RESERVED

ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW

Original Application No. OA (A) 128 of 2017

Thursday, this the 19th day of July, 2018

Hon'ble Mr. Justice S.V.S. Rathore, Member (J)
Hon'ble Air Marshal BBP Sinha, Member (A)

Ex No. 14863424H Rank - Sepoy/Driver (Mechanical Transport) Suraj Singh son of Shri Virender Singh, resident of House No. 45, Village – Chitavisav, P.O. - Fatehpur, P.S. -Raneepur, District – Mau, State - Uttar Pradesh

… Appellant

Counsel for the Appellant: **Shri S K Pathak, Advocate**

Vs.

1. Union of India through the Secretary, MoD (Army) South Block, DHQ PO, New Delhi-110011.

2. Chief of the Army Staff, Army Headquarters, MoD (Army) South Block,
DHQ PO, New Delhi-110011

3. The Commanding Officer, 531 ASC Battalion, Mechanical Transport,
C/O 56 APO

4. PCDA (P), Draupadi Ghat, Allahabad

5. The Chief Records Officer, ASC Records, C/O 56 APO

…… Respondents

Counsel for the respondents: **Shri Asheesh Agnihotri**
Central Government Standing Counsel

ORDER

(Per Hon'ble Air Marshal BBP Sinha, Member (A)

1. Feeling aggrieved by refusal to quash SGCM proceedings dated 27.05.2015 and quashing the punishment awarded on 22.07.2015, the appellant has approached this Tribunal by filing the present Original Application under Section 15 (3) of the Armed Forces Tribunal Act, 2007.

2. Briefly stated, facts necessary for the purpose of adjudication of present Original Application are that the appellant was enrolled in the Indian Army as Sepoy and during December 2014 he was posted on active service at Field at 5231 Army Service Corps Battalion (Mechanical Transport). He was entrusted with the duties of buddy of an Army officer (hereinafter referred to as Lieutenant Colonel 'B') from July 2014 to December 2014. On 29.01.2015 the said officer made a complaint to the Commanding Officer, 5231 ASC Bn (MT) that the appellant had physically abused and attempted molesting his minor son twice in the months of November and December, 2014 when the officer was staying with his wife and children in Regulating Centre, Srinagar premises. This inhuman act of the appellant came to the knowledge of complainant through his wife on 28.01.2015. He took his son into confidence and the child confirmed that the appellant had tried to molest him twice by asking him to undress, by touching the child's private parts and by making the child touch his private parts. The complaint further mentioned that the appellant attempted unnatural sex with the child by taking him to an isolated place on the pretext of playing with him. The minor child was threatened not to report the matter on the pretext that if

he did so, he being a child, nobody would agree with him and then he will have to face the consequences at the hands of the appellant. The complainant further mentioned in the complaint that he had spoken to the appellant in the presence of Lt Col Rahul Joshi, OCD Coy who had admitted to the crime committed by him. It was mentioned in the complaint that the minor child, on account of the immoral act of the appellant, has been badly affected the child. The child and his mother both are in a state of mental trauma.

3. Based on the complaint, summary of evidence was recorded and convening order of Summary General Court Martial dated 27.05.2015 was passed by the General Officer Commanding, 31 Sub Area. Charges under Section 46 (a) containing two charges were framed. Copies of summary of evidence, charge sheet and convening order were served upon the appellant on 28.05.2015.

4. Charge sheet was drawn against the appellant as follows:

"CHARGE SHEET

The Accused Number14863424H Sepoy/Driver (Mechanical Transport) Suraj Singh, 5231 Army Service Corps Battalion (Mechanical Transport) is charged with:-

FIRST CHARGE	DISGRACEFUL CONDUCT OF AN INDECENT KIND
Army Act Section 46 (a)	in that he,
	while in active service, at field, during November – December 2014 with indecent intent removed the clothes of Master 'A' son of Lieutenant Colonel 'B' of the same unit, touched the private parts of Master 'A' and also made Master 'A' touch his private parts.
SECOND CHARGE	DISGRACEFUL CONDUCT OF AN INDECENT KIND
Army Act Section 46(a)	in that he,

> While on active service, at field, during November – December 2014 committed an unnatural offence on the person of Master 'A', son of Lieutenant Colonel 'B' of the same unit, to wit inserted his penis in the anus of Master 'A'."

