

**COURT NO. 2, ARMED FORCES TRIBUNAL,
PRINCIPAL BENCH, NEW DELHI**

T.A. No. 374 of 2010

W.P.(C) No. 18433 of 2004 of Delhi High Court

IN THE MATTER OF:

L/Nk. Chekku Kumar

.....Applicant

Through : Mr. Siva Bala Murugan and Mr. Anis Mohammad, counsels
for the Applicant

Versus

Union of India and Others

.....Respondents

Through: Mr. Ajai Bhalla, counsel for the Respondents

CORAM:

**HON'BLE MR JUSTICE MANAK MOHTA, JUDICIAL MEMBER,
HON'BLE LT GEN M.L. NAIDU, ADMINISTRATIVE MEMBER**

JUDGMENT

Date: 11.11.2011

1. This case was filed before the Hon'ble Delhi High Court as WP(C) No. 18433 of 2004 on 20.11.2004 and later on it was transferred to the Armed Forces Tribunal on 13.01.2010.

2. The applicant vide his petition has prayed for setting aside and quashing of the order passed on 17.12.2003 (**Annexure P-1**) by the Summary Court Martial (SCM) with all consequential benefits by which he was convicted and sentenced to one year R.I. and dismissed from service.

3. The brief facts of the case are that applicant was enrolled in the Army on 06.08.1999. While posted at 3 Guards in Jodhpur Cantonment, an incident took place on 12.09.2003 at 14:40 hours. It is alleged that a molestation attempt was made on a girl, named, Ms. Aarti Singh, aged 11 years, daughter of Capt. J.K. Singh while she was returning from school to home.

4. After three days of the incident, Capt. J.K. Singh, the father of the victim apprehended the applicant because Aarti Singh claimed to have recognized the applicant as being the same person who made the attempt to molest her on 12.09.2003. Consequently, SCM was ordered under Section 69 of the Army Act read in conjunction with Section 354 of the IPC. SCM passed an order on 17.12.2003 (Annexure P-1) for the applicant to suffer one year of Rigorous Imprisonment (RI) to be carried out in civil prison and to be dismissed from service. Appeal/representation filed by applicant was also rejected vide order dated 18.08.2004 (**Annexure P-3**).

5. Learned counsel for the applicant argued that initially the applicant was forced to plead guilty and subsequently it was changed to not guilty which can be noticed from the copies of the proceedings which have a lot of overwriting. He also stated that no FIR was lodged.

6. Learned counsel for the applicant stated that there was no independent witness to the incident and all relevant witnesses that were

recorded were from the same family i.e. Aarti Singh (victim), Shruti Singh (sister), Capt. J.K. Singh (father) and Mrs. Kamlesh Singh (mother).

7. Learned counsel for the applicant argued that going by the statement of PW-5, Mrs. Kamlesh Singh, the mother of the alleged victim, it is clear that she first rang up her husband then she rang up the Sentry to stop anyone from going outside the enclave and then ran out to see her daughter. This conduct was not natural reaction of a person who is informed about her daughter being molested by someone.

8. In case of PW-6, Capt. J.K. Singh, the father of the victim to answer the Question no. 20 by the court, the witness stated that he was able to indentify the accused because he was behaving in a suspicious manner when he stopped him. He further stated that when he tried to stop him, he tried to ride away on his bicycle at a very fast speed. Learned counsel contended that his statement is based on mere suspicion. He further stated that the statements of other two witnesses i.e. PW-1 Aarti Singh and PW-2 Shruti Singh also do not inspire confidence to prove guilt. Circumstantial evidence also does not support the prosecution story despite all that he was punished.

9. Learned counsel for the applicant cited the judgment of Hon'ble Apex Court passed in the case titled "**Matru alias Girish Chandra Versus State of Uttar Pradesh**" (1971) 3 SCR 914 in which their

Lordships have delivered on the weight of circumstantial evidence. It was held that

“The cumulative effect of circumstantial evidence in the present case falls short of the test required for sustaining a conviction. When proof of guilt depended solely on circumstantial evidence, it was incumbent on the courts to properly consider and scrutinise all the material factors and circumstances for determining whether the chain of circumstantial evidence is so complete as to lead to the only conclusion of guilt.”

10. Learned counsel further contended that despite having given one year RI and dismissal from service, the character of the applicant has been shown very good in the discharge certificate. This is dichotomous with the punishment handed down to the applicant.

11. Learned counsel for the applicant further argued that offence has not been proved because the entire case is based on suspicion. No identification parade was carried out and only PW-1 Aarti Singh (victim) and PW-2 Shruti Singh her sister stated the facts with regard to incident.

12. Learned counsel further argued that at the point of time on 12.09.2003, the applicant was at the golf course duty as stated by PW-3 CHM Rajpal and PW-4 Sub Dhukal Chand, therefore, he could not have been at the place of incident which was in Shaitan Singh enclave which is far away from golf course.

13. Learned counsel for the applicant further argued that as per Section 69 of the Army Act, SCM is prohibited and the case should have been tried by GCM going by the provision of Section 120 specific reference to Sub Section 2.

14. Learned counsel for the respondents stated that despite been opportunity given to the applicant, applicant declined to cross examine any of the witnesses during the hearing of the charge under Rule 22, Recording of Summary Evidence under Rule 23 and during the SCM trial. This is corroborated from record. Hence, the applicant now cannot agitate the same.

