

**RESERVED**  
**Court No. 1**

**ARMED FORCES TRIBUNAL, REGIONAL BENCH,  
LUCKNOW**

**ORIGINAL APPLICATION NO. 181 of 2016**

Tuesday, this the 08<sup>th</sup> day of May, 2018

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

Deepak Kumar Singh (No 15420625W), son of Shri Mahesh Singh, Village & PO-Laxuman Chhapra, District-Ballia-277214 (U.P.)

....Applicant

Ld. Counsel for the: **Shri R. Chandra, Advocate**  
Applicant

Verses

1. Union of India, through, the Secretary, Ministry of Defence, Government of India, New Delhi.
2. The Chief of the Army Staff, Integrated Headquarters, New Delhi-11.
3. General Officer Commanding, HQ Central Command, Lucknow-226002.
4. The Officer-in-Charge, Army Medical Records, Lucknow-02.
5. Commanding Officer, No 2 Mil Trg Bn, AMC Centre & College, Lucknow-02.

....Respondents

Ld. Counsel for the : **Shri Bhanu Pratap Singh, Central**  
Respondents. Govt Counsel assisted by Maj Salen Xaxa, OIC Legal Cell.

**ORDER****“Per Justice S.V.S Rathore, Member (J)”**

1. By means of the instant OA filed under Section 14 of the Armed Forces Tribunal Act, 2007, the applicant has made the following prayers:-

*“(i) To quash the Summary Court Martial proceedings held on 06.04.2011 (Annexure No. A-1) and order dated 04.05.2017 (Annexure No. A-2)*

*“(ii) To direct the respondents to reinstate the applicant in the service w.e.f. 06.04.2011 with all consequent benefits including arrears of salary and continuity in service.*

*“(iii) Any other appropriate order or direction which the Hon’ble Tribunal may deem just and proper in the nature and circumstances of the case.”*

2. In brief, the facts giving rise to the instant OA may be summarised as under:-

The applicant was enrolled in the Indian Army in Army Medical Corps (AMC) as Sepoy/Ambulance Assistant on 30.07.2004. In the intervening night of 10/11.01.2011, he was detailed to perform patrolling duty in the unit area from 0100 hrs to 0215 hrs. It transpires from a perusal of record that in that fateful night, the applicant committed sodomy with recruit No.15433874N Rect/AA Prasenjit Dhara at Tej Coy of No. 2 Mil Trg Bn AMC Centre and College. On a complaint made by the victim of the offence, the applicant as well as the victim were sent for medical examination, which was conducted on

11.01.2011 in the MI of Command Hospital (Central Command), Lucknow. Thereafter, the applicant was subjected to Summary Court Martial (SCM) proceedings. He was served with a charge-sheet containing following charges:

“CHARGE SHEET

The accused No: 15420625W Rank: Sep/Amb Asst  
Name: Deepak Kumar Singh of No 2 Mil Trg Bn, AMC Centre & College, Pin-900450, C/O 56 APO is charged with:-

FIRST CHARGE  
ARMY ACT 1950  
SEC-46(a)

DISGRACEFUL CONDUCT OF AN  
UNNATURAL KIND

in that he,

at Lucknow on 10 Jan 2011 at about 2330h at Tej Coy of No 2 Mil Trg Bn AMC Centre and College committed an unnatural offence on the person of No 15433874N Rect/AA Prasenjit Dhara of the same Bn.

SECOND CHARGE  
ARMY ACT 1950  
SEC 39 (a)

WITHOUT SUFFICIENT CAUSE, FAILS  
TO APPEAR AT THE TIME FIXED AT  
THE, PLACE APPOINTED FOR DUTY

in that he,

at Lucknow on 11 Jan 2011 at about 0145h, failed without sufficient cause to appear at Tej Coy gate of No 2 Mil Trg bn AMC Centre and College appointed for patrolling duty.

