

IN THE ARMED FORCES TRIBUNAL, PRINCIPAL BENCH
NEW DELHI.

T.A.No.415 of 2010
WP(C) No.3308/94

Ex. Sepy Chotte Lal

...Petitioner

Versus

Union of India & Ors.

...Respondent

For the Petitioner : Sh. O. P. Arya, Advocate

For the Respondents : Sh. Ajai Bhalla, Advocate

C O R A M:

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

HON'BLE LT.GEN. S.S.DHILLON, MEMBER (A)

JUDGMENT
10.1.2012

BY CHAIRPERSON:

1. Petitioner by this writ petition has challenged the order of court martial and punishment awarded by order dated 30.11.1992 rejecting the petitioner's appeal and also prayed that second summary of evidence recorded subsequently is contrary to law. It was also prayed that

the impugned chargesheet dated 7.9.1991, the proceedings of General Court Martial held at Ramgarh on 17.9.1991 and on subsequent dates and the findings and sentence of General Court Martial dated 3.10.1991 may be quashed with all consequential benefits. The present writ petition was filed by the petitioner before Delhi High Court and the same was transferred to this Tribunal for disposal, after its formation.

2. Petitioner was enrolled in the Indian Army on 26.12.1984 and he was posted to 987 Air Defence Regiment Workshop Gopalpur. It is alleged that on 4.10.1989, petitioner struck a hand drill machine on the head of HMT Tech(Gun) L.M.Nigam of the same regiment with intent to murder him and dealt a severe blow on his head. He was tried by General Court Martial and was found guilty u/s 307 of IPC and accordingly he was punished with imprisonment of 3 years and dismissal from service vide findings of the General Court Martial dated 3.10.1991. He was handed over to Civil Jail Hazari Bagh (Bihar) on 30.11.1991 for

execution of sentence, which he has undergone and discharged and released from the jail on 31.1.1994.

3. Petitioner also alleged that he was already punished for 89 days on 5.10.1989 by the CO, 987 A.D.Regiment, E.M.E. by conducting Summary Court Martial u/s 116 of the Army Act 1950 for the alleged offence but due to intervention of some superior authorities the record seems to have been tampered with. Again he was asked to face the Court Martial which is not correct and which operates as bar u/s 121 of the Army Act. Petitioner challenged the Court Martial on various grounds and has submitted that all the evidence which has been recorded in the Court Martial proceedings is not correct and findings given by the Court Martial suffers from the wrong appreciation of evidence.
4. Reply has been filed by the respondent and respondent contested the position and stated that the orders passed by the Court Martial was done in a most proper manner and all the provisions of the Act and Rules have been fully applied in the present case.

5. Before we embark on the appreciation of prosecution, we may at the onset clarify that the petitioner raised the plea of bar u/s 121 of the Army Act which he subsequently withdrew before the GCM. Same was clearly recorded in the Court Martial Proceedings and reads as under:

"No.14585045N Cfn/Fitter Satya Narayan, 987 AD Regt. Wksp. EME, being duly affirmed is examined by the defending officer:-

I was never called as witness related to this case in front of my OC Maj NM Samantray in his office on 05 Oct. 89. The witness after some time says that he was not called in the office of OC however, he was asked about the case in the general area of Wksp on 05 Oct 89. When OC asked about the case I was alone there. The prosecutor declines to cross examine the witness. After a short adjournment the defending officer submits that he is unable to substantiate the plea in bar. And it may be treated as withdrawn. The prosecutor has nothing to say since plea in bar has been withdrawn. The courts permits the defending officer to withdraw the 'plea in bar' and decides to proceed with the trial."

The main issue brought before the Court in writ petition filed by petitioner was of plea-in-bar which was withdrawn by the petitioner which is apparent from the orders as reproduced above.

6. In order to appreciate whether the offence has been clearly established by the prosecution we need to examine

the testimony of some of the witnesses. The star witness in the present case is the main victim (PW-10) HMT Tech(Gun) L.M.Nigam. He has alleged that during the relevant time he was posted to the present unit located at Gopalpur-on-Sea. On 4.10.1989 he was detailed to supervise the work at gun site. At about 0810 hrs on the same day he reached to 511 Bty gun park. Technician of gun section Cfn Satya Narayan was detailed in 511 Bty. At about 0840 hrs, a person from 510 Bty came to him and reported that there was a quarrel between Cfn Chhote Lal and Hav BN Pandey. He left for 510 Bty gun park and enquired from Hav BN Pandey as to what was the reason of the arguments. Hav BN Pandey told him that Cfn Chhote Lal was doing unauthorised work and showed him a hole drilled on the gun. He asked Hav BN Pandey as to whether he had asked Cfn Chotte Lal to do the drill. He replied 'No'. PW-10 HMT Tech(Gun) L.M.Nigam inquired from Cfn Chhote Lal as to why he has done unauthorised drilling on that gun. He replied that he was told by Regt personnel. PW-10 HMT Tech(Gun) L.M.Nigam told him

