Singh, incharge of Unit STYD/PCO passed a message through a runner that a phone call had come from my home and I should speak to my home. I went to STD booth and after getting through my home, I talked to my brother and came to know that my mother was seriously ill and may required to be admitted in the hospital. Since the leave of Jazz band personnel was opened I told my brother that I am applying for leave and would be reaching home in a day or so. I then went back to working and about 1800 hrs I went to 'A' Company HQ to submit my leave request. I met CHM Satya Narain Lohchav at 'A' Company HQ and told him that my mother was seriously ill and I wanted to proceed on leave and I also told him that Jazz Band personnel have been allowed to proceed on leave. CHM Satya Naraian Lohchav told me that I should meet Sub Jagat Singh the Senior JCO of 'A' Company in this regard. At about 1930 hrs I met Sub Jagat Singh enroute to Battalion HQ. I wished him and told him that I had received a message that my mother was seriously ill and wanted to proceed on leave. Sub Jagat Singh replied that I could go on leave next day. I went to Battalion HQ, at about 2030 hrs and received a message that L.NK Devender Singh and I were to run BPET at 0500 hrs on 30.11.2002. On 30.11.2002, I reported to at 'A' Company location and ran BPET course. Thereafter, I went to Coy HQ and inquired from CHM Satya Naraian Lohchav about my leave. He told me to speak to Sub Jagat Singh. I went and met Sub Jagat Singh and requested him about my leave but he did not give me any clear answer and told me that he would see it later. I insisted that my mother was serious and other Jazz band personnel were proceeding on leave but

JCO did not agree. Then I went to Bn HQ and met Sub Tara Singh about my problem at home and Nb/Sub Tara Singh rang up 'A' Coy HQ and told CHM Satya Narain Lohchav as per orders, the Jazz band personnel were to proceed on leave together so that they could come back at the same time and were available for Jazz band duties and directed CHM Satya Narain Lohchav to process my leave documents. He then told me that I should get ready for CO's interview. I went to my barrack and got ready and went to Bn HQ. As I was standing for the interview CHM Satya Narain Lohchav came and asked me as to why I was standing there without any permission, I told him that Nb/Sub Tara Singh had already spoken to him in the morning for preparation of my leave documents. In the mean time Nb/Sub Tara Singh also came there and asked CHM Satya Narain Lohchav whether he had brought leave documents of mine. He replied that he would do so after the interview.

At about 1000 hrs Offg Sub Maj Birender Singh came and he made an announcement that one person was required to go on temp duty to Chandigarh to deliver some documents of 48 Inf Bde and whosoever would go on temp duty will be given two days leave. I volunteered for the same. On this CHM Satya Narain Lohchav told him that Sub Jagat Singh had already refused leave to me and I cannot be given any leave. Then I was told by Nb/Sub Tara Singh to break off and report to Bn HQ. Since JCO had said there was no way for me to get any leave, then I requested that I may be permitted to meet the Adjutant. He told that meet anybody I wanted to and I went to Bn HQ area and met the Adt Maj Balwan Singh MVC who was standing CHM Satya Narain Lohchav and Offg Sub Maj. I told him that about my mother seriousness and I am not being given leave. The Adjt inquired from CHM Satya Narain Lohchav why I was being refused leave. He further stated that if some mishap takes place who would be responsible. He then directed the CHM to grant me leave for 10 days. At the same time Offg Sub Maj Birender Singh recommended my name for temp duty to Chandigarh. The Adt however enquired from me whether I had been to Chandigarh before. On my reply that I had gone to Chandigarh only once, he asked me to suggest someone who belongs to Ambala. Then Gdr Joginder Singh was

