

**IN THE ARMED FORCES TRIBUNAL
REGIONAL BENCH, GUWAHATI.**

TA- 01/2017.

(AOO OA(A)-1486-2016).

PRESENT

HON'BLE DR(MRS) JUSTICE INDIRA SHAH, MEMBER(J)

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

No.4197276 L Ex Sepoy Raj Kumar Yadav
(through Smt Bachan Yadav (LR)
C/O.Ms Archana Ramesh, Counsel for the applicant
B 75 , Hilansh Society, Plot No.1, Sector 10, Dwarka
New Delhi-110 075.

..... Appellant.

**By legal practitioners for
Applicant.**

Maj K.Ramesh (Retd)
Ms Archana Ramesh

-VERSUS-

1.Union of India,
through Secretary,
Govt. of India, Ministry of Defence
Sena Bhawan, New Delhi – 110011.

2.The Chief of the Army Staff
Through Adjutant General (ADGDV)
Army Headquarters, New Delhi-110 011.

3.The Officer-in-charge
Kumaon Regiment Records
Ranikhet, Uttrakhand.

..... Respondents.

**By Legal Practitioner for the
Respondents**

Brig N Deka(Retd) CGSC

Date of Hearing : 21.02.2018

Date of Order : 11.04.2018

ORDER

((Dr)Mrs.Indira Shah,J)

The findings dated 12.08.2016 of District Court Martial (DCM) whereby the appellant herein has been found guilty under section 69 of the Army Act, 1950 read with section 354 of the Indian Penal Code, sentenced to undergo rigorous imprisonment for 1 year and also dismissed from service are under challenge.

[2] The facts of the case, in brief, are that the appellant was enrolled as Sepoy in the 13th Battalion of the Kumaon Regiment on 22.10.2001 and posted at Kota in the district of Rajasthan. On 29.09.2015 at about 11.15 hours he visited the house of Sepoy Rajvir Singh in his absence. Sepoy Rajvir Singh was supposed to vacate his allotted quarter, so the wife of Rajvir Singh was busy in packing her household stuff and most of the items were loaded into a Truck. The appellant on his arrival asked her whether Sepoy Rajvir Singh was there. She replied that he has gone out for some work. The accused appellant entered inside the quarter and after conversation with her the appellant told her that he had forgotten to bring the Helmet with him which he was supposed to return to Sepoy Rajvir Singh. The prosecutrix then replied that the Helmet did not belong to them and he could return the same to their neighbour. Thereafter, the appellant said that Madam were staying

as neighbor since 5-6 months but there was no conversations between us. He further said that after going back from this place Madam may call him sometime. He also said that Madam's behaviour is very good and that Madam behaved with other in a very well manner and so Madam may come in the next peace station. She replied that that she cannot say anything. While the conversation was going on, the prosecutrix was cleaning her house and collecting polythenes littered here and there. One polythene bag was left lying near the feet of the appellant and while she was about to pick up the polythene lying near his feet, it is alleged that the accused appellant forwarded his hand to shake hand with her. But she did not reply and did not shake hand. Thereafter, while the prosecutrix sat on the floor to pick up the polythene, the accused sat down and held her hand to which the prosecutrix immediately reacted pulling back her hand. She alleged that the accused held her face with his both hands and brought his face near her face. When she stood up, the accused also stood up with her. She quickly stepped back and asked what he was doing. Then the accused replied, "Sorry if you felt bad". She stated that there is no need for sorry and he could leave the house. The accused again said "If you felt bad, sorry." The victim asked the accused appellant to leave as she did not want to speak to him. The accused repeated "sorry" a number of times and thereafter, he

left. The victim went to the quarter of Lance Naik Om Prakash Yadav and asked for Mobile phone from his wife and over phone she told her husband that Sepoy Raj Kumar Yadav, (accused) came to their house and held her hand. He told her that he would be coming back to the quarter as early as possible. The victim narrated incident to the wife of Lance Naik Om Prakash Yadav immediately after the incident. On arrival of her husband within 8-9 minutes, she also reported the incident to her husband in detail. Her husband held some conversations on his mobile phone with some one of his Unit and thereafter, he asked her to go and stay with Lance Naik Om Prakash's wife until he returns from the Unit. When her husband left, the accused appellant along with his wife came to the quarter of Lance Naik Om Prakash Yadadv. The wife of the accused told her that her husband reported her that accidentally his hand touched with her hand and he immediately apologized for his act. The accused said that he has not done such a big mistake but she is making it big. He further stated that he had already said sorry and nothing will happen, save and except, there will be deduction of Rs.10,000.00, his promotion will be withheld and at the worst, he may be removed from service. He said that she is simply making an attempt to defame him as well as her own dignity and honour. Thereafter, the accused appellant left.

