

IN THE ARMED FORCES TRIBUNAL,
REGIONAL BENCH, GUWAHTI

TA-01/2015

(AOO W.P. (C): 1311/2003)

THE SEVENTH DAY OF MARCH, 2019

**CORAM: HON'BLE DR.(MRS.) JUSTICE INDIRA SHAH, MEMBER (J)
HON'BLE LT GEN GAUTAM MOORTHY, MEMBER (A)**

Applicant

No. 14531103Y Sep (Acting BHM)/Driver (MT)
Munifat Ali (presently in custody at the Central
Jail, Guwahati and permanent resident of Sutar
Gaon, P.O. & P.S. Barpani Gaon, District Nagaon,
Assam

Versus

Respondents

1. Union of India, through the Secretary,
Ministry of Defence, Govt. of India,
New Delhi-110011
2. The Chief of the Army Staff,
Integrated HQ, Ministry of Defence (Army)
South Block, DHQ PO, New Delhi - 110011
3. The General Officer Commanding,
HQ 101 Area, Shillong
4. The Officer Commanding Troops
1, Advance Base Workshop, EME,
Narangji, Guwahati

Represented by

Mrs. Rita Devi, Ld. Counsel - for the applicant
Mr. AR Tahbildar, Ld. Counsel

Mr. D. C. Chakravarty, Ld. Counsel, CGSC - for the Respondents

ORDER**Per Lt Gen Gautam Moorthy, Hon'ble Member (A):**

1. This is a transferred application No. TA 1/2015 which was transferred by the Hon'ble Gauhati High Court and received in the AFT on 29.05.2015.

2. In the Writ Petition filed before the Hon'ble Gauhati High Court on 20.02.03, the applicant, who was BHM (Battalion Havildar Major) in the Indian Army, was tried by a Summary Court Martial (in short SCM) on 22.01.2003 under Army Act Sec 69 on two charges for committing civil offences, that is to say using criminal force to a woman with intent to outrage her modesty, contrary to section 354 of the Indian Penal Code and house trespass in order to commit an offence punishable with imprisonment contrary to section 451 of the Indian Penal Code. He was sentenced to be reduced to rank, suffer RI (Rigorous Imprisonment) for one year and dismissal from service. He has prayed for quashing aside the order and reinstatement in service with all back wages. In his petition, the applicant has raised a number of issues with regard to the validity of the SCM. He has alleged that the decision to try the petitioner by SCM for an offence under Section 16 of the Army Act (sic) was taken without reference to an officer empowered to convene a District Court Martial (DCM) or a Summary General Court Martial (SGCM) as mandated by Section 20(2)(sic) of the Army Act. These are obviously typographical errors since Section 16 deals with attestation, while Section 20 (2) deals with the power of the Chief of Army Staff in dismissing or removing a person subject to the Army Act. It is Section 120 (2) that deals with powers of Summary Courts Martial when there is no grave reason for immediate action. Again, the

petitioner has erroneously mentioned that *"In the present case before taking a decision of trying the petitioner by a Summary Court Martial for an offence under Section 16 of the Army Act, no reference was made to an officer who is empowered to convene a District Court Martial or a Summary General Court Martial"*. It is evident that the petitioner meant trial under Army Act Section 69 and not Army Act Section 16, as Section 16 is regarding attestation of persons while Section 69 is pertains to civil offences under which the petitioner was charged. He has alleged that he would have got a far better opportunity of defending himself had there been a trial before a DCM or SGCM as he would not have been left totally at the mercy of one single officer, as has been the case. Hence, Section 120(2) of the Army Act was violated. He has also alleged that the provisions of Section 125 of the Army Act was violated as Section 125 of the Act provides discretion to the accused person to be entitled to choose between being tried either by a Criminal Court or by a Court Martial. Thus, violation of Section 125, when seen in the backdrop of Section 120(2) of the Army Act, becomes grave and serious and it has seriously prejudiced the rights of the petitioner. He has alleged that in the instant case, the SCM acted without jurisdiction as the officer who held the SCM, Lt Col P.G.C. Nair, Officer Commanding Troops, 1 Advance Base Workshop, EME was not the competent authority for holding the SCM and that the decision to try the petitioner by SCM was taken by Major General Indrajit Singh Bora, General Officer Commanding HQ 101 Area Shillong. Therefore, the decision to try the petitioner by SCM was taken by one authority whereas the SCM was held by another authority.

3. The counsel for the applicant has also assailed the detailed procedure for holding the SCM which has been laid down in Rule 106 to Rule 133 of the Army Rules 1954. He has alleged that Rule 129 provides for assistance of a friend of the accused. He stated that he specifically asked for the assistance of an Advocate to defend him or to advise him before the SCM. However, his prayer was not acceded to and he was allowed the assistance of a colleague in the Army who did not have any legal background. Consequently, he could not defend himself properly and, hence, the SCM proceedings are vitiated on the grounds of violation of Army Rule 129. The applicant has also assailed Section 164 of the Army Act which provides for remedy against the order of finding or sentence of a Court Martial in that he has stated that Section 164 of the Act is neither adequate nor effective as this very competent authority had taken the decision to hold the SCM in the case of the petitioner. Thus, he averred that submitting a petition before the same authority would be an exercise in futility. Further, no reason is required to be given for disposing of any appeal or petition against the award of the Court Martial and, hence, the remedy which is provided for under the provisions of this Act is neither adequate nor effective. Therefore, the petitioner was compelled to approach the Hon'ble Gauhati High Court. The applicant has also brought to the fore the point regarding the order of conviction and sentence of the SCM which is not required to be confirmed and that it comes into force at once, on its pronouncement in the open Court. Consequently, on 22.01.2003 itself, the petitioner was sent to Central Jail, Guwahati for undergoing RI for one year. Hence, he has prayed for an interim order also to suspend the operation and effect of the conviction and sentence pronounced by the SCM.

4. In the Affidavit-in-Opposition the respondents have stated that there has been no violation of the provisions of the Army Act and the averments made by the petitioner are denied. They have stated that the case of the petitioner was squarely covered under Sections 116 and 120 of the Army Act and the SCM was duly constituted only after obtaining prior sanction from the competent authority which was obtained on 30 Dec 02. The petitioner along with one co-accused were tried by the SCM and awarded sentence and punishment within the ambit of Section 120 of the Army Act. Thus, the petitioner was not simply at the mercy of the Court but was given the fullest opportunity to defend the case before the SCM and that the friend of the accused was an officer who was detailed based on the choice given by the applicant. While admitting that under the provisions of the Army Act, the rights of an accused person under an SCM are curtailed when compared to his rights under GCM or DCM, the Respondents averred that, all necessary facts were taken into consideration before the pronouncement of the verdict by the SCM and the punishment awarded thereupon. Therefore, the plea taken by the petitioner to hold the DCM or SGCM is not relevant in this case and hence, the award of punishment by the SCM is correct and legally valid keeping in view the gravity of the offence. The respondents have also stated that there was no violation of Section 120(2) of the Army Act. The respondents have also contended that Section 125 of the Army Act does not have any relevance to the case of the petitioner as the charges against him were proved beyond reasonable doubt while on active service which is squarely covered under Section 120(2) of the Army Act and, hence, no injustice was done to the petitioner. The appropriate Competent Authority empowered to hold the SCM in respect of a person under his command in terms of Section 116 of the Act is the Commanding Officer and

such summary powers of that Competent Authority is also specified in Para 443 of the Defence Service Regulations. Thus, the plea taken by the petitioner with regard to the decision taken by one authority to hold the trial and another authority to award the punishment is not relevant, as all actions taken were in consonance with the procedure and Military Law. The Respondents have also added that the punishment awarded of one year RI was remitted to six months by the Reviewing Officer under Section 162 of the Army Act and such an order was passed on 01.04.2003 well before the completion of six months. Thus, the Respondents affirmed that the SCM was legal and valid.

5. In the Affidavit-in-Reply, the applicant has stated that though there was no grave reason for immediate action, yet the Officer Commanding hastily tried the petitioner in SCM without following the due procedure as stipulated in Section 120(2) of the Army Act.

6. On the subject of the charges against him, the petitioner has stated that the charges leveled against him were not at all proved in the SCM, in that the alleged victim, Smt. Saroj Bala (PW-1) herself admitted that she could not recognize the alleged accused persons and she submitted the complaint naming the petitioner and the other accused person as told to her by Smt. Krishna (PW-8 in Summary of Evidence) on the basis of the description of their physical features given by the alleged victim to Smt. Krishna. However, the petitioner stated that Smt. Krishna had denied having any knowledge of the incident and stated that it was the victim who pressurized her to name the petitioner and L/Nk Suresh Das as the accused persons in the case. He further stated that the other prosecution witnesses too

did not corroborate the version of Smt. Saroj Bala (PW-1) regarding the incident as narrated by her regarding the involvement of the petitioner or Suresh Das in the alleged offence. Hence, according to the petitioner, he and the other accused person were framed by Smt. Saroj Bala (PW-1) in connivance with Nk Lavate (PW-9 in S of E & PW-4 in SCM) as a part of their nefarious design and no detailed order was passed by the SCM rejecting the evidence produced by the petitioner. He has reiterated that he was not allowed to have the assistance of a legal counsel in defending his case and the Presiding Officer of the SCM, in the absence of any evidence to prove the charges leveled against him, in a routine and whimsical manner, convicted him under Section 69 of the Army Act and though he has raised objection against such procedural irregularities, the authorities did not consider his objection and proceeded on their own without following the relevant rules.

7. In an amended petition filed on 04 Nov 2016, in the AFT Gauhati Bench, after the transfer of the Writ Petition from the Hon'ble Gauhati High Court, the counsel for the applicant further dilated upon the procedural irregularities mainly by repeating the contentions he had already raised in the original Writ Petition but has also alleged some other irregularities. In this amended petition, the petitioner has stated that Smt. Saroj Bala deposed in her evidence that the incident of trespass and molestation took place at around 8.30 p.m. on 12.9.2000 and that the applicant was one of the accused persons. However, defence witnesses unequivocally deposed in their evidence that the applicant was present in the Central Roll Call and Mandir Program continuously from 6 pm to 9.30 pm on the date of incident i.e. 12.9.2000. Besides, the prosecution witnesses

excluding Smt. Saroj Bala, the prosecutrix, have deposed that they had no knowledge of any such incident having taken place on the relevant date nor had she informed them immediately thereafter about the incident. Therefore, it was only on the basis of the evidence of Smt. Saroj Bala, that the applicant was convicted and sentenced for an offence that he had never committed and also dismissed from service. He has further highlighted that the evidence of Smt. Saroj Bala does not find any corroboration from other prosecution witnesses and that she was contradicted by the prosecution witnesses on the fact of occurrence of the incident and the involvement of the applicant in the offence. The Defence also alleged that in the Summary of Evidence, she could not identify the accused. The Defence has stated that Miss Seema Paul (PW-2 in SCM), a person living in the same block had given a statement to the effect that she saw two persons that night coming to her block but could not recognize them as it was dark and it was Smt. Saroj Bala who asked her to name these two persons. Also Smt Akhala Ao (PW-5) neither recognized the applicant and the co-accused nor recognized their voices.

8. The counsel for the applicant has further stated that the Presiding Officer of the SCM neither discussed the evidence nor recorded the findings on the basis of which the SCM arrived at the conclusion of the guilt of the applicant and that the prosecution miserably failed to establish the applicant's involvement in the offence, while the defence witnesses fairly established that the applicant was present in the Central Roll Call at the relevant point of time when the offence was alleged to have been committed. Hence, his involvement in the offence was not possible at all. Despite this, he was convicted and sentenced by the SCM mainly

on the basis of evidence of Saroj Bala, the alleged victim, who in her evidence deposed that she could not recognize the accused persons but Smt. Krishna told her their names "on the basis of description of their appearance" as Munifat Ali and Suresh Das. Accordingly, she lodged a complaint in the Station Headquarters, Narangi on 15.9.2000 and on the basis of the complaint, the SCM was held on 8.1.2003 after more than two years of the alleged incident and that the applicant and the other co-accused Suresh Das were convicted and sentenced under Section 69 of the Army Act. Hence, it was clear from the evidence of Smt. Saroj Bala, that it was Smt. Krishna who told her the names of the accused persons and on the basis of such statement, the disciplinary proceedings were initiated against him and Suresh Das. He has also stated that Smt. Krishna rejected and contradicted the evidence of Smt. Saroj Bala and in unequivocal terms deposed in her statement in the Summary of Evidence that it was Smt. Saroj Bala who informed her that she mentioned Smt. Krishna's name in her complaint to the Station HQ, Narangi as the person who gave her the names of the accused persons as Munifat Ali and Suresh Das and also insisted upon her to confirm the same before the Inquiry Officer. It was brought out in the amended application as well as in the oral arguments that Smt. Saroj Bala confided in her (Smt. Krishna) that it was Nk Lavate with whom Smt. Saroj Bala was having an extra-marital affair, who was behind falsely implicating the applicant and Suresh Das as he (Lavate) presumed that they knew about his relationship with Smt. Saroj Bala and at his (Lavate's) suggestion Smt. Saroj Bala mentioned the name of Smt. Krishna (PW-8 in S of E) in her complaint. Therefore, the applicant had come to the conclusion that he and L/Nk Suresh Das had been framed by Smt. Saroj Bala at the behest of Nk Lavate and the name of Smt. Krishna had been dragged only to

complete the chain of events so as to make the story convincing and to rope these two persons into this false case. It was also stated by the applicant in his evidence that it was Nk Lavate who told him that his name surfaced as one of the accused in the case and hence it was clear that it was Nk Lavate who had framed the applicant and L/Nk Suresh Das in the false case by making Smt. Saroj Bala instrumental as well as himself to spread the rumour of his involvement and that of L/Nk Suresh Das in the case. Also, most importantly, Smt. Krishna (PW-8 in S of E) was not examined at the SCM. Despite all this, the petitioner alleged that the officer holding the SCM conducted the same in a casual and routine manner and convicted him and L/Nk Suresh Das without any evidence to prove his involvement in the case. He has also stated that Sub/Armr K.B.K Kumar (PW-13 in S of E & DW-9 in SCM), in his evidence deposed that on 12.9.2000, the applicant was present in the Mandir Program from 6:15 pm up to the Central Roll Call at 9:15 pm which statement DW-1 to DW-13 who were present in the Central Roll Call also corroborated. Moreover, Lt Col Birendra Singh (PW-14 in S of E), who initially investigated the case, deposed in his evidence that on investigation, the JCOs and NCOs present in the Central Roll Call confirmed the applicant's presence from 6 pm to 9.15 pm whereas Smt. Saroj Bala in her complaint alleged that the incident had taken place at 8.30 pm and, therefore, it meant that at the time of occurrence of the incident, the applicant was present in the Central Roll Call and, therefore, could not have been present in Smt. Saroj Bala's house to commit such an offence. Hence, he averred that this major contradiction in evidence of Smt. Saroj Bala had not been corroborated by any other prosecution witnesses or defence witnesses. Thus, the SCM proceedings were conducted in a very illegal and discretionary manner.

