

**RESERVED**  
**(Court No.2)**

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

**Original Application No. 106 of 2013 with  
M.A. No. 464 of 2020**

Friday, this the 05<sup>th</sup> day of July, 2024

**Hon'ble Mr. Justice Anil Kumar, Member (J)**  
**Hon'ble Maj Gen Sanjay Singh, Member (A)**

**Mahabir Singh** (convicted and lodged in District Jail,  
Dehradun)

.....Applicant

Ld. Counsel for : **Shri Kishore Rai**, Advocate  
Applicant (Amicus curiae)

Versus

**Union of India & Others**

....Respondents

Ld. Counsel for the : **Dr. Shailendra Sharma Atal**, Advocate  
Respondents Sr. Central Govt Standing Counsel

**ORDER****“PER HON’BLE Mr. JUSTICE ANIL KUMAR, MEMBER (J)”**

1. This O.A. (Appeal) has been filed under Section 15 of the AFT Act, 2007 against the Court Martial proceedings and order dated 11.05.2009 passed by the GCM by which applicant has been convicted under Section 69 of the Army Act, 1950 read with Section 302 IPC and sentenced to suffer life imprisonment and dismissal from service.

2. Applicant an accused Rifleman/Cook in unit 30 Assam Rifles of the Indian Army who is lodged in District Jail, Dehradun had submitted his application in the year 2012 which was admitted by this Tribunal vide order dated 04.02.2013 and has been registered as O.A. (Appeal) No 106 of 2013.

3. Brief facts as emanated from the record are that the applicant was posted in Nagaland, District Mokokchung on the post No 3001528M as Rifleman/Cook Mahabir Singh of 30 Assam Rifles and was attached to 9 Assam Rifles w.e.f. 29.01.2008 at Signal Platoon Mess from 0300 AM to 0200 PM. After return to his military quarter, he was asked by his wife Smt Rajmati Devi to fetch biscuits from CSD Canteen for children. He proceeded for CSD Canteen and on his way back to his house, the applicant bought half bottle of rum and after consuming the liquor, he

returned to his house at about 0530 PM without biscuits. On reaching his residence, his wife enquired if he had bought the biscuits for children. His wife was angry with the applicant for not buying biscuits for children and consuming liquor, therefore, she took money from pocket of the applicant and went to the kitchen. After that, the applicant went to the bedroom and started to watch television. While watching television, he again consumed liquor sitting in the house. Thereafter, he asked his wife to cook food for him and went to the toilet.

4. After sometime the applicant came out from the toilet and entered into the kitchen where he found his wife with a plastic can of kerosene, filling it into the stove. The applicant again asked his wife to prepare food but she replied-she would not cook any food for the day, after which the applicant and his wife had serious altercation.

5. The applicant had allegedly poured the kerosene oil on the body of her wife and threw burning matchstick on her. When she was in flames she tried to escape and ran towards the bathroom, but fell down unconsciously on the passage between the bathroom and kitchen and died due to burning at around 0800 PM. The applicant also caught fire by saving her wife and had burns on his left hand and shoulder.

6. Major Anand Sasmal, Adjutant 30 Assam Rifles lodged a written complaint to the Police Station-II, Mokokchung informing that Smt Rajmati Devi wife of the applicant was found dead in a burnt condition. On receipt of information, FIR No 3 of 2008 was registered on 30.01.2008 u/s 302 IPC. The applicant was arrested on 01.02.2008 and during the course of interrogation, he confessed his guilt before the Investigating Officer (IO) on 05.02.2008. On 13.02.2008, the applicant was produced before learned Judicial Magistrate First Class, Mokokchung who recorded the confessional statement of the accused.

7. The case was taken over by 30 Assam Rifles on the order of Major General KS Sethi, Inspector General Assam Rifles (IGAR), Kohima for investigation and trial by GCM. On 20.02.2008, applicant was handed over to 30 Assam Rifles and thereafter, Summary of Evidence (S of E) was recorded. In terms of the S of E so recorded, it was clearly ascertained that prima facie case u/s 302 IPC was well established against the applicant for causing death of his wife Smt Rajmati Devi on the night of 29.01.2008 at his family residence at Mokokchung.

