

**ARMED FORCES TRIBUNAL,  
PRINCIPAL BENCH, NEW DELHI  
T.A. 520 OF 2009  
Writ Petition (Civil) No. 1939 of 1998**

**IN THE MATTER OF:**

**EX RFN CHANDER PRAKASH** **.....Applicant**

Through : Mr.Vinod Kumar, counsel for the applicant

Versus

**The Union of India and others** **.....Respondents**

Through : Mr. Ajai Bhalla, counsel for the respondents

**CORAM:**

**HON'BLE MR JUSTICE S. S. KULSHRESTHA, MEMBER,**

**HON'BLE LT GEN Z.U.SHAH, MEMBER**

**JUDGMENT**

**Date: 19 May 2011**

1. The petition under Article 226 of the Constitution of India was brought quashing of SCM proceedings held on 1 Feb 1995 against the appellant whereby he was held guilty for the offence u/s 304 A IPC and also for causing death of Hav Baldev Singh by rash & negligent act and also u/s 55 (a) of the Army Act for willfully destroying the Rifle registered No. CU-3084 which was the property of the Govt. and was sentenced to rigorous imprisonment for one year, dismissed from service, forfeiture of all arrear of pay and allowances and other dues payable to him, and also for recovery of the amount of Rs.10,000/- the cost of self-loading rifle registered no. CU-3084. The writ petition was transferred to this Tribunal after enforcement of Armed Force Tribunal Act, 2007 (which is hereinafter to be called the Act) and was treated to be an Appeal u/s 15 of Armed Force Tribunal Act.

2. It is said that the appellant was falsely implicated in this case. As a matter of fact, he was accompanying the deceased for the purpose of hunting but there is no cogent and convincing evidence for fixing his culpability in the said crime. The dead body of the deceased was not recovered and so factum of death

was also not established. The appellant, Rfn Ashok Kumar and Hav Baldev Singh (now deceased), all had gone for hunting. There was some land slide and the appellant could somehow escape, but whereabouts of Hav Baldev Singh could not be found. He had also taken the Rifle of the appellant. That was also not traceable. On such premises his culpability was fixed. Whatever inference was drawn by the SCM that would not in any way prove the guilt against the accused-appellant. Moreover, the prosecution did not whisper about the shot fired by the appellant. There were no witnesses to the accident. Merely on the missing of Hav Baldev Singh, guilt can not be established against the appellant. It is also stated that whatever confessional statement was recorded by the Circle Officer or the Magistrate, can not be read as evidence in the eye of law. It is also stated that the plea of the guilt was wrongly recorded by the SCM and that can not be read as substantive piece of the evidence on the part of the appellant. This appeal was resisted from the side of respondents contending that there is ample evidence against the appellant. It is established fact that appellant alongwith Hav Baldev Singh and Ashok Kumar duly armed with rifles went for hunting. Rfn Ashok Kumar could not keep pace with other two

persons who were going ahead. It was for the accused-appellant to have explained as to what have had happened to Hav Baldev Singh whom he was accompanying for the purpose of hunting. It was the field area and there could be no possibility of any eye-witness and accused-appellant alone had the knowledge till the point he accompanied him and in view of the arrangement made u/s 106 of the Evidence act, it was for him to have explained the whereabouts of Hav Baldev Singh. To the contrary, he came back with Rifle of the deceased and the empty cartridge but did not tell about the whereabouts of Hav Baldev Singh. To the contrary he told that because of the land slide it was not possible for him to come back. Apart from it he gave his confessional statement before the Circle Officer u/s 164 of The Code of Criminal Procedure and had explained the circumstances under which the accident had taken place. Moreover in the course of trial he also pleaded guilty. The testimony of witnesses remained unimpeachable. Further, full opportunity was afforded to the appellant and there appeared to be no reason to interfere in the findings of the trial court.

3. In order to appreciate the salient points raised from the side of the appellant, it shall be useful to brief the narrative appeared

from the first hand information given by Rfn Ashok Kumar to Major S. H. Naqvi. It was reported by him that Hav Baldev Singh and Rfn Chander Prakash (who is accused) had gone towards Kumrotsar for hunting at about 1000 hours on 8 March 1994. During the course of movement they came across a land-slide. At this point, Rfn Ashok Kumar expressed his inability to cross the land-slide and detached himself from the hunting party and moved down to the foot track, on the lower portion of the land slide. Hav Baldev Singh and Rfn Chander Prakash, however, moved ahead (Eastwards across the land slide). After few minutes Rfn Chander Prakash came back on the foot track across the land slide and told that Hav Baldev singh had climbed up from the area of Big Boulders and crossed the land slide whereas he could not do so. On the suggestion of the accused-appellant both of them went to Chauri Huts to look for Hav Baldev Singh but could not find him. At about 2000 hours, he and Rfn Tsewang Tobge were sent by accused to report the matter to Sub Parma Nand, the JCO Incharge of OP GDS of 8 JAK LI. A report of non-location of Hav Baldev Singh was lodged at PS Lumla. Request for search was made by Major S H Naqvi to Circle Officer, Zimithang Circle, Distt. Thwang for making search of Hav

