

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

**T.A.No.574 of 2009**  
**(W.P.No.(C) No.241/09)**

Madan Gupta

...Petitioner

Versus

Union of India & Ors.

...Respondent

For the Petitioner : Ms. Supriya Arora, Advocate

For the Respondents: Ms. Shilpa Singh, Advocate

**C O R A M:**

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

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

**JUDGMENT**  
**6.1.2012**

**BY CHAIRPERSON:**

1. Petitioner by this writ petition has prayed for quashing the penalty of dismissal from the Naval Service with consequential penalties involved there from as imposed by order dated 5<sup>th</sup> June, 1997 and of the Chief of the Naval Staff after a Judicial Review of the proceedings of trial by Court Martial of the petitioner and also quashing all

proceedings conducted by the Court Martial against the petitioner for alleged offence of adultery under section 497 IPC read with 77(2) of the Navy Act, 1957 and 54(2) of the Navy Act, 1957. He has also requested for quashing the order dated 12.10.1998 passed by the Central Government rejecting the petitioner's representation.

2. The brief facts which are necessary for disposal of this petition are:

- that petitioner who is a MBBS doctor joined the Indian Army on 13.4.1971. The petitioner served at various places as a doctor with the Indian Army and Indian Navy. The petitioner was posted at Naval Hospital Ship Nivarini as Surgeon Commander and worked there from 26-7-1994 to 15-2-1996.
- That on 4.11.1995, one Maj. K Ramdasan, husband of Major (Mrs.) Sheela Kumari, had come for admission of his mother in the Hospital where petitioner was working as Doctor. After the admission of his mother, Maj. K Ramdasan made a complaint to the petitioner that

Surgeon Cdr. R.P.S.Yadav has been visiting his wife's house at odd hours in his absence. Maj. K Ramdasan and his wife were living in a separate cities where they were posted. Maj. K Ramdasan alleged that Surg. Cdr. one R.P.S. Yadav has borrowed money from his wife Major Sheela Kumari which he has not refunded. Petitioner made certain enquiries and came to know that Maj. K Ramdasan was having strained relations with his wife Major Sheela Kumari.

- That on 3.12.1995, Maj. K Ramdasan created an ugly scene outside the premises of Nivarini House i.e.the residence of the petitioner by shouting, abusing and demanding to know the whereabouts of his wife. The matter was reported to the Station Commander Cmde. A. Chinaverriyya on telephone by the petitioner who sought his help. Maj. K Ramdasan was removed from the spot after persuasion by the officers who had come on the spot after the petitioner second time telephonically informed the Station Commander.



3. That in January, 1996, Board of Inquiry was constituted and after its completion it appeared that there was reasonable doubt that Major Sheela Kumari was present on the night of 2/3 December, in the house of the petitioner. On perusal of the report of the Board of Inquiry and subsequent Summary of Evidence, the Court Martial proceedings were initiated against the petitioner on 30.7.1996 and the petitioner was chargesheeted u/s 497 IPC, Charge No.3(a) (b) (c) under Sec 54(2) of the Navy Act and Charge No.4(a) (c) (d) (e) (f) under 54(2) of the Navy Act.
4. As against this respondent contested the position and prosecution examined as many as 15 witnesses and two persons were examined as Court witnesses. The Court Martial authorities after examining all the witnesses and the relevant documents on record found the petitioner guilty of the charges and he was accordingly punished as aforesaid. Thereafter petitioner filed the application which was also rejected, therefore, he was driven to file present writ petition

challenging his court martial before the Delhi High Court which has been transferred to this tribunal after its formation.