8. The applicant was attached to 9 Assam Rifles where Colonel Sanjay Tyagi, Commandant 27 Assam Rifles conducted Court of Inquiry (C of I) in which 09 (nine) witnesses were examined and

their statements were recorded. The statement of applicant was also recorded.

9. The Court of Inquiry (C of I) carefully examined and critically analysed the whole evidence on record. It had also appreciated the same in its entirety both from the prosecution and defence angle. The prosecution having established through clinching evidence the factum of death, as a result of burn injuries, which deceased sustained on the intervening night of 29 and 30 January, 2008. Moreover, as regards to death of Smt Rajmati Devi, the Court found abundant evidence on record in arriving at its findings.

10. The Court of Inquiry arrived at the firm decision that applicant was guilty of murdering his wife by burning. The charge-sheet dated 19.03.2009 was prepared and handed over to the applicant. Applicant was recommended to be tried by GCM. The charge sheet, for convenience sake, is reproduced as under:-

CHARGE SHEET

*The accused, No. 3001528M Rifleman/Cook Mahabir Singh of 30 Assam Rifles attached to 9 Assam Rifles, a person subject to the Army Act, 1950, as a rifleman under Section 4 (i) thereof, read with SRO 117 of 28 March 1960 and SRO 318 of 06 December, 1962 as amended vide SRO 325 of 31 August, 1977, is charged with :-*

"Army Act  
Section 69

COMMITTING A CIVIL OFFENCE, THAT IS TO SAY  
MURDER, CONTRARY TO SECTION 302 OF THE  
INDIAN PENAL CODE

*At field, on active service, on 29 January 2008, by intentionally causing the death of his wife, Smt Rajmati Devi, a civilian, committed murder."*

11. Based on summary of evidence, applicant was subjected to GCM. During the GCM, applicant was provided defence counsel Shri Hemant Rai, Advocate and defending officer Major VS Tomar who assisted him during the GCM proceedings. The charge framed against the applicant was read over and explained to him. He had pleaded not guilty. After pleading of not guilty, the GCM proceeded further for trial. We have gone through the GCM proceedings exhaustively and we find that the proceedings were done in a manner provided under the Army Act, 1950.

12. As many as 15 witnesses (PW-1 to PW-15) were examined by the prosecution in which statement of PW-11 and PW-15 are very important. PW-11 is the daughter of the applicant and at that time she was 09 years old. She has fully supported the prosecution case. PW-15 is Shri Ajongba Imchen, learned Judicial Magistrate First Class, DC Hill, Mokokchung who had recorded confessional statement of the applicant.

13. Under Army Rules, 1954 statement of applicant was recorded by the GCM enabling him to explain and adduce the defence in his favour. He was given full opportunity to adduce

evidence in his defence but no witness has been examined by the applicant in his defence.

14. The GCM concluded the trial with finding that the accused is guilty of charge under Section 69 of the Army Act, 1950 read with Section 302 IPC, and on 11.05.2009 sentence has been passed first to suffer imprisonment for life and second to be dismissed from service.

15. The applicant was under arrest during investigation, inquiry and trial. On 11.05.2009, he was sent to civil jail, Mokokchung and on 15.03.2012, he was sent to civil jail, Dehradun.

16. In the instant case since applicant has not engaged his counsel, 2-3 counsels have been appointed as amicus curiae and presently this O.A. (Appeal) is being contested by Shri Kishore Rai, Advocate who has been appointed as amicus curiae vide order dated 30.10.2023.

17. We have heard Shri Shri Shailendra Sharma Atal, Learned Senior Central Govt Counsel appearing for the respondents and Shri Kishore Rai, learned amicus curiae appearing for the applicant who has also filed written arguments. We have also perused the material placed on record including C of I proceedings, summary of evidence and GCM proceedings.

