

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

TA No.56 of 2009
WP (C)1975/94)

Sh.Manoj Nehra ...Petitioner (1)

Versus

Union of India & others ...Respondents

AND

TA No.230 of 2009
WP (C)1049/95)

Sh.Vikram Pal Singh ...Petitioner(2)

Versus

Union of India & others ...Respondents

For the Petitioner (1): Mr. O.S.Saran, Advocate
Mr. D.K.Sharma, Advocate
Mr.O.S.Punia, Advocate

For the Petitioner (2): Mr. S.S.Pandey, Advocate

For the Respondents: Mr. R.Balasubramanian, ASG

C O R A M:

HON'BLE MR. JUSTICE A.K.MATHUR, CHAIRPERSON
SHON'BLE LT.GEN.S.S.DHILLON, ADMINISTRATIVE MEMBER

JUDGMENT
(30.5.2012)

BY CHAIRPERSON:

1. Both these petitions are connected with each other,
hence they are disposed off by a common order.

2. For convenient disposal of both these petitions, the facts in the case of T.A.56/09 (WP No.1975/94) are taken into consideration.
3. Petitioner in this petition has prayed that by appropriate direction the finding of guilty and order of sentence dated 27.7.1993 recorded by Court Martial and the order dated 29.3.1994 passed by the Chief of the Naval Staff may be quashed and petitioner may be given all consequential benefits.
4. Petitioner was enrolled in the Indian Navy in 1988 as Store Assistant Grade-I in the Naval Ship "VIKRANT" under the control of the respondents. Petitioner was chargesheeted to face a Court Martial on oral complaint by one Pawan Kumar, Electric Mechanic 1st Class to Capt. Ravi Chand Kochar, Indian Navy, Commanding Officer, Indian Naval Ship "VIKRANT" after getting the same approved by Vice Admiral Shri K.A.S. Raju. He was to face a Court Martial wherein he was found guilty for the charges and sentenced to dismissal from service and 10 years imprisonment. Thereafter he filed a

petition for review and thereafter on judicial review u/s 162 of the Navy Act his sentence was confirmed. Hence, he challenged these court martial proceedings by way of this petition. The charges which were framed against the petitioner reads as under:

CHARGESHEET

The accused Manoj Nehra, Store Assistant First Class, Indian Navy, belonging to Indian Naval Ship Vikrant being a person subject to Naval Law, is charge for that he:-

- (1) *Did at about 2100 hrs on the Fifteenth day of May Nineteen Hundred and Ninety three strike Mrs. Poonam wife of Pawan Kumar, Electrical Mechanic Power First Class, Indian Navy of Indian Naval Submarine Vagir with fist of her chest and with his leg on her back in Quarter Number Makar 7A, Navy Nagar, Colaba, Bombay and thereby committed an offence punishable under section 48(a) of the Navy Act, 1957*
- (2) *Did at about 2100 hrs on the Fifteenth day of May Nineteen Hundred and Ninety three committed rape on Mrs. Poonam, wife of Pawan Kumar, Electrical Mechanic Power First Class, Indian Navy of Indian Naval Submarine Vagir in Quarter Number Makar 7A, Navy Nagar, Colaba, Bombay and thereby committed an offence punishable under section 376 of Indian Penal Code read in conjunction with Section 77(2) of the Navy Act, 1957*
- (3) *Did at about 2100 hrs on the Fifteenth day of May Nineteen Hundred and Ninety three committed criminal intimidation by threatening Mrs. Poonam wife of Pawan Kumar, Electrical Mechanic Power First Class, Indian Navy of Indian Naval Submarine Vagir to kill Ms. Poonam with her husband Pawan Kumar, Electrical Mechanic Power First Class, Indian Navy of Indian Naval Submarine Vagir, with the intention to prevent her from reporting the incident of rape committed on her by him, to anybody and thereby committed an*

offence under section 506 of the Indian Penal Code read in conjunction with Section 77(2) of the Navy Act, 1957.