Station: Lucknow  
Dated: 29 Mar 2011

Sd./- Illegible  
(HHP Singh)  
Lt Col  
Commanding Officer”

3. Summary of Evidence (SoE) was recorded, wherein the victim was examined as PW-1. Other witnesses were also

examined. Since the applicant had pleaded guilty, the SCM after following the prescribed procedure, held him guilty and sentenced him to suffer rigorous imprisonment for nine months in civil prison and to be dismissed from service. Feeling aggrieved, the applicant preferred a statutory petition under Section 164(2) of the Army Act, 1950 on 25.12.2011. Since the said petition was not decided by the competent authority for quite some time, the applicant filed an OA bearing No. 139 of 2013, which was disposed of by this Tribunal vide order dated 04.11.2015 with a direction to respondent concerned to dispose of the petition preferred by the applicant on 25.12.2011 with a speaking order within a period of three months from the date of production of a certified copy of the order before him. Thereafter, an Execution Application bearing No. 91 of 2016 was filed for execution of the aforesaid order dated 04.11.2015 passed in OA No. 139 of 2013. Since the pending statutory petition/representation of the applicant had been disposed of on 04.05.2016, therefore, vide order dated 18.05.2016, the said execution application was dismissed as infructuous. The said statutory petition of the applicant was rejected by a speaking order. Feeling aggrieved, the applicant has now challenged the said order dated 04.05.2016 (Annexure No. A-2), praying further for quashment of Summary Court Martial proceedings held on 06.04.2011 and also for his reinstatement in service w.e.f. 06.04.2011 with all consequential benefits including arrears of salary and continuity in service.

4. We have heard Shri R. Chandra, Ld. Counsel for the applicant and Shri Bhanu Pratap Singh, Ld. Counsel for the respondents, assisted by Maj Salen Xaxa, OIC Legal Cell and perused the record.

5. Learned counsel for the applicant has argued that in this case, a perusal of the statement of the victim coupled with the fact that he himself did not go to the competent authority to make any complaint against the applicant, clearly indicates that he was a consenting party. It has also been argued that the evidence of the victim does not find support from the medical evidence and that the applicant ought to have been tried by a civil court instead of SCM. It has also been argued that the respondent no. 3 has rejected the applicant's statutory appeal without application of mind and without any justification. The impugned orders, therefore, being not in accordance with law are liable to be set aside and the applicant is entitled to be reinstated in service with all consequential benefits.

6. **Per contra**, learned counsel for the respondents has submitted that the applicant himself had pleaded guilty; the SCM proceedings were held as per procedure prescribed after plea of 'guilty' and he was awarded punishment in accordance with law. There was no procedural illegality or irregularity in conducting the SCM. It is submitted that during SoE, the victim has fully supported his case and the applicant also admitted it in his statement. He also submitted that the statutory petition of the

applicant was duly considered and being devoid of merit was rightly rejected by the competent authority.

7. We have given our anxious consideration to the rival submissions made before us by learned counsel for the parties. It is pertinent to mention here that learned counsel for the applicant has not challenged the procedure adopted in holding the SCM against the applicant nor has he argued that any mandatory provision of the Army Act or the Army Rules has been violated in holding the present SCM.

8. Before proceeding further, we would like to reproduce the statement of the victim given during the SoE, which is as under:

**PROSECUTION WITNESS NO. 1**

1. *I No 15433874A Rect/ AA Prasenjit Dhara of Tej Coy of No 2 Mil Trg Bn, AMC Centre & College, Lucknow state that:-*

2. *I have been enrolled in the Army Medical Corps as Amb Asst and reported to Rect Reception Platoon of No 1 Mil Trg Bn on 17 Dec 2010. I was subsequently despatched to the Tej Company No 2 Mil Trg Bn AMC Centre & College, Lucknow on 24 Dec 2010. I was given an accn in room No 2 of barrack No 3 of Tej Coy.*

3. *On the night of 10 Jan 2011, I was sleeping on my charpoy, in room No 2 of barrack No 3 of Tej Coy. I was woken up from sleep by some body, who was shaking me by holding my leg. I woke up, however could not recognise the person neither could guess the time as it was dark. I was told by the person that I was supposed to be on duty at the point in time and because of this CHM of the Coy is calling me outside. I got surprised and scared, however went out of the room to meet CHM along with that person who woke me. The person asked me to accompany him to the Nimbu garden, located nearby. Even at this stage, I was not able to recognize him. I recognized him after reaching to the Nimbu garden. I recognized him as Sep/ AA DK Singh of Tej Company, No 2 Mil Trg Bn AMC Centre & College, Lucknow, who stays in the adjacent room of the same barrack.*