18. Learned counsel for the respondents submitted that applicant had poured kerosene oil on the deceased with intent to

cause her death and after pouring kerosene oil, he set her on fire, which caused her death. Learned counsel for the respondents further submitted that daughter of the applicant is an eye-witness of the occurrence who has fully supported prosecution case and accused has himself confessed his guilt before the First Class Judicial Magistrate Shri Ajongba Imchen who has been examined by the prosecution and has supported the prosecution case. It is also submitted by learned counsel for the respondents that there is no illegality in GCM proceedings.

19. Learned amicus curiae submitted that the accused has been falsely implicated in this case. He has never confessed his guilt. His confessional statement has been recorded by First Class Judicial Magistrate in the English language but the applicant does not know English language. It is further submitted that daughter of the applicant is said to be eye-witness and her statement has been recorded in English language, but she does not know English language. She has been forced to give such statement. Learned amicus curiae further contended that motive of the applicant to commit murder cannot be said to be proved beyond reasonable doubt and findings of the GCM is liable to be set aside. It is further contended that case in hand does come under the definition of murder but it falls under exception 4 to Section 300 IPC and it will amount to be culpable homicide not



amounting to murder because there was no pre-meditation and the accused has also suffered a serious burn injuries which was caused in saving the deceased.

20. From the perusal of the inquest report and post-mortem report of the body of the deceased, it is evident that the cause of death was because of burn injuries. Inquest report has been proved by Shri Susang AO, Sub Inspector, Police Station Number II, Mokokchung (PW-6) and post mortem of deceased body was done by Dr. Kika Longkumer, Zonal Leprosy Officer, Mokokchung (PW-16). Post Mortem examiner has stated that body of the deceased was charred with 95% burn causing shock by multiorgan failure.

21. The deceased died due to burn injuries in her house where she was living with her family and it is not disputed that at the time of occurrence accused was present in that house. As provided under Section 106 of the Indian Evidence Act, the burden to prove the cause of death is upon the accused because the fact was especially within the knowledge of the accused.

22. It was told by the accused to PW-4 (Havildar Kamaljeet Sharma of 30 Assam Rifles) and PW-8 (Capt Prabhu Desai Padmini Sandeep of 30 Assam Rifles, RMO) who visited the site after the occurrence that the incident occurred due to stove burst but the stove was found intact. PW-5 Rfn/Safai Nand Lal,

immediate neighbour of the accused stated that he had not heard any sound of stove burst in the night of 29/30 Jan, 2008. PW-8 Capt Prabhu Desai Padmini Sandeep of 30 Assam Rifles stated that when he visited, he found that the stove was intact, therefore, we find that cause of death was not due to stove burst.

23. The version of prosecution that death of the deceased was intentionally caused by the accused by setting fire on her after pouring kerosene oil on her body. The GCM has concluded that the prosecution was successful in proving his burden beyond reasonable doubt. The GCM has reached the conclusion on the basis of evidence adduced and proved by prosecution in which statement of PW-9 Smt Sarita Devi W/o Rifleman/Safai Nand Lal immediate neighbour of the deceased, statement of PW-15 Shri Ajongba Imchen, First Class Judicial Magistrate, Mokokchung and confessional statement recorded by him are very important in reaching the conclusion. PW-9 (Mrs Sarita Devi W/o Rfn/Safai Nand Lal) was immediate neighbour of the accused since 2006 onwards. In her statement, she has deposed as under:-

*"On 29 January 2008, there was family line sanitary inspection of Regimental Medical Officer. After the sanitary inspection was over and while I was basking in the sun, I saw the accused coming down from the road at about 1430 hrs and at about 1530 hrs I saw him going up on the 'kaccha' track to the road. After accused went, late Smt Rajmati Devi also joined me and we sat in the ground basking the sun. We sat there till 1630 hrs. While chatting she appeared to be very happy.*