9. The Respondents in their affidavit-in-opposition to the amended T.A. have briefly stated the sequence of events and have raised a preliminary objection by stating that the applicant had not exhausted the provisions of alternate remedy under Army Act 164(2) read with Army Rule 201 and that the applicant was not restricted by any law or circumstances to make such a petition. However, the applicant chose not to file a petition and failed to exercise the provisions of alternate remedy and thus has violated Section 21 of the Armed Forces Tribunal Act, 2007 by approaching the Tribunal without exercising the provisions of alternate remedy and hence his appeal should be dismissed so that he may avail the remedy available to him under Army Act Sec 164.

10. The Respondents counter of all the other legal objections with regard to the SCM, raised by the Applicant has already been noted in para 4 (supra).

11. Insofar as the facts of the case are concerned, the Respondents have stated that the applicant along with other accused person L/Nk Suresh Das on 12.9.2000 at around 8:30 pm went to the house of L/Nk Mani Ram (husband of victim) situated in separated Family Quarters Complex Narangi Cantt, knowing fully well that L/Nk Mani Ram was away on posting and gained access by falsely representing that they were on duty and had come to check if any heater was being used in the house. After inspecting the house, the applicant suddenly took out a knife and closed the mouth of the victim and, thereafter, both men dragged her and tried to lay her down on a cot. There was a tussle and the blouse of the victim was torn and she shouted for help. Her daughter Miss Sonia Rani (PW-3 in

SCM) aged 6 years, woke up and came to the room and started crying on seeing her mother in a life threatening situation. In the tussle, the victim managed to free herself and ran out of the room. However, before she could close the entrance door of her house from outside, the two intruders pushed her aside and fled away. The victim in a state of shock went to the house of Nk Lavate which was in the same locality and narrated the incident to his wife. On 13 and 14 Sep 2000 the victim tried to ascertain the identity of the two intruders. On 15 Sep 2000, after she ascertained their identities, she reported the incident to Adm Comdt, Stn HQ, Narangi Cantt. While reporting the incident she also brought out that in the intervening period 13/14 Sep 2000, the applicant along with Nk Lavate came to her house, accepted his mistake and requested her to forgive him. The prosecution has examined a total of 10 witnesses to prove the charges against the applicant. The Respondents have averred that the Defence has failed to establish that any enmity existed between the victim and the applicant so as to falsely implicate the applicant on the charges and that there was no requirement of Identification Parade before trial by SCM as the identity of the applicant was known to the victim at the time of investigation. Besides, the victim herself has specifically stated that on the date of incident she was not aware of the identity of the applicant but subsequently on enquiry by herself post the incident, she came to know the identity of the applicant which was confirmed, when, after the incident, the applicant visited the house along with Nk Lavate.

12. The Respondents have further stated that careful perusal of the statements of various witnesses who were inhabitants of the block of flats in which the victim was residing as well in the adjacent blocks of the separated family

accommodation, reveals that the applicant was holding one of the most important appointment of the battalion and was recognized as "BHM Ali" in the locality. It was also clear from the statements of these witnesses that the applicant frequently visited separated family accommodation and his latest visit was on 10 Sep 2000 wherein Smt. Krishna (Witness No. 3 in C of I) and Smt. Durga Devi (Witness No. 9 at C of I) had confirmed in their respective statements that they had seen the applicant on 10 Sep 2000 in front of their block and recognized him as BHM Ali. Smt. Bimla Boro (witness No. 10 at C of I) in her statement also confirmed that on 10 Sep 2000 two persons had visited her house and left after a short conversation. Further, Smt Krishna when questioned by the applicant in the C of I ,clearly stated that she knew him since last 8 months and was told that the applicant was the BHM and any report concerning the quarters had to be made to him. The Respondents have, therefore, stated that it is evident that whatever the source, the victim was aware of the identity of the applicant as her attacker, post commission of the offence and prior to her complaint to the Station HQ Narangi Cantt and the recording of her statement at the C of I. Various other evidence through Miss Seema Paul (PW-2), Nk Lavate (PW-4), Master Erom Pandang (PW-6) and Master Younger Ao (PW-7) have corroborated the chain of events on that particular date and time of incident.

13. The Respondents have further averred that the line of defence of the applicant solely depends on the principle of alibi, i.e. the applicant was not present at the place of incident at that particular date and time. They have averred that careful perusal of the testimonies of the Defence Witnesses No. 1 to 9 could not establish the above fact. Though the Defence Witness No. 1 to 8 have

stated that the Central Roll Call did take place after the Mandir Parade and commenced at 1955h on 12 Sep 2000, but none of them clearly stated that either the applicant was present at the Central Roll Call or that he presided over it between 1955 hrs to 2020 hrs. However, on questioning by the applicant, Sub KBK Kumar(PW-13 in S of E & DW-9 in SCM) stated that the applicant took the Roll Call at 1955 hrs and handed over the Roll Call to himself at 2020 hrs. It is, therefore, clear that Sub KBK Kumar was an interested and partisan witness and the principle of interested witness would apply squarely in this case. The Respondents further go on to state that the above facts clearly establishes that the applicant was missing from the Central Roll Call, but was present for Prasad distribution later at 2040 hrs and with the help of a sketch have submitted that the distance to the house of the victim from the Mandir was approximately 750 meters which can easily be covered by 5 minutes on foot and 2 minutes on cycle. It has already been established that both the persons were on the cycle. Hence, the 25-45 minutes is more than sufficient time to visit/enter the house of the victim, commit the offences as charged and returned back to the Mandir/Central Roll Call area and be present at the time of dispersal. Also, the respondents have stressed that at all the stages, the victim was unmoved in her testimony and no amount of cross-examination had been able to shake her confidence. Consequently, for two and half years, she had to face humiliation every time while giving testimony against the applicant. The stigma attached with the victim in such cases of molestation/outraging the modesty of woman generally leads to the emotional breakdown, but the victim, Smt. Saroj Bala had weathered all such conditions in spite of the fact that she was the mother of two children living alone without her husband in a society dominated by men who carry weapons. No amount of cross-

examination, the respondents have stated, has led to any deviation in her testimony. The Respondents have stated that the applicant has submitted that Hav MK Singh (PW-8 in Summary of Evidence and husband of Smt. Krishna) made a statement that the victim forced her (Smt. Krishna, his wife) to state that she moot the name of the applicant as the offender, to which she did not agree. This, the Respondents aver, is a mere conjecture, as Smt Krishna was not examined in the trial, in spite of the fact that the victim during her cross-examination named her at the Summary of Evidence as the person who had mooted the applicant's name. The Respondents stressed that even the Defence did not bring forward her evidence on record in order to disprove the victim's testimony. The victim being a single lady living alone had to prove her case when there were counter allegations against her by the applicant and she sought help from Hav MK Singh to speak the truth but Hav MK Singh thought otherwise for reasons best known to him. The Respondents have stated that the applicant had tried to evolve a conspiracy theory hatched by Nk Lavate and the victim. It is clear from the evidence of the victim, that just after the incident, she reported the matter to Nk Lavate's wife with whom she shared a high level of confidence. There is no dispute about the fact Nk Lavate at every stage of the disciplinary proceedings had given a detailed statement with clarity and conviction. The applicant has failed to prove on record any fact relating to previous enmity between him and Nk Lavate. Post the incident, when there was a discussion between ladies of the locality, the name of the applicant had cropped up. Whatever, may be the source of information, it is clear that Nk Lavate came to know of the involvement of the applicant in the incident from his wife only on the night of 14 Sep 2000 and when the applicant met Nk Lavate in the morning of 15 Sep 2000, the latter mentioned to him for the

first time that his name is involved in the incident along with L/Nk Suresh Das. Earlier also, both men had met on the night of 12 Sep 2000 after the incident was reported to Nk Lavate by the victim but at that time, Nk Lavate did not take the applicant's name as being involved in the case as he was not aware of the identity of the offender. When asked by BHM Ali as to what had happened, he reported that two persons had gone into the house of a lady in the SF quarters and had done "SHERKHANI" with her and run off. Hence, had there been a conspiracy, then in order consolidate the applicant's involvement, Nk Lavate would have started taking his name on the night of 12 Sep 2000 itself and would have urged the victim to file the complaint on the very next date with the name of the applicant as the intruder. However, this was not the case, as the victim, only after confirming the identity of the perpetrators made the complaint to the Administrative Commandant, Station Cell of HQ 51 Sub Area on 15 Sep 2000. Therefore, the Respondents stressed that this fact strongly belies the conspiracy theory.

14. Finally, the Respondents stated that the officer holding the SCM after examining the whole evidence believed the prosecution version to the effect that the applicant was the offender as charged.

Factual Matrix of the Case

15. We have perused the proceedings of the Summary Court Martial, the Summary of Evidence as well as the Court of Inquiry in detail. The factual matrix of the case is that on 12.9.2000 around 8.30 pm two intruders gained access to

the house of Smt. Saroj Bala (PW-1), wife of L/NK Maniram, who was staying along with her two children in the Separated Family Quarter complex in Narangi Cantt. The Separated Family Quarters as the name suggests, are meant only for families of Army personnel who are away on posting at another place and not in the same station. In this case, the husband of the victim was posted at another place i.e., Sikkim. The intruders gained access to the house of L/Nk Mani Ram where only his wife Smt.Saroj Bala was staying with her children by falsely representing that they were on duty and had come to check if the occupant was using any electric heater. After inspecting the house as they started moving out, one of the intruders took a knife and closed the mouth of Smt. Saroj Bala (PW-1 in SCM). Thereafter, both the intruders dragged her inside the room and tried to lay her on the cot. During the tussle the blouse of Smt. Saroj Bala was torn and she shouted for help. Her daughter, aged six years, woke up and came to the room in which the two intruders were holding her. The girl started crying seeing her mother in this situation and one of them tried to hold the girl's mouth. Meanwhile, Smt. Saroj Bala managed to free herself and went out of the room. However, before she could close the entrance door of her house from outside, the two intruders pushed her aside and fled away. In a state of shock she went to the house of Nk Lavate (PW-4 in SCM) which was in the same locality and narrated the incident to his wife who thereupon informed her husband about the incident. Next, on 13 and 14 Sep 2000 she tried to ascertain the identities of the two intruders and on 15 Sep 2000 she reported the incident to Administrative Commandant, Station HQ, Narangi Cantt. While narrating the incident, she stated that BHM Munifat Ali came to her house either on the 14th or 15th and accepted his mistake and requested her to forgive him. Thereafter, the authorities

ordered Court of Inquiry followed by a Summary of Evidence which then resulted in holding of the SCM.

16. The Charge Sheet and the sanction of the GOC (Competent Authority) to try the applicant by Summary Court Martial is set out below:-

CHARGE SHEET

The accused, No. 14531103Y Hav (Acting BHM)/Driver (MT) Munifat Ali of 1 Advance Base Workshop EME is charged with :-

<p><u>First Charge</u> <u>Army Act</u> Section 69</p>	<p>COMING A CIVIL OFFENCE, THAT IS TO SAY USING CRIMINAL FORCE TO A WOMAN WITH INTENT TO OUTRAGE HER MODESTY, CONTRARY TO SECTION 354 OF THE INDIAN PENAL CODE,</p> <p style="text-align: center;">In that he,</p> <p>At Narangi Cantt on 12 Sep 2000 used criminal force to Smt. Sarojbala wife of No. 6928530M Lance Naik Mani Ram of 17 Mountain Division Ordnance Unit by dragging her to a vacant Room and forcing her to lie down on a bed, intending thereby to outrage her modesty.</p>
<p><u>Second Charge</u> <u>Army Act</u> Section 69</p>	<p>COMMITTING A CIVIL OFFENCE, THAT IS TO SAY, HOUSE TRESPASS IN ORDER TO COMMIT AN OFFENCE PUNISHABLE WITH IMPRISONMENT CONTRARY TO SECTION 451 OF THE INDIAN PENAL CODE,</p> <p style="text-align: center;">In that he,</p> <p>At Narangi Cantt on 12 Sep 2000, at about 2000 h committed house trespass in order to commit an offence punishable with imprisonment at House No. 281, Separated Family Quarters Complex, Narangi Cantt, residence of No. 6928530 M Lance Naik Mani Ram of 17 Mountain Division Ordnance Unit.</p>
<p>Place : Narangi, Guwahati</p>	<p>Sd/ - x x x x x x x x x x x x (P G C Nair) Lieutenant Colonel OC Troops 1 Advance Base Wksp EME</p>
<p>Dated : 28 Dec 2002</p>	

To be tried by "Summary Court Martial"

Place : Shillong

Sd-/ x x x x x x x x x x x x x x x x x
 Bora, Indra Jeet Singh)
 Major General
 General Officer Commanding
 HQ 101 Area

Dated : 30 Dec 2002

ANALYSIS OF THE CASE

17. At the outset, the preliminary objection by the respondents that the applicant has approached this Tribunal without availing the alternate remedies available to him under Army Act, Section 164 and has, therefore, violated Section 21 of the Armed Forces Tribunal Act 2007 does not hold good as this case was originally a Writ Petition filed before the Hon'ble Gauhati High Court and transferred to this Tribunal on 30th June 2015. The said WP (C) 1311 of 2003 was filed on 20.02.03 and has been transferred to this Tribunal on 29.05.15. No such preliminary objection was raised in the Writ Petition filed before the Hon'ble High Court on 20.02.03 and hence to raise it on 24.01.17 in the Affidavit-in-Opposition (to the Amended Petition filed on 04.11.2016) ie after a period of **13 years 8 months** and at this stage, after affidavits had been exchanged in the Hon'ble Gauhati High Court, does not stand to reason and, accordingly, the preliminary objection is overruled.