5. The appellant was arraigned and hearing on charges was done. The appellant pleaded 'not guilty' to both the charges. During Summary General Court Martial Mr. Shuja-Ul-Haq, Advocate Jammu & Kashmir High Court was engaged by the appellant as defence counsel.

6. The Summary General Court Martial after examining the evidence on record was convinced that the prosecution has been able to prove the charges against the appellant. Considering the gravity of the offence and the age of victim, convicted him under Section 46(a) of the Army Act, 1950 and awarded sentence of imprisonment in civil prison for six years and dismissal from service.

7. At the very outset, it may be noticed that the appellant has moved an application for bail. At the time of hearing, it was brought to the notice of the Tribunal by learned counsel for the respondents that for disposal of an Appeal under Section 15 of the Armed Forces Tribunal Act, 2007, parawise reply in the form of Counter Affidavit is not necessary. Since the complete record of the Summary General Court Martial is available on record, therefore, the Appeal may be heard and disposed of finally. Learned counsel for the appellant submitted that he would have no objection to it and he is prepared to argue the Appeal on merits itself. Accordingly, we have heard learned counsel for the parties and perused the record.

8. The first limb of arguments of learned counsel for the appellant is that a civil offence committed by Army personnel can be tried after exercise of initial jurisdiction by the Magistrate on the basis of lodgment of an F.I.R. It is argued that it is incumbent to have lodged an F.I.R against the appellant under the relevant provision of the Protection of Children from Sexual Offences Act (POCSO), hence the trial vitiates and seems to be not sustainable.

9. **T**he appellant was charged with two offences under Section 46 (a) of the Army Act for disgraceful conduct of an indecent kind. For these offences he was tried summarily by a Summary General Court Martial and was awarded punishment to suffer rigorous imprisonment for six years and to be dismissed from service.

10. Section 3 (ii) of the Army Act, 1950 provides that 'civil offences' means an offence which is triable by a criminal Court. Section 69 of the Army Act, 1950 defines civil offence, which reads as under:-

> *"69.* ***Civil Offences****. – Subject to the provisions of section 70, any person subject to this Act who at any place in or beyond India, commits any civil offence, shall be deemed to be guilty of an offence against this Act and, if charged therewith under this section, shall be liable to be tried by a court-martial and, on conviction, be punishable as follows, that is to say, -*
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> *(a) if the offence is one which would be punishable under any law in force in India with death or with transportation, he shall be liable to suffer any punishment, other than whipping, assigned for the offence, by the aforesaid law and such less punishment as is in this Act mentioned; and*
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> *(b) in any other case, he shall be liable to suffer any punishment, other than whipping, assigned for the offence by the law in force in India, or imprisonment for a term which may extend to seven years, or such less punishment as is in this Act mentioned."*

11. Section 69 of the Army Act (supra) empowers the Army to put for trial through Court Martial in case Army personnel commit civil offence anywhere or at any place in India or beyond India and may be punished. Sub Section (a) of Section 69 of the Act clearly provides that if the offence is one which would be punished under any law in force in India with death or transportation, then such punishment may be provided by the Court Martial. Accordingly, even if an offence is made out under the POCSO Act, as alleged by learned counsel for the appellant, the appellant could have been punished through Summary General Court Martial though it is a civil offence in terms of definition contained in Section 69 of the Act. It is pertinent to mention here that the appellant was not tried for any civil offence by the Summary General Court Martial but was tried only for an Army offence under Section 46 of the Army Act, 1950. It is nowhere the case of the appellant that the act alleged against the appellant does not fall within the purview of Section 46(a) of the Army Act, 1950.