5. Prosecution in order to substantiate these allegations examined as many as 9 witnesses and one R.K.Singh as Court witness. Court martial authorities after considering the oral evidence found the petitioner guilty of the charges and thereafter, the Chief of Navy Staff confirmed the same and found him guilty and sentenced him to undergo 10 years rigorous imprisonment in Class-II prison and Rs.2,000 as fine, or to undergo additional one year's imprisonment, to be dismissed with disgrace from the Naval Services and to be deprived of first GCB (Good Conduct Badge) vide order dated 27.7.1993. Then the petitioner filed a judicial review petition which was rejected by the Chief of the Naval Staff by its order dated 28.3.1994. Hence, this writ petition has been filed by the petitioner challenging the aforesaid finding and punishment passed by the court martial authorities in the hon'ble

Delhi High Court which has been transferred to this Tribunal on its formation.

6. A reply has been filed by the respondent contesting the matter and it supported the case of prosecution.
7. We have heard learned counsel of the parties and perused the record. In order to unfold the prosecution story, prosecution examined PW-7 Mrs. Poonam who was said to have been subjected to rape and intimidation. Therefore, much depends on the testimony of Mrs. Poonam (PW-7). She has deposed that on 15.5.1993, she was alone at home. It was 9 O'clock in the evening, she heard a knock at the door and she went to open the door. She saw VP Singh and Manoj Nehra standing at the door and both of them were in a drunken state. Then Manoj Nehra asked where is her husband and she told them he is away on sailing. He then again asked if anybody is there at home and she replied there is nobody and she is alone. Then Manoj Nehra asked her for a glass of water. She went inside the room to get the water. When she was

getting the water, she saw Manoj Nehra who was standing at the door entered the room and closed the door of the main entrance from inside. Mr.V.P. Singh stayed outside and locked the door from outside. When she asked Manoj Nehra why he had come inside and why he had closed the door, he knocked the glass from her hand. Then he hit her chest so hard that she sat on the ground and when she tried to get up, he again hit her so badly on her chest that she fell down on the floor. Then he hit her on shoulder due to which she fell down on her back. Then he held her by the upper arm and forcibly dragged her to the bed. When he was forcibly trying to put her on bed, she bit his right hand and kicked him, still he forcibly put her on the bed. Whenever she tried to release herself he used to slap her on her face. Whenever she tried to scream he slapped her on her face. He pinned her hands down and put his knees on her palm. He then took her dupatta which was lying on the bed and tied her mouth. When she was trying to release herself and hit

him, he caught both her hands and tied them to her back with the other corner of the dupatta. Then he tried to open her salwar, she struggled violently and in the process the string of the salwar itself broke and the salwar was torn. Then he pulled her underwear and salwar below her knees. Again she tried to escape but he sat down on her legs. Then he opened his pant and underwear and pulled it down to his thighs. He then inserted his private part in her private part and raped her.

8. After sometime there was a knock at the door. Manoj Nehra got up and untied her hands. When she tried to get up he pushed her on the bed and threatened her not to come out or he would hit her. As soon as he went out she took her salwar and kurta and went to the door. She saw V.P. Singh was standing at the door and Manoj Nehra was handing over a key to V.P. Singh. After taking the key V.P. Singh went away. After that he again bolted the door from inside and came back to the bedroom. There was a knife lying

there which is used for cutting vegetables. He took the knife and threatened her saying that if she will ever report to anyone or tell this incident to anyone he will kill her and as well as her husband. It was easy for him to kill her husband when he comes late from duty alone on cycle and he told her that being a woman she cannot complain to the police and he knew people in the police and he had also killed one person in the past. Therefore, on being threatened, she was scared and could not tell any one and was greatly disturbed. After her husband came, she told him that "Mein Tumare layak nahi rahee, mein barbad ho gayee". She used to keep saying this and cry. After this incident her sister-in-law came on 16th May and she was so scared that she could not tell about this incident to her. She did not tell her husband also till 8th June because she was scared. He used to keep asking her and she used to tell him "Main aapke layak nahi rahee, mein barbad ho gayee". He also was very unhappy and she could not see him sad. At last on 8th June, morning