*Smt Rajmati Devi was a well natured lady and she had cheerful disposition. We frequently used to go to each other's house and she used to tell me that she was not happy with her husband due to his habit of drinking liquor, careless attitude towards children and coming late. They used to quarrel on these issues.*

*Our quarters were in secluded location and were in the vicinity of civil area. Late Smt Rajmati Devi, used to tell her husband to come on time, because she was afraid due to the secluded location of the house.*

*My son Himanshu and Miss Sangeeta D/o Rifleman/Cook Mahabir Singh, used to go together daily to fetch milk. At 0530 hrs on the morning of 30 January 2008, when Himanshu went to call Sangeeta to collect milk, then I heard accused saying that 'today Sangeeta will not go to fetch milk'. I could hear this, because I was cleaning my bedroom at that point of time. When I was preparing breakfast in the kitchen, Line Regimental Police Havildar AA Khan called up from outside. He asked me, 'Do you know what has happened in your neighbourhood'. The accused was standing in the verandah of his house and I got frightened, when I saw the hands of the accused. I asked him, 'BHAIYA APKE HAATH KO KYA HO GAYA' (brother, what has happened to your hand and words to that effect). He told me that his hand got burnt with gas cylinder. I asked him where is Sangeeta's mother, to which he replied that 'she is dead'. When I asked him that what type of person you are, such a big incident has happened at your house and you never called us. He said that I had called once.*

*I told him that such a big incident has happened in your house and you called only once. In the meantime, Regimental Police, Havildar came and took away the accused with him and the children of the accused came to my house. The elder daughter of the accused Sangeeta was of eight years at that time, Dishant was of eleven months and I do not remember the age of Sanjana.*

*Then I called up my husband, on the mobile and informed him of this incident and told him that Commanding Officer, 30 Assam Rifles has also arrived at the incident site. The children of the accused stayed with us till 11 February 2008. The elder daughter of the accused appeared to be very sad, depressive and quiet. She did not eat her food on 30 January 2008. Next day at about 1900 hrs, I asked her affectionately that why are you sad and quiet. Then she narrated me the whole incident as follows:-*

*"My mother had given money to my father to bring biscuits from the Canteen Stores Department. My father brought only two packets and he was drunk and also came late. My mother asked him that why you have come late and you are drunk also. On this issue they quarrelled with each other. My father slapped my mother and when my mother gave food to my father he threw it away. My mother went to the kitchen and my father also followed her to the kitchen. When I could not hear anything for quite some time, I went to see out of curiosity that what was happening, hid behind the curtain of bedroom and saw that my mother was lying in the passage which leads to the kitchen and my father was pouring kerosene on his hand and on the body of my mother and*

*then he lit the fire. I got very frightened and came inside and sat on the bed. After some time, when my father came to the bedroom, I asked him that what you have done to my mother. I will tell everything to RP uncle and everyone else. Her admonished me and told furiously that if you tell this to anyone I will also burn you like your mother. I got frightened and started waiting for dawn”.*

*After narrating this incident to me she started crying. I consoled and cuddled her and thereafter she slept. I did not hear the noise of any stove or cylinder burst on the intervening night of 29 and 30 January 2008.”*

24. Learned amicus curiae contended that PW-9 is not an eye witness and her statement is mere hearsay. Though PW-9 is not an eye witness, she has stated what she heard from the accused's daughter PW-11 and what she had seen just after the incident. The fact stated by her (PW-9) and the facts stated by her so connected with fact in issue as to form part of same transaction and relevant in this case under Section 106 of the Indian Evidence Act.