12. Section 125 of the Army Act, 1950 provides that when a criminal court or a Court Martial have each jurisdiction in respect of an offence, it shall be in the discretion of the Commanding Officer of the Army, Army Corps, Division Or Independent Brigade in which the accused person is serving or such other officer as may be prescribed to decide before which court the proceedings shall be instituted. Where there is a dual/concurrent jurisdiction as indicated above, the choice initially lies with the military officers mentioned in this section to decide whether an accused should be dealt with by a court-martial or he should be handed over to the civil authorities for being dealt with according to civil law. A combined reading

of Section 3(ii) and 69 of the Army Act tends to show that even though civil offence is triable by criminal court, commission of civil offence by army personnel shall be deemed to be an offence under the Army Act and such offence is triable by Court Martial (Summary General Court Martial in this case). The act of the appellant falls within the definition of Section 69 (civil offence) and also under Section 46 of the Army Act, 1950. Therefore, if the authorities preferred to try the appellant for his disgraceful conduct, then it would not amount to any illegality which can vitiate the entire Summary General Court Martial proceedings.

13. Even otherwise when Army personnel is being tried by civil court for civil offence, even then the Army authorities can get the case transferred and try the case themselves in view of the provisions of Section 475 of the Code of Criminal Procedure. Section 475 of the Code of Criminal Procedure reads thus:

> *"475.* ***Delivery to commanding officers of persons liable to be tried by Court-martial. – (i)*** *The Central Government may make rules consistent with this Code and the Army Act, 1950 (46 of 1950), the Navy Act, 1957 (62 of 1957), and the Air Force Act, 1950 (45 of 1950), and any other law, relating to the Armed Forces of the Union, for the time being in force, as to cases in which persons subject to military, navel or air force law, or such other law, shall be tried by a Court to which this Code applies or by a Court-martial, and when any person is brought before a Magistrate and charged with an offence for which he is liable to be tried either by a Court to which this Code applies or by a Court-martial, such Magistrate shall have regard to such rules, and shall in proper cases deliver him, together with a statement of the offence of which he is accused to the Commanding Officer of the Unit to which he belongs or to the Commanding Officer of the nearest military, navel or air-force station, as the case may be, for purpose of being tried by a Court-martial."*

14. Thus, it is clear that the Legislature has left it to the discretion of the Army authorities to take a decision. In the instant case, the Army authorities took a decision to try the appellant for Army offence under Section 46 of the Army Act, 1950. So this decision of the authorities

cannot be said to be illegal, improper or beyond jurisdiction. Hence the submission of learned counsel for the appellant has no substance.

15. Coming to the next argument advanced by the learned counsel for the appellant that the impugned order of conviction and sentence and dismissal from service is unsustainable for the reason that certain provisions of the Code of Criminal Procedure were not complied with regarding issuing summons, we are of the considered opinion that since the trial by the Summary General Court Martial was not conducted under the provisions of the Code of Criminal Procedure, therefore, this submission of the learned counsel for the appellant has no substance. Army Act is a special Act which provides complete code of trial, therefore, the same has to be followed. Law is settled on the point that the provisions of special law shall prevail over general law.

16. Perusal of the record shows that the convening order was passed on 27.05.2015 and the appellant was taken into custody vide order dated 03.06.2015 with effect from 04.06.2015.

17. The next submission of the learned counsel for the appellant is that no Court of Inquiry was conducted, as such, the appellant has been prejudiced in defending himself. We do not find any merit in this argument of learned counsel for the appellant. A Court of Inquiry is not a trial. It is only a fact finding enquiry which has a limited purpose. Hon'ble Apex Court in the case of **Union of India & others vs Major A. Hussain** (AIR 1998 SC 577) has discussed the nature of Court of Inquiry**,** Hon'ble Apex Court has opined as under :