about 4 O'clock she told him the whole incident. Her husband felt very angry and put on his uniform and went to her elder sister-in-law's home. Then her sister-in-law came to her house and she told her everything. She also felt very upset about it and consoled her and remained in the house. She deposed that her husband came back from sailing on 26.5.1993. She was sharing this house with another family (PW-5 Mrs.Kamlesh). She also deposed that earlier also she saw Manoj Nehra standing in a drunken state and she told Mrs. Kamlesh that whenever this man comes to the quarter don't let him come inside and tell him she was not at home. She deposed that before her present home i.e.7A Makar, she was staying in R-16/1 OC with VP Singh. She further deposed that Manoj Nehra had come there at V.P. Singh's house and V.P. Singh's wife had given food and liquor to him and he slept there. One day her husband was on duty and he had his food at 8 O'clock and went away. In the mean time she also had food at 9 O'clock and went to bed to sleep. Around

midnight, somebody knocked and when she opened the door , she saw Manoj Nehra standing at the door and he had taken liquor. She told him that you have gone mad knocking the door at night. Then he apologised and left. In the morning she told Mrs.V.P.Singh, the wife of the co-accused that you may consider him as your brother, call him at home and give him liquor, but he should not be allowed to knock at my room late at night. She deposed that on the 8 & 9.6.1993, an officer came and asked her about the incident and she told him everything. He collected her clothes which she was wearing at the time of incident. She deposed that on 10.7.1993, she asked her husband to bring Baygon to kill the cockroaches. He brought the medicine and on seeing the medicine, a thought came to her mind that what is the use of living as Manoj Nehra has spoiled her life and therefore, she consumed the medicine but doctors and destiny saved her life. Thereafter, she was cross-examined and in cross-examination she deposed that her marriage took place

on 18.6.1992. She further deposed about her educational qualifications etc. She said that earlier her husband had shared the house with V.P. Singh and her relations with V.P. Singh's family were cordial and she was occupying one room in the quarter where V.P. Singh was residing. She admitted that she knew that the Naval Police Station is near her building and she also knew that the opposite house belonged to Mr. Prem Dayal, who was a Naval police person. Her brother-in-law was also living in the same area. Then she was asked that on the relevant date when the accused Manoj Nehra asked for a glass of water, out of courtesy did she call him inside? She denied calling them inside and they continued to remain outside. She deposed that V.P. Singh did not enter the house. She has further deposed that when the glass of water was offered to Nehra he was standing inside the house and she asked him as to why he had come inside, but he bolted the door from inside. Sh. V.P. Singh also bolted the door from outside, and before she could give the

glass of water to Manoj Nehra, the glass was plucked by him and she deposed that she could not get an opportunity to run away. Then she was confronted with regard to V.P. Singh bolting the door from outside, with her earlier statement given on 10.7.1993 but she explained by saying that she was upset and crying, therefore, she might have forgotten to make such statement. Then she was asked whether she was wearing bangles on the relevant date. She admitted that she had bangles on her hand. She said that she tried to kick him away to get free but he hit her therefore she could not resist. She bit his hand when he put her on the bed, but there was no sign of biting. She deposed that her hands and mouth were tied with dupatta. She was suggested as to whether she could have resisted by picking up any article from her house and hitting him when he was forcibly trying to overpower her in order to commit sexual assault. But she denied such suggestion. She was also asked that when her room sharer, Mrs.Kamlesh, came at 2300

hrs, did you complain to her, but she denied it stating that she was afraid to make any complaint, nor had she made any complaint to her sister-in-law. She also admitted that when Mrs. Kamlesh, her sharer of the house came, she opened the door. She admitted that for the first time she had thought of committing suicide. A suggestion was given to her that she was not forcibly raped and she wanted to settle some score of her husband with the accused. She was specifically asked that after her husband has come back did she go to bed with him, to which she admitted "yes". She was also specifically asked that why did she not preserve her clothes for the semen examination. But she stated that she did not do so and had washed all the clothes. She was asked her explanation that when there was a knock on her door and accused Nehra had gone away to give the key to V.P.Singh why did she not make any hue or cry to which she stated that she was scared. She also admitted that lights were on but she was scared therefore she did not made any noise.