5. We have heard learned counsel for the parties and perused the record. Learned counsel for the petitioner has taken us to the relevant evidence on record and tried to show that no offence u/s 497 is made out nor offence pertaining to the violation of any of the provisions of the Naval Act. He has submitted that the Board of enquiry was not able to find the petitioner guilty. But in the court martial proceedings, petitioner has been found guilty by not properly appreciating the testimony of the witnesses and it is submitted that no offence u/s 497 is made out.
6. As against this the Learned Counsel for the respondent has supported the findings of the Court Martial and submitted that findings of the court martial are based on evidence and the court martial authorities correctly appreciated the testimony of all the witnesses and the conviction is well founded. In order to appreciate the

controversy involved in the matter it would be proper to reproduce section 497 of the IPC which reads as under:

*"497 Adultery - Whoever has sexual intercourse with a person who is, and whom he or she knows, or has reason to believe, to be the wife or husband, as the case may be, of another person, without the consent or connivance of that other person, such sexual intercourse by the man not amounting to the offence of rape commits adultery, and shall be punished with imprisonment of either description for a term which may extend to five years, or with fine, or with both."*

7. So far as proving of section 497 is concerned, this offence is of a very peculiar nature and here male is convict and not the female. To prove this offence it is very difficult to secure any direct evidence, except if there are some eyewitnesses to that effect, but such kind of offences are committed in a clandestine manner and it is rarely feasible to secure direct eyewitness who can testify about finding the man and woman in a compromising position. Therefore, one has to seek evidence of a circumstantial nature which should clinch commission of the offence. It is true that inference should not be so easily drawn and the circumstantial evidence connecting the link with offence should form



one chain. The circumstantial evidence should be such that it leads to only one conclusion i.e. guilt of the accused. Keeping in view these safeguards we have appreciated the testimony of the following witnesses.

PW-2 Maj. K Ramdasan (Husband of Major Sheela Kumari) has deposed that during relevant time he was posted at ADGM School, Gopalpur and he was married to Major Sheela Kumari on 22.1.1984. He was married at Kanoor district, Kerala and his marriage was registered in the Panchayat. He further deposed that his wife was serving in Military Nursing Service(MNS) and posted at INHS Nivarini, at Chilka. PW-2 was also known to Surg Cdr Madan Gupta as in 1995 his wife Major Sheela Kumari requested him to help out Surg Cdr Madan Gupta in terms of accommodation and messing during his visit to ADGM School, Gopalpur for entrance examination of his daughter. He deposed that he has two children, a son and daughter. His son is studying in Gopalpur and staying with him and his daughter is studying in Naval KG School, Chilka and

residing with his wife. They have a permanent maid servant Sabitri Nahak, who was staying in the quarter allotted to his wife. PW-2 used to come often, especially on weekends, to visit his wife. On 2.12.1995 at about 11 in the night when he came to his wife, he did not find his wife in the house, therefore, he asked the maid servant about whereabouts of his wife and she told that Madam has gone out of the house after coming back from duty at about 9 O Clock in the night. He further deposed that he sat down in the house for a while thinking about where his wife could have gone. He persisted with his questions to the maid servant who was in a confused state and she told him that Madam has taken her and her daughter along with her while going out at nine in the night. The maid told him that she went out on Apsara Road leading to Nivarini House and near the STD booth told them to go back to the house. While going out from the house she locked the door from outside and told the maid servant and his daughter to enter the house from the kitchen door



which had been kept open. He kept sitting waiting but she did not come. When he kept questioning the maid servant Sabitri, she told him that Smt. Birajini, an employee of Nivarini had told her that my wife used to go to Surg Cdr Gupta's house daily in the night and that gave rise to suspicion that his wife might have gone to the house of Surg Cdr Gupta. Therefore, he went to the house of the Surg. Cdr.Madan Gupta and from the extreme right side of the house, he heard the voice of his wife and another male voice which he recognised to be that of Surg Cdr Madan Gupta. These voices were of very intimate nature and he heard his wife asking Surg Cdr Gupta in Hindi 'Tere Ko Mila Tha' or words akin to that and he could also hear sounds as if both are turning on the bed. He got totally confused and shocked that his wife is in the bed room of Surg. Cdr Madan Gupta. He went back home to his daughter and maid servant and told the maid servant that he was going to the Station Commander to report the matter and instructed her not to open the door for anyone except for him. He