> *"Provisions of Rules 180 and 184 had been complied. Rule 184 does to postulate that an accused is entitled to a copy of*

the report of Court of Inquiry. Proceedings before a Court of Inquiry are not adversarial proceedings and is also not a part of pre-trial investigation. In Major General Inder Jit Kumar vs. Union of India & Ors. [(1997) 9 SCC 1] this Court has held that the Court of Inquiry is in the nature of a fact-finding enquiry committee. The appellant in that case had contended that a copy of the report of the Court of Inquiry was not given to him and this had vitiated the entire court martial. He had relied upon Rule 184 in this connection. With reference to Rule 184, the Court said that there was no provision for supplying the accused with a copy of the report of the Court of Inquiry. This Court considered the judgment in Major G.S. Sodhi's case and observed that supply of a copy of the report of enquiry to the accused was not necessary because proceedings of the court of enquiry were in the nature of preliminary enquiry and further that rules of natural justice were not applicable during the proceedings of the court of enquiry though adequate protection was given by Rule 180. This Court also said that under Rule 177, a Court of Inquiry can be set up to collect evidence and to report, if so required, with regard to any matter which may be referred to it. Rule 177, therefore, does not mandate that a Court of Inquiry must invariably be set up in each and every case prior to recording of summary of evidence or convening of a court- martial. "

Hon'ble Apex Court in the case of ***Major Suresh Chand Mehra vs. Defence Secretary, Union of India & others*** (1991) 2 SCC 198) has considered the nature and object of Court of Inquiry and has held in Para 13 as under :-

"13. .....We find that there is no substance in this contention. The said inquiry was by a Court of Inquiry provided for in Rule 177 of the Army rules, the provisions of sub-rule (1) of the said rule show that the said inquiry must be by an assembly of officers of the ranks described in sub-rule (1) and the purpose of this inquiry is merely to collect evidence and if so required, to report with regard to any matter which may be referred to the said officers. This is merely in the nature of a preliminary investigation and cannot be equated with a trial.

18. In the case in hand, as evident from the evidence on record, the appellant had admitted his guilt before the father of the victim in the presence of PW-5, an Army Officer, as such, there was no necessity to conduct a Court of Inquiry as all the facts were clear. Summary of

Evidence was recorded and a copy thereof was provided to the appellant. Thus, the appellant was in no way prejudiced in defending himself in the Summary General Court Martial proceedings. Apart from it, Court of Enquiry is a pre-trial stage. Once the trial has started then the pre-trial stage loses its significance.

19. The main thrust of arguments of learned counsel for the appellant is with regard to delay in informing the incident to the authorities. In this case, the incident had taken place in a closed area in isolation and only the victim and the appellant were aware of it. It has also come in evidence that the appellant had threatened the victim not to disclose the incident to anyone. It transpires from the perusal of evidence that this incident made a great dent on the innocent mind of the victim of such a tender age due to which his normal behavior changed which was noticed by the mother. When the mother of the victim took him in confidence, then only he informed about the incident. Accordingly, the wife communicated the incident to her husband and thereafter the authorities were informed and action began. So in the peculiar facts of this case, there was absolutely no delay in initiating action against the appellant. It was on account of threat of the appellant himself due to which the victim suffered mental trauma and he could not gather courage to inform the incident to his parents. Therefore, by arguing that there was delay in reporting the matter to the authorities, virtually the appellant wants to take benefit of his own wrong and, therefore, we do not find any substance in the argument of learned counsel for the appellant and hold that there was no delay in informing the authorities.

20. Learned counsel for the appellant has also argued that the appellant had moved an application to engage an Advocate but no order was passed on that application. However, it transpires from the record that the appellant was duly defended by an Advocate of the Jammu & Kashmir High Court who had cross-examined the prosecution witnesses at length. Therefore, this submission of learned counsel for the appellant has no legs to stand and the appellant cannot claim that his trial was prejudiced as he was not given due opportunity to defend himself. Since the appellant was defended by a competent Advocate throughout the trial, this submission has no legs to stand. A defence counsel cross-examines the witnesses under the instructions of his client (the appellant). All the witnesses have been cross-examined at length in the presence of the appellant which means that the counsel was defending him with the consent and authority of the appellant and under the instructions of the appellant. If the appellant was, at any point of time, not satisfied with the services of his counsel, then he ought to have requested his counsel not to appear and would have prayed for another counsel. But it has not been done. So now at this stage, this submission loses all its force.