9. Apart from PW-7, prosecution has also examined other witnesses i.e. PW-1 Lt.Cdr R.A.Singh, who has deposed that he was posted to INS Kunjali and on 8.6.1993 at about 1830 hrs when he was at Provost HQs at Kunjali, Lt.Cdr Bhaskar, Executive Officer INS Vagir came and reported to him that one of his sailor's wife Mrs. Poonam w/o P. Kumar has been raped and he requested him for assistance. He then produced P.Kumar before him and asked him to narrate the incident. This matter was then reported to Commandant Uday Date of Naval Police at Navy Nagar for further investigation who ordered his staff to look out for Manoj Nehra and his accomplice V.P. Singh and proceeded to place of incident i.e. 7A Makar. There he found P.Kumar and Mrs. Poonam. Then he asked Mrs.Poonam to narrate the incident of 15.5.1993 and she narrated the incident. The he took the lady for medical check-up along with her husband. He deposed that on 10.6.1993 he came to know from P.Kumar that Manoj Nehra had told Uday Singh that he had

committed a mistake and he was ready to ask for pardon from the lady. Then he again went to the house of the victim at 7A Makar and took the torn salwar of Mrs. Poonam with broken strings and other clothes and sealed them. He prepared a sketch map of the site and proved that site plan. Then he was asked about the distance between 7A and 7B, he deposed that it is 2 mtrs. He also deposed that another building, just opposite to Makar building, is about 30 to 40 feet away. He also deposed that there was a Naval Police Station about 30 to 40 feet away from the place of occurrence. He has also deposed that the building contained 13 to 14 stories and if one looks from the fourth floor, one can see what is happening in the opposite building on 6th floor or 7th floor. He has also admitted that most of the people live in houses drawing their curtains and keeping the door closed for their privacy. 2100 hrs was almost bed time for sailors and the curtains & windows would also be closed. He also admitted that clothes which were seized by him

had already been washed and had no stains of semen on that. He has also deposed that he called Manoj Nehra personally. He asked V.P. Singh about the incident and he also stated that he knew Manoj Nehra and that he was a regular visitor to his house. On 15.5.1993 he did not accompany the accused but had drawn his house key from 7A Makar at 2100 hrs. He has also deposed that V.P.Singh told him that Manoj Nehra asked him for the keys as Manoj Nehra said that he would be staying for the night with him and doesn't wish to go to Chembur. On 15.5.1993, Manoj Nehra asked V.P.Singh whether he know the address of P.Kumar since he had shifted from R-16/10C to which V.P.Singh denied any knowledge about his address. But he told him that on 15.5.1993, he was told by Manoj Nehra that although he did not tell him the address of P.Kumar but he had found out on his own. He admitted that while interrogating Mrs. Poonam he asked her whether she had screamed for help, she told that she did not scream for help because she received

a blow which put her out of her wits. She also admitted that she did not speak to anybody till she disclosed the incident to her husband. She admitted that V.P.Singh and Manoj Nehra had cordial relations. He also deposed that Mrs.Poonam has told him that Mrs.V.P.Singh tried to bring about a reconciliation when the accused felt guilty and was prepared to accept her sister by tying a rakhee.

10. PW-2 Surg. Cdr Sashindranath deposed that he examined the patient and she had undergone a traumatic experience. He deposed that she was sexually assaulted by a sailor and was showing signs of early pregnancy. In cross-examination he has deposed that miscarriage could happen if resistance and struggle of a high degree takes place.
11. PW-3 P.Kumar, husband of the victim Mrs. Poonam deposed that he went with his submarine to sea on 9.5.1993 and came back on 26.5.1993. His wife Mrs. Poonam opened the door and saw him and started crying. She said "Mujhe Barbaad kar diya hai and main