18. In so far as the other legal issues pertaining to the holding of the Summary Court Martial per se, it is clear that after holding of the Court of Inquiry and Summary of Evidence, the complete case was forwarded to the JAG department

of the Army for issue of pre- trial advice. Section 120(2) of the Army Act is set out as under:

120. Powers of summary courts-martial.-

(1) Subject to the provisions of sub-section (2), a summary court martial may try any offence punishable under this Act.

(2) When there is no grave reason for immediate action and reference can without detriment to discipline be made to the officer empowered to convene a district court-martial or on active service a summary general court-martial for the trial of the alleged offender, an officer holding a summary court-martial shall not try without such reference any offence punishable under any of the sections 34, 37 and 69, or any offence against the officer holding the court."

19. It is abundantly clear from Section 120(2) of the Army Act, that the offence under Army Act Section 69 can be tried by a Summary Court Martial only after reference to an officer empowered to convene a District Court Martial or Summary General Court Martial in active service. Therefore, it is observed in this case that, as the applicant was on active service, it was referred to the General Officer Commanding 101 Area who was the officer empowered to convene a DCM or SGCM and only after his endorsement was obtained on 30 Dec 2002, the applicant was tried by the SCM. Hence, trial by the SCM instead of by a DCM or a SGCM in this case is perfectly legal and valid.

20. In so far as the objections raised by the applicant with regard to the provisions of Section 125 of the Army Act in respect to the choice between the criminal court and court martial, Section 125 of the Army Act is reproduced 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”.

21. It is very clear from the above that it shall be at the discretion of the *“officer commanding 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”.* **The choice or the decision here lies with the Officer Commanding that is, in this case, the GOC of 101 Area and not with the accused person i.e. the applicant.** The Army Act does not give an accused person the choice to be tried between a Criminal Court or a Court Martial, and therefore, the applicant is not entitled to make any such choice. Hence there has been no violation of Sec 125 of the Army Act.

22. In so far as violation of Rule 129 of the Army Rules is concerned, there is no record of the applicant asking for the services of a legal counsel. Rule 129 of the Army Rules is set out as under: -

“129. Friend of accused:- In any summary court-martial, an accused person may have a person to assist him during the trial, whether a legal adviser or any other persons. A person so assisting him may advise him on all points and suggest the questions to be put to witnesses, but shall not examine or cross-examine witnesses or address the court”.

23. It is very clear that the person to assist an accused in a Summary Court Martial is called "Friend of Accused" who may be a legal officer or any other person. In this case, the applicant was asked who he would want as his friend to which he has replied vide his letter of 7th January 2003, (Page 28; Appendix-H) as Major R L Verma. Hence, his contention that he had asked for a legal officer of his choice but was not given one does not stand scrutiny. So, no violation of Army Rule 129 has taken place.

24. Army Rules 120 & 121 do not statutorily require the SCM to record reasons in support of its findings, which is to be recorded only as "Guilty or Not Guilty". This has been upheld by the Hon'ble Apex Court in the case of **UOI & Others vs. Dinesh Prasad reported in (2012) 12 SCC P 63 Para 24.** *"It is now settled that no reasons are to be recorded by the Summary Court Martial"*. Therefore this Bench observes that the SCM was conducted in accordance with Section 116 of the Army Act and Rules 106-133 of the Army Rules.

25. Insofar as the Court of Inquiry is concerned, it cannot be used in any trial as it is only a fact finding exercise and its proceedings are not admissible in evidence at a trial. Be that as it may, the Court of Inquiry forms the basis on which the military authorities are able to determine whether a prima facie case exists regarding any wrongdoing. In this case also the Court of Inquiry was not relied upon during the Summary Court Martial. However, we have studied this exhaustive Court of Inquiry in order to appreciate the case in its entirety. The Findings and Opinion of the Court of Inquiry are significant in arriving at the truth in this case. These are set out below.

**“COURT OF INQUIRY SMT SAROJBALA WIFE OF L/NK MANIRAM RESIDENT OF
HOUSE NO 281 SF QUARTERS PHASE II NARANGI CANTT”**

FINDINGS OF THE COURT

Background

1. *Smt. Sarojbala, wife of L/NK Maniram, of 17 Mtn Div Ord unit, is residing in House No. 281, OR SF Quarters, Phase II, Narangi Cantt (witness No 1 and annex I, II, III, IV and V).*
2. *No 14531103Y M Ali, is the BHM of 1 ABW, since the last three years and is staying with his family, in NCO family accommodation House No 469, in phase II in Narangi Cantt (Witness No., 16, Annex I, II and III).*
3. *No 14590318 L/NK S Das is the Battalion Champion (one who fills parade gate and makes duties of JCOs) of ABW, and is residing with his family in House No P-18, phase II, Narangi Cantt. (Witness No. 17, Annex I, II and III).*
4. *No. 1457833W Nk NH Lavate, is an NCO of 1 ABW of Coy and is residing in Quarter No. P-281 along with his family in the OR Family Quarters Phase II, Narangi which is about 100 M from the house of Smt. Sarojbala. (Victim) (Witness No. 30 Annex I and III).*
5. *W/O NK NH Lavate, Smt. Sampatha Narayan, is a friend of Smt Sarojbala (victim). Smt Sarojbala knows Smt. Sampatha Narayan Lavate, through the wife of Babulal who was earlier posted in 1 ABW. NK Lavate, NH's family and the family of L/NK Manairam are family friends. (Witness N 1, 30, 55).*
6. *The family of L/NK Maniram, came to know the family of NK NH Lavate through Babulal's family. The family of L/NK Maniram and Babulal were good friends on account of similar religious back ground, (i.e. satsangis) and had been exchanging religious books and religious cassettes with one another. (Witness No. 1).*
7. *NK NH Lavate had delivered gas cylinder (cooking gas) once or twice at the house of Smt. Sarojbala, on request of the lady and the wife of Nk NH Lavate i.e. Smt. Sampatha Narayan Lavate. (Witness No 30 and 59).*
8. *NK NH Lavate had not told anyone in 1 ABW, regarding his having delivered a gas cylinder to Smt. Sarojbala apart from his wife who knew of the same (Witness No 30 and 59).*

9. *The separated family accommodation of phase II Narangi has five blocks within the overall married accommodation of the JCOs/NCOs/OR married accommodation of phase II in Narangi cantt. The said SF accommodation is not enclosed separately and is thus exposed to possible exploitation because of the road in front of the accommodation being a thoroughfare (Refer Annxure I, II and III).*
10. *There is a vegetable shop under the contract of 1 ABW which is opposite the separated family accommodation precisely opposite the block of Smt Sarojbala. The contractor of this vegetable shop is Shri Mangelal Bishnoi. (Witness No. 58 and 59 also in Annexure I to III and V).*
11. *The Bishnoi vegetable shop is a scene of crowd in the evening and the max is between 7.30 PM and 8.30 PM everyday. (Witness No. 58.)*
12. *Shri Mangelal Bishnoi had been given a sentence of life imprisonment by a session court in Rajasthan, under charges under section IPC section 302. He is presently on bail and has not been acquitted of the said charges (witness No. 58).*
13. *Shri Mangalal Bishnoi, has been charged under IPC section 303, for the alleged murder of Shri Lauram S/O Sh Prahlad Ram. The reasons for the murder of the person by Shri Mangelal Bishnoi was that he had found the said person i.e., Shri Laduram, in his house when he reached his house, at this village, where his wife was staying then (Witness No. 58).*
14. *Smt Patasi, is the wife of Shri Mangelal Bishnoi, the owner of the vegetable shop (Witness No. 58 and 59).*
15. *Shri Mangelal Bishnoi and his wife Smt Patasi were in full view of the front of the Block of Smt Sarjbala and were in knowledge of people entering and leaving her block/house (Witness No 58, Annex V).*
16. *Smt. Patasi, knew Nk NH Lavate and had asked to Nk NH Lavate, tauntingly once whether he had delivered the gas cylinder to Smt Sarojbala on occasion before 12 Sep 2000. (Witness No 30, confession.)*
17. *Smt. Patasi misguides men to various houses of SF Quarters i.e. for them to try their luck/chance at certain houses of SF Quarters (Witness No. 30, confessional).*
18. *BHM M Ali and L/NK S Das, are friends and sit in the same office from morning to afternoon. Their families are well known to each other. Both BHM M Ali and L/NK S Das are residents of Assam and speak the Assamese language at home. Their families too have an affinity because of the Assamese language. BHM M Ali's wife and L/NK S Das's wife have been meeting one another and are friends. BHM M Ali is the immediate superior of L/NK S Das, under whom he is working. (Witness No16 and 17).*

19. Sub KBK Kumar, the JA of 1 ABW, knows BHM M Ali since his posting and had served with him in 1 ABW since last three years. (Witness No. 16 and 23).

20. BHM M Ali has been authorized by the battalion, to visit ORs SF accommodation, as a BHM of 1 ABW, since he is a member of the Adm team, responsible for the administration and security of SF family accommodation in Phase II, Narangi cantt (Witness No. 17 and SOP of 1 ABW, Exhibit AI refers).

21. BHM M Ali and L/NK S Das have been visiting the Bishnoi vegetable shop and know the owner Shri Mangelal Bishnoi and his wife Smt Patasi. (Witness No. 16, 17, 58 and 59).

22. BHM M Ali was well known in the colony of SF Quarters, phase II Narangi as he used to organize maintenance of area, to include grass cutting and also for getting circulars signed by the families of SF Quarters. The walk and voice of BHM M Ali was recognizable to the persons of SF accommodation phase II Narangi. (Witness No. 2, 3, 10 and 16).

23. BHM M Ali was known to the ladies of SF quarters as they had to give the Report for maintenance of their quarters to him. He also was responsible for having organized one or two SF family welfare meets. (Witness No. 3 and 10).

24. The program for every Tuesday in 1 ABW, as scheduled is as under:

- (a) Time for workshop closing – 16.30 h
- (b) Time for Mandir Programme and Central Roll Call – 1730 to 1830 h
- (c) Dinner – 1900 hrs – 2000

(Exhibit – 'F', Weekly Training Programme of 1 ABW and Exhibit 'T', 'L' - Published Meal Timings refers)

25. The administrative channel of 1 ABW in descending orders is under:-

- (a) Lt Col Virender Singh (Adm Officer)
 - (b) Sub Maj – Sub Maj (Hony Lt) AK Ghatak
 - (c) JA - Sub KBK Kumar
 - (d) BHM M Ali
 - (e) CHMs and Battalion Champions
- (Witness No 16, 23, 24, 25 and 35)

26. The central roll call of 1 ABW is held on the road in front of the mandir at 1 ABW. The central roll call is held on the said road immediately after the mandir parade. (Witness No 16 and 23).

27. The central roll call of the OR and JCOs is taken as a parade in which the JCOs are fallen in about 25 meters away from the rest of the men on the same road in front of the mandir of 1 ABW. (Witness No 23, 34 and 56).

28. The JCOs of 1 ABW attending Central Roll Call are broken off about 10 minutes before the OR central roll call parade finishes. (Witness No. 56, 23 and 34).

29. The roll call of the JCOs less the JCO adjutant of 1 ABW is taken by the Sub Maj. (Witness No 56).

30. The central roll call of the ORs is taken by the BHM, JA and the Sub Maj in that order. The Sub Maj speaks to the OR, after he has broken off the JCOs. (Witness No 16, 23, 17).

31. The JA (JCO Adj) stands in his position in the central roll call when the Sub Maj speaks to the men in the Central Roll Call after he hands over the parade to the Sub Maj. (Witness No. 56, 51, 52 and 53).

32. All duty JCO have instrs to attend the central roll call on Tuesdays. (Witness No. 24, duty JCO check from Exhibit – 'P').

EVENTS PRIOR TO 12 SEP 2000

33. BHM M Ali and L/NK S Das visited house No. 288, SF Quarters, phase II Narangi Cantt, belonging to Mrs. Durga Chhetri, wife of Hav B Deb, on 10 Sep 2000 (Sunday) at about 7 PM or 7.15 PM. (Witness No 9 and 54).

34. BHM M Ali and L/NK S Das made enquiries about the residents of House No 290 and also of Smt. Durga Chhetri, from Depika Chhetri, daughter of Smt Durga Chhetri, resident of House No 288, on 10 Sep 2000. (Witness No 9 and 54).

35. BHM M Ali and L/NK S Das did not have any official permission to visit house No. 288, SF Quarters, Phase II, Narangi Cantt on the night of 10 Sep 2000. (Witness No. 15, 17, 23 and 24).

36. BHM M Ali and L/Nk S Das, visited House No. 297, SF Quarters, Phase II, Narangi Cantt, belonging to Smt Bimla Boro, wife of Sep Aurobindo Boro, on 10 Sep 2000 at about 8.30 PM. (Witness No. 19 and 11).

37. BHM M Ali and L/Nk S Das, did not have any official permission to visit house No 297 on the night of 10 Sep 2000. (Witness No 16,17, 23 and 24).

EVENTS ON 12 SEP 2000

38. On 12 Sep 2000 the Mandir Programme of 1 ABW commenced at 6.00 PM (Witness No 21, 26, 29 and 56).

39. On 12 Sep 2000, the 1 ABW Central Roll Call, commenced at 7.30 PM. (Witness 56 and Exhibit – 'O').

40. On 12 Sep 2000, the duty JCO Sub GC Roy, had not been given any specific instrs to be absent from the central roll call nor given any specific task which was to be done during the period of the central roll cal. (Witness No. 24).