21. Now we may consider the evidence of the prosecution witnesses and defence witness. The prosecution has examined five witnesses. The appellant examined himself as a defence witness (DW-1) and five other defence witnesses.

22. PW. 1 is mother of the victim. In her examination-in-chief she has stated that the appellant had performed the duties of buddy with effect from 30.10.2014 till the time she proceeded for winter vacation in December, 2014. She stated that at the relevant time her elder son was

studying in IV Standard and the younger was studying in Kinder Garden. She stated that , "From July 2014 – December 2014 Sepoy Suraj Singh was performing the duties of buddy to my husband and I was staying at Officer Commanding 'Regulating Centre Officer Residence' during the said period. I along with my family had proceeded to Lucknow for winter vacations. I had noticed certain behavoural changes in my elder son Master 'A' during the ibid vacations and even before that. …..Master 'A' repeatedly said that he did not wish to go to Srinagar and also appeared to be scared by the thought of going back. In December 2014, before proceeding for vacations, Master 'A' had stopped playing outdoors and would stick around me or watch TV indoors saying he did not wish to stay in Srinagar and would ask me as to when they will shift to Bengaluru, since Lieutenant Colonel 'B' 's posting to Bengaluru was out by that time. Before December 2014 Master 'A' used to play outdoors keenly. However, in December 2014, even if insisted upon by me, he did not go outdoors." This witness further deposed that "After knowing that my husband had gone back to Srinagar, my elder son Master 'A' got restless/scared and said that he did not want to go back to Srinagar. Having observed the behavioural changes as brought out above and my son's unwillingness to move to Srinagar, I took my son Master 'A' into confidence and spoke to him at length so as to know what problem he was facing. Master 'A' at the outset said *"Suraj Bhaiyya mere sath bahut gandi harkat kartein hain".* In order to figure out as to what Sepoy Suraj Singh used to do to my son, I asked Master 'A' about the same. Master 'A' then confided in me that a few days after Sepoy Suraj Singh had returned from leave, i.e. after 30 October 2014, he had

taken Master 'A' to a store room located behind our residence at 'Regulating Centre' on the pretext of showing him some new games on his mobile phone. Inside the store room, Sepoy Suraj Singh touched the private parts of Master 'A', unzipped his (Sepoy Suraj Singh's) trouser and took out his private part,held the hand of Master 'A'' and made him (Master 'A') touch and shake his (Sepoy Suraj Singh's) private part. This prosecution witness further deposed, "My son further told me that some days after the above incident, Sepoy Suraj Singh again took him to the same store room on the pretext of playing cricket with him. This time he again latched the store room from inside, lowered the trouser which Master 'A' was wearing, made him bend down forward and inserted his penis in the anus of Master 'A' which caused pain to Master 'A'. Master 'A' asked Sepoy Suraj Singh to leave him to which the latter replied saying "*Bas thodi der aur, ho gaya"*. As per Master 'A' Sepoy Suraj Singh while doing so was shaking himself. When Sepoy Suraj Singh left Master 'A', Master 'A' could feel something wet/dirty at his backside.

23. PW-1 has specifically stated in her examination-in-chief that the victim told her that he did not disclose the above acts of Sepoy Suraj Singh to anybody earlier since Sepoy Suraj Singh had put him in fear by saying that he should not disclose the above acts to anyone; should he do so he would get a beating from his parents and no one will believe him. The minor boy disclosed the incidents only 2-3days after this witness reached Koklata on 16 January 2015. She informed her husband on telephone the acts committed by Sepoy Suraj Singh.

24. This witness was cross-examined at length by the defence. In her cross-examination she has fully supported her statement and nothing

could be elicited in her cross-examination to make the testimony of this witness unworthy of credence.

25. On being questioned by the Court, this witness deposed that Master ‘A’ told me that he had washed himself after the second incident as narrated by him, in the washroom located inside my residence at Regulation Centre, Srinagar. The accused had an easy access to my residence. He had close relation with my children.