that Hav BN Pandey is the incharge of the work of 510 Bty., he should have asked him and not the directions of the Regiment personnel. The accused did not give any satisfactory reply and kept quiet. Thereafter, Hav BN Pandey told him that Cfn Chhote Lal was not listening to him and keep on doing unauthorised work in the Bty and he does not want Cfn Chhote Lal and he can work without Cfn Chhote Lal. Then PW-10 HMT Tech(Gun) L.M.Nigam told Cfn Chhote Lal to go and report to 511 Bty gun shed. After telling this to Cfn Chhote Lal, he came back and sat on the chair. At about 0845 hrs Cfn Chhote Lal reported in 511 Bty gun shed. PW-10 HMT Tech(Gun) L.M.Nigam asked him as to why he was quarrelling with Hav. BN Pandey and instructed him to go to other shed of 511 Bty and check the defect on guns. He did not proceed as directed by PW-10 HMT Tech(Gun) L.M.Nigam and instead went behind the gun and sat down on the tool box. Thereafter during the tea break, he along with Cfn Satya Narayan went to have tea in the workshop. When he came back to 511 Bty, he found Cfn Chhote Lal did not go

for tea and was sitting on the same place on the tool box. He called him outside the gun shed and asked that "I asked you to do some job" and enquired as to why since the morning he has done nothing and why he had quarrelled with everyone. When PW-10 HMT Tech(Gun) L.M.Nigam did not get any satisfactory answer, he instructed him to go and do his work and he went back and sat down on the opposite side of the gun. PW-10 HMT Tech(Gun) L.M.Nigam deposed that he sat on a chair and started working. Between 1125 hrs to 1130 hrs he got up and went to Cfn Satya Narayan and told him that after finishing that work he should do work on the other gun and he came back and sat on the chair and started checking documents. After 5-6 minutes, he kept the documents on one side on the table and starting writing a private inland letter. After he had written two-three lines he felt that somebody was approaching behind him. He looked back and saw Cfn Chhote Lal immediately behind him with a hand drill machine in his hand. He did not pay much attention and continued writing the letter. Just

after writing 4-5 lines, he felt that somebody had hit him on his head and on looking back he say Cfn Chhote Lal running away at a distance of about 5 ft. In the mean time he lost consciousness and he did not known as to what happened thereafter. When he gained consciousness he found himself lying in Berhampur Medical College, Hospital. He has further deposed that just prior to the GCM, accused came to him in the afternoon and sat down on the cot and said that he had caused the injury and to forgive him, to which PW-10 replied as to why he has not done this two years earlier and was now asking for a pardon. This witness was cross-examined at length and our attention was also invited to the evidence in which he has alleged to have said, he does not known who has hit him and with what object and he did not see him at the time of hitting. But one has to go through the whole statement & not pick one or two lines. A reading of the full statement of this witness leaves no doubt that victim did see the assailant i.e. petitioner before he became unconscious. Then accused has also

made confessional statement before PW-11 Subedar Ganga Singh.

7. PW-1 Cfn Satya Narayan has supported the version of PW-10 HMT Tech(Gun) L.M.Nigam. he has deposed that PW-10 L.M.Nigam had asked accused as to why he was quarrelling with Hav. BN Pandey and that accused was sitting on the tool box and not obeying the orders of PW-10 HMT Tech(Gun) L.M.Nigam. He further deposed that after completing his work he started repair work on the gun mtg 0294 and after some time he saw accused Cfn Chhote Lal on the right side going at a brisk pace. At the same time he asked Gnr Ranvir Singh who was working with him, to bring the drift. He went about 3-4 steps and came back and told him that something had happened to HMT LM Nigam. He got up and ran alongwith him. He saw HMT LM Nigam sitting on a chair with injured head lying on the table. He saw blood scattered on the table, on his body and on the ground around the table. On seeing this he shouted for help and at the same time he