41. BHM M Ali took the central roll call of the OR and handed it over to the JA on 12 Sep 2000 (Witness No 16, 17 and 23).

42. L/Nk S Das attended the central roll call on 12 Sep 2000. (Witness No 53 and 49).

43. The Duty JCO of 1 ABW Sub GC Roy attended the central roll call and sealed the key box at the security gate of 1 ABW at 810 pm. (Witness No 56 and Exhibit – 'P').

44. The Duty JCO along with other JCOs was broken off from the central roll call about 10 minutes before the ORs roll call finished on 12 Sep 2000. (Witness No. 53, 46 and 49).

45. It takes Sub GC Roy, three minutes and twenty-eight second to go from the place of central roll call, to the office where the key box is kept in 1 ABW. (Timings taken by court, Witness No. 56)

46. The sealing process of the key box by the duty JCO of 1 ABW takes five minutes. (Timings taken by Court on 24th Oct 2000, Witness No 45).

47. On 12 Sep 2000, the JA Sub KBK Kumar, handed over the central roll call parade to the Sub Maj and took his position in the central roll call of ORs in progress (Witness No 53 and 46).

8. On 12 Sep 2000, Lt Col CV Gopal of 1 ABW, spoke on telephone to Sub KBK Kumar, the JA at 8.15 PM after the central roll call was broken. It takes Sub KBK Kumar 3 minutes 28.5 second to walk from the place of the roll call to the MI Room and ring up Lt Col CV Gopal. (Witness No 47 and Timings taken by court on 01st Nov 2000).

49. The Central roll call of the ORs of 1 ABW was broken off by the BHM between 8.10 PM and 8.15 PM on 12 Sep 2000. (Timings derived from para 40 to 48 above and Witness No 56).

50. It takes seven minutes 5.5 seconds for BHM M Ali to take Prasad from the unit mandir, walk up to the place where his cycle is kept at the time of the central roll call, unlock the cycle, ride his cycle from the central roll call place to the Bishnoi vegetable shop; buy vegetables at the Bishnoi vegetable shop; walk from the Bishnoi vegetable shop to the house of Smt. Sarojbala and till time the door of Smt Sarojbala is opened. (Timings taken by the court on 01st Nov 2000, Witness No 16 and 17).

51. BHM M Ali and L/NK S Das walked from the direction of Bishnoi vegetable shop, towards the house of Smt. Sarojbala, in between 8.15 PM and 8.30 PM, on 12 Sep 2000 (Witness No 2 and 15).

52. BHM M Ali along with L/NK S Das knocked at the door of House No. 381, SF Quarters Phase II Narangi cantt in between 2015-2030 hrs on 12 Sep 2000. (Witness No 1, 2, 14 and 15.)

53. Smt. Sarojbala, opened the front wooden door of her house and keeping the wire-meshing door still close, asked BHM M Ali, why he had come to her house. She did not recognize BHM M Ali or L/NK S Das. Because she did not know them from before. (Witness No. 1).

54. Smt. Sarojbala asked BHM M Ali as to why he had come at night to her house, while still keeping her wire meshing door bolted, on the night of 12 Sep 2000. (Witness No 1).

55. There was heater checking in the SF Quarters conducted by the Stn HQ with assistance of 1 ABW in the SF Quarters, Phase II Narangi cantt in Sep 2000. (Witness No. 23 and 24).

56. BHM M Ali said that he had come for heater checking to the house of Smt. Sarojbala in between 8.15 and 8.30 pm on the night of 12 Sep 2000 (Witness No 1).

57. Smt. Sarojbala told BHM M Ali that she would not open the door in between 8.15 and 8.30 PM on the night of 12 Sep 2000. (Witness No 1).

58. BHM M Ali told Smt Sarojbala, that he was accompanied by one other man and that Smt Sarojbala should open her door, as they were on official duty for checking heaters, in between 8.15 and 8.30 PM, on 12 Sep 2000. (Witness No 1).

59. Smt. Sarajbala opened the wire meshing door also and permitted BHM M Ali and L/NK S Das to come into the house and conduct the checking for heaters on the night of 12 Sep 2000. (Witness No 1).

60. BHM M Ali and L/NK S Das conducted the checking for heaters, of the house of Smt. Sarojbala on the night of 12 Sep 2000. (Witness No 1).

61. BHM M Ali and L/NK S Das saw the children of Smt. Sarojbaa, the boy aged 10 yrs and the girl namely Sonia Rani aged 6 yrs sleeping in room No. 1 (Witness No. 1, Annex IV refers.)

62. After carrying out the heater checking BHM M Ali and L/NK S Das moved towards the exit side of the house and closed the front door on night of 12 Sep 2000. (Witness No 1).

63. BHM M Ali placed the point of a knife at the neck of Smt. Sarajbala, threatening to kill her if she did not do as per the wishes of him and his associate, L/NK S Das on night of 12 Sep 2000, between 8.15 and 8.30 pm. (Witness No 1).
64. BHM M Ali gagged Smt Sarojbala with his one hand and stifled her from crying out for help. (Witness No 1.)
65. BHM M Ali ordered Smt. Sarojbala on the point of the knife to go to Room No 2 and L/NK S Das told Smt. Sarojbala, "What difference does it make your husband is not here", or words to that effect on the night of 12 Sep 2000. (Witness No 1 and Annex IV refers).
66. BHM M Ali and L/NK S Das dragged Smt. Sarojbala into the vacant room i.e. Room No 2 which had single bed in it. (Witness No 1.)
67. Smt. Sarojbala used her full strength to free herself from the clutches of BHM M Ali and L/NK S Das. (Witness No 1).
68. BHM M Ali and L/NK S Das, pushed Smt. Sarojbala on the charpoy in room No. 2 of house No 281, on the night of 12 Sep 2000. (Witness No. 1).
69. Both persons i.e., BHM M Ali and L/NK S Das, used force on Smt. Sarojbala in an endeavor to force her into submission into a sexual act. (Witness No 1.)
70. BHM M Ali and L/NK S Das tore the Kameez top part of the dress of Smt. Sarojbala, at the front of neck as well as the right arm top. (Witness No 1 and Exhibit – 'A'.)
71. One of the two i.e., BHM M Ali or L/NK S Das pressed the left breast of Smt Sarojbala between 8.15 pm and 8.30 pm on the night of 12 Sep 2000. (Witness No 1).
72. Smt. Sarojbala did manage to get herself free for a short while in which she shouted "Didi" (Witness No 1)
73. BHM M Ali and L/NK S Das once again clamped her mouth shut of Smt. Sarojbala so that she could not shout for help. (Witness No 1)
74. Due to the commotion in the house and shout/scream of 'DIDI' by Smt Sarojbala, her daughter Miss Sonia Rani, aged 6 yrs woke up and came into the Room No. 2. (Witness No 1 and 12 Annex IV).
75. Miss Sonia saw two persons fighting with her mother and one of them with a knife in his hand. Seeing this Miss Sonia Rani started crying. (Witness No 1 and 12).
76. Miss Sonia's crying out was heard by the neighbours. (Witness No. 15 and 2).

77. BHM M Ali clamped the mouth shut of Miss Sonia Rani with one hand so that she could not make any further sound. (Witness No 1 and 12).

78. Smt. Sarojbala kicked BHM M Ali while trying to free herself. (Witness No 1 and 12).

79. Since there was only one person i.e., L/NK S Das holding her then, Smt. Sarojbala managed to break free from his hold and picking up her daughter, Miss Sonia, in her arms rushed towards the exit of the house. (Witness No. 1 and 12).

80. BHM M Ali and L/NK S Das sped out of House No 281, SF Quarters and rode off on their cycle, which was parked outside the house. (Witness No 1, 14 and 15).

81. While BHM M Ali and L/NK S Das were going out of the block Smt. Sarojbala said to BHM M Ali and /NK S Das, "Haramzado, main tumhari report karoongi", while she was standing in the door way. (Witness No. 1, 14 and 15).

82. BHM M Ali and L/NK S Das rode off on their cycle towards the direction of Salgaon TCP. (Witness No 1, 15)

83. BHM M Ali along with Sub B Kumar, Hav NC Manda, NK B Chakarborty and Cfn Rajesh Kumar went to the New Arrival platoon at about 9 PM on night of 12 Sep 2000. L /NK S Das was along with the above said pers. (Witness No 16, 17, 32 and 23).

84. BHM M Ali spoke to L/NK Ajay Yadav the sentry of the CSD canteen gate at about 9.20 PM on night of 12 Sep 2000. (Witness No 16).

85. BHM M Ali was wearing a half sleeves red shirt on the night of 12 Sep 2000. (Witness No 1 and 30).

86. Smt. Sarojbala spoke to Smt Akhala Ao immediately after the incident and informed her about the incident. (Witness No 1 and 6).

87. Smt. Sarojbala went to the house of NK NH Lavate between 8.50 pm and 9 pm on night of 12 Sep 2000 and told Smt Sampatha Narayan Lavate, the details of the incident of the molestation and attempted rape, on her between 8.50 pm and 9 pm on night of 12 Sep 2000. (Witness No 1, 55, and 30).

88. NK Lavate NH and Smt. Sampatha Narayan consoled Smt. Sarojbala, after the incident of night of 12 Sep 2000. NK Lavate NH searched the area on his cycle and looked for the two miscreants. (Witness No 30).

89. NK NH Lavate took the sentries, NK K Samal and Cfn MK Singh of 1 ABW with him to assist him in conducting the search. (Witness No 30, 31 and 32).

90. BHM M Ali was standing at the T junction along with some persons including the two sentries, Cfn M Singh and NK K Samal after 9 pm on night of 12 Sep 2000. (Witness No 30, 31, 32 and 16.)

91. BHM M Ali met NK NH Lavate in front of his house after 9 PM on night of 12 Sep 2000. (Witness No. 30 and 16).

92. When BHM M Ali met NK NH Lavate in front of his house on night of 12 Sep 2000 he was wearing a half sleeves red shirt. (Witness No 30).

93. BHM M Ali was informed of the details of the entry of two persons in house No 281 SF Quarters, phase II Narangi belonging to Smt. Sarojbala. Nk N Lavate told BHM M Ali the complete incident and the story of the Smt. Sarojbaa, to BHM M Ali on night of 12 Sep 2000, when he met BHM M Ali after 9 PM on that day. (Witness No. 30).

EVENTS AFTER 12th SEP 2000

94. BHM M Ali did not give any report to anyone regarding the incident of night of 12 Sep 2000 which occurred in the house of Smt. Sarojbala to anyone including the JA of 1 ABW or the Adm Offrs 1 ABW between night of 12 Sep 2000 and morning of 15 Sep 2000. (Witness No 16, 23 and 24).

95. Sub KBK Kumar, the JCO Adjt of 1 ABW was informed of the incident in the SF OR Family quarters which occurred on the night of 12 Sep 2000, by NK K Samal, one of the sentries on duty on 12 Sep 2000 the very next day i.e. 12 Sep 2000. (Witness No 32).

96. The JA Sub KBK Kumar, did not inform anyone up the channel between the morning of 12 Sep 2000, to the morning of 15 Sep 2000, regarding the incident which occurred in SF quarters, on the night of 12 Sep 2000. (Witness No. 23 and 24).

97. The Duty JCO of 1 ABW of 12 Sep 2000 checked the SF OR Family quarters guard at 0030 h on 12 Sep 2000. (Witness No 57).

98. The duty JCO of 12 Sep 2000 of 1 ABW Sub G C Roy was not informed by the sentry of the guard regarding the incident which occurred on the night of 12 Sep 2000, in the SF Qtr, Phase II, Narangi Cantt, when he checked the Niti Marg Guard at night at about 0030 hrs (Witness o 56 and Exhibit – 'P').

99. Smt. Sarojbala did not make a report of the incident at the Stn HQ Guwahati between night of 12 Sep 2000 till about 1300 hrs of 15th Sep 2000. She did not make this report because she did not know their names of the persons, who had come to her house on the night of 12 Sep 2000 (Witness No. 1).

100. Smt. Sarojbala, was informed of the name of BHM M Ali, as being one of the two pers, who had come to her house between 8.15 PM and 8.30 PM, on the night of 12 Sep 2000 by Miss Seema Paul, her neighbor, residing in house No. 279. Miss Seema Paul, had told Smt. Sarojbala, in the evening of 13 Sep 2000, that one of the pers, who had come to her house was known to her and she had seen him

entering the block and heard him talking to Smt. Sarojbala and that the name of the pers was BHM M Ali of 1 ABW (Witness No. 2).

EVENTS OF 15TH SEP 2000

101. On 15 Sep 2000 at about 7.30 AM Nk NH Lavate, informed BHM M Ali that his name was being mentioned as one of the pers, who had entered the house of Smt. Sarojbala on the night of 12 Sep 2000. (Witness No 30 and 16).

102. On 15th Sep 2000, at about 7.30 AM, BHM M Ali told NK H Lavate, "USKAJAKAR MUH CHUP KARADO MEIN BADNAM HO JAUNGA". (Witness No. 30 Confession).

103. BHM M Ali requested NK NH Lavate to accompany him to house No 201 of Smt. Sarojbala to request the lady not to take his name otherwise he would get defamed. (Witness No. 30 Confession).

104. On 15th Sep 2000, when NK N H Lavate refused to go along with BHM M Ali to the house of Smt. Sarojbala, BHM M Ali forced him to go to her house. (Witness No. 30 Confession)

105. On 15th Sep 2000, BHM M Ali and NK N H Lavate went to the house of Smt. Sarojbala in between 7.45 and 8.15 AM. (Witness No. 1, 30 and 6).

106. BHM M Ali and NK Lavate stood outside the door of the house of the house of Smt. Sarojbala and knocked at the door in between 7.45 and 9.15 AM on 15 Sep 2000. (Witness No. 30 confession, 1 and 6).