26. The second prosecution witness (Lieutenant Colonel ‘B’) is the father of the minor boy. The evidence of this witness is also, to a large extent, similar to the evidence given by his wife (PW-1). A careful examination of the evidence of this witness shows that whatever he has stated is truth. He had absolutely no reason to falsely implicate the appellant. When he came to know about the incident, he immediately informed the authorities and action was initiated against the appellant. Nothing material could be elicited in the lengthy cross-examination of this witness also to make a dent on his credibility. It is true that PW-1 and PW-2 are not eye-witnesses. For that the prosecution has examined the victim, the only witness on this point.

27. PW-3 is the minor boy who is the victim of the incidents. He was examined in the presence of his father whose evidence was already recorded and who was instructed by the Court not to interrupt/interfere with Master ‘A’ during his examination before the Court. The Court prior to recording statement of this witness ascertained and was satisfied that Master ‘A’ is capable of understanding the questions put to him and of giving rational answers to them and found that Master ‘A’ is

competent to testify in terms of Section 118 of the Indian Evidence Act, 1872. Thus, the Court before recording his evidence has satisfied itself that he is capable of giving evidence.

28. It was submitted by the learned counsel for the appellant that the evidence of the victim has not been corroborated. Law is settled on the point that the evidence of the victim in such type of offences is treated at a very high pedestal and no corroboration is required. If the evidence of the victim is found to be reliable, then the same can be made the basis for conviction. On this point, we would like to quote the pronouncement of Hon'ble The Apex Court in the case of ***"Childline India Foundation and Another Vs Allan John Waters and Others***. We would like to reproduce Para 49, 50 and 51 of the case law, which are very much relevant in the present controversy. Para 49, 50 and 51 are reproduced as under:-

> *"49. Regarding the requirement of corroboration about the testimony of PWs 1 and 4, with regard to sexual abuse, it is useful to refer the decision of this Court in* ***State of Kerala vs. Kurissum Moottil Antony****, (2007) 1 SCC (Crl) 403. In that case, the respondent was found guilty of offences punishable under Section 451 and 377 IPC. The trial Court had convicted the respondent and imposed sentence of six months and one year's rigorous imprisonment respectively with a fine of Rs.2,000/- in each case. The factual background shows that on 10.11.1986 the accused trespassed into the house of the victim girl who was nearly about 10 years of age on the date of occurrence and committed unnatural offence on her. After finding the victim alone in the house, the accused committed unnatural offence by putting his penis having carnal intercourse against order of nature. The victim PW-1 told about the incident to her friend PW-2 who narrated the same to the parents of the victim and accordingly on 13.11.1986, an FIR was lodged.*
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> *50. On consideration of the entire prosecution version, the trial Court found the accused guilty and convicted and sentenced as aforesaid. An appeal before the Sessions Judge did not bring any relief to the accused and revision was filed before the High Court which set aside the*

order of conviction and sentence. The primary ground on which the High Court directed acquittal was the absence of corroboration and alleged suppression of a report purported to have been given before the FIR in question was lodged. In support of the appeal, the State submitted that the High Court's approach is clearly erroneous and it was pointed out that corroboration is not necessary for a case of this nature.

51. The following observations and conclusion in ***Kurissum Antony*** *are relevant (SSC pp. 629-30, paras 7-11)*

"7. An accused cannot cling to a fossil formula and insist on corroborative evidence, even if taken as a whole, the case spoken to by the victim strikes a judicial mind as probable. Judicial response to human rights cannot be blunted by legal jugglery. A similar view was expressed by this Court in ***Rafiq v. State of U.P****. with some anguish. The same was echoed again in* ***Bharwada Bhoginbhai Hirjibhai v. State of Gujarat****. It was observed in the said case that in the Indian setting refusal to act on the testimony of the victim of sexual assault in the absence of corroboration as a rule, is adding insult to injury. A girl or a woman in the tradition-bound non-permissive society of India would be extremely reluctant even to admit that any incident which is likely to reflect on her chastity or dignity had ever occurred. She would be conscious of the danger of being ostracised by the society and when in the face of these factors the crime is brought to light, there is inbuilt assurance that the charge is genuine rather than fabricated. Just as a witness who has sustained an injury, which is not shown or believed to be self-inflicted, is the best witness in the sense that he is least likely to exculpate the real offender, the evidence of a victim of sex offence is entitled to great weight, absence of corroboration notwithstanding. Corroboration is not the sine qua non for conviction in a rape case. The observations of Vivian Bose, J. in* ***Rameshwar v. State of Rajasthan*** *were AIR P. 57, para 19)*

