IN THE ARMED FORCES TRIBUNAL, PRINCIPAL BENCH AT NEW DELHI

T.A. No. 680/2009
WP(C) No.2374/99

Nb Sub. D. Manoharan .....**Petitioner**

Versus

Union of India & Ors. .....**Respondents**

For petitioner: Mr. Prabodh Kumar and Mr. Karmender Singh, Advocates.
For respondents: Mr. Ankur Chibber and Ms. Aakriti Jain, Advocates

CORAM:
HON'BLE MR. JUSTICE N.P. GUPTA, JUDICIAL MEMBER.
HON'BLE LT. GEN. M.L. NAIDU, ADMINISTRATIVE MEMBER.

ORDER
26.09.2012

1. This writ petition filed by the petitioner before the Hon'ble High Court of Delhi being CWP No.2374/99 seeking to challenge the proceedings and punishment awarded by the GCM, convicting the petitioner for the offence under Section 69 of the Army Act being committing a civil offence, that is to say voluntarily causing grievous hurt by means of an instrument for stabbing, contrary to Section 326 of the IPC; in that he, at a place near Village Nekpur on 10 October 1996 voluntarily caused grievous hurt to JC-369598-A Naib Sub S.P. Singh of the same unit by stabbing him with a knife in his chest and left upper abdomen. The punishment awarded is (a) to take rank and precedence as if his appointment as Naib Subedar bore date of 01.01.1998, (b) to forfeit four years of past service for the purpose of pension and (c) to be severely reprimanded.

2. The necessary facts of the case as disclosed by the victim Shri S.P. Singh who appeared as PW-2 before the GCM, are that he and the petitioner were both JCOs, posted at exercise location. On the fateful day, they

attended the exercise "Atam Vishwas". At about 2115 or 2130 hours, the victim was having food in the JCOs mess. At that time, the petitioner came and asked the victim as to why the victim did not get the post 007 repaired. To which, the victim replied that HMT Dabas of EME had inspected the post a day before, and had told that the post could not be repaired at the exercise location, due to non-availability of circuit diagram and this was conveyed by the victim to the petitioner. It appears that the answer was not to the satisfaction of petitioner, and the petitioner felt that he was only being kidded. However, the victim advised the petitioner, who happened to be his senior, to go and take rest. Saying this, the victim went a bit close to the petitioner and at that time the petitioner is said to have hit the victim with knife near the left nipple and below the left arm pit. The victim fell down and was taken to hospital.

3. The necessary procedure was followed, and GCM was convened, which tried the petitioner, wherein the prosecution examined a number of witnesses, including the Medical Officer, Col G. Ganguly (PW-12) who examined the victim, and Maj R.K. Dubey who conducted the investigation, has been examined. The weapon of offence being knife has also been produced as Material Exhibit.

4. The accused also got his statement recorded. However, no evidence was led by him in his defence. Injury report has been produced as Ex. E showing presence of two stab wounds and collection of blood at two points. Both sides made their written submissions, and thereafter the summing up by the Judge Advocate was also submitted, and the Court Martial ultimately found the accused guilty of offence charged, and punished as above.

5. Arguing the appeal, learned counsel for the petitioner, read in extenso the statement of victim P.W.2, PW-10 Maj R.K. Dubey and PW-12 Col G. Ganguly, Medical Officer and few more documents. After reading the above, firstly, it was sought to be submitted that there is no memo prepared regarding recovery of knife, and knife which has been produced in the Court was not kept sealed. Perhaps meaning thereby, that it is not established that the knife which has been produced in the Court was the weapon of offence. Than, after reading the statement of PW-2, it was sought to be impressed, that there was no pre-meditation, there was no intention of the petitioner to cause any grievous hurt, rather it was a sort of scuffle, which suddenly ensued therein the victim received two injuries. Thus, by reading the provision of Section 320 IPC it was sought to be contended that the offence cannot be said to be one falling under Section 326 IPC, and at best it can only Section 324, with the result, the punishment awarded is grossly excessive, and requires interference.