107. Smt. Sorojbala opened the wooden door of her main gate and immediately recognized BHM M Ali as one of the pers who had entered her house on the night of 12 Sep 2000 and these refused to open the door then. (Witness No. 30 confession, 1 and 6).

108. BHM M Ali informed Sub Maj AK Ghatak and the JA Sub KBR Kumar, in the hearing of L/NK S Das, regarding his name and the name of L/NK S Das being taken as the two pers who had entered House No. 281 of Smt. Sarojbala on the night of 12 Sep 2000 (Witness No. 16, 17 and 23).

109. Sub Maj Ghatak told the BHM not to be under any tension because when the report would come, it would come to him and the JA and they would manage. (Witness No. 30 Confession).

110. L/NK S Das said that whoever takes his name "USKO MAIN KAT DUNGA" in the presence of the Sub Maj, The BHM and NK NH Lavate on 15 Sep 2000 at about 8.30 AM (Witness No. 30 Confession).

111. On 13 Sep 2000 L/Nk S Das told "The SM and the JA of 1 ABW, that Bishnoi had told him (ie L/Nk S Das) that Nk NH Lavate goes to that house (i.e., of Smt.

Sarojbala and that this information was given to him by the owner of Bishnoi Vegetable shop. (Witness No. 30 Confession).

112. *In the morning of 15th Sep 2000, Sub Maj Ghatak, asked Nk N H Lavate as to why he had given the gas cylinder to Smt. Sarojbala (Witness No. 30 Confession).*

113. *On the morning of 15th Sep 2000, while giving the report to the Adm Offr, Lt Col Virender Singh, Sub KBK Kumar and BHM M Ali informed him, regarding the incident of night 12 Sep 2000. BHM M Ali told Adm Offr, that his name (ie BHM M Ali's name) was being taken in the incident, along with the name of L/NK S Das, as having entered the house of the victim at about 8.30 PM (Witness No. 16,23 and 24).*

114. *In the morning of 15 Sep 2000 BHM M Ali while giving the report to the Adm Offr told him that at the time of the incident ie 8.30 PM he was taking the Bn Central Roll Call (Witness No. 16 and 24).*

115. *The Adm Offr, Lt Col Virender Singh, called Nk Lavate and spoke to him in the afternoon of 16th Sep 2000, at about 16.30 hrs in the presence of the BHM M Ali and L/Nk S. Das (Witness No. 30 confession and 23).*

116. *Smt. Sarojbala (Victim came to know the name of the 2nd person who had entered her house and attempted to rape on the night of 12 Sep 2000, as L/NK S Das at about 12.30 hrs on 15 Sep 2000. When she saw him near the Bishnoi Vegetable shop and asked who he was from someone. (Witness No. 1).*

117. *On 15 Sep 2000, at about 13.30 hrs Smt. Sarojbala went to Stn, HQ Guwahati and informed the Offg Adm Comdt, Lt Col KD Shelly, regarding the incident which occurred at about 8.30 PM in her house on 12 Sep 2000. (Witness No. 1 and 20).*

118. *On 15 Sep 2000, at about 1500 hrs, Smt. Nandita Das, W/O L/NK S Das went to the house of Smt. Sarojbala and requested her not to take the name of her husband in the incident. She told Smt. Sarojbala that she would get her husband L/NK S. Das to her house in the evening and L/NK S Das would apologise to her in front of other ladies (Witness No. 1 and 2).*

119. *On 15 Sep 2000, at about 6 PM L/NK S Das went to the block of Smt Sarojbala when Smt Sarojbala was not in her house. L/NK S Das said sorry to the ladies of the block of Smt. Sarojbala and went away. (Witness No. 13, 17, 4, 5, 6 and 7).*

120. *On 16 Sep 2000 at about 1330 hrs, the Offg Adm Comdt of Stn Hq Lt Col KD Shelly and Col 'A', HQ 51 Sub Area, Col S Mishra, went to the office of the Comdt of 1 ABW, Brig T S Sekhon and informed him that one Hav M Ali and Champion Das*

of 1 ABW had gone to House No, 281, SP Qtr, Ph II and had molested and attempted to rape a lady namely Smt Sarojbala (Witness No. 20)

121. On 15 Sep 2000, Lt Col Virender Singh, the Adm Offr of 1 ABW told the Offg Adm Comdt in the presence of the Comdt of 1 ABW and Col S Mishra, Col 'A' of 51Sub Area that "we can produce 200 witness to prove that BHM M Ali was present in the Roll Call that day" (ie on 12 Sep 2000) or words to the effect. (Witness No. 20).

122. On 16 Sep 2000, at about 1630 hrs, Lt Col Virender Singh, Adm Offr 1 ABW asked Nk Lavate in the presence of BHM M Ali and L/NK S Das as to how he knew the lady Smt. Sarojbala. He also asked NK N H Lavate whether he had given a gas cylinder to Smt. Sarojbala (victim). (Witness No. 30, 16 and 17).

123. On 16 Sep 2000 at about 1630 hrs when the Adm Offr 1 ABW Lt Col Virender Singh was speaking to NK NH Lavate in the presence of BHM M Ali and L/NK S Das the Comdt 1 ABW came into the office of the Adm Offr and sat downthere (Witness No. 16, 17, 24 and 30).

124. On 16 Sep 2000., at about 1630 hrs the Comdt, 1ABW Brig T S Sekhon, asked Nk NH Lavate as to how he know Smt. Sarojbala (Victim) (Witness No. 16, 17 and 30 Confession).

Alibis created for coverup of BHM M Ali and L/NK S Das

BACK GROUND

125. On the morning of 12 Sep 2000, there was a ladies meet in the ROI for deciding the decoration of the ladies club function, which was to be held on 14 Sep 2000 (Witness No. 47) 126. On the morning of 12 Sep 2000, in the ladies meet which took place it was decided that malas of 2 ¼ meter long, made of Ashoka leaves, 20 in number were required. The orders for making these malas was given by the ladies through the Offrs' Mess Hav, of 1 ABW to the administration of 1 BW (Witness No. 47).

127. On 12 Sep 2000 before the central roll call the companies of 1 ABW had already been informed regarding the making of the malas of Ashoka leaves for the ROI ladies club rehearsal to be held on 13 Sep 2000. (Witness No. 36 and Exhibit-'D').

128. On 12 Sep 2000, at about 1945 hrs, to ensure the message was conveyed, as also to make a change in the length of the malas from 2 ¼ Mtr, Lt Col CVGopal, logged a msg with the duty CLK of 1 ABW, for the JA to spk to him immediately. (Witness No. 47).

129. On 12 Sep 2000, the JA got the msg that he was to speak on telephone to Lt Col CV Gopal immediately while he was in the process of the conducting the central roll call (Witness No. 23 and 16).

THE ALIBIS

130. The following false alibis were created by the administration below the officers rank to cover of the folly of BHM M Ali and L/NK S Das (Witness No's 16,17,18,19,22,23,24,25,28,33,34,35,36,37,40,46,49,50,52 and 53) :-

(a) The start time of the Mandir Programme of 12 Sep 2000, was changed from 6 PM to 6.30 PM.

(b) The start time of Central Roll Call of the same day was changed from 7.30 PM, to between 7.50 PM and 8 PM and the finish time changed from between 8.10 – 8.15 PM to 8.40 – 8.45 PM.

(c) The JA, Sub KBW Kumar became a witness alongwith Hav NC Mandal NK B Chakraborty and Cfn Rajesh Kumar, in making out a circular for the requirement of five malas per companies made of Ashoka leaves to be delivered at 11 PM in the Bn Office on 13 Sep 2000. The said circular was not required to be sent as the msg had already been given to the coys before the central roll call took place.

(d) The time that the information was given by NK Lavate to NK K Samal and Cfn MK Singh regarding the entry of two pers in the house of Smt Sorajbala was changed from after 9 PM to between 8.25 PM,so that the incident in Smt. Sarojbala's house could be quoted as having taken place much before 8.15 PM.

131. The following pers of 1 ABW supported the false alibis and gave false Evidence in court :-

(a) IC-24574 Lt Col Virender Singh, Adm Offr, 1 ABW on 12 Sep 2000(Witness No. 24).

(b) JC -75124X Sub KBK Kumar, JA 1 ABW on 12 Sep 2000(Witness No. 23).

(c) JC-747750w NB Sub SM Tripathi, religious Teacher of 1 ABW (Witness No. 18).

(c) JC-749247x Sub Amarjit Singh, 'A' Coy 1 ABW (Witness No. 32).

(d) JC-752267W B Kumar,A' Coy 1 ABW. (Witness No. 34).

(e) 14531103Y BHM M Ali if 1 ABW, (Witness No. 16).

- (f) JC-748438A Sub GC Roy, Duty JCO of 1 ABW on 12 Sep 2000 (Witness No. 57).
- (g) 14549143F Hav (Now CHM) Mahabir Singh, 'T' Coy, 1 ABW (Witness No. 19).
- (j) 14583487N Cfn Rajesh Kumar 'A' Coy, 1 ABW, (Witness No. 22.)
- (k) 14533620P CHM HC Roy, CHM 'A' Coy 1 ABW, (Witness No. 25).
- (l) JC-13877179A NK TK Das, 5133 SC Bn, Attached to 1 ABW (Witness No. 28) the witness is from the same District of Assam as the accused No. 2, L/NK S Das (i.e. the district of Barpeta, Assam). He was the only attached pers to give statement in favour of the accused.
- (m) No 14603597M Cfn M K Singh, V Coy 1 ABW witness No. 31 (Sentry on duty at SF Qtrs).
- (n) 14585884L NK Samal 'V' Coy 1 ABW (Witness No. 32) Sentry on Duty of SP Quarters.
- (o) 14532341Y CHM/Dvr RK Prasad CHM 'S' Coy 1 ABW (witness No. 35).
- (p) 14613769K Sep Suresh Kumar 'A' Coy 1 ABW (Witness No. 36).
- (q) 14626087N Sep RR Bhauri 'A' Coy 1 ABW (witness No. 37).
- (r) 14532073Y Hav Mandal 'A' Coy 1 ABW (witness No. 40).
- (s) 14584385K NK D Chakraborty, Bn Champion, 'A' Coy 1 ABW (witness No. 42).
- (t) 14530382 Hav Mohan Singh, 'A' Coy 1 ABW (Witness No. 49)
- (u) 14614049P Hav MK Debnath, 'A' Coy 1 ABW (Witness No. 46).
- (v) 14612034M Cfn Abadesh Kumar, 'A' Coy 1 ABW (witness No. 53.)
- (w) 14590318P L/NK S Das, 1 ABW (witness No. 17).

Note :- Out of the 22 pers mentioned above only Lt Col Virender Singh and Sub GC Roy were called by the Court, rest all the pers were called on request of BHMM Ali or L/NK S Das.

133. IC-24574 Lt Col Virender Singh, produced an incorrect parade state of 1 ABW of 12 Sep 2000 Central Roll Call to the Court, which was contrary to the parade state, submitted to the Comdt, 1 ABW by Sub DB Manna, in his orderly Officer report for the week 11 Sep to 17 Sep 2000. (Witness No. 24 and 56.)

134. *The following are the reasons which contributed to the indiscipline in 1 ABW due to which the Act of an attempted rape case by two of its OR took place :-*

(a) Security Lapses :-

- (i) *There are orders for a Separate guard of 1 and 3 at the SF OR Qrs. However, the same is not happening on ground. (Exhibit 'A1' and witness No. 31 and 32).*
- (ii) *There was no specific guard of SF OR Qtrs. There is a patrolling guard of the complete married accommodation of Phase II which looks after the security of SF Qtrs as well. (Witness No. 23, 24, 31 and 32).*
- (iii) *The patrolling of the area of phase II, Narangi accommodation was being done by the sentries on a single cycle. (Witness No 31 and 32).*
- (iv) *The guard was not alert. The sentries were found at different places not in the process of doing their duty. Witness No. 30 and 57.*
- (v) *The sentries of guard were found at the STD booth by the duty JCO who checked the guard as well as by NK Lavate NH who was looking for them to help him search the area. (Witness No. 30 and 57).*
- (vi) *The guard was not briefed and did not know its responsibilities. (Witness No. 31 and 32).*
- (vii) *Only two sentries were present at the appointed place of the guard up to after 9 PM (Witness No. 31 and 32).*
- (viii) *The guard did not have a guard commander. Out of the two sentries of each of the pair, for duty, one was a NK and the other a Cfn/Sep. (Witness No. 23,24,31,32 and Exhibit – 'L').*

135. *IC- 24574 Lt Col Virender Singh, produced a false Parade State of 1 ABW of 12 Sep 2000 Central Roll Call, which was contrary to the parade state, submitted to the Comdt. 1 ABW by Sub DB Manna, in his orderly Offrs report for the week 11 Sep to 17 Sep 2000. (Witness No. 24 and 56).*

136. *The following are the reasons which contributed to the indiscipline in 1 ABW due to which the Act of an attempted rape case by two of its ORs took place :-*

(b) Administrative Lapses :-

- (i) *No commissioned officer was appointed as the orderly officer of the week of 1 ABW for the past one year. (Witness No. 24).*
- (ii) *There is no order for the orderly officer to conduct the check of the guard only the duty JCO is responsible for conducting these check. (Witness No. 56, 57 and Exhibit – 'P' and 'O').*
- (iii) *No officer ever attended the central roll call of 1 ABW which is a central event held once a week for the whole unit. (Witness No. 23 and 24).*

(iv) The OIC Adm, of 1 ABW of 12 Sep 2000, Lt Col Virender Singh who was also the security officer of 1 ABW did not conduct checking of the guards in his tenure of 3 Months as OIC Adm (Witness No. 24)

(v) The OIC Adm did not inform the Dy Comdt of 1 ABW regarding the incident of night of 12 Sep 2000 when he had the knowledge of the same (Witness No. 24).

(vi) The following orders given in the standing orders of 1 ABW were violated (Witness No. 24 exhibit 'G')

(aa) Paragraph 2221 (e) states with regards to discipline and security, the function of OIC Adm will include attending the evening roll call once a month.