apke layak nahi hun". He asked her what has happened and she just keep on crying continuously. Finally on 8.6.1993 morning at 4 am she told him that she cannot see her in this condition any longer and narrated the whole incident and the traumatic experience of sexual assault by the accused. After hearing this he was very upset and went to his brother's house at B-2/ 33 Navy Nagar. There he met his sister-in-law and narrated the event. After that his sister-in-law came to his house and he also narrated the whole thing to Commanding Officer and investigation was taken up. He has also deposed that about an earlier occasion when the accused had knocked on the room of his house and the complaint made to V.P. Singh's wife, who pacified the matter and apologised on behalf of the accused. He deposed that when he came back from sea duty, his wife did not tell him about the incident till 8.6.1993 and whatever she had said earlier he could not understand. He admitted that he came back from sea duty on 26/27.5.1993. He

was also asked pertinent question that after he came back from sea, , did he go to bed with his wife to which, he replied "yes" he went to bed with his wife after coming from sailing and he was also questioned as to whether after returning from sailing how many times he had gone to bed with his wife. The attempt was also made to show that his wife had some relation with Uday , which is not relevant.

12. PW-4 is Mrs. Sangeeta w/o Mahajeet Singh, Petty Officer who is elder brother of the P.Kumar (PW-3). She deposed that she resides at B2-33 Navy Nagar and Pawan Kumar is her brother-in-law (Dewar). She deposed that on 16th May, she met Poonam at her house and she complained to her that she is having some nausea and vomiting but she did not disclose about the incident. On 8th June, P.Kumar, her Dewar, came to her house and told about Manoj Nehra's sexual assault. She deposed that she frequently visits the house of her P.Kumar and met Poonam, her Devrani, and when she met her on 16th May, she was normal.

13. PW-5 Mrs. Kamlesh wife of Ramakrishnan who was co-sharer of the room at the time of the incident has deposed that somewhere in mid-May somebody knocked at her house and on opening the door found that one man was enquiring whether Poonam is inside. She went to Poonam and told her that somebody in drunken state is asking for you, Poonam told her to tell him that she is not here. She informed the person accordingly and he went away. She was asked for how long did she stay in 7A Makar and she deposed that she stayed in that building from 9th of May onwards for 11 or 12 days. During those days she found Poonam quite normal and the only person who used to visit Poonam was her brother-in-law.
14. PW-6 U.Singh, LMA deposed that on 9.5.1993 at 2030 hrs he was at Asvini MI room where he saw Manoj Nehra and V.P. Singh seated and they were looking sad. Manoj Nehra told him that P. Kumar has reported something against him. He said if he has committed

some mistake, he does not mind asking for pardon and touching the feet of the lady.

15. PW-8 is a Cdr VS Bhaskar, Executive Officer, INSM Vagir who has deposed that on 8.6.1993 at about 1030 hrs when he was standing on the jetty, he saw P.Kumar, EMP crying on the jetty. His divisional officer Lt. Girish Kumar Jetly came to him and told that the sailor has some very serious problem and he wanted to talk to him separately. Thereafter, he took P.Kumar aside and saw that he was mentally disturbed and crying continuously, after which he narrated the incident that how his wife has been sexually assaulted by Manoj Nehra.
16. Before we examine the statement of PW-9 VP Singh we would like to examine the statement of Court Witness RK Singh (CW-1). It seems that witness was not examined in proper chronological order. RK Singh is a Petty Officer and he is working at INS Ranvijay. He deposed that he met V.P. Singh on 15.5.93 which was Saturday. He came to his quarter R19-13 A and they

were sharing a cup of tea and talking for about 10 minutes. Thereafter, he met him in the evening at about 2130 hrs at which time he told him that he was going to 7A Makar. He had a key in his hand and was playing with the key. He asked V.P. Singh from where he brought the keys. He told him that Manoj Nehra is sitting in 7A Makar and I have brought the key from him. Then R.A. Singh asked him why Manoj Nehra is sitting there and why are you defaming Manoj Nehra and Poonam. Then V.P. Singh told him to come along with him and he would show Manoj Nehra sitting there with Poonam. He, accompanied by his son, then went to 7A Makar. On reaching 7A Makar building V.P. Singh told him to go upstairs and see. He asked V.P.Singh why don't you come up with me, to which he replied that he has just a little while back come from the house and if he will go for the second time, Manoj Nehra might suspect him. He proceeded along with his son and knocked the door of P.Kumar and after a little while the door was opened by Poonam and he asked