4. I was taken inside the Nimbu garden and was told by Sep/AA Deepak Kumar Singh that CHM NG Sinha is waiting for me there. I could not find the CHM in Nimbu garden. Thereafter, Sep/AA Deepak Kumar Singh asked me to lower down my trouser and bend forward. Initially I refused to do so but on threat of losing my job, I obeyed his orders. I obeyed because I got very scared. Then, Sep/AA Deepak Kumar Singh attempted to penetrate my anal canal and could partially succeed in his second attempt. Thereafter, Sep/ AA Deepak Kumar Singh asked me to accompany him to his room. I went along with him to his room. On reaching his room, Sep/AA Deepak Kumar Singh took out a condom from his bag and asked me to put it on his penis. He also asked me to lie down on his bed with my trouser lowered. Sep/AA Deepak Kumar Singh once again tried to penetrate my anal canal and partially succeeded twice. He subsequently ordered me to dispose the used condom which was full of semen. Instead of disposing, I hid the same near the tank of warm water located near Nimbu garden. Thereafter, he told me to go back to my room and not to discuss the matter with anybody. He also threatened me of dire consequences, if I don't follow his orders.

5. I went back to my room and slept. After waking up in morning, I narrated the incident to my buddy, No 15433868A Rect/ DMT Samsaul Hoque. He advised me to report the matter to CHM NG Sinha. I reported the matter to CHM NG Sinha who took me to the Sr JCO, Sub/AA SN Paswan. Sub/AA SN Paswan took me to the Coy Cdr/ Adjutant and Commanding Officer. Thereafter, I was sent to the RMO, AMC Centre and College, Lucknow for medical exam and referred me to the Command Hosp (Central Command) Lucknow. After medical, exam, I was directed back to the unit and allotted a bed near to CHM NG Sinha's bed, in barrack no 176 of platoon no1.

6. The above statement has been read out to me in a language that I understand and sign it as correct.

Station: Lucknow

Sd/-

(15433874 n Rect/AA  
Prasenjit Dhara

Dated: 02 Feb 2011

Prosecution Witness

The accused declined to cross examine the witness.

Sd/-

(154206625W Sep/Amb Asst)  
Deepak Kumar Singh

Dated: 02 Feb 2011

Sd/-

(BS Bisht)  
Capt

Recording Officer

Dated: 02 Feb 2011"

9. The applicant himself was also examined during SoE. He was duly warned. An independent witness JC-697730K Nb Sub/ Amb Asst Mahadevan Nair was called in close presence and hearing of the applicant's case. The applicant/accused was cautioned in term of Army Rule 23(3) by putting the following questions:-

**“DO YOU WISH TO MAKE ANY STATEMENT? YOU ARE NOT OBLIGED TO SAY ANYTHING UNLESS YOU WISH TO DO SO. BUT WHATEVER YOU SAY WILL BE TAKEN DOWN IN WRITING AND MAY BE GIVEN IN EVIDENCE”**

*No 15420625W Sep/ Amb Asst Deepak Kumar Singh prefer to state that:*

*I am posted to the Tej Company of No 2 Mil Trg Bn AMC Centre & College, Lucknow wef 17 Feb 2009, I am performing administrative duties and staying in the bk No 3 of Tej, Coy, No2 Mil Trg Bn.*

*On the night of 10/11 Jan 2011, I was detailed to perform patrolling duty in the unit area from 0100 hr to 0215 hr. Around 2000 hr on 10 Jan 2011, I consumed 03 pegs of whiskey from a bottle which I kept with my personal belongings and had come to the Darbar Hall, located in the unit areas to sleep. I woke up around 2230 hr, as I was feeling cold and decided to go back to the lines. I called the sentry on duty and told him to wake me up from the barrack where I will be sleeping. After returning back to the lines, I consumed 03 more pegs of whiskey.*

*On 10 Jan 2011, at approx 2330 hr, I went to the next room of same barrack and woke up No 15433874N Rect/AA Prasenjit Dhara of Tej Coy, No 2 MT Bn, who was sleeping there. I told No 15433874N Rect/AA Prasenjit Dhara to come out of the barrack and took him to the nearby Nimbu garden, located approx 30 mtr from the barrack. I ordered No. 15433874N Rect/ Amb Asst Prasenjit Dhara to remove his*



*trouser & underwear and bend forward. Initially, Rect/ AA P Dhara refused to lower his trouser, however after insistence he followed my orders. I thereafter lowered my own trouser & underwear and also wore a condom that I was carrying in my purse. I then tried to insert my penis into the anus of No 15433874N Rect/ AA Prasenjit Dhara. I tried for about 10 min but failed to get inside his anal canal.*