25. PW-11 is the daughter of the accused and only eye-witness of this case. When her statement was recorded, she was 09 years old. She has deposed as under:-

*“My mother told father to bring biscuits. My father came late in intoxicated state. Later, my father had drinks and told my mother to prepare food. When my mother gave him food he threw it away. My father went to the kitchen after my mother and he pressed the neck of my mother and later he burnt her by putting kerosene oil on her. When my father saw me he told me to go inside, where my brother and sister were sleeping. After some time, I saw he was pouring kerosene oil on my mother and on his hand. He set my mother on fire. When, he came inside I asked him that if we do not find our mother, then I will tell RP uncle and Sarita aunty. Later, my younger brother started crying. I took him in my lap but he cried continuously. I gave him toy but still he did not stop crying but when, I gave him biscuit he stopped crying. I switched off the light and went off to sleep.*

*In the morning, Himanshu used to come to our house. We used to fetch milk daily. My father told him from inside that Sangeeta will not go to fetch milk today. Later in the morning, RP uncle came and called up from outside the name of my father that 'Mahavir' 'Mahavir' where are you and why you did not come for duty. My father showed my mother to RP uncle, who was lying in the passage which leads to the kitchen and told him that "MERI FAMILY JALI HUI PADI HAI" (my family has got burnt or words to that effect). Then, RP uncle called Sarita aunty and we went to Sarita aunty's house."*

26. She has clearly stated that the accused had pressed the neck of the deceased and poured kerosene oil on the body of her mother and set fire on her causing her death. She is daughter of the accused. There seems to be no reason to falsely implicate the accused by his own daughter.

27. During the course of hearing, learned counsel for the applicant contended that testimony of PW-11 (Miss Sangeeta) cannot be relied upon as she being minor (at that time she was only 09 years old) had deposed against the father due to misleading by police personnel. It was also contended that applicant should not have been convicted because of statement of only eye-witness who being minor is susceptible to tutoring.

28. In regard to minor witness, the Indian Evidence Act, 1872 does not prescribe any particular age as a determinative factor to treat a witness to be a competent one. On the contrary, Section 118 of the Evidence Act envisages that all persons shall be competent to testify unless the Court considers that they are prevented from understanding the questions put to them or from

giving rational answers to these questions because of tender age. A child of tender age can be allowed to testify if he/she has intellectual capacity to understand questions and give rational answers thereto. In the instant case, before deposition, the girl child was asked certain questions by the GCM for verifying whether she understands the question and was able to answer and found that she was able to understand the question and give their rationale answer and after that her statement was recorded. Therefore, in our view the evidence of PW-11 seems to be reliable and should not be discarded per se as held by the Hon'ble Supreme Court in the case of **Dattu Ramrao Sakhare vs State of Maharashtra**, (1997) 5 SCC 3411, which for convenience sake is reproduced as under:-

*"A child witness if found competent to depose to the facts and reliable one such evidence could be the basis of conviction. In other words even in the absence of oath the evidence of a child witness can be considered under Section 118 of the Evidence Act provided that such witness is able to understand the questions and able to give rational answers thereof. The evidence of a child witness and credibility thereof would depend upon the circumstances of each case. The only precaution which the court should bear in mind while assessing the evidence of a child witness is that the witness must be a reliable one and his/her demeanour must be like any other competent witness and there is no likelihood of being tutored."*

29. PW-11, Miss Sangeeta was cross examined by the defence counsel and in her cross examination her testimony was found intact and she stated that the deceased was burnt by the applicant after pouring kerosene oil on her. Learned amicus

curiae contended that PW-11 is the only eye-witness and conviction should not be based on her statement.

30. We have given our anxious consideration to the submission of learned amicus curiae. In regard to this, in the case of **Shivaji Sahebrao Bobade vs State of Maharashtra**, (1973) 2 SCC 793, the Hon'ble Supreme Court has held that even where a case hangs on the evidence of a single eye-witness, it may be enough to sustain the conviction, though the testimony of a competent, honest man although as a rule of prudence Courts call for corroboration. It was also held that it is a platitude to say that witness has to be weighed and not counted since quality matters more than quantity in human affairs.