her is anybody was inside with her. She replied no. He went a few steps inside towards her room. He did not see anybody inside and came down and told V.P. Singh that there is nobody and asked him why did he lie to him. After that he returned back home and V.P.Singh also went back to his house. He denied that V.P. Singh had dinner at his house. He also stated that he had good relations with P.Kumar. He also said that he did not find any disturbance or signs of struggle in the house and when she opened the door she was normal. He also denied that he had told Poonam as to why he had come to visit her.

17. PW-9 is V.P. Singh, who was sitting with R.K.Singh(CW-1) and who told him that Manoj Nehra is in the house of Poonam. He deposed that he had already shifted to his new house, but he had possession of his old house, and Manoj Nehra had asked for the keys of that old house as he wanted to sleep in that house. He deposed that he did not come down and he did not sleep in his house. He also

deposed that he went to take the keys from Manoj Nehra between 2000 hrs and 2100 hrs, before taking dinner at RK Singh's house. He has deposed that he had given the key to Manoj Nehra between 1830 hrs to 1930 hrs and then he went to R.K.Singh's house and he had no intention of eating there. After coming back from R.K. Singh's house at 2000 hrs, he found that the door of his house was locked. He then thought as to where he could find Manoj Nehra and remembered that Manoj Nehra had told him earlier that he would be going to 7A Makar. Therefore he went to 7A Makar. He deposed that there are four houses on the 7th floor and when he reached the 7th floor he went and knocked at the door of 7A Maker. He said that he was not sure whether Manoj Nehra was inside the house or not and he was making a guess. He knocked at the door as there was no call bell outside the house. When he knocked the door it was opened by Nehra who came out and asked him why he has come and then gave the keys to him. Thereafter he went to the house of R.K.

Singh. He also deposed that he told R.K. Singh and Mrs. RK Singh about Nehra and thereafter R.K. Singh went to 7A Makar to find out but he did not accompany him. This is the total evidence on the case.

18. First and foremost question that needs to be answered is whether any rape was committed on Mrs. Poonam by the accused or not. Learned Counsel for the petitioner has taken us to all the evidence and pointed out the unusual conduct on the part of Mrs. Poonam. He highlighted the nature of the house in the building, where one can peep into the house of the other person and the only shield is the curtains. Secondly, if the accused has really committed a sexual assault on the victim then she could have screamed or could have raised her voice as the other houses were just adjoining to each other. He also pointed out that a policeman's house was just opposite and the distance between two houses were hardly four to five metre. He has also pointed out that Police station was in same building. He also pointed out that there was no sign of

resistance or disturbance in the house when immediately after the incident the court witness (CW-1) R.K. Singh visited the house of Poonam. Poonam did not give an impression of agitation either when her sister-in-law went to meet her. He also pointed out that there is no evidence of any stains on the clothes of Poonam as she has washed all the clothes. Therefore, in these circumstances learned counsel for the petition has submitted that the whole story which has been worked out appears to be unreasonable and the allegation of so called sexual assault is not established. He has also pointed out about the natural conduct on the part of Poonam that when her husband came back, she should have told him that she is not worthy of him and she remained aloof and was showing great dissatisfaction. However, the husband could not understand till the 8th June when she disclosed the true facts to him. PW-1 Pawan Kumar, husband of the victim has stated that he has gone to bed with her a number of times after coming back from sailing. If she

had felt so much remorse that she is not worthy of him, why had she gone number of times to bed with him after he returned from sailing. Therefore, learned counsel has submitted that the whole case collapses on the basis of the testimony of PW-1 Poonam, therefore, we need not look to other evidence. The other witnesses are just supporting the story which is being given by her to her husband, and her husband in turn to other persons. As against this learned counsel appearing for respondent has submitted that in such cases of sexual assault on the lady, it is not possible to visualise the traumatic experience of the lady specially keeping in view our Indian psyche. It is submitted that a number of times because of our social taboo, the victim does not come forward and always try to suppress the facts and suffocate. At a belated stage, realisation dawns upon them to make such affair public and in support thereof learned counsel has invited our attention to the decision of the Apex Court in the case of ***Sri Narayan Saha and Anr Vs. State of Tripura***