*Subsequently, after my failed attempt, I told No 15433874N Rect/ AA Prasenjit Dhara to go back to his barrack and I also went back to my barrack and slept.*

*Next morning on 11Jan 2011, at around 0830h, CHM Tej Coy No 13968575K Hav/AA NG Sinha called me, I reported to him, who brought me to the office of Coy Cdr. Thereafter, Coy Cdr directed JC-69559M Sub/AA SN Paswan, Sr JCO Coy and CHM Tej Coy No 13968575K Hav/AA NG Sinha to get my medical exam done by the RMO, AL MI Room AMC Centre & College Lucknow for the same and was referred to the Comd Hosp (CC) for further medical examination.*

Sd/-

Station: Lucknow (15420625W Sep/ Amb/Asst  
Deepak Kumar Singh  
Dated: 02 Feb 2011

The accused was afforded an opportunity to produce any witness in his defence for which he declined.

Sd/-

(Signature of Independent Witness)

JC-697730K Nb Sub/AmbAsth

Mahadevan Nair

Dated: 02 Feb 2011

Sd/-

(Signature of Accused)

15420625W Sep/Amb Asst

Deepak Kumar Singh

Dated: 02 Feb 2011

Sd/-

(B S Bisht)

Capt

Recording Officer

Dated: 02 Feb 2011”

10. The law is settled on the point that the evidence of a victim of such a sexual offence has to be given same importance as is given to an injured witness in a normal crime. Law is also settled on the point that the evidence of a witness cannot be discarded only on the ground that the same is not supported by medical evidence unless and until the medical evidence is of such a nature that it completely falsifies the evidence of the victim. In view of the aforesaid legal position, particularly keeping in view that no procedural illegality has been alleged by the learned counsel for the applicant, the evidence of the victim cannot be discarded. In the instant case, it is not the argument of learned counsel for the applicant that no such incident had taken place. His submission is that the incident took place with the consent of the victim himself. When we examined the evidence on record, then it was clear that it was not with the consent of the victim but it was committed against his will; rather the victim surrendered under fear to the wish of his senior due to which he became depressed and he was also scared due threats extended by the applicant. When witness Samual Haq (PW-2) asked him the reason for his depression and assured him to render help, he disclosed the entire story and the victim went alongwith the said witness to make a complaint of the incident. Total six prosecution witnesses were examined during SoE and the statement of the applicant was also recorded. He was also asked to lead his evidence in defence, to which he declined. Simply because the victim remained silent till morning,

it cannot be said that he was a consenting party. How a person would react in a given circumstance differs from man to man. It transpires from the evidence of the victim recorded during SoE that he was threatened by the applicant not to tell about this incident to anyone, failing which he would have to face dire consequences. The applicant was senior to him.

11. Admittedly the applicant and the victim, both were referred to medical examination, which took place on 11.01.2011. In the medical reports of the two, though there is no significant finding to establish the offence involved, but the law is settled on the point that mere penetration is sufficient to complete the offence. That apart, the applicant himself in his statement recorded during SoE has admitted that he tried to commit sodomy, but could not succeed. The victim has fully supported the prosecution story in his statement recorded during SoE. Apart from it, there is the evidence of five other prosecution witnesses, who have corroborated the circumstances under which the offence was committed. These circumstances also establish the commission of the alleged offence by the applicant. The law is settled on the point that the evidence of victim of such an offence can be discarded on medical ground only when the medical evidence is of such a nature that it completely rules out the possibility of the commission of offence. In the instant case, we do not find that the medical evidence is of such a nature to render the evidence of the victim unreliable.

12. Thus, the act of sodomy, may be mere penetration, was committed on the victim and the specific allegation was that it was the applicant who did it. Learned counsel for the applicant has also not submitted that the applicant had not committed this offence; rather his submission is that it was done with the consent of the victim, whereas there is no evidence or circumstance to suggest that it was with the consent of the victim. We do not find any conflict between the oral evidence of the victim and the medical evidence, as argued by learned counsel for the applicant. In a recent **case Latesh alias Dadu Baburao Kelkar versus State of Maharashtra**, reported in (2018) 3 SCC 66, it has been held by the Hon'ble Apex Court that the oral evidence takes precedence over medical evidence, unless later completely refutes any possibility of such occurrence. As observed above, there is no denial on the part of the applicant that such an occurrence had not taken place. The evidence of the victim on the point is consistent, hence the same has to be given precedence and requires no corroboration by the medical evidence. In this context, it would also be relevant to quote the observation of the Hon'ble Apex Court made in the case of **Childline India Foundation and another versus Allan John Waters and others**, reported in (2011) 6 SCC 261, which is reproduced as under:

“51. The following observations and conclusion in *Kurissum Antony* [(2007) 1 SCC 627] are relevant: (SCC 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 30 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 1952 SC 54, p. 57, para 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*, (1990) 1 SCC 550). 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.