(ab) Paragraph 2213 (a) – The OIC will keep the Comdt and Second in Command informed about the important happenings relating to the following : -

(i) Security.

(ii) Morale and Welfare.

(iii) Discipline

(ac) Paragraph 234 of Duties of Adjt – Sub para (g) (iii) and (iv) i.e. He will ensure the following carry out their duties efficiently: -

(i).....

(ii).....

(iii) Duty Officer

(iv) Duty JCO

(ad) Paragraph 3224 Roll Call – Roll Call will be held daily. Timings will be published from unit part 1 Orders from time to time .

(ac) Paragraph 3241 Visiting Quarters :-

(h) Visiting family quarters of JCOs and OR without Prior sanction is prohibited.

(ii) Only the Comdt, OIC Adm, Coy Cdrs, Sub Maj and respective Coy Senior JCOs are permitted to visit family quarters.

(vii) The timings in the weekly trg programme and in the published Meal Timings of 1 ABW were being violated. (Exhibit – 'I' and 'F', Witness No. 16, 17, 23).

(viii) The security orders for restriction of persons on visiting SF Qtrs or Family Qtrs were violated. (Witness No. 1, 2, 4, 5, 6, 10, 9, 11).

(ix) The SOP of 1 ABW on adm and security of SF Qtrs phase II Narangi was only on paper and was not being followed. (Witness No. 16, 23).

(x) Certain duty roaster books of guard of 1 ABW are being maintained on sheaf's of paper and get torn off and records of the same are not available after 15 to 20 days of the duty. (Exhibit 'M' and 'N' refers).

(d) Miscellaneous:-

(i) The administrative machinery of ABW did not try to find out the facts from the victim Smt. Sarojbala. Not a single officer or responsible administrative functionary went or tried to find the facts or make an effort to inquire into the circumstances of the case and to assure the security of the aggrieved lady. (Witness No. 23, 24).

(ii) Not a single officer or important administrative functionary went to the house of Smt. Sarojbala after the incident. Not one of the above said person tried to even console, the aggrieved lady or assure her of her security. (Witness No. 23 and 24).

(iii) Not a single officers or JCO's wife was sent to Smt. Sarojbala (Victim) to console her as a welfare measure. (Witness No. 24).

CONFIDENTIAL

COURT OF INQUIRY : SMT SAROJBALA

OPINION OF THE COURT

1 The court is of the opinion that:-

(a) No. 14531103Y BHM M Ali and No. 14590318P L/Nk both 1 ABW, have molested Smt. Sarojbala, on the night of 12 Sep, 2000, at her residence, House No. 281, OR SF Quarters, Phase II Narangi Cantt.

(b) No. 14531103Y BHM M Ali and No. 14590318P L/Nk S Das, both of 1 ABW, have attempted to rape Smt Sarojbala, on the

night of 12 Sep 2000, at her residence, House No. 281, OR SF Quarters, Phase-II Narangi Cant.

(c) No M14531103Y BHM M Ali of 1 ABW has threatened to kill Smt Sarojbala, on the point of a knife on the night of 12 Sep 2000, at her residence, House No 281, OR SF Qtrs, Phase –II, Narangi Cantt.

(d) Disciplinary action should be taken against No. 14531103Y BHM M Ali and No. 14590318P L/NK S Das both of 1 ABW for charges mentioned in Sub paras 1 (a) to 1 (c) above.

(e) Both the above mentioned predators had been surreptitiously visiting various other houses of SF Quarters prior to 12 Sep 2000 trying their luck/chance (after getting guidance from the owners of Bishnoi vegetable shop in the guise of doing official duty such as heater checking, getting circular signed, etc. Both the predators had made a detailed plan for the act and the cover up and executed it with finesse.

(f) The administrative machinery of 1 ABW had no control on the various omissions and commissions of the persons of 1 ABW. The coterie of responsible persons of 1 ABW in the administration such as the Sub-Maj, the JCO Adjt and the Bn Hav Maj had paralysed the official administrative channel above them by feeding wrong and/or doctored information up the channel.

(f) The administrative official machinery/authority below the officers Rank but including the OIC Adm of 1 ABW have created false alibis for the accused by construction of false documents.

(h) Disciplinary action should be taken against the persons of 1 ABW as mentioned in part 1 of the appendix to the opinion of the court, for having made or abetted in the construction of false documents.

(j) The complete administrative official channel below the officer rank but including the administrative officer of 1 ABW, including the Panditji, the JCOs of the unit and men were instructed to tell lies in court and support the alibis framed by the accused and the persons responsible for the administration in 1 ABW.

(k) Disciplinary action should be taken against the personnel of 1 ABW as mentioned in part II of the Appendix to the opinion of the court for having given false evidence in court.

(l) Various standing orders/published orders/security orders/SOPs and various instruction of 1 ABW have been violated with impunity.

(m) The crime was committed on a helpless and defenseless OR's wife, name Smt. Sarojbala who was staying in SF Qtrs in Phase II Narangi Cantt. The lady is to be protected by the Army. In this case the responsibility of protecting this lady was with 1 ABW. Instead of protecting this helpless and vulnerable lady, BHM M Ali and L/Nk S Das have attempted to rape her taking advantage of their position and appointment.

(n) The Administrative machinery of 1 ABW did not try to find out the facts from the aggrieved lady. Not a single officer or responsible administrative functionary went to her house or tried to find the facts and/or console Smt Sarojbala, the victim. Not a single lady of 1 ABW was asked to console or assure the safety and security of Smt. Sarojbala after the incident till date.

(o) By trying to hide the administrative lapses, the complete administrative machinery of 1 ABW have assisted in trying to put a veil over the heinous crime against the wife of a 'BROTHER IN ARMS', who had entrusted the safety and security of his family to them and their unit.

(p) The administrative machinery of 1 ABW is thus guilty of not only of not providing proper security/administration/welfare measures to the ladies of SF OR Qtrs Phase II, but also in playing tune to the accused and thereby misleading the court.

(q) The administrative machinery of 1 ABW is guilty of not conducting a proper preliminary investigation in the case and also of not reporting the same to the superior authority as per orders on the subject.

(r) The Indian Army is known for its reputation in comradeship, discipline, mutual faith and understanding among All Ranks. BHM M Ali and L/Nk S Das have shaken this well built image of our age old Army. Exemplary disciplinary action should be taken against these two individuals.

PRESIDING OFFICER : - Sd/ xxxxxxxx

IC-37093X

Lt Col K MANMEGH SINGH

MEMBER NO. 1 : Sd/xxxxxxxxx

IC-39326M

MAJ RN PANDY

MEMBER No. 2 : Sd/xxxxxxxxx
MS – 12417 M
MAJ S RUKMINI

Appendix
(Refers para 1 (h) and 1 (j) of opinion of court)

LIST OF PERSONNEL OF 1 ABW WHO GAVE FALSE EVIDENCE IN COURT

PART - I

IC 2454 LT COL VIRENDER SINGH, OIC AMD, 1 ABW

1. JC51211X SUB KBK KUMAR, JA, 1 ABW
2. 14590318P L/NK S DAS, BN CHAMPION, 1 ABW
3. 14540143F HAV (NOW CHM) MAHAVIR SINGH, 1 ABW
4. 14533620P CHM HC ROY, 1 ABW
5. 14532341X CHM RK PRASAD, 1 ABW
6. 14533725Y CHM HK SINGH, 1 ABW

PART - II

1. IC-24574 LT COL VIRNDER SINGH, OIC ADM, 1 ABW
2. JC-751211X SUB KBK KUMAR, JA 1 ABW
3. JC-747750W NB/SUB SN TRIPATHI, 1 ABW
4. JC-749247X SUB AMARJEET SINGH, 1 ABW
5. JC-752267W NB/SUB B KUMAR, 1 ABW
6. 14531103Y BHM M ALI, 1 ABW
7. JC-748438 A SUB GC ROY, 1 ABW
8. 14590318P L/NK S DAS, BN CHAMPION, 1 ABW
9. 14540143F HAV (NOW CHM) MAHAVIR SINGH, 1 ABW
10. 14583487N CNF RAJESH KUMAR, 1 ABW
11. 14533620P CHM HC ROY, 1 ABW
12. 13877179A NK TK DAS, 5133 ASC BN ATTACHED TO 1 ABW
13. 14603597M CFN MK SINGH, 1 ABW
14. 145858841, NK K SAMAL, 1 ABW
15. 14532341X CHM RK PRASD, 1 ABW
16. 14613769K SEP SURESH KUMAR, 1 ABW
17. 1462608711 SEP RR BHAIM 1 ABW
18. 14532673Y HAV NC MANDAL, 1 ABW
19. 14584385K NK B CHAKRABORTY, 1 ABW
20. 14530382 HAV MOHAN SINGH, 1 ABW
21. 14614049P HAV NK EDEBNATH, 1 ABW
22. 14560245Y NK CR BARIK, 1 ABW
23. 14612034N CFN ABDESH KUMAR, 1 ABW

PRESIDING OFFICER : Sd/xxxxxxx
IC-37093X
LT COL K MANMEGH SINGH

MEMBER NO. 1 : Sd/xxxxxxxxx
IC-39326M
MAJ RN PANDY
NO. 2 : Sd/xxxxxxxxx
MS-12417M
MAJ S RUKMINI

RECOMMENDATIONS OF THE OFFICIATING STATION COMMANDER
GUWAHATI ON THE COURT OF INQUIRY CONVENED TO INVESTIGATE
THE ALLEGATIONS OF MOLESTATION AND ATTEMPTED RAPE LEVELLED
BY MRS SAROJBALA, WIFE OF NO 6928530M L/NK MANI RAM OF 17
MTN DIV ORD UNIT, AGAINST NO. 14531103Y BHM M ALI OF LADY BASE
WKSP EME AND HIS ASSOCIATE ON 12 SEP 2000

1. I generally agree with the Opinion of the Court and recommend:-

- (a) Exemplary disciplinary action against No. 14531103Y BHM M Ali and No. 14590318P L/NK S Das both of Adv Base Wksp.
- (b) Disciplinary/administrative action against all personnel of 1 Adv Base Wksp listed in Part I and Part II of the "Appendix to the Opinion of the Court" as contained in the Court of Inquiry proceedings, in relation to the gravity of offence in each individual case.
- (c) Necessary administrative and corrective measures by Station Headquarters Guwahati and 1 Adv Base Wksp, as applicable, in accordance with the "Recommendations of the Court" as contained in the Court of Inquiry proceedings.

Station : Guwahati
Dated : 06 Nov 2000

Sd/-xxxxxxxxxxxxx
(Vijay Saxena)
Col
Offg Stn Cdr

26. Based on the above Findings and Opinion of the Court of Inquiry as well as based on the Recommendations of the Officiating Station Commander Guwahati, GOC 101 Hq Area gave out his directions which are set out as under:-

DIRECTIONS OF THE GENERAL OFFICER COMMANDING 101 AREA ON THE COURT
OF INQUIRY CONVENED TO INVESTIGATE THE ALLEGATIONS OF MOLESTATION
AND ATTEMPTED RAPE LEVELLED BY MRS SAROJBALA, WIFE OF NO 6928530M
L/NK MANI RAM OF 17 MT DIV ORD UNIT AGAINST NO 14531103Y BHM M ALI OF
1 ADV BASE WKSP EME AND HIS ASSOCIATE ON 12 SEP 2000

1. *I agree with the opinion of the Stn Cdr, Stn HQ, Guwahati.*
2. *A perusal of the evidence on record clearly reveals the involvement of No 14531103Y BHM M Ali and No 14590318P L/NK S Das, both of 1 Adv Base Wksp in the molestation of Mrs. Saroj Bala, Wife of No 6928530M L/NK Mani Ram of 17 Mtn Div Ord Unit.*
3. *I direct the following :-*
 - (a) *Disciplinary action be initiated against No 14531103Y BHM M Ali and No 14590318P L/NK S Das of 1 Adv Base Wksp.*
 - (b) *Disciplinary action be initiated against JC-754124X Sub KBK Kumar, 1 Adv Base Wksp who inspite of having the knowledge of the molestation on 13 Sep 2000, failed to report the matter to his superior authorities till 15 Sep 2000.*
 - (c) *Adm action at the level of GOC 101 Area against IC-24574 Lt Col Virender Singh, Adm Offr who failed to investigate into the matter.*
 - (d) *Disciplinary action at the unit level against the following individuals of 1 Adv Base Wksp EME who gave false evidence in Court.*
 - (i) *No 14540143F Hav (now CHM) Mahabir Singh*
 - (ii) *No 14533620P CHM HC Roy*
 - (iii) *No 14532341X CHM RK Prasad*
 - (iv) *No 14533725Y CHM HK Singh*
 - (v) *JC-747750W Nb Sub SN Tripathi*
 - (vi) *JC-749247X Sub Amarjeet Singh*
 - (vii) *JC-752267W Nb Sub B Kumar*
 - (viii) *JC-748438A Sub GC Roy*
 - (ix) *No 14583487N Cfn Rajesh Kumar*
 - (x) *No 13877179A NK TK Das, 5133 ASC Bn
(attached to 1 Adv Base Wksp EME)*
 - (xi) *No 14603597M Cfn MK Singh*
 - (xii) *No 14585884L Nk K Samal*
 - (xiii) *No 14613769K Sep Suresh Kumar*
 - (xiv) *No 14626087H Sep RR Bhai*
 - (xv) *No 14532673Y Hav NC Mandal*
 - (xvi) *No 14584385K Nk B Chakraborty*
 - (xvii) *No 14530382 Hav Mohan Singh*
 - (xviii) *No 14614049P Hav NK Debnath*
 - (xix) *No 14612034N Cfn Abdesch Kumar*
4. *I direct that the necessary administrative and corrective measures by Stn HQ, Guwahati and 1 Adv Base Wksp, be undertaken as brought by the court in its recommendations.*

Station : Shillong
Dated: 18 December 2000

Sd/ XXXXXXXXXXXXX
(Bora, Indra Jeet Singh)
Major General
General Officer Commanding

27. Subsequently, the GOC gave out his directions on the Summary of Evidence which is set out as under:-

RECOMMENDATIONS OF THE GENERAL OFFICER COMMANDING 101 AREA ON THE SUMMARY OF EVIDENCE IN RESPECT OF NO 14531103Y BATTALION HAVILDAR MAJOR MUNIFAT ALI OF 1 ADVANCE BASE WORKSHOP ELECTRICAL MECHANICAL ENGINEERS

1. *I have perused the Summary of Evidence together with the court of inquiry proceedings as also the recommendations of the Officer Commanding Troops 1 Advance Base Workshop Electrical Mechanical Engineers and the recommendations of the Commandant 1 Advance Base Workshop Electrical Mechanical Engineers. I concur with the recommendations of the Commandant.*

2. *A perusal of the Summary of Evidence reveals that No 14531103Y Battalion Havildar Major Munifat Ali of 1 Advance Base Workshop Electrical Mechanical Engineers on 12 September 2000 had entered the Separated Family Accommodation No 281, with a malafide intention of molesting Shrimati Saroj Bala wife of No 6928530M Lance Naik Muni Ram of 17 Mountain Division Ordnance Unit. The accused was accompanied by No 14590318P Lance Naik (Vehicle Mechanic) Motor Vehicle Suresh Das of same unit. Both of them attempted to overpower Shrimati Saroj Bala with an ulterior motive of molesting her and in the process pinned her down to the bed causing damage to her apparel.*

3. *The charge against the accused is sustained by the statement of the eye witnesses who have seen the accused leaving the accommodation. In addition to the above, the statement of the victim Shrimati Saroj Bala bears out the charge by her identification.*

4. *Keeping in view the gravity of the offence committed by the individual, I recommend the trial of the accused by General Court Martial having full penal powers to punish the accused.*

Station : Shillong.

