

IN THE ARMED FORCES TRIBUNAL

REGIONAL BENCH, GUWAHATI

OA(A) – 28 OF 2015

PRESENT

HON`BLE MR. JUSTICE V.K.SHALI, MEMBER (J)

HON`BLE LT GEN C.A.KRISHNAN, MEMBER (A)

6940545-F

Ex-Sep (L/NK) THM SINGHA of 11 FOD

Now TH Hori Mohan Singha,

Son of Bachabi Singha,

Vill Madhopur,

P.O. Madaripar

Dist. Hailakandi, Assam-788163

..... **Applicant.**

By legal practitioners for
Applicant.

Mr. Abdur Rashid,

Mr. N.Kajal Singha,

Mr. S.Rajkumar,

Mr. A.Mobareque.

-VERSUS-

1. **Union of India,**
Through its Secretary,
Ministry of Defence, Govt. of India.
2. **The District Court Martial,**
Assembled as per convening order dated
11.07.2011 passed by IC-40679Y
Brigadier Amit Kumar Sanyal,
Commander, 81 Sb Area held at
Ammunition Depot Bathinda Punjab
From 18.07.2011 to 14.09.2011.
3. **GOC-in-C, South West Command,**
C/o 56 APO.
4. **Commander, 81 Sub Area,**
C/o 56 APO.
5. **Office in Charge,**
Records, AOC,
Secunderabad-15.
6. **Commanding Officer Ammunition Depot,**
Bathinda Punjab, Pin (Army) 900484,
C/O 56 APO.

..... Respondents.

By Legal Practitioner for the
Respondents
Brig N.Deka (Retd), CGSC

Date of Hearing : 25.10.2017

Date of Order : 25.10.2017

ORDER

(Hon`ble V.K.Shali,J.)

This is an appeal filed by the applicant under Section 15 of the Armed Forces Tribunal Act, 2007 against the order dated 8th September, 2015 and 14th September, 2011 by virtue of which the applicant was tried and convicted by the District Court Martial and dismissed from the service.

2. Briefly stated, the facts are that on the evening of 08/06/2010 at around 19:00 hours, Mrs. Priyanka Gohil, W/o Major Puspendra Singh Gohil of 7 Battalion the Sikh Regiment went for walk to walking plaza. She was walking on Right Hand Side of the road leading from Chetak Officers Institute (COI) VIP entrance gate to MAP accommodation. At around 19:40 hours, after crossing the T Junction opposite the Chetak Officers Institutes (COI) VIP entrance gate, somewhere near the old Army School, she saw a person riding on a black bicycle approaching her from the opposite direction. He was around 7-8 meters away from her. He was wearing a white T-shirt, olive green trousers and brown shoes. Considering nothing abnormal she did not pay any special attention to him and continued walking. Suddenly the individual came close to her, turned his bicycle towards her, halted his bicycle and sitting on his bicycle assaulted her and molested her by pressing her breasts with his one hand. She saw his face clearly as he was at an arm length distance.

3. The unexpected incident left her in a state of shock and before she could regain herself the individual fled away on his bicycle towards Godha Chowk in front of COI. She came home and narrated the incident to her husband Major P.S.Gohil.

4. After being consoled by her husband, Mrs. Gohil gave the description of the molester. She told him that the individual looked like a Gorkha or a highlander with Mongolian feature i.e., a person with fair complexion, lean built with no hair on his arms. He had light moustache and very light brown eye brows. Major Gohil immediately went to Colonel Digvijay Singh, his Commanding Officer and reported the matter to him.

5. Colonel Digvijay Singh told Major Gohil to go and check out on Gorkha Sahayak employed in the quarter, which is to the rear of his residence. Major Gohil went and brought that sahayak for identification. Mrs. Gohil saw him and said that he was not the same person who had assaulted and molested her.

6. In continuation with their efforts to find the molester on 10/06/2010 Major Gohil reported the matter to Lt. Col. Jagdeep Singh, 2 i/c 10 Corps Provost Unit . Lt. Col. Jagdeep Singh came to their residence and Mrs. Gohil narrated the incident to him.

7. On 11/06/2010, Major and Mrs. Gohil were called to the COI where an expert working with the Punjab Police had been arraigned to draw a sketch of the man who had assaulted and molested her. Based on the description given by Mrs. Gohil a sketch was prepared which resembled the molester, who had assaulted and molested her.