[3] The accused was charged for committing civil offence i.e. using criminal force to woman with intent to outrage her modesty. The accused was charged with Rule 69 of the Army Act, 1950 read with section 354 IPC ,to which he pleaded not guilty.

[4] Altogether 7 witnesses including the victim were examined as Prosecution Witnesses (PWs). One witness was examined as Court Witness. The accused examined himself as Defence Witness (DW) and adduced evidence of one another Witness i.e. No 4191089 Havildar Satish Kumar of 13 Battalion of Kumaon Regiment.

[5] The statement of the accused under Army Rule 58(1) was recorded in detail. According to accused, he received a call from Lance Naik Rajveer Singh who asked him to return the Helmet which was borrowed by him. The accused in his statement admitted that he went inside the quarter of the victim in the absence of her husband. He entered inside the house up to the second door of the house and had conversations with the victim regarding the Helmet and about their departure. His plea was that the victim moved towards him and he was not aware that she would pick up the cartoon which was lying near his feet. He stated that as she bent towards him, his hand touched her hand by mistake. He immediately said sorry to her and in reply she also said sorry to him. He denied the allegation that he molested the victim or anyway intended to outrage the modesty of the victim.

[6] We have heard Maj K.Ramesh (Rtd), learned counsel appearing for the appellant and Brig N.Deka(Retd), learned CGSC appearing for the respondents.

[7] It is submitted by the learned counsel for the appellant that there was no cogent and substantial evidence to convict the accused. The evidence of the victim was self contradictory at different stages of the trial. Other witnesses are reported witnesses. The prosecution failed to prove the intention of the accused so as to hold him guilty of the offence. The evidence of PW 5, PW 6 and PW 7 suffers from contradictions. It is pointed out by the learned counsel for the appellant that in her answer to the question by the DCM, the victim simply alleged that the accused sat down and held her hand. She did not allege that the accused held her face. Touching the hand accidentally may not and cannot be termed as use of criminal force with an intention to outrage the modesty of a woman.

[8] Per contra, the learned counsel for the respondents supporting the findings of the District Court Martial (DCM), urged that the explanation given by the accused that he had gone to the house of the victim to return the Helmet is after-thought as because the Helmet was with Lance Naik Pradeep Kumar (PW 1). The accused intentionally came to the house of the victim in absence of her husband knowing fully well that in a Unit of a Chef

community they would not be available at home at 11 AM. When the victim stated that her husband was not at home and was likely to return after 1½ hours, then he had no business to enter inside the house of the accused, that too crossing two doors and prolonging his stay. The Defence Witness (DW) 2 has failed to substantiate the defence plea, who simply stated that he could not guarantee the innocence of the accused.

[9] At this juncture, the learned counsel appearing on behalf of the appellant submitted that let the accused be convicted and sentenced for whatever offence he had committed but if the conviction is upheld in this appeal, his sentence should be reduced and he should be reinstated in service considering the nature of offence and his past antecedent to which the learned counsel for the respondent has vehemently opposed.

[10] It transpires from the arguments advanced by the learned counsel for both sides and also on perusal of the materials available on record that there is no denial of the fact that the accused entered into the house of the victim in the absence of her husband at duty hours i.e. 11.15 AM. He had conversations with the victim and admittedly he touched the hand of the victim whether accidentally or intentionally. The allegation of the prosecution is that he held the hand of the victim and with an

intention to molest her, held her face and brought his own face near her.

[11] Section 354 IPC may be quoted here as under :

*“ 354. **Assault or criminal force to woman with intent to outrage her modesty** – Whoever assaults or uses criminal force to any woman, intending to outrage or knowing it to be likely that he will thereby outrage her modesty,1[shall be punished with imprisonment of either description for a term which shall not be less than one year but which may extend to five years, and shall also be liable to fine].”*

[12] In order to constitute the offence under section 354 IPC mere knowledge that the modesty of woman is likely to be outraged is sufficient without any deliberate intention of having such outrage alone for its object. There is no abstract conception of modesty that can apply to all cases. The essential ingredients of the offence under section 354 IPC are thus as under :

- (i) that the person assaulted must be a woman;
- (ii) that the criminal force must have been used on the woman intending thereby to outrage her modesty.