reached the house of the Station Commander but he was stopped by the watchman and was denied permission to wake up the Station Commander as the Station Commander has come back to Gopalpur late in the night and he didn't want to be disturbed. PW-2 rang the call bell for 5 to 8 minutes, then he left the residence of Station Commander and went to report the matter to the Officer on duty (OOD) of Chilka. OOD, Lt. C Shikher came out of his duty room and he explained the matter to him. He told him that he will take me to the Ex O of Chilka and they both went to Ex O's residence on his two wheeler. On reaching the Ex O's house, Maj. K Ramdasan (PW-2) narrated the complete events to him. PW-2 requested him to help him in freeing his wife from Surg. Cdr Madan Gupta's house or help him in calling them out from the house or search the house. The Ex O told him that he didn't have the authority to search Surg. Cdr Madan Gupta's House. However, he told him that he will inform the Station Commander in this regard and told him to wait. He sent

him and the Duty Officer to the Guard Room. PW-2 requested the EX O that he should not ring up Surg. Cdr Gupta's house for the reason that they may escape from there. From there he went to Nivarini house i.e. residence of Surg. Cdr. Madan Gupta. He could hear some voices from the window and he stood there for a while as he was breathing heavily and was under mental tension. Then he heard noise from inside akin to that of sexual union alongwith shrieks of his wife, which he knew very well. For a while he was not in his normal senses. He shouted for help and took the name of Cdr. Madan Gupta and his wife and told them to come out. He went around the house hoping that some help will come from somewhere or the other. He was standing in front of the house, however, as there was a possibility of both of them escaping from the rear door, he went to the rear of the door and latched the door from outside. Then he saw Lt. Shikher, Duty Officer coming to the house and he told him that he had heard the voice of my wife from inside and requested his help in



getting the house opened. He told him that he does not have orders to get the house opened and also told him that some officers will be coming from Chilka. After sometime Lt.Cdr Sarawat reached the spot. He narrated the complete incident to him also and requested for his help and by then he was totally exhausted and requested for some water, which was provided. Lt.Cdr. Sarawat told him that kindly move out from that place. But PW-2 repeatedly requested him that he will not move until and unless someone calls his wife out from Surg. Cdr Gupta's house. This went on for 15 to 20 minutes. Then Lt. Cdr. Tom Joseph came to the site and after some time left the site, probably to inform Ex O or Station Commander. On returning, Lt. Cdr Tom Joseph repeated the same thing and instructed him to move out of the site. PW-2 asked him to go and inform the Station Commander so that he may come himself to see his state. Lt. Cdr. Tom Joseph then left, probably to inform ExO or Station Commander. In between Lt. Cdr. Stanley John also came to the site. Lt.

Cdr Tom Joseph came back to the site telling him that he had got orders to remove him from the site, if required by force. All his requests to these officers of the Navy fell on deaf ears. They did not search the house of Surg. Cdr. Madan Gupta and after 20 to 25 minutes they moved him out and told him that either he should move out willingly otherwise they have to forcibly remove him from there. He was taken in a jeep and kept in confinement. He deposed that he was confined in the room on the left hand side of the stair case and he was in a mental shock. He was not allowed to lodge a complaint nor he was permitted to go to his unit at Gopalpura. Thereafter an officer escorted him to see his daughter and he was taken under escort to his Y-1 quarter which was adjacent to the room where he was confined. He felt badly humiliated and let down. He called his daughter and took her in his hands and was totally confused and under shock. He had a cup of tea in his house and after some time came back to the cabin where he was confined. He repeated his requests