8. Again on 11/06/2010 at around 19:00 hours Major and Mrs. Gohil went for walk at the walking plaza. Colonel and Mrs. Digvijay Singh who were also going for a walk joined them. When they were returning from the walk, Mrs. Gohil saw an individual on the road junction on his bicycle. Mrs. Gohil indicated him to her husband and Col. Digvijay Singh who were walking ahead of them and said that he is the person who assaulted her. Major Gohil asked the individual to stop but instead of stopping, he fled away on his bicycle in the direction of ChaudharyTraffic Check Post (CTCP). Major Gohil and Col. Digvijay Singh ran after the individual to stop him but of no avail. Meanwhile, Major Gohil saw two persons coming from opposite direction and shouted to them to stop the individual. One of the persons heard Major Gohil's call and tried to stop the individual, but the individual who was fleeing kicked that person and continued fleeing towards CTCP.

9. Major Gohil took the bicycle from the person who had fallen down and continued chasing the individual. Mrs. Gohil saw the individual turning left a few meters short of the CTCP and her husband also followed him but could not find him.

10. On the same night at around 22:00 hours Lt. Colonel R.M.NEGI 2 i/c 7 Sikh came to their residence and apprised Mrs. Gohil that the suspect has been identified from 11 FOD. He also told her that she was to carry out the identification of the suspect and escorted her to 11 FOD. Her husband and Col. Digvijay Singh were already present there. They reached 11 FOD wherein the suspect THM Singha was shown to Mrs. Gohil and Mrs. Gohil recognized THM Singha as the same man who had attacked and molested her on 08/06/2010, in

presence of other officers.

11. The respondents conducted a Court of Inquiry and found the conduct of the applicant not above suspicion. Thereafter charges were framed and summary of evidence recorded. After calling on Summary of Evidence the applicant was put on trial before the District Court Martial.

12. The prosecution examined, as many as 7 (seven) witnesses, while the applicant examined 2 (two) defence witnesses. The star witness, examined by the prosecution, is P.W.-4, Mrs. Priyanka Gohil, who herself is the victim. She has distinguished in a graphic manner as to who was the person by whom she was assaulted on 8th June, 2011 while she was taking a walk when her breast was pressed by the applicant with one hand and thereafter ran away from the spot. The applicant was identified by the victim not only from a photographic identification but also physically 3 days later on 11th June, it was a chance identification because the victim was taking a walk along with her husband in the walking plaza when they came across the assailant. The victim saw the assailant on 11th June and identified him immediately. The said fact was disclosed to her husband as well as to the Commanding Officer, Col Digvijay Singh, P.W.- 1 who was incidentally also taking a walk along with his wife. The applicant on being asked to stop by the husband of the victim, ran away from the spot on his bicycle. The factum of his running away from the spot is itself indicative of his guilty mind which he had. In the process of running away he also hit another person who tried to stop him. Therefore, the testimony of this sole witness who happens to be the victim is good enough to sustain the conviction of the applicant and it has also been corroborated from the evidences produced by P.W. 1 and P.W.2. The defence of the applicant questioning the possibility of recognising the face of a person due to failing light at the time of incident does not inspire confidence because of the facts borne out by the almanac of 8 and 11 June, 2010. The factum of alibi given by the applicant is also incongruent with the factum of his running away on 11th June when he was identified because this was unnatural conduct on the part of the applicant. Had he been not guilty he would not have ran away, he would have stopped and confronted the victim or her husband. But on the contrary he not only ran away but kicked another person even who tried to stop him.

13. We have heard learned Counsel for the applicant as well as the learned Counsel for the respondents.

14. Learned Counsel for the applicant has raised essentially three points:

(i) No formal Test Identification Parade (TIP) was held for identification of the accused.

(ii) The identification of the accused was allegedly not proper.

(iii) The accused has put up an alibi about the time of offence.

15. None of the three points raised by the learned Counsel for the applicant are of such nature which will distract the testimony of the victim. On the contrary, we feel that the applicant is putting too much stress on the non-holding of the identification parade of the applicant. The holding of identification parade is only a method of seeing as to whether the investigation is going on in a correct direction or not. In the instant case, he has been identified after the incident both before the Court of Inquiry and before the Summary of evidence and even in the Court Martial. The applicant was identified not only from the photograph but physically i.e. visual impact when he was seen on 11th June. Therefore, this plea of alibi can not be sustained in the eye of law.