detailed for the temp duty. At about 1230 hrs on 30.11.2002, I went to 'A' Coy HQ and met Coy Clk Gdr Rampal and asked him about my leave document. He told me that Sub Jagat Singh had left a message that I should meet him. Then I went to meet Sub Jagat Singh and he was taking a class. I met him after the class was over and I again requested for my leave and after some time when I again requested him for leave, stating that my mother was serious he angrily told me if I was a doctor and what I will do for my mother. I told the JCO that we all have our parents and wanted to be with them during their illness when they need us most. On this the JCO got agitated and told me that I will not proceed on leave. Then I called up Adjutant and informed him about my conversation with Sub Jagat Singh. The Adjutant asked me as to who was my Coy Commander, to which I replied that Sub Jagat Singh was saying that he was the Coy Commander. Maj. Balwan Singh, MVC, the Adjutant then told me that Lt. Arun Kumar was my Coy Commander and was sitting with him in his office. He further told me to come over and meet him personally. I then went to Bn HQ and by then Adjutant and Lt. Arun Kumar had already left for Officer's mess. At about 1500 hrs, when both the officers came out, I went and met the Lt. Arun Kumar and briefed him. Then he asked me if 06 days casual leave would suffice, I replied in affirmative. He told me that since he had granted me 08 days leave and Sub Jagat Singh may clarify from me on telephone if he need to do so and he will be available at Shamike post. Then I again went to Sub Jagat Singh, he was playing cards with NCOs. I went and reported to him that Lt. Arun Kumar, the Coy Commander has granted me 06 days of casual leave and as instructed by Lt. Arun Kumar I told Sub Jagat Singh that he could talk to the Coy Commander at Shamike, if he so wished. To this he replied that he did not consider it necessary to talk to the Coy Commander. He then threw over the cards and told me that I could go where I wanted to and do whatever chamchagiri I wanted to, but he will not allow me to proceed on leave. I then called up Shamike post but Lt. Arun Kumar was not there. I then rang up 'D' Coy. Maj. Balwan Singh, MVC about the attitude of the Sub Jagat Singh and he said that get the leave document prepared, but I told him that when my own

Coy was not ready to prepare my leave documents, how would some other Coy prepare the same. On this he told me that he will speak to Coy Clk and he did so. He spoke to Gdr Rampal Singh, the Coy Clk and told him to prepare my leave documents. He declined to do so without permission from S/JCO but when Adjutant insisted, he agreed to do it. Then he told him to ask Sub Jagat Singh to speak to him. Then Sub Jagat Singh spoke to Adjutant and told that I should not be sent on leave being a indiscipline soldier who entered into family quarters and moves with defaulters like Gdr. Bhagat Singh. On hearing this, I pleaded the JCO not to malign my name. He further told the Adjutant that he had no problem at house and he is lying that his mother is sick and if he is allowed to go on leave, then people will have no respect for S/JCOs. Then Sub Jagat Singh also spoke to Lt. Arun Kumar that I could go on leave after BEPT and pay collection. Thereafter, Sub Jagat Singh put the phone down and said that now I can go anywhere I like, he will not be granted leave. Then I tried to contact the Coy Commander but without any result. Then Sub Jagat Singh left for the weekend at Ferozepur rear location. Then again I rang up my home and I was told that my mother was serious and required hospital admission. At about 2000 hrs, I was informed that I was detailed on escort duty for pay collection on 02.12.2002 and to be ready at 0800 hrs.

On 02 Dec 2002, I met Pradip Kumar who was incharge of the Jazz band. Then I went to 'A' Coy location and drew 7.62 mm Rifle from 'A' Coy Kote and started back to Bn HQ location. Then at the 'A' Coy location I saw some 'A' Coy personnel getting ready for interview of the Commanding Officer for proceeding on leave. One of them asked me what about my leave, I told them that I wanted to go on urgent leave as my mother was sick, but Sub Jagat Singh is not permitting me to do so. Thereafter, I along with Gdr Deepak Kumar went for breakfast. As I was having my breakfast, I saw Sub Jagat Singh talking to two-three JCOs of the Bn after coming back from the weekend. I met him and wished him 'Ram Ram' and started walking with him. I again requested him for my leave but he said that he will not send me on leave. I pleaded with him saying that there were 10 persons proceeding on leave from each Coy today and as my