to meet the Station Commander and to lodge a police complaint to trace out his missing wife and also to talk to his Commandant at the ADGM School which was denied. He was asked by Lt. Cdr Sarawat to give the complaint in writing. Despite the fact that he was under severe mental stress, somehow wrote his submissions and given it to Lt. Cdr Sarawat. Thereafter on his request the authorities permitted him to go to his house under escort and was directed not to leave the house. His daughter kept on repeatedly asking him about the whereabouts of her mother. Then Lt. Col. (Miss) Surya Kantam, MNS came and she pleaded complete ignorance but she pointed out that we should ask Smt. Birajini, an employee of INHS Nivarini the whereabouts of his wife as they both know each other very well. Then he came to the Mess and discussed the whereabouts of his wife with Lt. Cdr Tom Joseph. Thereafter, both of them left for the house of Birajini and he kept on sitting in his cabin. Thereafter he was told by Lt. Cdr Tom Joseph that Birajini Patra also did



not know the whereabouts of his wife. Then he saw Col. AK. Rana (Col Admin ADGM School) and Lt. Col KP Singh, Major Bapat, Major TS Viridi and Captain Vinay Handa and felt little assured thereafter. They consulted and discussed. He told Lt. Col KP Singh that he will not move out of this place unless the whereabouts of his wife is known to him. Lt.Col. K.P.Singh consoled him and said that required action is being taken. Then they persuaded him that his wife will be on duty next day by 7.30 and he advised him to come along with him to ADGM School, Gopalpura. Thereafter, he went to his house, collected his luggage and left along with his daughter for his unit at Gopalpur. Col. A.K. Rana also talked to Sabitri (maid servant) and she informed him that his wife had been going out of the house for last several days in the evening. Even when she was not on night duty she used to leave his daughter behind with the maid servant.

8. Thereafter he wrote many complaints, to the Commandant and also to other authorities including Flag Officer Commanding-in-Chief, Southern Naval Command.
9. PW-1 Lt. C Shikher deposed that he was Divisional Commander, Angre Division posted at INS Chilka. On the relevant date, he was OOD INS Chilka. He deposed that Madan Gupta, was Commanding Officer, INS Nivarini and he used to visit him quite often and he deposed that at about 0300 hrs early in the morning Maj. K Ramdasan came to him for help and he also deposed that he knows Maj. K Ramdasan because he along with his wife Major Sheela Kumari has called on him and he reported that his wife is missing from the house for the past 5 hours. He told him that he visited Chilka House for help, but the Watchman did not permit him to meet the Commanding Officer since the CO had reached late that night and was fast asleep. Then he came to the guard room where he received the phone call from the Executive Officer that action is being taken. He also informed him that Maj. K Ramdasan has gone to Nivarini House. He informed the

Executive Officer on telephone and thereafter he received a call from Capt. A Chinaverriyya, Commanding Officer, Chilka who asked him to go silently and see what Maj. K Ramdasan was doing outside the Nivarini house. He was instructed by the CO not to let Maj. K Ramdasan know that he was watching him. After going there he informed the CO who asked him to go to the Regulating Officer's and alongwith him go to Nivarini House. Accordingly he went to Regulating Officer's house, who was already waiting for him and together in his jeep they went to Nivarini House. There he found that Maj. K Ramdasan had lost his cool and was shouting at Surg. Cdr Madan Gupta. The moment they reached there, Maj. Ramdasan rushed to them thinking that we have come for his help. He showed his identity card and said that these people are spoiling his wife's life. Then he asked him whether the CO i.e. Capt. Chinaverriyya, would help him or not. Then he also deposed that he saw Lt. Cdr S. John who also came and thereafter Lt. Cdr Tom Joseph



also came and some how they took him to the mess and he supported the statement of the PW-2.

10. Respondent has also examined the testimony of PW-3 Lt.Cdr Y S Sarawat who was Regulating officer of INS Chilka and Assistant Naval Provost Marshal Orissa Area. He has also more or less supported the version given by PW-2.