16. The Hon`ble Supreme Court in the case of Amitsingh Bhikamsingh Thakur Vs. State of Maharashtra reported in (2007) 2 SCC 310 has opined that TIP does not constitute substantive evidence but can only be used as corroborative of the statement in the Court. The Hon`ble Supreme Court had opined that evidence of the witness in the Court and his identifying the accused only in the Court to someone who was not known earlier to the witness had to be treated as valueless. However, it is not so in this case as the accused was identified before the assembly of the DCM. Further, the Court has held that, the position may be different when the accused or a culprit who stands trial had been seen not once but for quite a number of times at different points of time and places which fact may do away with the necessity of TIP. Therefore, it is clearly seen that as the prosecutrix had seen the accused in different time and places as reported in the DCM proceedings, there was no necessity of a TIP.

17. Further, Col Sushil Chander, Commandant 11 FOD, P.W.6, in Page 51 of DCM proceeding has stated that, *"on my instructions, the accused was later taken to Ayur Kutir Hall. Since Col Digvijay Singh and Maj Puspendra Gohil had already identified the accused, no identification parade was carried out as there was no necessity for the same. Mrs. Gohil was later taken to Ayur Kutir where she had identified the accused to be the same person who had molested her on 8 June 2010".* In Page 52 he has further stated that, *"It is correct to say that on 12 June 2010 at approx. 1800 hours, I along with Lt Col Manish had gone to the residence of Col Digvijay, Commanding Officer, 7 Sikh where Maj Gohil and Mrs. Gohil were also present. We had taken a lot of photographs of Sahayaks having similar looks for identification. Mrs. Gohil had identified the accused again on 12 June 2010 to be the same person who had molested her on 8 June 2010. However, Mrs. Digvijay Singh was not able to identify the accused".* He had also stated in page 53 that

Col Digvijay Singh and Maj Puspendra Gohil had indicated to him from a distance that the accused was the one who was involved in the incident. It must be realized that PW 6 is the Commanding Officer of the accused and therefore responsible for complete interest of the accused.

18. The victim as P.W.-4 in the DCM has stated, *"However, as he came closer to me while I was walking on the kaccha road he suddenly stopped his bicycle, while he was still on his cycle, from one hand he pressed my breast. Since all these happened all of a sudden I was in state of shock. Once I regained myself I shouted 'You bastard'. The accused thereafter moved towards Ghoda Chowk..... I saw his face clearly as he was at an arm length distance."*

19. That as per almanac on 8th and 11th June 2010, sunset at Bhatinda would have been at about 1915-1930 hrs. Therefore, dusk would be for another 15 to 20 minutes and this would automatically indicate that visibility would have been quite good when the incident took place.

20. The accused was arraigned on one charge. He was charged under Section 69 of the Army Act for committing civil offence, that is to say using criminal force to a woman with intent to outrage her modesty contrary to Section 354 of the IPC. A District Court Martial was convened wherein the applicant had pleaded not guilty to charge. The court after trial found him guilty and sentenced him to suffer rigorous imprisonment for one year six months and to be dismissed from service on 14/09/2011. The Confirming Authority on 10/10/2011 confirmed the finding and the sentence of the court but remitted the unexpired portion of the sentence of rigorous imprisonment of one year six months.

21. The applicant had also filed a petition to the GOC-in-C South Western Command and to the Chief of Army Staff. However, the GOC-in-C South Western Command rejected his petition. The COAS also rejected his petition on 08/09/2015.

22. Having regard to the aforesaid discussion, we feel that the applicant's guilt is established beyond all reasonable doubt and there is no factor which is compatible with his plea of innocence brought on record. He has been rightly convicted by the District Court Martial. A disciplined soldier indulging in such act of perversion of pressing the breast of wife of an officer cannot be condoned, as condoning such act would not only be detrimental to the discipline of the organization but would also give impetus to other like minded persons.

23. There is no merit in the appeal. Accordingly, the appeal (OA(A)-28/2015) is dismissed.

MEMBER (A)

MEMBER (J)

nath