[13] The term modesty is not defined in the IPC. The definition of criminal force under section 350 IPC speaks that whoever intentionally use force to any person, without that person's consent, in order to committing of any offence, or intending by use of such force to cause, or knowing it to be likely that by the use of such force he will cause injury, fear or annoyance to the person to

whom the force is used, is said to use criminal force to that other.

Illustration (f) to Section 350 IPC may be quoted as under :

“ (f) A intentionally pulls up a woman’s veil. Here A intentionally uses force to her and if he does so without her consent intending or knowing it to be likely that he may thereby injure, frighten or annoy her, he has used criminal force to her.”

[14] **In the case of Vidyadharan Vs. State of Kerala reported in (2004) 1 SCC 215**, it was held that, *“ Intention is not the sole criteria of the offence punishable under section 354 IPC, it can be committed by a person assaulting or using criminal force to any woman, if he knows that by such act the modesty of the woman is likely to be affected. Knowledge and intention are essentially the things of the mind and cannot be demonstrated like physical objects. The existence of intention or knowledge has to be culled out from various circumstances in which and upon whom the alleged offence is alleged to have been committed. A victim of molestation and indignation is in the same position as an injured witness and her testimony should receive the same weight.....”*

[15] In the case of **Rupan Deol Bajaj (Mrs) and another Vs. Kanwar Pal Singh Gill and another reported in (1995) 6 SCC 194**, the Hon’ble Supreme Court held that where the accused is a superior rank Police Officer slapped back of the

complainant, an IAS Officer in a party in public place, having regard to the sequence of offence, his act ,prima facie, amounted to outrage the modesty of the lady IAS Officer. It was observed that, "*the ultimate test for ascertaining whether the modesty has been outraged is the action of the offender such as could be perceived as one which is capable of shocking the sense of decency of a woman.....*". It was further observed that *the alleged act of Mr. Gill in slapping Mrs Bajaj on her posterior amounted to "outraging of her modesty" for it was not only affront to the normal sense of feminine decency, but also affront to the dignity of the lady whether there are any sexual overture or not.*

[16] In the instant case, the accused had gone to the house of the victim in absence of her husband in the pretext of returning of a Helmet which was in custody of Lance Naik Pradeep Kumar (PW-1). This fact has been corroborated by the evidence of PW 1 and the fact has remained unrebutted.

[17] PW 2 is the husband of the victim. When the incident was told to him by his wife, he immediately reported incident to PW 3 Naib Subedar Rajpal Yadav, Platoon Havildar, Support Company. He was told that the accused has misbehaved with the wife of PW 2 Sepoy Rajvir Singh. PW 3 immediately contacted the accused over phone but the accused appellant denied that he has

misbehaved and if there is any confusion, he (accused) and his wife is going to Rajvir Singh's (PW 2) quarter to clarify the misunderstanding. Thereafter, PW 3, accompanied by PW 2 went to Senior JCO but PW 3 did not listen to the conversations between Senior JCO and PW 2. He further stated that PW 2 did not tell him the details of the incident.

[18] From the entire evidence of PW 3 it appears that PW 3 perceived that something had happened for which the accused wanted to clarify the misunderstanding. There was no allegation by the accused that the complaint lodged against him was entirely false.

[19] PW 4, Subedar Rajender Singh was on duty as Sr.JCO of the Support Company at the relevant point of time. According to him, Sepoy Chef Community Rajvir Singh (PW 2) informed him that the accused appellant held the hand of his wife and misbehaved with her. PW 4 asked Rajvir Singh (PW 2) to go back to his quarter and inquire the matter in detail. When PW 4 met the accused appellant and asked about the incident, the accused told him that he went to quarter of PW 2 to return the Helmet. Thereafter, the matter was reported to the Company Commander. On reply to the question by the DCM, PW 4 has stated that on the day of the incident i.e. 29.09.2015 there was programme for OR wives and their husbands in the Central auditorium. PW 4 stated that he did

not ask the accused as to what he was doing in Rajvir Singh's (PW 2) quarter at 11.30 hours and why he wanted to return the Helmet at that time. He further stated that on 30.9.2015 at around 9 hours he came to know the exact detail of the incident from PW 2.