Dated : 08 September 2001

Sd/ XXXXXXXXXXXXXXXX

(Bora, Indra Jeet Singh)

Major General

General Officer Commanding

28. While hearing the case earlier, this Bench on 14.06.2018 observed as follows: -

1.

"2. On perusal of the case records, it appears from the records of the Court of Inquiry that disciplinary action was initiated against No. 14531103Y BHM M. Ali. There is nothing on records to show that there was any trial/proceedings against L/NK S. Das and the fate of the trial against him.

3. Record speaks that disciplinary action was to be initiated against JC-754124X Sub KBK Kumar, 1 Adv. Base Workshop who allegedly inspite of having the knowledge of the molestation incident on 13.9.2000, failed to report the matter to his superior authorities till 15.9.2000. Record is silent about the disciplinary action against Sub KBK Kumar.

4. Administrative action at the level of GOC 101 Area against IC – 24574 Lt Col Virender Singh, Adm Officer who failed to investigate into the matter was also to be initiated. Similarly, disciplinary action at the Unit level against 19 persons was also to be initiated for giving false evidence.

5. Record is silent whether any such disciplinary or administrative action were taken against the aforementioned persons and what was the ultimate result, if there was any such action.

6. Respondents are directed to produce all note sheets relating to the SCM and all the relevant records and documents within a month.

7. For the aforesaid reasons, we release the case from CAV and after perusal of records and documents, as directed above, further hearing will be fixed".

29. Pursuant to the above Order of this Bench, the Army Authorities provided the details of the action taken against the witnesses who had made false/incorrect depositions with respect to the alibi of the applicant. A copy of the details of action taken against the individuals for giving false evidence was submitted before this Bench and is set out as under: -

CONFIDENTIALAppx

(Ref para 2 of 1 Adv Base Wksp letterNo
14531103/PC/MA/Est-III dt Jul 18)

DETAILS OF DISCP PROCEEDINGS

Ser No	Particulars of pers	Action taken	Remarks
1.	145909138P L/NK S Das	1. Tried by Summary Court Martial and awarded the following sentences:- (a) Reduced to the ranks. (b) Rigorous imprisonment in civ prison for one year. (c) To be dismissed from service. 2. S of E is enclosed herewith.	Exhibit 1
2.	JC-7454124x Sub KBK Kumar	Charge against the JCO was dropped as per dirns of GOC, 101 Area Dated 03 Nov2001. Copy of dirns is enclosed.	Exhibit 2
3.	14541043F Hav (now CHM)Mahabir Singh	Awarded reprimand under AA Sec 63 on 11 Feb 2003. Copy of discp proceedingsare enclosed.	Exhibit 3
4.	14533620P CHM HC Roy	Awarded reprimand under AA Sec 63 on 11 Feb 2003. Copy of discp proceedingsare enclosed.	Exhibit 4
5.	14532341X CHM RK Prasad	Awarded reprimand under AA Sec 63 on 11 Feb 2003. Copy of discp proceedingsare enclosed.	Exhibit 5
6.	JC-747750W Nb Sub SN Tripathi	Warning order issued to the JCO on 08 Feb 2003. Copy of the same is enclosed.	Exhibit 6
7.	JC-752267W Nb Sub B Kumar	Warning order issued to JCO on 08 Feb 2003. Copy of the same is enclosed.	Exhibit 7

8.	JC-748438N Sub GC Roy	Warning order issued to JCO on 08 Feb 2003. Copy of the same is enclosed herewith.	Exhibit 8
9.	13877179A NK TK Das	The indl was att with this unit at the time of incident from 5133 ASC Bn. Discp proceedings were asked from ASC Records. ASC Records has fwd CTC of IAFF-3013 of the indl vide their letter No 13877179/SR/LCC-3/NEPG dated 16 Jul 2018. Copy of IAFF-3013 is enclosed.	Exhibit 9
10.	14585884L NK K Samal	Awarded reprimand under AA Sec 63 on 11 Feb 2003. Copy of discp proceedings are enclosed.	Exhibit 10
11.	14626087H Sep RR Bhai	Awarded 06 days extra guard under AA Sec 63 on 11 Feb 2003. Copy of discp proceedings are enclosed.	Exhibit 11
12.	14584385K NK B Chakraborty	Awarded reprimand under AA Sec 63 on 11 Feb 2003. Copy of discp proceedings are enclosed.	Exhibit 12
13.	14530382 Hav Mohan Singh	Awarded reprimand under AA Sec 63 on 11 Feb 2003. Copy of discp proceedings are enclosed.	Exhibit 13
14.	14612034N Cfn Abdesh Kumar	Awarded extra guard under AA Sec 63 on 11 Feb 2003. Copy of discp proceedings are enclosed.	Exhibit 14
15.	14533725Y CHM HK Singh	Awarded reprimand under AA Sec 63 on 11 Feb 2003. Copy of discp proceedings are enclosed.	Exhibit 15
16.	IC-24574 Lt Col Virender Singh	Details have been asked from HQ 101 Area vide this unit letter No. 14531103/PC/MA/Est-III dated 30 Jun 2018, letter of even No. Dated 11 Jul 2018, 20 Jul 2018 and 27 Jul 2018. The same will be fwd on receipt from them.	
17.	JC-749247X Sub Amarjeet Singh	Details have been asked from EME Records vide this unit letter No 14531103/PC/MA/Est-III (i) dated 30 Jun 2018, Sig No 20903/Est-III dated 10 Jul 2018, letter of even No dt 12 Jul 2018, 17 July 2018. Also apch to Dte Gen of EME (EME Pers), IHQ of MoD (Army) to direc EME Records to fwd the discp proceeding in respect of these pers vide his unit letter No. 14531103/PC/MA/Est-III dated 20 Jul 2018. The same has not been recd from EME Records till date. The same will be fwd to your HQ on receipt from EME Records.	
18.	14583487N Cfn Rajesh Kumar		
19.	14603597M Cfn MK Singh		
20.	14613769K Sep Suresh Kumar		
21.	14532673Y Hav NC Mandal		
22.	14614049P Hav NK Debnath		

30. The applicant's case relies mainly on his plea of alibi in that he was at a Mandir Programme followed by a Roll Call Parade throughout between 6.30 pm to 9 pm on the date of occurrence. There were 22 witnesses who had given

evidence in the Court of Inquiry with regard to the presence of the applicant at the Mandir Programme as well as at the Roll Call. This evidence was proven to be false and hence Disciplinary/Administrative action, has been taken as per the directions of the GOC 101 Area. Further record reveals that most of the individuals pleaded Guilty at the Summary Trials and were awarded appropriate punishments. The others were dealt administratively. Also, it is pertinent to note that neither L/NkSuresh Das (the second accused person who was also court martialled along with the Applicant) nor any of the personnel punished/warned have appealed against the Punishment/warnings received. In fact there is no record of L/Nk Suresh Das appealing against the same finding and sentence of the SCM. This clearly shows that L/Nk Suresh Das had indeed accepted his guilt and the punishment thereon for the same offence. The only exception has been JC-754124X Sub KBK Kumar, 1 Adv Base Wksp. The GOC had ordered disciplinary action be initiated against him based on the Court of Inquiry for *"inspite of having the knowledge of the molestation on 13 Sep 2000, failed to report the matter to his superior authorities till 15 Sep 2000."* However the charges were dropped subsequently for lack of evidence (Exhibit 2 of Details of Discp Proceedings, HQ 101 Area letter dt 03 Nov 2001). This was a related matter as it pertained to having knowledge of the molestation on 13 Sep 200 and the failure to report it. The statements given by Sub KBK Kumar in the S of E (Witness no. 13), in the SCM (DW-9) and in the C of I (Witness No.23) are at variance. In the S of E, Sub KBK Kumar stated that when he left the Roll Call ground around 8:30 pm, the applicant was there and when he returned around 9 pm, the applicant was there at that time also. However, in the SCM, in reply to a question by the applicant about his

presence, has stated *“On 12 Sep 2000, from 1815 hrs to 1955 hrs BHM Munifat Ali was with me near the shoe rack of the Mandir. From 2020hrs to 2030 hrs he was there in the roll call and from 2040 hrs to 2105 hrs he was with me in the new arrival barrack.”* He has also added, *“Hav (Acting BHM) Munifat Ali took the roll call at about 1955 hrs and he handed over the roll call at about 2020 hrs to me. After 10 minutes, ie 2030 hrs, I had handed over the roll call parade to Bn Sub Maj AK Ghatak.”* He also mentioned that the applicant was standing in front of the roll call parade when he handed over the parade to the Bn Sub Maj. However, in the Court of Inquiry, he stated that while the Roll call was in progress, he was called away by Lt Col CV Gopal and when he returned by about 8:50-8:55 pm, the Roll Call had already dispersed. That is when he met the applicant along with the other co-accused while he was enroute to the site of the Roll Call. Hence his statement at the SCM to support the presence of the applicant at the parade ground throughout the entire period is suspect and cannot be used as proof of alibi.

31. This is clearly a case where a number of personnel belonging to the unit of the applicant in which the applicant held an important and prestigious appointment, conspired to provide an alibi for him perhaps in their mistaken sense of their duty to protect one of their own and not allow the fair name of their unit to be tarnished in the eyes of the other personnel belonging to various other units located in Narangi. **There was indeed a massive cover-up that had taken place in the unit, 1 Advance Base Workshop EME, which the army authorities discovered during the conduct of the Court of Inquiry and took action thereupon.** This cover-up has probably taken place because the applicant

was the senior-most Non-Commissioned Officer in the Advance Base Workshop being in the appointment of Battalion Havildar Major (BHM) whereas the victim was a lady whose husband belonged to another unit (17 Mtn DOU) which is neither from the Corps of EME to which all the uniformed witnesses belonged to nor located in the vicinity of Narangi, being located far away in Sikkim. Careful perusal of the testimony of the victim brings out that the victim clearly identified the accused as one of the persons who came and tried to molest her on 12 September 2000. When the applicant went to her house subsequently on 14/15 September 2000, along with Nk Lavate she grew upset as soon as she came face to face with him, the first time after the incident and said "*Haramzade tu fir aa gaya*". This in itself shows that the applicant was the same person who committed the serious act. The defence plea is that the name of the applicant BHM Munifat Ali was fed to her by Smt. Krishna. Be that as it may, and irrespective of the fact of who provided her the name of the applicant, the fact remains that she did clearly identify the accused, i.e. the applicant who had gone to seek his apology. This was corroborated by Nk Lavate (PW 4 in the SCM.)

32. What is also germane to the case is that on the night of 12 Sep 2000, after Nk Lavate learned of the incident, he went out of the family quarters to ascertain who the intruders were. The victim's house was adjacent to the main road. He, in fact, showed her one JCO who was in the vicinity and asked her whether he was intruder to which she said "No". While returning his house, he met the applicant and told him about the incident that had occurred at the victim's residence. In the applicant's own statement at the Summary Court Martial, the applicant confirmed

that he was told about the incident by Nk Lavate on the night of 12 Sep 2000 itself. The relevant portion of the applicant's statement is set out as follows: *"I saw Nk Lavate was standing there and asked him what are you doing here? Nk Lavate replied that two persons entered in one of the SF, he did not tell in which house this incident occurred then he told me that he had gone around the SF accommodation with two sentries but he did not find any one in the area. I told the sentries to be more vigilant on duty"*. Being the senior most NCO holding the most important appointment, that of Battalion Havildar Major, it was incumbent of the applicant to have made further enquiries into the matter and to have reported it immediately to his superior officers. It is indeed astonishing that the applicant did not find it fit to report such a serious crime (which falls under the ambit of "Unusual Occurrence" for which there is a detailed Army Order on such reporting) to any of his superiors and preferred to keep quiet about it.

33. Smt. Akhala Ao (PW 5 in SCM) also saw two persons in combat dress apologizing to the victim on a subsequent day although she neither recognized the applicant or the other person nor recognized their voices. She also heard one of the persons saying *"Mein Nehi Hai, Mein Nehi Aaya, Aap Meri Beti Barabar Hai"*. She also heard the victim saying *"Aap Hi Hai"*. This clearly indicates that it was the applicant who was one of the intruders as nobody else had come to seek apology of the victim other than the applicant. It is also obvious that the person who attempted molestation was not known to the victim by name but one whom she clearly recognized. Hence although the other witnesses indicated that it could be the applicant, but the fact remains that on coming face to face with him, the

victim immediately recognized him as the intruder. The allegation of the Defence that in the Summary of Evidence, she could not identify the applicant is not borne out by her statement in the Summary of Evidence in para 2 in which she has stated, *"Next day around 8 am on 13 Sep 2000 BHM Ali whom I identify and who is present here as accused came to my house along with Nk Lavate of 1 Adv Base Wksp EME."* Besides, the testimony of the victim's daughter is important as the young girl recognized the applicant at the trial as one of the intruders.