> *'19.....The rule, which according to the cases has hardened into one of law, is not that corroboration is essential before there can be a conviction but that the necessity of corroboration, as a matter of prudence, except where the circumstances make it safe to dispense with it, must be present to the mind of the judge, ...'*

8. To insist on corroboration except in the rarest of rare cases is to equate one who is a victim of the lust of another with an accomplice to a crime and thereby insult womanhood. It would be adding insult to injury to tell a woman that her claim of rape will not be believed unless it is corroborated in material particulars as in "the case of an accomplice to a crime". ***(See State of Maharashtra v.***

> ***Chandraprakash Kewalchand Jain.)*** *Why should the evidence of the girl or the woman who complains of rape or sexual molestation be viewed with the aid of spectacles fitted with lenses tinged with doubt, disbelief or suspicion? The plea about lack of corroboration has no substance.*
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> *9. It is unfortunate that respect for womanhood in our country is on the decline and cases of molestation and rape are steadily growing. Decency and morality in public and social life can be protected only if courts deal strictly with those who violate the social norms.*
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> *10. The above position was highlighted by this Court in* ***Bhupinder Sharma v. State of H.P.***
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> *11. The rule regarding non-requirement of corroboration is equally applicable to a case of this nature, relating to* ***Section 377*** *IPC."*

29. The victim of the offence has fully supported the complaint and has made very serious allegation against the appellant in his evidence. There is no law that the evidence of victim of such offence cannot be relied upon without corroboration. This submission of the learned counsel for the appellant is without any substance. The sole testimony of a victim of sexual assault, if found reliable, can be made the basis for conviction. Apart from it, in the instant case, there is evidence of prosecution witnesses that the appellant had confessed his guilt. Such type of offence is immoral and very serious. In Army, a very high standard of discipline is required from the Army personnel.

30. The child witness, who is victim of sexual assault, has fully supported the incident. He was student of Class IV when his statement was recorded. During evidence, whenever this witness encountered some difficulty in expressing as to what was done by the appellant with him, he expressed the same with gestures and such gestures have been noted during course of evidence. A perusal of the evidence of this witness shows that his evidence is very very natural and there is nothing to

discredit his evidence. He was subjected to a very lengthy cross-examination, but even in the cross-examination nothing material could be elicited which may create any doubt regarding his credibility. Why such a tender aged boy would depose against the appellant unless and until such an incident has happened. During course of arguments learned counsel for the appellant could not bring to our notice any reason for his false implication.

31. PW-5 examined by the prosecution is Lieutenant Colonel Rahul Joshi of 5231 Army Service Corps Battalion (Mechanical Transport). He stated that on 24 January 2015, Lieutenant Colonel 'B' (PW-2) while in the office of this witness was quite disturbed and on being asked, PW-2 informed that his buddy (accused) had molested his son and attempted unnatural sex with him. This witness was told by Lieutenant Colonel 'B' (PW-2) that before taking official action, he wanted to speak to the accused and ascertain the facts from him. At 1500 hours on the same day Lieutenant Colonel 'B' (PW-2) called this witness to his residence and requested him to be present there to be privy to the conversation while he would speak to the accused. The accused was questioned by Lieutenant Colonel 'B' (PW-2) about the unnatural acts committed by him with son of Lieutenant Colonel 'B' (PW-2) to which at the first instance he denied it, but later on broke down and said that he had committed a wrong and pleaded for mercy. Thus, virtually in this case, there is also extra judicial confession of the appellant before the Army officers.