11. In the chain of evidence the another important testimony is of PW-4 Smt. Birajini Patra. She deposed that she is working in INHS Nivarini as a Ward Sahayika. She has to look after nursing duties and delivery duties. She also deposed that she stayed inside the Base near to KG School and knew Surg. Cdr Gupta for the past two years. On the relevant day, she was on night duty she left her house and went to Major Sheela house at 6 O'Clock. There she met Sabitri and Madam's daughter and had discussion with them and came on duty. She joined duty at 7.30 pm. That day Major Sheela was on long duty. When she was on night duty there was a phone call from the petitioner between 3.30 am and 4.00 am. Jessy

Madam who was also on night duty received the call and she said 'Birajini, its CO's telephone'. She picked up the phone and Commanding Officer told the witness "Birajini", Maj. Ramdasan Saab is creating nuisance around the house and there is police around the house. There are people also around, you be careful. And when it is little day light you come to my house from servant quarter's rear gate. After 10-15 minutes, there was another call which was received by Miss Bijayyini Patnaik, who told her it was CO's call. She attended the phone and was told by CO that "I am ringing you up, you be careful and come to my house". After that she was called by Ward Master Umesh at the gate of Second Family Ward by a hand signal. He asked her 'what is your name', to which she replied - Birajini. He said come with me and took me to the MI Room telephone. He lifted up the phone and put it on to my ears. I attended the call. The CO who was on the line said that "I have already informed you 3-4 times, why don't you come. You come from the rear gate" and he was angry with me. I took off my uniform and left for

the house of Surg. Cdr. Madan Gupta. I went through the back door and it was not latched. The CO Sahib was standing near the door. He was walking up and down at the door and I saw Major Sheela's chain around his neck. Madam was sitting in his bed room on the bed which is in the front of the bathroom. I saw Madam and she also saw me. I had seen her orange colour saree and green colour blouse lying on the bed. She was putting on a skirt and blue coloured shirt and the skirt had pink coloured flower design. CO told me to say that "when I was coming out of the hospital I met the woman who said that I am coming from Major Sheela Madam's house side and there are lot of people standing there". And she should say that "madam slept at her house" and tutored her to say that she went to her house and madam opened the door and CO also directed her that if anybody asks she should state that Madam had slept in her house. Thereafter when she went to her house near the Deer Park, there was a man who came and started talking to her. He asked her why she went to CO's house, to which the witness replied that



should not to talk to her because this pertains to high officers. Then he asked me whether CO's wife was there or not. I told him at times Madam is here and at times she is at her native place, but at present she is not there. Thereafter he kept on asking questions. Thereafter the witness went home. At about 10 O'Clock, an officer from Chilka and Principal Matron (PM) came to my house. I asked PM Matron how come you have come to my house. She asked me where is Sheela Madam. I told her that Madam had slept at my house and she had left in the morning because she had to go to Gopalpur. She asked me to tell her the truth. She further deposed that she had two keys and both keys were kept by her only and when she was confronted with her statement which was recorded in the Court of Inquiry wherein she said that Major Sheela Kumari was having one key of her house. and that Major Sheela used to sleep in her house for the last 10 months. She admitted that she made false statements in the Board of Inquiry because she was working with CO and staying with Major Sheela. But what

she has stated during the GCM was the correct version of events. She was cross-examined at length by the defence counsel and she stated that she was terrorised and was forced to give wrong statements. But what she had stated at the GCM is the truth. She further reiterated that when she went to the house of Surg. Cdr. Madan Gupta, Madam Sheela was present in the bedroom. She was again asked a direct question that when she visited the CO's house, whether both were in a compromising position, which she denied and said that the CO was putting on Kurta Pyjama and Major Sheela was sitting on the bed facing downwards.

13. Another strong witness is PW-5 Sabitri Nahak, maid servant of the Major Sheela Kumari's house. She has also virtually corroborated that Major Sheela used to go out frequently at night and she has also supported the version of Maj. K Ramdasan that when he came to house and enquired about his wife she was not there at 11.30 pm on that day.