Baldev Singh. But the police could not locate him. However, in order to implicate the accused-appellant, his confessional statement was fabricated by the Circle Officer and he was put to trial on the following charges :

**First Charge**  
**Army Act**  
**Section 69**

**COMMITTING A CIVIL OFFENCE, THAT IS TO SAY, CAUSING DEATH BY A RASH OR NEGLIGENT ACT, NOT AMOUNTING TO CULPABLE HOMICIDE CONTRARY TO SECTION 304 A OF THE INDIAN PENAL CODE**

**In that he,**

**At field, on 08 Mar 1995, by rashly or negligently firing a shot from 7.62mm self loading Rifle Registered No CU 3084 caused the death of No 9082687M Hav Baldev Singh of his unit.**

**Second Charge**  
**Army Act**  
**Section 55 (a)**

**WILFULLY DESTROYING ARMS THE PROPERTY OF THE GOVERNMENT ENTRUSTED TO HIM**

**In that he,**

**At field, on 08 Mar 1994, willfully destroyed by throwing into the river Namjang Chu a 7.62 mm self**

**loading Rifle Registered No  
CU 3084, the property of the  
Government entrusted to  
him, valued at Rs 14030.00**

4. Prosecution in support of its case, examined Rfn Ashok Kumar as PW1 who accompanied the accused-appellant and Hav Baldev Singh on the fateful day for hunting. It was stated by him that Hav Baldev Singh and accused-appellant went ahead of him, after sometime when he noticed the accused-appellant all alone, he asked about the whereabouts of Hav Baldev Singh. On it, it was replied by him that Hav Baldev Singh was ahead of him and he crossed the land slide from Area Rocks and he could not cross that area. However, at that time accused-appellant was appearing to be nervous and worried in giving that reply. It was further clarified by the witness that when accused was asked to report this matter to JCO, he showed his inability on the excuse of being totally exhausted and suggested that he should go to report the matter. From the statement of the witnesses, however it is evident that the accused-appellant was accompanying the deceased till to the end point where the land slide had been suggested. It is submitted by Ld. Counsel for the appellant that the testimony of this witness can not be relied upon when he

himself was not giving the true narration of the facts and he is the person who misled the search team. It was mentioned that the witness has however, made clear that at the time of search he misled the team. But this would not be a ground for rejecting the testimony of this witness which remained intact and no cross examination was preferred against him. The principle of “Falsus in Uno Falsus in Omni”(false in one thing false in anything) is not applicable in India. Particularly, the witness made it clear at the time of search he misled the team. That would not be the ground to reject his testimony when it is admitted fact that all the three went for hunting and the accused-appellant with the deceased was going ahead.

5. PW2 – Rfn Tsewang Tobge made it clear that Rfn Chander Parkash and Rfn Ashok Kumar returned from hunting to the Post. They were asked about Hav Baldev Singh, to which accused told him that ***“Aaj Havildar ka ana mushkil hai. Jahan mein nahin char saka wahan Havildar char gaya slide area mein chala gaya, niche hum intezaar kar ke aagaye lekin hamen Havildar nahi mila”***. Witness further stated that search was made but Hav Baldev Singh could not be located. However, the accused whispered that now he would not be spared from the GCM.



6. PW3 – Sub Parma Nand stated all about the making of the efforts for locating Sub Baldev Singh. PW4 – Major H S Naqvi who was at the relevant time Adjutant 8 Dogra stated that on 8 March 1994 he received a telephonic call from Sub Parma Nand reporting that Rfn Tsewang Tobge and Rfn Ashok Kumar both of 8 JAK LI had come from Dung Post Op Gd detachment sometime back and reported to him about the missing of Hav Baldev Singh from 1130 hrs on 8 March 1994 along with 7.62 mm Self Loading Rifle. He reported this matter to PS Lumla. It was also stated by the witness that all efforts for tracing Hav Baldev Singh remained futile as he was misled by his other companions about the place where they had gone for hunting and for that reason dead body was not recovered.

7. PW-5 Rfn Ashwani Kumar stated that on 10 March 1994 between 1200 to 1230 Rfn Chander came to Dunger Post in a Jonga vehicle of 8 DOGRA to collect his bedding and other personal belongings. The accused after collecting his belongings threw empty cartridge of 7.62 mm ammunition in front of him and told that same should be given to Lance Hav Madan Lal, the magazine guard commander of the unit. PW-6 also stated that

PW5 – Rfn Ashwani Kumar handed over empty cartridges to Hav Madan Lal which was given to him by the accused-appellant. PW-7 Lance Hav Madan Lal also confirmed it and also stated that accused-appellant wanted to have cartridge. Initially he refused but subsequently he gave two cartridges and then requested that he should also share the hunt. PW-8 Hav Mangal Ram also supported the prosecution version with regard to giving of two live cartridges.