6. Learned counsel for the respondents on the other hand supported the impugned judgment.

7. Taking up the first submission, true it is, that the recovery memo of knife has not been produced and it is also clear that knife was not kept sealed, and therefore, it cannot be said that the knife produced on record, is the weapon of offence. Even otherwise also, from a look at the injury report also, it cannot be said, that this is the weapon, which was the weapon of offence. Had the Medical Officer gave the dimensions of the injuries being length, width and depth, then perhaps the identity of knife would have been relevant as to whether the injury of that dimension could be caused by the weapon referred or not, and in the absence of that, the weapon produced on

record cannot be said to be connected with the incident. But, that does not affect the merits of the matter in the present case for the simple reason that the petitioner carrying the knife, victim receiving knife injuries in the incident alleged by the prosecution, is not on dispute on either sides, and the dispute is only as to how the incident began, and what was the sequence of incident. Therefore, the identity of knife etc., lose their significance.

8. Than coming to the actual incident, from a reading of statement of PW-2, it is of course clear that prior to the incident there was no bad blood between the parties, and obviously both the persons, being the victim and the petitioner were working in the same unit, and in the same rank, though the petitioner being senior. The a close reading of statement of PW-2, does show that the petitioner was particular about putting post 007 workable, but it could not be put so workable. Both sides have their own stories, in as much as according to the victim, it could not be repaired for technical reasons while according to the petitioner, repairing of the post was only put aside, and lame excuses were being projected. It is in this background, that according to the victim, after taking dinner when he was going, he did come to meet the accused, and when he came close to the accused, the accused inflicted the two injuries, as a result of which the victim fell down, and started bleeding. While according to the questions put in cross examination, and according to what had been stated by the petitioner in his own statement, that it was the victim who hurled filthy abuses to the accused in the name of mother, and the victim pushed the accused, as a result of which the accused fell down, and in that process, scuffle ensued. However, the accused does not explain as to how the stab injuries were received by the victim. We make it clear that we do not expect the accused, as an accused, to give any reasonable or plausible

explanation for the incident, as it is for the prosecution to establish the offence, and it is not for the accused to make out his defence. But then in the circumstances of the case, when it is not in dispute that a scuffle ensued, and the victim clearly states that when he reached near the accused, the accused straightaway inflicted two knife blows on him. Then we have to examine the totality of circumstances, and find firstly that admittedly, no injuries whatever, even of slightest nature are said to have been received by the petitioner as a result of any fall. Then even if the victim had hurled abuses, or pushed the petitioner, resulting into making him fall, whether any scuffle should or could have ensued or not, in any case that could not result into the victim receiving two stab wounds on parts of the body where they have been received, and of the depth, resulting collection of blood inside.

9. In that view of the matter, we are inclined to believe the story as deposed by the victim, that the petitioner did cause two stab wounds on the person of the victim.

10. Than comes the question as to whether the offence falls under Section 320 or not. Obviously, the first 7 clauses are not attracted, and the controversy centres around only 8th clause of Section 320, which comprises of or comprehends three eventualities being (i) any hurt which endangers life (ii) or which causes the sufferer to be, during the space of twenty days in severe bodily pain or (iii) renders him unable to follow his ordinary pursuits. Obviously, there is no evidence on record to show the existence of either of the first two eventualities. However, the Medical Officer PW-12 has clearly deposed, that the victim had to be hospitalised for more than 20 days, in as much as, from the date of admission on receiving injuries, he was discharged on 21.11.1996. May be that thereafter he was given sick leave but then his

hospitalisation for more than 20 days, necessitated by receiving of the injuries, does bring the case under 8th clause of Section 320.

11. Thus, we do not find any infirmity in the findings of the GCM, finding the petitioner guilty for the offence charged.

12. So far as sentence part is concerned, it would suffice to say, that Section 326 IPC is an offence punishable with imprisonment for life, or imprisonment of either description for a term which may extend to 10 years, and also with fine. Obviously, if the petitioner was to be sentenced to imprisonment for any time whatever, dismissal would have ensued. At the same time, Sections 4 and 6 of the Probation of Offenders Act also shows that in case of offences punishable with imprisonment for life, they are also not attracted. It is notwithstanding that the petitioner, contrary to the language of section 326, has not been sentenced to any term of imprisonment, and he has been let off on punishments, which in the circumstances and in our view also, cannot be said to be excessive, so far as to require any interference in this appeal.

13. The appeal, thus, has no force and the same is hereby dismissed. No order as to costs.

N.P. GUPTA
(MEMBER)

M.L. NAIDU
(Member)

New Delhi
September 26, 2012
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