14. Other witnesses also by and large supported the version given by Maj. K Ramdasan but they are not of much relevance. In this background, we have to consider whether petitioner can be found guilty of the offence for which he is charged.
15. CW-2, wife of the Maj. K Ramdasan i.e. Maj. Sheela Kumari was also examined as a Court witness and she was asked to explain about her absence and her reply is also of very importance. She has deposed that on 2<sup>nd</sup> December till 1930 hrs, she was on long duty at Family Ward. After that she came home, changed and around 2100 hrs went to the civilian Birajini's house and slept there and from about 6.30 in the morning till 5.30 in the evening on 03 December, she remained in an open ground near her house. Thereafter till 7.15 pm she was in civilian Birajini's house after which she came back to Nursing Officers Mess around 7.45 pm. This is a very strange explanation given by her. She has her young daughter, whom she left her in the house with the maid servant, Sabitri and she says that she was in an open



ground and that slept at the house of the Smt. Birajini Patra. Whereas Smt. Birajini Patra has categorically denied this and Sabitri in her deposition has said that Major Sheela left the home wearing a orange colour saree and that orange colour saree was confirmed by Smt. Birajini Patra when she was called at the house of Cdr. Madan Gupta. This lends a assurance to the testimony of the Smt. Birajini Patra and she has also denied that Maj. Sheela was at her house at the relevant time.

16. PW-1 is Capt. Chinaverriyya who was at the relevant time CO of INS Chilka. He also supported the statement of Maj. K Ramdasan that Cdr Bhatnagar called him at 3.15 am on the the relevant date and stated that Maj. K Ramdasan of ADGM school had come along with the OOD and asked for one officer to carry out search for his wife who was not present in quarter. Then at about 0320 hrs Surg. Cdr. Madan Gupta, Commanding Officer, INHS Nivarini gave a ring and told him that Maj. K Ramdasan has bolted the door form outside and banged the doors and shouted and threatened to kill him. Surg. Cdr.

Madan Gupta requested for help. Then he said that he directed the Executive officer to send DLC to assist the ANPM Lt. Cdr Sarawat and if he doesn't heed then he should be forcibly taken out. First Lt. Cdr Tom Joseph was deputed to bring the officer away from the scene. The witness denied the suggestion that he gave any orders for any surveillance. He has also deposed that he got information in November that Maj. Sheela Kumari has requested the CO Nivarini to stay away from her quarters as she was threatened by her husband.

17. After summarising the evidence as aforesaid, the inference which can be drawn is that the sequence of events speaks for itself that Maj. K Ramdasan when he reached his house where his wife was living, did not find her and he was told by his maid Sabitri that she had gone to the Nivarini House. Maj. K Ramdasan left the house and when he came back home and enquired about her, then Sabitri informed that she has left Maj. Sheela Kumari upto the gate of the Nivarini House and returned back. But when she did not come back for quite some time, then

Maj. K Ramdasan went to the Nivarini House and tried to seek release of his wife from the house of Surg. Cdr. Gupta, but he could not succeed. He then rushed to seek support from the Naval officers and tried to contact CW-1 Capt. A. Chinaverriyya who did not talk to him, therefore, he created a quite of commotion there and in turn Madan Gupta also informed CW-1 Capt. A. Chinaverriyya about the scene created by Maj. K Ramdasan and he in turn directed his officers to persuade Maj. K Ramdasan to withdraw from that place.