8. From the statement of the witnesses which remained unimpeached, atleast this fact is established that the accused-appellant, Rfn Ashok Kumar and Hav Baldev Singh (deceased) all the three went for hunt. Accused-appellant and Rfn Ashok Kumar came back and they did not tell about the whereabouts of Hav Baldev Singh. However, it is clear from the statement of Rfn Ashok Kumar that Hav Baldev Singh and accused-appellant went ahead and subsequently accused-appellant came all alone with the rifle of the deceased. He did not give any explanation except the same that he crossed land-slide and after taking his rifle thereafter he did not come back. From such evidence it can be concluded that the accused-appellant was there with Hav Baldev

Singh and it is he who has to explain the whereabouts of Hav Baldev Singh. It is settled law under the criminal jurisprudence that Sections 105 and 106 of the Evidence Act place a part of the burden of proof on the accused to prove facts which are within his knowledge when the prosecution establish the ingredients of the offences charged, the burden shifts on the accused to prove certain facts within his knowledge or exceptions to which he is entitled to.

9. It was also argued by the Ld. Counsel for the respondents that it was field area and there could not be any other person to witness the incident and it was only accused-appellant to explain the whereabouts of the deceased. He has not given any explanation except he was there with Hav Baldev Singh and what next have happened to him it was for him, it could not be explained. In the absence of any explanation, the possibility of his involvement in the killing of Hav Baldev Singh can not be ruled out. Further there is no explanation as to how his Rifle had gone with Hav Baldev Singh and how he managed to have empty cartridge which was handed over by him to PW5 – Rfn Ashwani Kumar. Accused also pleaded guilty.

10. Further it may be mentioned that strong circumstantial evidence was appearing against the accused. He has not given any explanation to that evidence appearing against him. Silence on the part of the accused-appellant would be construed to be providing the missing link for completing the chain. In **SNEH PATRA V/S STATE OF KARNAL 1995 (9 SCC page 242)**, the apex court held that in the case of circumstantial evidence where the accused offered an explanation and that explanation can be counted when the same offered in providing a missing link to complete the chain of circumstances.

11. Here, the accused offered only the plea of the guilt that would also on the analysis, complete the chain. The same principle has been followed and reiterated in the case of **STATE OF MAHARASHTRA v/s SURESH** (2000 (1) SCC page 471) where it has been said that :

***“the false answer given by the accused when his attention was drawn to the circumstances, renders that circumstance is capable of incriminating him.”***

12. It was next submitted on behalf of appellant that what ever the plea of the guilt was recorded it was an arbitrary act on the part of SCM. There is strong presumption with regard to correct recording of proceedings by the Court.

13. It has next been submitted by Ld. Counsel for the appellant that there could not be any intention on the part of the accused-appellant to have killed his own fellow-man. That would appear from the material on record that both were ahead for hunting and it is because of some mistaken belief of the presence of some animal, fire was shot by the accused but it accidentally caused hurt to Hav Baldev Singh. Much emphasis was laid that on the facts it turned out to be a case of accident and wrong identity. Such appears to be the plea of the accused-appellant and on that basis he was simply tried of the offence u/s 304 A IPC and on that premises there appears to be no illegality for the trial and conviction of the appellant in that offence.

14. It has next been submitted that whatever the confession was recorded by the police is not admissible in evidence. Thrust was laid from the side of the respondents that such confessional statement was recorded by the Magistrate u/s 164 Cr.P.C. The

Magistrate who is said to have recorded the confessional was examined by the prosecution. It is not clear from the materials on record that the Magistrate who recorded the confessional statement of the accused was blissfully aware of the stringent responsibility cast on him by section 164 Cr.P.C. It could only be assessed when he was examined as witness in the court. Merely recording of the so-called confessional statement by the Magistrate, it can not be said that at that time the accused was not in police custody. By not producing the Magistrate, it can not be ascertained as to whether he made searching questions regarding the nature of custody of the accused. In the given circumstances, such confessional statement can not be relied upon. Confessional statement was required to be proved by examining the Magistrate and merely production of such confessional statement without ascertaining the safeguards as provided u/s 164 Cr.P.C., can not be relied upon.

15. Further it is strenuously argued that question of factum on the death of Hav Baldev Singh has not been established by the prosecution. He was missing from the day one and in the absence of the recovery of the dead body or the weapon, it can not be construed that he was killed. In such accident **death or**

***murder “Corpus Delicti” consists of proof of death of the person alleged to have been murdered and that such death has been caused by the commission of a crime by someone. However, also reiterated that it is not essential to establish corpus delicti, but, fact of death of victim must be established like any other fact.*** (see 2010 8 SCC page 536).

Here in this case, the clinching evidence that the deceased was with the accused at the relevant time and that both had gone for hunting, accused-appellant came back with the live cartridge and the gun of the deceased, had not given any acceptable explanation with regard to the whereabouts of the deceased. To the contrary he pleaded his guilt.

16. In such circumstances, non-recovery of the dead body will not materially affect to the prosecution case. In view of the aforesaid discussions, we do not find any merit in appeal. In the result it is dismissed.

**Z. U. SHAH  
(MEMBER)**

**S. S. KULSHRESTHA  
(MEMBER)**