32. This witness was cross-examined by the defence. He reiterated his version as given in the examination-in-chief. He was questioned by the

Court wherein he stated that the accused had admitted that he molested Master 'A'.

33. The appellant examined himself as defence witness. During his evidence, he made certain allegation against the mother of the victim which goes to suggest that the mother of the victim was trying to sexually exploit him to which he declined and this was the reason for his false implication. We find absolutely no substance in this suggestion of the appellant because when the mother of the victim was examined as PW-1, then she was cross-examined at great length and there was not even a single suggestion to this effect as to what has been alleged by the appellant in his defence evidence. Had there been any such incident, then PW-1 was the best witness to be cross-examined on these points. But absence of suggestion of such incident to this witness shows that it was an afterthought and cooked up defence which does not inspire the least confidence. On this point, we would like to refer the findings of the Summary General Court Martial, which reads as under:-

> *"The Court is not convinced with the contention of the accused that he has been falsely charged in the case by PW-2 after he had disclosed to PW-2 that advances made by PW-1 towards the accused because; firstly, during their cross-examination, neither PW-1 nor PW-2 were questioned by the defence regarding the advanced made by PW-1; secondly, the accused also did not state about the advances made by PW-1 when questioned by the Court under Army Rules 58 and 159 and thirdly, the contention of the accused that he was not able to disclose about the acts of PW-1 to anyone earlier due to the pressure of his Commanding Officer whereafter he phone was deposited by Naik Ghanshyam (DW-3) and he was placed under a guard does not inspire the confidence of the Court since DW-3 has specifically deposed that the accused used to keep his mobile with himself while in the Lines and in night, the on duty guard used to remain outside the Lines."*
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> We do not find any mistake of law or of fact in this finding.

34. Therefore, such defence has absolutely no legs to stand and it has been stated by the appellant only as a ground to raise an argument that he has been falsely implicated in this case. Apart from it, such type of incident also creates stigma on the victim in his future life, therefore, no parents would involve their minor son by making such false allegation. The evidence of the victim shows that his evidence is most natural and the evidence cannot be discarded. Therefore, evidence of the prosecution witnesses was wholly reliable.

35. The only witness of fact was PW-3, the victim, who has given a vivid description of the incident and we do not find any infirmity in the Summary General Court Martial proceedings whereby the evidence has been believed and acted upon.

36. The accused examined Sepoy Ram Vijay Pal as DW-2, Naik Ghanshyam as DW-3, Naik Koriayya CH as DW-4, Naik Kudalle Dhananjay Vishnu as DW-5, and Havildar Bani Kanta Maji as DW-6 who are formal witnesses. All the defence witnesses from DW-2 to DW-5 have deposed about certain circumstances that took place after the date of incidence. After perusal of their evidence, we find that their evidence does not touch the merits of the case and does not help the appellant in any manner. Learned counsel for the appellant has also not raised any argument on the basis of evidence of these defence witnesses.

37. We have carefully gone through the entire evidence on record. We find that there is uniformity in the evidence of the prosecution witnesses with regard to the manner and nature of offence committed by the appellant. Learned counsel for the appellant could not bring to our notice any such inconsistency in the evidence of the prosecution

witnesses which would vitiate the findings of conviction and sentence awarded to the appellant. The appellant had indulged in a disgraceful and immoral offence against a boy of innocent age. As observed earlier, the appellant has taken a false ground for his false implication.

38. We have also gone through the findings recorded by the Summary General Court Martial on the two charges. Perusal of the same shows that evidence has been considered correctly and the findings recorded do not suffer from any infirmity, whether factual or procedural.

39. During course of arguments, learned counsel for the appellant has not argued that any Military provision of Law, Rules or Regulations has not been complied with in conducting the Summary General Court Martial proceedings. We do not find any merit in this Appeal.

40. The Appeal deserves to be dismissed, and is hereby **dismissed**.

No order as to costs.

(Air Marshal BBP Sinha)
Member (A)

(Justice SVS Rathore)
Member (J)

Dated: 19.07. 2018
anb