(2004 7 SCC 775). In this case their Lordships has observed that: the evidence of the prosecutrix is not that of an accomplice, but a victim of the injured witness. It can be accepted without corroboration if the court, keeping in mind that it is dealing with the evidence of a person who is interested in the outcome of the charge levelled by her, is satisfied that it can act on her evidence. If the court is hesitant to place implicit reliance on the same ,it may look for evidence which may lend assurance to her testimony, short of corroboration required in the case of an accomplice. Nature of evidence required to lend assurance would depend on the facts and circumstances of each case. It is also pointed out that delay in lodging the FIR does not necessarily indicate that the version of the victim is false and if the delay is explained then it cannot be fatal. In this case, the prosecutrix was a married woman and the Court found the explanation of delay satisfactory and evidence of the prosecutrix was found to be credible.

19. In the case of ***State of Punjab Vs. Ramdev Singh(2004 (1) SCC 421)***, their Lordships have observed that:

The Court have to display a greater sense of responsibility and to be more sensitive while dealing with charges of sexual assault on women, particularly of tender age and children.

20. In the case of ***Dildar Singh Vs. State of Punjab (2006 (10) SCC 531)***, the case pertained to a minor student being raped twice by a teacher and the prosecutrix divulging about it only when her mother came to know that she was pregnant i.e. after more than 3 months of occurrence. Though she did not inform anyone about the incident, their Lordships held that in these circumstances it cannot detract from her reliability.

21. In the case of Ram Das and Ors. Vs. State of Maharashtra (2007 (2) SCC 170), their Lordships observed that:

Delay in filing FIR will not be fatal to the case of prosecution and that delay has to be considered in the background of the facts and circumstances in each case and is a matter of appreciation of evidence by the Court of fact. The delay in the case was 8 days and the explanation given in the delay was not found to be acceptable.

22. In the case of State of Punjab Vs. Ramdev Singh(2011 (2) SCC 550), their Lordships have observed that:

In case of rape the law does not require corroboration, the evidence of prosecutrix allow and sustain conviction. But for abandon caution the court may look for some corroboration so as to satisfy its conscience and rule out any false accusation..

23. So far as the proposition of law is concerned there are no two opinion that as and when the conscience of the court is satisfied that testimony of prosecutrix is trustworthy then there is no hesitation in convicting the accused for the rape. But no hard and fast rule can be laid down. It depends on each case. There is no rule of thumb that every case of delay will not be fatal and nor can it be ruled that in every case prosecutrix evidence should be accepted as truth. If there is to be a proposition that whenever the prosecutrix makes an allegation of rape against anyone, her testimony should be accepted as gospel truth and the accused should be convicted for rape, then it will create chaos. Therefore, Courts have time and again ruled that while appreciating the testimony of prosecutrix, caution

should be maintained lest an injustice may be done on the sole testimony of prosecutrix. Therefore, it would be desirable that some corroboration be obtained in addition to the testimony of the prosecutrix. The corroboration can be in terms of medical evidence, or other evidence collected on the site, or of some eyewitnesses, or of some resistance put by the lady and corresponding injuries on her body or some stains on the body of the victim. These are some of the checks to establish that the story of the prosecution has a ring of truth. Now admitting the facts of the present case, the incident has taken place in a naval quarters where each house is very close to the other and neighbor can peep into their neighbours house and privacy is maintained only by drawing of curtains. Therefore, if the victims story is to be accepted, then it is natural to assume that if some intruder walks into the house she is bound to scream and the outside world, screened merely by curtain, would have attracted people to the site. As per testimony, the