18. Smt. Birajini Patra who was come as witness has deposed that she was directed by Cdr. Madan Gupta to immediately rush to her house and give a false explanation of Maj. Sheela Kumari being at her house. When she reached the house of Surg. Cdr. Madan Gupta, she found Maj. Sheela Kumari in the bedroom of Cdr. Gupta and her saree, of orange colour was lying on the floor and she was sitting there in the bedroom on the bed of Cdr. Gupta. If these evidences are pieced together, then the only result which emerges from the situation is



that at the relevant night Maj. Sheela Kumari was in the bedroom of Cdr. Gupta. Now it is established that at the relevant night Maj. Sheela Kumar was in the bedroom of Madan Gupta and if she was in the bedroom of Madan Gupta then other inference automatically follows that it was not for any bonafide purpose. She was sitting on the bed of Madan Gupta, her saree was lying on the floor, she was putting on skirt which speaks volume about the whole murky affair. Had Cdr. Madan Gupta been honest in his opinion that he is shielding her against her husband who was not very benevolently motivated towards her, then there was no need for him to bolt his house from inside, he could have asked Maj. K Ramdasan to come and take his wife from that place. However, instead of that he tried to play the card of Naval fraternity and telephoned CW-1 Capt. A Chinaverriyya to send certain officers to remove Maj. K Ramdasan from the site. We are constrained to observe that infact the conduct of Capt. A Chinaverriyya and the officers was not very supportive; rather they wanted to shield Cdr Madan Gupta and instead of rescuing

the wife of Maj. K Ramdasan they rather pressurised Maj. K Ramdasan to withdraw from that place and brought him to Naval Mess under escort/detention. This conduct of all these officers and specially that of the CW-1 Capt A. Chinaverriyya shows clearly that they wanted to shield Cdr. Gupta instead of assisting Maj. K Ramdasan to rescue his wife. The offence of adultery is a clandestine offence and to secure direct evidence is somewhat difficult. Both the candidates are consenting party, therefore, it is very difficult to procure direct evidence except in exceptional cases when somebody can peep into the bed room where this illicit relation is in progress. Normally such kind of things are done clandestinely and not in the open. Therefore, to secure direct evidence is well-nigh impossible. But in the present case the chain of circumstances leads to the guilt of the accused that he was having a lady in his bedroom and not in a properly dressed manner and she was sitting on the bed of Cdr Madan Gupta. That speaks indicates as to what kind of relation they were having. Nobody would shield a lady,

against her husband, by putting her in his own bedroom, and in dishevelled condition like the one where the saree is lying the other way and she was not even properly dressed. This conduct of Cdr. Gupta is reprehensible. Similarly, the conduct of the lady also gives clinching evidence that when she was asked where was she at the relevant time, her explanation is strange i.e. that during the relevant time she was in an open field, which hardly provides a satisfactory explanation. In our view the evidence of Sabitri as well as Birajini Patra, which has been given out during the Court Martial, clinches the circumstantial evidence against the accused. Though both these witnesses were cross examined with reference to their statement in the court of enquiry and summary of evidence, their explanation is that during that time when court of enquiry was conducted and summary of evidence was recorded, they were under the pressure from Maj. Sheela Kumari as Sabitri was her personal maid and Smt. Birajini Patra was working directly under her as a mid-wife. Therefore she was forced to give a wrong statement



before the court of inquiry. When the court martial proceedings took place and they were asked to give statement on oath, they spilt out the beans, that real story is that Maj. Sheela Kumari used to frequently visit the house of Cdr Gupta, though apparent explanation given was that she used to stay with Birajini Patra to save herself from the her own husband. This explanation is hardly sustainable since she had a small daughter whom she used to leave at her house and go out in the late night and come back in the morning. The theory that she was staying in Birajini Patra house is also exploded when Birajini stated that she had two keys and both were kept by her and on the relevant night Maj. Sheela Kumari had not stayed at her house. Therefore, the sequence of events and circumstantial evidence is clinching and leads to one and only one conclusion is that Maj. Sheela Kumari had illicit relations with Cdr. Gupta and as such Cdr. Gupta was rightly found guilty u/s 497 of IPC & other Naval offences.

19. Hence as a result of above discussion we don't find any merit in this Writ Petition and same is dismissed.

26. No order as to costs.

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[Justice A.K. Mathur]  
Chairperson

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

New Delhi  
6<sup>th</sup> January, 2012