saw the accused going away at a brisk pace. He put his hand on right rear side of the head of HMT LM Nigam from where he was bleeding to stop the blood. Then he and Gnr Ranvir Singh, along with others, took him to MI room. Thereafter he was examined by medical officer at MI room. He further deposed that when he shouted for help, he saw accused at a distance of about 50 feet, but at that time the accused did not come to the help of the victim and he also saw accused carrying along with him a drill machine in his hand. He was also cross-examined by the defence but nothing substantial was brought out. The victim was attended by the Doctor in MI room and was shifted to the hospital and was examined by PW-2 Dr. Basant Kumar Panda and other attending doctors. This version has also been corroborated by PW-7 L/Nk Ranbir Singh who also helped take the victim to the MI Room and thereafter to the hospital. PW-2 Dr. Basant Kumar Panda has come in the witness box and has deposed that accused was having a lacerated profusely bleeding injury 4" x 1" over the occipital region and he also deposed that

this injury could be caused due to blunt object and was a severe injury and had medical aid not being given in time, the injury could have been fatal. He also said that in medical terms serious and grievous hurt are more or less the same.

8. PW-11 Sub Ganga Singh produced the Drilling machine in a sealed packet. He has deposed during questioning by the Court that during the additional Summary of Evidence recorded by Capt. P.K.Nangia wherein statement of accused was recorded and accused accepted that he had hit with hand drill machine on the head of the PW-10. The defence was given opportunity to cross-examine this witness but no cross-examination was directed.
9. PW-13 Capt Nangia has also been examined. Capt. Nangia has stated that he has recorded statement of accused in summary of evidence and accused during his summary of evidence himself voluntarily confessed his guilt in presence of PW-11 Ganga Singh and PW-13. Opportunity was given to the defence counsel to cross

examine but he declined. The statement has been produced in the court martial proceedings and marked as Exhibit 'O' and was made part of the Court Martial Proceedings and it bears the signatures of PW -11 Ganga Singh.

10. This aforesaid brief resume of evidence has been challenged by the learned counsel for the petitioner and tried to persuade us that the statements of all these witnesses are not consistent and they suffer from inconsistency, vagueness and are contradiction.
11. We have bestowed our best of consideration on the arguments of the learned counsel for the petitioner. The question arises for consideration is why HMT Tech (Gun) L.M.Nigam would unnecessarily rope in the accused. During the relevant time in that particular workshop there were hardly two or three persons and those persons PW-1 Cfn Satya Narayan and PW-7 L/Nk Ranvir Singh. Petitioner was also present there but did not come to the rescue of the victim and to take him to the hospital. PW-1

Cfn Satya Narayan and PW-7 L/Nk Ranvir Singh have in their statements deposed about the presence of the accused in the workshop and saw him briskly walking away whereas he should have come to the rescue of the victim. Therefore, from these circumstances, it can be inferred that there was no other person except the accused who had hit on the head of the victim HMT Tech(Gun) L.M.Nigam. The presence of the accused is established and injury caused by the accused could have been fatal has been proved by medical evidence that it was a grievous injury on a vital part of the body. There is no reason to disbelieve victim and two witnesses PW-1 Cfn Satya Narayan and PW-7 L/Nk Ranvir Singh who saw the accused in the same workshop and briskly running away instead of coming to the help of the victim as he was unconscious. Therefore, circumstances lead to the conclusion that it was the accused and accused alone who had hit on the head of the victim. It leads further assurance that accused after two years confessed before victim and tendered an apology to him. Apart from this

his voluntary confession during summary of evidence also clinches the issue.

12. The learned counsel for the petitioner has invited our attention to the decision of the Supreme Court in the case of ***Paramjeet Singh@ Pamma Vs. State of Uttarakhand (AIR 2011 SC 200)***. Their Lordships have held that in case of circumstantial evidence circumstances should be such that it leads to one conclusion that of guilt only. But in the present case apart from the circumstantial evidence there is direct evidence of the victim and there is no reason to disbelieve the statement of the victim himself that it is the accused alone who perpetuated the crime and non else. In these circumstances we are of the opinion that prosecution has successfully established the guilt of the accuse.

12. Now the next question is whether offence u/s 307 is made out or not. In the present case, accused has hit with hard and sharp object on the head of the victim HMT Tech(Gun) L.M.Nigam and this has been corroborated by

the testimony of PW – 2 Dr.Basant Kumar Panda and he has said that it was a grievous injury and if medical care had not been given in time, it could have been fatal. In this circumstances, we are of the opinion that conviction u/s 307 is fully justified.

13. In this background we do not find any merit in this case and same is dismissed.

14. No order as to costs.

[Justice A.K. Mathur]
Chairperson

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

New Delhi
10th January, 2012