31. In **Kartik Malhar vs. State of Bihar**, (1996) 1 SCC 614 : JT 1995 (8) SC 425, referring to several cases, the Hon'ble Supreme Court has further held that on a conspectus of these decisions, it clearly comes out that there has been no departure from the principles laid down in **Vadivelu Thevar vs The State Of Madras**, 1957 AIR 614, and, therefore, conviction can be recorded on the basis of the statement of a 'single eye witness' provided his credibility is not shaken by any adverse circumstance appearing on the record against him/her and the court, at the same time, is convinced that he/she is a truthful witness.

32. Applicant while being produced before Shri Ajongba Imchen, Learned Judicial Magistrate First Class in connection with the present case, confessed the pouring of kerosene oil on his wife's body and lighting a match. This confessional statement was signed by the applicant before the Learned Magistrate. For convenience sake, confessional statement made by the applicant before the Learned Magistrate is reproduced as under:-

*"Q1. Are you willing to give your confessional statement?-Yes.*

*Q2. Are you aware that the statement made/given by you now will be used as evidence-Yes.*

*Q3. Are you aware that I am not a police officer but Magistrate?-Yes.*

*On 29<sup>th</sup> January at around 5.00 PM I went home after duty. After I reached home my wife asked me to go to Canteen (CSD) to buy a cream cracked (biscuit) so I went but canteen was already closed. So while returning home I stopped at (sick) gate and drink a half bottle of rum and got drunk. I went home and start watching T.V. my wife asked me where is the biscuit for children then I told wife canteen was closed today so I will get tomorrow. My wife got very angry after seeing me drunk and went to other room. I also went to our family room and sleep with my children. Wife again started complaining my behaviour and took Rs 150/- from my pocket and so I told her to prepare dinner but before dinner boil two eggs first for him and I went to toilet but to my surprise, when I back from toilet my wife was already started pouring kerosene oil over her body seeing that I got very angry I so I forcefully took the K oil (jerrican) from my wife and poured K oil on her body but after seeing her burning I realised and in order to stop the flame I hold her body and I also got burn and she was collapsed after hearing the shouting my children also got up and came in to kitchen and started asking what had happened with you and mom but it was too late my wife was already died. And it was around 8.00 pm whole night I also lay down on the floor and in the morning at around 3.00 AM I called to line RP and inform about the accident. No body came to my house till that moment."*

*"I have explained to Mahabir Singh that he is not bound to make a confessional and if he does so any confession he may make it and it may be used as evidence against him and I believe that this confession was given voluntarily in my present*



*hearing and it was read over to the person making it and admitted by him as correct.*

*Sd/- x x x x x x  
(AJONGBA IMCHEN)  
Judicial Magistrate First Class  
Mokokchung, Nagaland"*

33. Shri Ajongba Imchen, Learned Judicial Magistrate First Class who recorded confessional statement of the accused has been examined by the GCM as PW-15. He has stated that the statement of the accused was recorded by him and what was stated by the applicant was without any threat or promise.

34. Learned amicus curiae contended that the applicant does not know the local language as well as English language. He knows only Hindi language, therefore his confessional statement recorded in English language creates doubt. This objection of amicus curiae has been explained in the statement of accused in which it is stated that confessional statement was recorded with the help of retired constable Lanu (Interpreter) who explained the accused everything in Hindi and after that it was signed by the accused.

35. Based on the statement of PW-11 (only eye-witness) being present on the incident site, confessional statement of the accused recorded by Judicial Magistrate First Class and other evidences of the GCM, we are of the view that applicant had

sprinkled kerosene oil on her wife's body and set fire on her causing death of the deceased on the spot.

36. Learned amicus curiae appearing for the appellant argued that the appellant had no pre-meditated mind to kill the deceased wife and that he had no intention to kill her. He has also suffered burn injury in saving the deceased, therefore, he argued that the provision of Section 302 IPC are not applicable and at the best the accused can be charged under Section 304 IPC i.e. culpable homicide not amounting to murder.