mother was serious why I was not being allowed to proceed on leave. On this he got agitated and started rebuking calling me "Bahanchod, Matherchod". He further told me that he would teach me a lesson. I then told him as to what was my fault and why he was having such a biased attitude towards me. On this, he told that I have gone to all officers like Adjutant and Coy Commander and now he will see to it that I do not proceed on leave. I told him that because you refused to grant me leave, therefore, I approached Adjutant and the Coy Commander. In reply he said, "TU NE SAB KE PAAS JA KAR MAA CHUDWALI, PHIR KYA HUA", I told him not to use abusive language. I then told the JCO that he was stopping my leave alright but why he was using such foul language against me. On this the JCOs said "TU SABHI JAGAH GHUM LIA AB MAIN TERI MA KO ACHHI TARAH SE CHODUNGA". I again told him not to use this language. On this he stopped and stared me. He was so furious I thought he was going to kill me. Then he by shaking his close fist said, "SALE TU BOLTA HAI KE TERI MAA BEMAAR HAI – TU APNI MAA KO YAHAN BULA LE SALI KO AK RAAT ME AISE ACHHI TARAH SE CHODUNGA KE EK RAAT ME USKI SARI BEMARI DUR KAR DUNGA". On hearing this, I lost control over my senses. My body started shivering and I had a complete blackout and I do not know what happened thereafter. When I regained my senses I found myself locked in the Sub Maj Office with my hands and legs tied. I was totally foxed as to what all was happening. I was in a dazed state when I was taken to police station. Next day I was sent to civil jail. Therefore, he submitted that therefore, he became victim of circumstances beyond my understanding and control and pleaded that I have committed no offence."

11. Therefore, so far as the death of the deceased is concerned, there are no two opinions. The recovery & seizure of gun & empties are all proved. But from these facts question arises for consideration is that, can it be said that accused really

intended to cause murder of the deceased Jagat Singh. The detailed statement of the accused has been given only to show that accused was subject to harassment. Over and above this, abusive language used by the deceased was so provocative touching his dignity and his family's dignity that the petitioner lost self control. Where such abusive language is used by the deceased, can it not be said to be a case of providing grave and sudden provocation to the accused. This aspect seems to have been completely lost sight of by the court martial authorities. The grave and sudden provocation provided by the deceased can cause provocation to anybody in normal course and people can react strongly to save their honour. This precisely has been done by the accused.

12. What is grave and sudden provocation, depends upon case to case. No generalised principle can be laid down, however, the test is whether a reasonable man would have lost his self control and retaliated in a manner that the offender did. In the present situation, the accused was all the time requesting Sub. Jagat Singh, deceased, for grant of leave and going from

pillar to post on account of the illness of his mother and although leave has been granted to him by the sanctioning authority, still Sub Jagat Singh resisted it. And with abusive language being hurled at him against his mother, it suddenly provoked him, and since he was already armed with a gun he lost control & fired. After all each individual has his own dignity and if one challenges the dignity and self respect by using filthy language against his mother and says that he will sleep with your mother and she will be relieved from her ailment, nobody with sense of self respect can accept this kind of abusive language and suffer the humiliation. The deceased was a JCO but when his superior officer has granted leave to the accused and he continued to resist the order of the competent authority despite the constant pleading of the accused. While resisting the same he crossed the limit of reasonableness by hurling serious abuses against the accused and his mother, which gave the accused ground to take the extreme action of shooting the deceased point blank. In the entire incident, the action of the accused was

spontaneous and there was no premeditation which indicates that it may be a consequence of the sudden provocation provided by the deceased, who did not in any manner provoke him to use the unbecoming language against his mother. Therefore, in this background the court martial authorities should have taken into consideration as to whether accused is entitled to the benefit of Exception-1 of Section 300 of IPC or not. After giving the details of the grave and sudden provocation provided by the accused, we are of the opinion that accused is entitled to benefit of this Exception-1 of Section 300 of IPC that in fact deceased provoked the accused to resort to this extreme extent and accused is entitled to this benefit. Consequently, we are of the opinion that accused is not guilty u/s 302 IPC, and we set aside this conviction, however, he is guilty u/s 304 (2) i.e. homicide not amounting to murder and consequently, we convict the accused u/s 304 (2) IPC and award him sentence of seven years. If the accused has already undergone

sentence of 7 years then he may be released forthwith, if not party in any other case.

28. The transfer application is accordingly allowed. No order as to costs.

[Justice A.K. Mathur]
Chairperson

[Lt. Genl. SS Dhillon]
Member (A)

New Delhi
22nd July, 2011