[20] PW 5 is the victim i.e. wife of Sepoy Chef Community Rajvir Singh (PW 2). In her statement she deposed that while she was doing her household works inside her quarter, she heard the voice 'Rajvir'. She asked who and then she heard the voice " Whether Rajvir is there". She replied that he has gone out for some works. The accused came inside her quarter. She stated that they were shifting their quarter and a loaded truck was parked outside her quarter as such the door was open. The accused came forward and stood at the door of Store Room and asked where Rajvir has gone and at what time he would return. She told that she was not sure but he may take 1 or 1 ½ hours to come back. Thereafter, the accused told her that he has forgotten to bring the Helmet with him. She replied that the Helmet does not belong to them, it belongs to her neighbour and he could return the Helmet to them because she was supposed to leave with her husband from this place in a couple of hours. The accused, thereafter, started talking with her. During the conversation she was cleaning the house and collecting polythenes. One polythene was lying near feet of the accused and when she was about to pick up the

polythene, he forwarded his hand to shake hand with her. But she did not forward her hand for hand shake. Then she sat on the floor to pick up the polythene which was lying near the accused and while she was picking up the polythene in a bag and tying its knot the accused sat down and held her hand. She immediately reacted and pulled her hand back and then the accused with his both hands brought her face near his face. She quickly stepped back and asked what are you going, then the accused said sorry to her. It appears from her evidence that the accused uttered sorry number of times but she asked him to leave from there. He stood for some time and left the place.

[21] The charge against the accused was that he used criminal force to the wife of Sepoy chef community Rajvir Sing by holding her cheeks and bringing her face near her face intentionally and thereby outraged her modesty. If the evidence of the victim is believed, the act of the accused whereby he hold her face with both hands brought his face near her face clearly demonstrates his intention.

[22] It is argued on behalf of the appellant that this part of the evidence of the victim is not corroborated by any other independent witnesses. On perusal of the evidence of PW 6, Mrs. Shanti, wife of Lance Naik Om Prakash of 13 Kumaon Regiment , it appears that the victim immediately after the incident came to

her(PW 6) quarter . She took the mobile phone of PW 6 and called her husband, thereafter, she narrated to PW 6 that the accused came inside her quarter and tried to shake hands with her but she refused. Then he (accused) brought his face towards her face. She then pushed him back and told him to leave from there. After sometime the accused along with his wife came to the quarter of PW 6. The accused apologized and said "please forgive me by mistake my hand was touched". He said "I will beg your feet, please forgive me, we will be defamed. There will be loss of 8000.00 to 10,000.00 Rupees." The incident was also reported by the victim to PW 7 Mrs. Anamika wife of Lance Naik Rajveer Singh of 13 Kumaon in the same manner. PW 7 has seen the accused coming to the house of PW 6 and apologizing to the victim. She stated that the accused saying sorry to the victim bent down to touch her feet.

[23] The accused as DW 1 stated that on 29.9.2015 he attended a lecture on Golden Jubilee of 1965 war along with his wife. When the lecture was over he was returning back with his wife and other families. He asked the Driver to stop the vehicle near his quarter. According to him, he got down alone from the vehicle. When he saw a truck, outside the quarter of the victim, it came to his mind that he has to return the Helmet and so he went to the house of the victim to ask at what time they were leaving. He called her

husband by his name but the reply was given by the victim. He entered into the room and stood at the second door of the room and asked the victim that when she is leaving and whether he could return the Helmet himself or send it through someone else. According to him, during the conversations she moved towards him as she was picking up polythenes. One cartoon was lying near his feet and when she bent down to pick up that cartoon, his hand touched with her hand. He immediately said sorry to her and in reply she also said sorry. Thereafter, he said that he will return the Helmet at the earliest and she replied that "It is OK bhai sahab". He then left her quarter. The evidence of DW 2 is neither here or there. He simply stated that he cannot say whether the accused is innocent or has committed any offence.

[24]. The ingredients of Section 354 IPC could show that an act of assault or criminal force with an intention to outrage or likely to outrage the modesty would attract Section 354 IPC.

[25] Admittedly there was no grudge or enmity between the accused and the victim or her husband. The victim and her husband were supposed to leave from the place in a couple of hours . Nothing has been elicited to create a doubt that they have falsely roped the accused. There is no reason to disbelieve the testimony of the victim which is corroborated on material aspects by other witnesses as discussed earlier.

[26] In view of the aforesaid discussions, we uphold the findings of the District Court Martial as it needs no interference.

[27] This TA is accordingly dismissed. No costs.

MEMBER (A)

MEMBER (J)

MC