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.

10. The above position was highlighted by this Court in *Bhupinder Sharma v. State of H.P* (2003) 8 SCC 551.)

11. The rule regarding non-requirement of corroboration is equally applicable to a case of this nature, relating to Section 377 IPC.”

14. During the course of arguments, learned counsel for the applicant has submitted that the plea of guilty was recorded applying force on the applicant and it was not voluntary, but when we made a query as to whether such a ground was taken by the applicant in his statutory petition preferred under Section 164(2) of the Army Act, learned counsel for the applicant conceded that no such plea was taken at that time. It is also noteworthy that once the learned counsel for the applicant admits that such an act was committed by the applicant, then whether it was with or without consent has absolutely no meaning, keeping in view the strict army discipline. Learned counsel for the applicant has admitted even at this stage that such an offence was committed by the applicant but it was with consent of the victim. So there is no occasion for us to find substance in the submission that the plea of ‘guilty’ was recorded under pressure.

15. The last submission made by learned counsel for the applicant is that since the applicant had committed a civil offence, therefore, he ought to have been tried by a civil court and not by the court martial. Here, It would be relevant to quote Section 475 of the Code of Criminal Procedure, which reads as under:

**“475. Delivery to commanding officers of persons liable to be tried by Court- martial.** (1) *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, naval 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, naval or air force station, as the case may be, for the purpose of being tried by a Court- martial.*

**Explanation.-** *In this section-*

(a) *" unit" includes a regiment, corps, ship, detachment, group, battalion or company,*

(b) *" Court- martial" includes any tribunal with the powers similar to those of a Court- martial constituted under the relevant law applicable to the Armed Forces of the Union.*

(2) *Every Magistrate shall, on receiving a written application for that purpose by the commanding officer of any unit or body of soldiers, sailors or airmen stationed or employed at any such place, use his utmost endeavours to apprehend and secure any person accused of such offence.*

*(3) A High Court may, if it thinks fit, direct that a prisoner detained in any jail situate within the State be brought before a Court- martial for trial or to be examined touching any matter pending before the Court- martial.”*

16. Sections 125 and 126 of the Army Act are also relevant in this regard, which read as under:

**“125. Choice between criminal court and court- martial.-***When a criminal court and a court- martial have each jurisdiction in respect of an offence, it shall be in the discretion of the officer commanding 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, and, if that officer decides that they should be instituted before a court- martial, to direct that the accused person shall be detained in military custody.*

**126. Power of criminal court to require delivery of offender.-***(1) When a criminal court having jurisdiction is of opinion that proceedings shall be instituted before itself in respect of any alleged offence, it may, by written notice, require the officer referred to in section 125 at his option, either to deliver over the offender to the nearest magistrate to be proceeded against according to law, or to postpone proceedings pending a reference to the Central Government.*

*(2) In every such case the said officer shall either deliver over the offender in compliance with the requisition, or shall forthwith refer the question as to the court before which the proceedings are to be instituted for the determination of the Central Government, whose order upon such reference shall be final.”*

17. A bare perusal of the above mentioned sections makes it abundantly clear that it was within the discretion of the Commanding Officer to try the case either under the provisions of Army Act or hand it over to the civil court. In the instant case,



the Commanding Officer has exercised his discretion for trial by SCM and not by regular civil court.

18. In view of aforementioned legal position, there was no illegality in trial of the applicant by SCM. We, therefore, find no substance in the aforesaid submission of learned counsel for the applicant.

19. Accordingly, this OA being devoid of merit deserves to be dismissed and is hereby **dismissed**.

No order as to costs.

**(Air Marshal BBP Sinha)**  
**Member (A)**

**(Justice S.V.S Rathore)**  
**Member (J)**

Dated: 8<sup>th</sup> May, 2018  
LN/-