37. For considering the above argument for giving the benefit of exception 4 to Section 300 IPC, it would be relevant and material to refer exception 4 to Section 300 IPC. The said exception is as under:-

*"Exception 4. Culpable homicide is not murder if it is committed without premeditation in a sudden fight in the heat of passion upon a sudden quarrel and without the offender having taken undue advantage or acted in a cruel or unusual manner.*

*Explanation-It is immaterial in such cases which party offers the provocation or commits the first assault."*

38. As provided in exception 4 of Section 300 IPC for extending the benefit of the exception, following ingredients of the exception must be there:-

- (i) There has been no premeditation.
- (ii) It was heat of passion because of sudden quarrel.
- (iii) Offender has not taken any undue advantage and has not acted in a cruel and unusual manner.

39. In the case in hand, evidence of premeditation of killing of the deceased is not available. It is not disputed that before the commission of offence there was heat of passion because of altercation between the deceased and the accused. The existence of only two above ingredients are not sufficient for application of this section. Third ingredient of offender has not taken undue advantage or acted in unusual manner is very important. In this case it has been proved that the offender poured kerosene oil upon the body of the deceased and set her ablaze. Thus, he has taken undue advantage and acted in unusual manner in committing the offence. In **Rajesh Bansal @ Montu vs State**, 2018 SCC online Delhi 10563 division bench of the Hon'ble Delhi High Court has held that exception 4 to Section 300 IPC expects the assailant not to act in such disproportionate manner to the provocation.

40. In **Anil Kumar vs State of Kerala**, Crl Appeal No 2697 of 2023 decided on 01.11.2023 the Hon'ble Supreme Court has held that :-

*"21. The exception clearly in unequivocal term states that it would be applicable where culpable homicide is committed not only without premeditated mind in a sudden fight or quarrel but also without the offender taking undue advantage of the situation. In the instant case, the appellant upon seeing the deceased drenched in kerosene clearly took advantage of the situation and lighted a matchstick and threw it upon her so that she can be burnt. The appellant having taken undue advantage of the situation cannot be extended the benefit of exception 4 to Section 300 IPC so as to bring the case within the ambit of Part-II of 304 IPC."*

Thus, we are of the view that benefit of exception 4 to the Section 300 IPC cannot be given to the applicant.

41. In view of the foregoing reasons we are of the opinion that the GCM has not committed any error of fact or law in convicting and sentencing the appellant. The impugned conviction and sentence awarded by the GCM is upheld.

42. The appeal accordingly lacks merit and is **dismissed**. However, we would observe that the appellant, who is in jail, may in usual course be at liberty to apply for remission in accordance with the prevailing policy of the State.

43. Pending Misc Application (s), if any, shall be treated to have been disposed off.

44. The services rendered by the learned amicus curiae Shri Kishore Rai, Advocate is appreciated. Registry shall ensure his payment as per rules.

**(Maj Gen Sanjay Singh)**

**Member (A)**

Dated: 05.07.2024

*rathore*

**(Justice Anil Kumar)**

**Member (J)**

RESERVED  
(Court No 2)

Form No. 4  
**{See rule 11(1)}**  
**ORDER SHEET**  
 ARMED FORCES TRIBUNAL, REGIONAL BENCH,  
 LUCKNOW

O.A. No. 106 of 2013

Mahabir Singh  
 By Legal Practitioner for the Applicant : **Shri Kishore Rai**, Advocate  
 Applicant  
**(Amicus Curiae)**

Versus

Union of India & Ors  
 By Legal Practitioner for : **Dr. Shailendra Sharma Atal**, Advocate  
**the respondents**  
 Respondents

Notes of the Registry	Orders of the Tribunal
	<p><u>05.07.2024</u>  <u>Hon'ble Mr. Justice Anil Kumar, Member (J)</u>  <u>Hon'ble Maj Gen Sanjay Singh, Member (A)</u></p> <p>Judgment pronounced.  <b>O.A. No. 106 of 2013</b> is dismissed.            For orders, see our judgment and order passed on separate sheets.</p> <p>(Maj Gen Sanjay Singh)            Member (A)  <i>rathore</i></p> <p>(Justice Anil Kumar)            Member (J)</p>