15. Learned counsel for the respondents also stated that initially some photographs were shown to Aarti Singh (PW-1) out of which she identified five photographs as to the likely suspects. When the identification was carried out on 16.09.2003, she declined to identify anyone of them. After the identification, it was at about 16.00 hrs when she was going back along with her father when she saw the applicant moving on the road on a cycle. She indicated to her father and shouted that he was the one and immediately recognized him positively. The applicant increased his cycle speed but was chased and apprehended. During the court martial proceedings in the deposition of PW-6 Capt. J.K. Singh at question no. 20, the answer clearly states that

“when my daughter, Arti identified Gdsm (LNK) Chekku Kumar cycling on main road outside HQ 4 (1) Armd Bde

Gate and shouted to me that he is the person. Gdsm (LNK) Chekku Kumar started cycling faster. He was however, apprehended near the MES 1B crossing. Gdsm (L Nk) Cheeku Kumar, at this stage, was looking scared and did not say anything. I could make out from his behaviour that he was trying to hide something.”

16. Learned counsel for the respondents stated that in case the allegations and statements of PW-1 Aarti Singh are corroborated by PW-2 Shruti Singh who was also an eye witness to incident, it will be seen that both have narrated the sequence of facts in a similar manner. Answering to Question no. 3 by the court, Aarti Singh has stated as under;

“Yes, on 12 Sep 2003, at around 1440 hrs, while walking back from my school bus to my house with my younger sister, Shruti, Gdsm (L Nk) Cheeku Kumar approached me. He put his hand on my shoulder and asked me my name, my father’s name to which I replied. He told me that my house was located in some other place and started to pull me back towards the bush. I started crying and shouting for help. My younger sister, Shruti ran towards our house to inform my mother about this incident. Meanwhile, Gdsm (L Nk) Cheeku Kumar strongly caught hold of my shoulder and school bag and was pulling me towards the bushes.”

17. As regard the identification, PW-1 Arti Singh was clear in her answer to question no. 6 in which she states as under:

“On 14 Sep 2003, at approx 2100 hrs, we were, i.e. me and Shruti, taken by our father to the residence of Lt Col S.K. Sharma, 2IC, 12 RAPID Provost Unit and were shown photos of few persons to identify. I suspected five of them. Later, on 16 Sep 2003, my father took me to HQ 4 (1) Armd Bde to physically see and identify the person. All suspected pers were shown but Gdsm (L Nk) Cheeku Kumar was not amongst them. While coming out from HQ 4 (1) Armd Bde area after Identification parade, at approx 1600 hrs, I saw Gdsm (L Nk) Cheeku Kumar moving on the road on a cycle. I immediately positively identified him and shouted to my father that he is the person. Gdsm (L Nk) Cheeku Kumar increased his cycle speed but was caught near MES IB crossing.”

18. Learned counsel for the respondents submits that going by the above material, the identity of the applicant was well established beyond doubts and also the manner in which molestation being attempted was corroborated by PW-2 Shruti Singh in similar words in answer to question no. 8 which are as under :

“On 12 Sep 2003, at around 1440 hrs, while walking back from my school bus to my house with my elder sister, Aarti, Gdsm (L Nk) Cheeku Kumar approached her. He put his hand on her shoulder and asked her name, our father’s name and told us that our house was located in some other direction. He firmly held the shoulder of my sister, Aarti and started dragging her towards the bushes. Aarti started crying and I ran to my house to inform my mother.”

19. It was also replied that as regards the invoking of Section 69 of the Army Act and trying the case by SCM is concerned, the permission from the competent authority i.e. Brig Cdr who has a warrant to convene a DCM, was obtained on 26.11.2003. Therefore, there was no illegality of trying the case by SCM.

20. Having heard both the parties at length and having examined the court martial proceedings in original, we are of the opinion that the procedure given out in the Army Act and Army Rules with specific reference to Army Rule 22, Army Rule 23 and Army Rule 24 was strictly followed by the respondents and during course of arguments no contention has been raised even by the learned counsel for the applicant.

21. Due dispensation was also obtained by the competent authority to try the case by SCM though charged under Section 69 read in conjunction with Section 354 of the IPC. Thus the contention raised in this respect by the applicant is not having any force of law.

22. We have also considered the contention of learned counsel for the applicant as regards the effect of suspicion and circumstantial evidence. In this case, applicant was not impleaded merely on suspicion but was stopped on identification by PW-1 Ms. Aarti when he was trying to run away. Therefore, his action did seem suspicious and he was duly apprehended. The applicant had taken time questioning PW-1 Aarti

Singh by asking her name, her father's name, the house she lived and so on. Thus, ample opportunity was available to the witnesses to recognize him subsequently. Both the sisters, PW-1 and PW-2 positively recognized the applicant at a subsequent stage. There is no allegation of previous enmity with him, therefore, possibility of falsely involving him does not arise. We have also perused the statements of witnesses. Therefore, we feel that there was no requirement of conducting an identification parade. Since the case occurred in a cantonment area which is a restricted area and the charge was under Section 354 IPC lodging of an FIR was not essential. The guilt is well established and in such cases victim and her relatives are most relevant witnesses. The contentions placed by applicant in this respect are not sustainable. The aforementioned judgment cited by the applicant is not helping his contentions in the facts and circumstances of the present case, as the case is not solely based on circumstantial evidence but based on the statements of victim and her sister. In such type of cases where there is no motive to falsely involve the accused, the statement of victim is most material. There is also no substance in the plea that he was working in golf area and was not involved in incident. Contrary to, it has come on record that the victim was pulled by the applicant towards the bushes. It itself established the mental attitude of the applicant to commit big offence.

23. In view of the foregoing, no interference is needed, the T.A. is dismissed. No order as to costs.

M.L. NAIDU
(Administrative Member)

MANAK MOHTA
(Judicial Member)

Announced in the open Court
on this 11th day of November 2011