34. The Defence plea that it was Smt. Krishna who in her statement in the Summary of Evidence denied giving the name of the applicant and the other co-accused to the victim and that it was the victim who was pressurizing her (Smt. Krishna) to name the applicant does indeed muddy the waters. However what is significant is that the victim (prosecutrix) identified the applicant after he had come to her house on a subsequent day to seek an apology and hence the issue of the name of the intruder becomes secondary in the face of clear identification of the applicant without any doubt by the victim (prosecutrix) that subsequent day. Hence the issue of why Smt. Krishna was not examined by the SCM, is not fatal to the case as Smt. Krishna was not an eyewitness to the case. The fact that the Defence too did not bring her as a Defence Witness in the SCM in order to disprove the victim's testimony shows that the testimony of Smt. Krishna could not be relied upon in the quest for the truth. In the Court of Inquiry, Smt Krishna (Witness No.3) stated that the incident was narrated to her by the victim on the morning of 13 Sep 2000 and she assured the victim that if she wished to report the matter, she would accompany her. At best, all that can be concluded by us is

that according to the prosecutrix, Smt. Krishna supplied her the name of the applicant which Smt. Krishna has denied.

35. The other contention of the applicant that the victim was having an affair with Nk Lavate does not stand to reason as it is not corroborated by any evidence whatsoever. This seems to be an afterthought and has been brought in the Defence Plea at a later stage, **16 years after the incident**, with the obvious motive of trying to overturn the punishment meted out to him by the SCM. In the Summary of Evidence all that Smt. Krishna (PW-8) stated was that Smt. Saroj Bala herself told her that Nk Lavate was in her house and left through the backdoor, a statement that any rational person would find hard to believe as the victim would, in no way, incriminate herself by making such a statement to anyone, in this case, her neighbour, Smt Krishna. That this was denied by Nk Lavate and not even touched upon in the SCM is indicative of the fact that Smt. Krishna simply appeared to be stating untruths in reporting what Smt. Saroj Bala told her. The fact however remains that the victim, Smt. Saroj Bala, recognized the intruder as BHM Munifat Ali who tried to molest her and remained unwavering in her testimony right through.

36. The Defence has also relied upon the statement of Miss Seema Paul (PW-2), a person living in the same block who had stated in the SCM that she saw two persons that night coming to her block but could not recognize them as it was dark and it was Smt. Saroj Bala who asked her to name these two persons. However, earlier in the Summary of Evidence when asked whether it was Smt. Saroj Bala who told her about the incident, she categorically denied that Smt. Saroj Bala had told her about the incident, let alone to name the two persons.

While the applicant declined to examine her at the Summary of Evidence, the co-accused asked her:-*"Did Saroj Bala aunty told you about the incident of 12 Sep 2000?"* She replied:-*"No."* However, in the Court of Inquiry, Miss Seema Paul (Witness No.2) had stated "*On Tuesday 12 September 2000 at around 8.30 p.m. or may be little before I do not exactly recollect the correct time, I was looking out of the window of my house waiting for my elder sister who was to come back from tuition. I saw two persons coming towards our block who then went towards a neighbouring house. Out of these two persons I recognize one of them as M. Ali who is presently sitting in the court.*" This indicates to us that Miss Seema Paul (PW-2) in the SCM was perhaps tutored to say it was Smt. Saroj Bala who asked her to name these two persons in order to let the applicant off the hook. Hence her testimony at the SCM cannot be relied upon.

Analysis of the other Legal Pleas of the Defence and Prosecution

37. The charge-sheet that was filed under Army Act 69 read with Section 354 of the IPC and the second charge also under the same Act read with Section 451 of the IPC. The main ingredients of Section 354 IPC are (a) that the person assaulted must be a woman; (b) that the accused must have used criminal force on her; (c) that the criminal force must have been used on the woman intending thereby to outrage her modesty. In this case, it was seen very clearly that the two intruders had indeed tried to outrage the modesty of Smt. Saroj Bala by using criminal force. In so far as the plea of alibi provided is concerned, if an accused wishes the court to believe that at the time of incident in question he was not at the scene of offence but was somewhere else, it is he who must establish it, of course, upon

preponderance of probabilities yardstick. The Respondents with the help of a sketch (Annex 5, page 78) have shown it was possible to be present at the Mandir at 6:30, stay on to take the roll call at 7:55 pm, leave the roll call parade ground at 8:20 pm and return to the ground/mandir at about 8:40 pm well after the Roll Call had broken off as the flat of the victim was about 750 mtrs from the Roll Call Ground, a distance which can be covered by bicycle in 2-3 minutes and on foot in 7-8 minutes.

38. None of the witnesses even in the Summary Court Martial, the trial on which the applicant was convicted have given statement to the effect that the applicant was present in the Mandir and at the Roll Call Ground continuously from 6.30 pm to 8.40 pm. Where the applicant was from about 8.15 (the time the Roll Call dispersed) to 8.40 pm (when he collected the Prasad) is crucial. DWs - 1,3,4,6,7 & 8 have stated that the applicant collected Prasad at about 8.40 pm. However, no witness was able to substantiate the applicant's statement that he was present in the area throughout and accordingly the alibi provided by the defence witnesses in the SCM fails. It is this 20 minutes that have been adverted by the prosecution. The applicant's whereabouts for these crucial 20 minutes remains unsubstantiated by the defence. We, therefore, conclude that when the applicant's unsuccessful attempt to outrage the modesty of Smt. Saroj Bala failed, he rushed back to the Mandir/Roll Call Ground in order to be seen so that the alibi could be established. Besides, earlier on the findings of the Court of Inquiry (although not admitted as evidence in the SCM), all the persons who gave the alibi of the applicant's presence at the Mandir Parade stretching onto after the Roll Call were subsequently punished/warned for this a punishment/warning that they have accepted and not challenged.

39. What is also important in a case such as this, is that the statement of the victim can be the sole basis of conviction, and evidence in such a case, has to be read in quality and not in quantity. In this connection, decision of the Hon'ble Delhi High Court in **CRL. A. No. 254/2016** on 25.5.2016 in the case of **STATE (NCT OF DELHI) vs. PRATAP SINGH @ KRISHNA** refers. Here the Court allowed the appeal on the sole evidence of the prosecutrix (the victim). The relevant portions are reproduced below:

"11. A perusal of the aforesaid cross examination goes to show that on material aspects, the testimony of the complainant goes unrebutted and unchallenged except for a vague suggestion that no such incident took place which was denied by her. Her testimony could not be shaken in cross examination. The accused did not allege any animosity, ill-will or grudge against the complainant for which reasons she would lodge a false complaint against the accused....."

*"12.....This approach of the Trial Court cannot be sustained because the law well-settled that as a general rule, the Court can and may act on the testimony of a single witness provided he/she is wholly reliable. **There is no legal impediment in convicting a person on the sole testimony of a single witness.** That is the logic of Section 134 of the Evidence Act, 1872. But if there are doubts about the testimony the courts will insist on corroboration. In fact, it is not the number, the quantity, but the quality that is material. The time-honoured principle is that evidence has to be weighed and not counted. The test is whether the evidence has a ring of truth, is cogent, credible and trustworthy or otherwise".*

(Emphasis added)

40. Reference is also be made to a decision of the Hon'ble Apex Court in the case of **Bharwada Bhoquinbhai Hirjibhai v State of Gujarat reported in AIR 1983 SC 753**, wherein the Hon'ble Supreme Court had noticed peculiar conditions and circumstances in which a girl or woman, who happens to be victim of rape, in Indian conditions would find herself and so will be reluctant to disclose such incident to anyone and it is observed as under:

“Without the fear of making too wide a statement or of overstating the case, it can be said that rarely will a girl or a woman in India make false allegations of sexual assault on account of any such factor as has been just enlisted. The statement is generally true in the context of the urban as also rural Society. It is also by and large true in the context of the sophisticated, not so sophisticated, and unsophisticated society. Only very rarely can one conceivably come across an exception or two and that too possibly from amongst the urban elites. Because: (1) 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 had ever occurred. (2) She would be conscious of the danger of being ostracized by the Society or being looked down by the Society including by her own family members, relatives, friends and neighbours. (3) She would have to brave the whole world. (4) She would face the risk of losing the love and respect of her own husband and near relatives and of her matrimonial home and happiness being shattered. (5) If she is unmarried, she would apprehend that it would be difficult to secure an alliance with a suitable match from a respectable or an acceptable family. (6) It would almost inevitable and almost invariably result in mental torture and suffering to herself. (7) The fear of being taunted by others will always haunt her. (8) She would feel extremely embarrassed in relating the incident to others being overpowered by a feeling of shame on account of the upbringing in a tradition bound society where by and large sex is taboo. (9) The natural inclination would be to avoid giving publicity to the incident lest the family name and family honour is brought into controversy. (10) The parents of an unmarried girl as also the husband and members of the husband’s family of a married woman would also more often than not, want to avoid publicity on account of the fear of social stigma on the family name and the family honour. (11) The fear of the victim herself being considered to be promiscuous or in some way responsible for the incident regardless of her innocence. (12) The reluctance to face interrogation by the investigating agency, to face the court, to face the cross examination by Counsel for the culprit, and the risk of being disbelieved, acts as a deterrent”.

41. In this case too the applicant has not alleged any animosity, ill-will or grudge against the complainant for which reasons she would lodge a false complaint against him. Besides, the testimonies of Smt. Krishna and that of Miss

Seema Paul have already been concluded by us as being untrustworthy. The fact remains that the victim recognized the accused (the applicant) and told this in the Court of Inquiry, the Summary of Evidence and the Summary Court Martial in no uncertain terms and remained unwavering in her testimony at all the three fora. Crimes of such nature involves the dignity and honour of the complainant and in the absence of any motive, without any rhyme or reason she would not put her honour at stake by lodging a false complaint. The act of the accused closing her mouth and dragging her to other room and trying to put her on the cot fulfils the ingredients of section 354 of IPC. The defence has failed to bring out any cogent reason as to why either the victim or Nk Lavate (PW-4) would lodge a false complaint against the applicant.

42. The defence counsel has cited and relied on a judgment of the Hon'ble Supreme Court delivered on 16.02.2017 in the case of **Union of India & Others vs. Vishav Priya Singh in Review Petition (Civil) No. 3927 of 2016 in Civil Appeal No. 8360 of 2010** wherein the Supreme Court has observed as follows: -

"4. The thrust of the review petition is against the observations made by this court, in paragraphs 20 and 33 of the Judgment under review, which are quoted here:-

*"20. The High Court of Delhi was therefore completely correct in observing that such power must be exercised rarely and when it is absolutely imperative that immediate action is called for. **The satisfaction in that behalf must either be articulated in writing or be available on record, specially when the matter can be considered on merits by a tribunal, with the coming into force of the Armed Forces Tribunal Act, 2007.***

(Emphasis added)

33.We fully endorse and affirm the view taken by the High Court that SCM is an exception and it is imperative that a case must be

*made out for immediate action. **The reasons to convene an SCM must be followed by well-articulated reasons or the record itself must justify such resort.***

(Emphasis added)

43. No doubt the Hon'ble Supreme Court on Review Petition did not find any error apparent on record, but made a pertinent observation in para 7 of the Judgment which is set out below:-

"7. However, it is observed that the requirement, as stipulated in aforesaid paragraphs 20 and 33, of recording reasons for convening Summary Court Martial, shall apply on and with effect from the date of the judgment namely from 05.07.2016".

(Emphasis added)

44. Thus, the order of the Hon'ble Supreme Court to record reasons in writing for convening a SCM does not apply in this case as this SCM was held on 08 Jan 2003.

45. The Defence have quoted (1983) 2SCC 442 (Bhagat Ram vs State of Himachal Pradesh) para 15 which states- *"It is equally true that penalty imposed must be commensurate with the gravity of misconduct and the penalty disproportionate to the gravity of the misconduct would be violative of Article 14 of the Constitution of India"* and (1987) 4SCC 611 (Ranjit Thakur vs UOI), para 9- *"The question of choice and the quantum of punishment is within the jurisdiction and discretion of the Court Martial. But the sentence has to suit the offence and the offender. It should not be vindictive or unduly harsh. It should not be so disproportionate to the offence as to shock the conscience and amount in itself to conclusive evidence of bias."*

46. Having regard to the aforesaid, we are of the opinion that the sentence and punishment are entirely commensurate with the offence committed in that, a person of high authority, has taken advantage of a defenceless wife staying away from her husband, with her two little children. Instead of being protective towards her, the applicant had taken advantage of her isolation and had attempted to force himself upon her. The punishment awarded of one year RI (reduced to six months) coupled with reduction to ranks and dismissal from service was commensurate with the offence. Besides, we have come to the conclusion that the SCM which was conducted on 22.01.03 had been conducted in a fair and unbiased manner in accordance with law with no procedural or other infirmities and hence, warrants no interference. The Summary of Evidence and the Court of Inquiry on basis of which the Summary Court Martial was held, too were conducted correctly as per the Army Act, the Army Rules and no infirmity or irregularity is seen in them. Therefore, there is no reason whatsoever to quash the Summary Court Martial.

47. Accordingly, TA No. 01 of 2015 is dismissed without any order as to costs.

48. Let a plain copy of this Order, duly counter-signed by the Tribunal Officer, be supplied to the parties upon observance of requisite formalities.

**(LT GEN GAUTAM MOORTHY)
MEMBER (ADMINISTRATIVE)**

**(JUSTICE INDIRA SHAH)
MEMBER (JUDICIAL)**

Dks/kk