lights were on and the curtains were drawn, it therefore, looks somewhat unnatural that such kind of act can be committed in such circumstances when the house is so exposed to the sight of other occupants of the building. Secondly, immediately after the incident Court witness R.K.Singh, who is her brother-in-law, visited her, but she did not complain to him. Not only that, this witness has testified that the victim was appearing normal and the house was not in disarray and all household items were at their correct place. Even after the incident, she could have rushed out of the house and called the naval policeman who living just besides her house or other inmates of the quarters adjacent to the house and she could have shouted for the help. The explanation given by her that accused had threatened her that he knows the police people and can kill her husband when he travels in the night does not appear to be very satisfactory. The immediate reaction of the person who is exposed to this kind of assault is to revolt and seek help or shout

for help, especially in a concentrated urban complex where she was residing. We also fail to appreciate as to how she could digest such facts for such a long time in that the incident took place on 15th May and she disclosed the true facts only on 8.6.1993 to her husband. Specially when as alleged by her she had complained to her husband, PW-1 Pawan Kumar, that as soon as he came after sailing around 26/27 May, she has said that she is not worthy of him now and she remained perpetually depressed. We fail to understand why she couldn't take her husband into confidence and disclose her traumatic experience with the accused. So much so if she really felt remorse and she felt that she is unworthy of her husband, then how did she go to bed with him a number of times after her husband returned back from sailing, till she came out with the facts on 8.6.1993 to her husband. We fail to appreciate this long delay. If she had really been subjected to this traumatic experience, she could have immediately blurted it out when her husband came

back from sailing and disclosed everything to him. But her silence from 15th May till 8th of June is very enigmatic. We may concede that she did not feel confident of disclosing this fact after 15th May till her husband came, but after her husband arrived back on 26/27 May from sailing, she could have disclosed this in the first available opportunity. More so since she has gone to bed with him a number of times after his return from sailing. It is only on 8th of June that she told the husband. Therefore, this enigmatic silence on her part is unexplainable. Secondly, if she has undergone such a traumatic experience and she has persons of her confidence i.e. her own brother in law (brother of her husband) who was living just nearby, she could have told him or taken him or his wife in confidence. Even when her brother-in-law's wife, Sangeeta, came to visit her she could have taken her into confidence and disclosed this fact. So much so that on the same evening, soon after the incident, R.K.Singh (CW-1) came to meet her and she did not

disclose to him about the incident. The relations between RK Singh and Pawan Kumar were very cordial and Pawan Kumar used to treat R.K.Singh as an elder brother. These factors somehow create a doubt whether there was any sexual assault on her or whether it was a case of some consent. It is difficult in this background to come to any definite conclusion as to whether it is really a sexual assault that was committed on her or not. It is not the delay alone which makes the prosecution story doubtful, the fact remains that soon after the incident she has washed the clothes and if she was really very keen to complain about this traumatic experience, she should not have washed these clothes. The other factor which stands out is that she herself was pregnant and as per the testimony of the doctor, she was in the early stages of pregnancy of couple of months and if she had such a traumatic experience it could have caused miscarriage of pregnancy. Also she has deposed that she bit the hand of the accused but there was no corresponding

injury on the body of the accused. Therefore, all these small pieces of evidence when put together, creates a very doubtful situation whether she really was subjected to such a traumatic experience or not. We cannot presume that it was a case of a consent or otherwise, but suffice it to say that looking to these factors the evidence of the prosecutrix in the present case does not inspire confidence. Therefore, we give the benefit of doubt to the accused and acquit him of all the charges.

24. The case of Vikram Pal Singh is he abetted the offence and fabricated the false evidence. Once we are satisfied that the incident is doubtful, the question of convicting Vikram Pal Singh for abetment and fabricating false evidence does not arise. Consequently, we allow this petition and acquit the accused u/s 109 read with 376 and u/s 193. Hence as a result of above discussion we allow both the writ petitions and set aside the order of the Court martial order dated -27.7.1993 and the punishment. Likewise

in appeal no.230/2009, we set aside the order of the court martial dated-20.9.1993 and the punishment. Both the accused are acquitted of all the offences. Appeal is allowed. No Order as to costs.

[Justice A.K. Mathur]
Chairperson

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

New Delhi
30th May, 2012