

Satheesh Kumar Vs. Union of India, Represented by Its Secretary, Ministry of Defence and Others

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Court : Armed forces Tribunal AFT Regional Bench Kochi

Decided On : Nov-13-2013

Judge : Shrikant Tripathi, Member (J) & the Honourable Mr. Lt. Gen. Thomas Mathew, Pvsm, Avsm, Member (a)

Appeal No. : T.A. No. 104 of 2010 (WP(C) No. 5824 of 2005 of the High Court of Kerala at Ernakulam)

Appellant : Satheesh Kumar

Respondent : Union of India, Represented by Its Secretary, Ministry of Defence and Others

Judgement :

Shrikant Tripathi, Member (J):

1. The applicant, Satheesh Kumar, Ex.Naik No. NC 14586089X, filed Writ Petition (C)No.5824 of 2005 in the Hon'ble High Court of Kerala challenging the verdict dated 4.1.2001 of the General Court Martial (hereinafter referred to as the GCM) and its proceedings whereby the GCM found him guilty of the charge under Army Act Section 69 for committing the civil offence under Section 302 of the Ranbir Penal Code and accordingly sentenced him to suffer imprisonment for life and also directed him to be dismissed from service along with the penalty of reduction to

ranks. After the establishment of this Bench of the Armed Forces Tribunal, the Writ Petition was transferred to this Bench under Section 34 of the Armed Forces Tribunal Act, 2007 and is registered here as T.A.(Appeal) No.104 of 2010. It may be mentioned that the proceedings of the GCM and its verdict/order was confirmed by Major General M.P.Singh, General Officer Commanding, 29 Infantry Division, on 21.2.2001. The applicant had preferred a petition before the Chief of the Army Staff against the aforesaid decision of the GCM, who considered the matter and rendered the rejection order dated 9.1.2002 vide Ext.P15. The then Chief of the Army Staff, General S.Padmanabhan, found that the contentions of the petitioner(applicant) were misconceived and bereft of any merit. He further found that the findings of the GCM were supported by cogent and reliable evidence on record, which inspired confidence. The Chief of the Army Staff further arrived at the conclusion that the sentence was commensurate with the gravity of the offence for which the applicant stood convicted.

2. The facts leading to this T.A. are that the applicant was posted to 275 Recovery Company on the date of occurrence. The deceased Naik/Driver (MT) Shedole Govind was also posted to the same company on that date. On 14.7.1999, the applicant was detailed on guard duty at the In Gate of 275 Recovery Company, EME from 18 00 hours. He attended the fall in at about 18 45 hours and was required to perform the guard duty during night. PW3, Nb.Sub. Manik Chand P, used to issue weapon to individuals on the basis of the authority letter given by the Second-in- Command. On 14.7.1999, he opened the kote at about 18 00 hours and issued a 5.56mm INSAS Rifle with butt No.4 to the applicant for guard duty in the night and obtained his signature in the Arms Outgoing Register. It is also alleged that PW4, Sub. V. Janki Raman, had the authority to issue ammunition to the persons detailed on duty as per the authority letter of the Unit, 21C. On 14.7.1999 at about 18 30 hours, he opened the ammunition store and as per the authority letter issued five rounds of 5.56mm INSAS ammunition to the applicant on the basis of the authority letter (Ext.R) and obtained the signature of the applicant on the relevant page of the Ammunition Issue Register, a copy whereof is on record as Ext.S. After taking the rifle and five rounds of 5.56 INSAS ammunition, the applicant proceeded to attend the Ingate guard duty. It is also alleged that at about 21 10 hours, the applicant went to take his dinner in the

mess, after handing over his rifle to PW7, Sepoy Lallan Prasad, but kept the five rounds of 5.56mm INSAS ammunition with him and returned after taking his dinner at about 21 50 hours. It is also alleged that at about 22 30 hours, the applicant was not found on Ingate guard duty though other guards were there. At about 22 40 hours a cracker burst like sound was heard in the vicinity by several armed forces personnel including Officers. After a gap of 20 - 25 seconds, four rounds of cracker burst like sound was also heard. The people started moving here and there and tried to know the reason of the sound. PW13, Hav. P.N. Sharma, also heard the sound and tried to know the reason of the sound. While moving from his room, which was on the first floor of the Recovery Platoon lines and going down the steps to the ground floor, he saw the applicant approaching the verandah of the ground floor with the rifle, 5.56 INSAS. He enquired into from the applicant regarding the sound, but he did not pay any attention to him and kept moving forward. He however heard the murmuring of the applicant something to the effect Jo hona tha ho gaya ab apne jo karna hai, kar lo (what had to happen has happened, and now you may do what you want to do). After meeting the applicant in the aforesaid manner, PW13, Hav. P.N. Sharma, proceeded further towards the ration store and noticed in the light that was glowing on the rear side of the ration store that the deceased, Naik S.Govind, had been lying there on his back with his face upwards with blood marks on his vest, on the left side and middle of his chest and on his stomach portion. After this, an arrangement of the vehicle was made and the deceased was taken to MI Room where, PW2, Maj.(Mrs) R. Sidhu, who was DMO on duty in Section Hospital, Nagrota, examined the deceased at about 23 20 hours and declared him dead and noted the following injuries on the dead body of the deceased: (i) A wound on the left arm; (ii) A wound on the left axilla; (iii) Wound about 10 cms below the wound mentioned at Sl.No. (ii) and (iv) a wound on the lateral aspect of the left thigh. The deceased was also bleeding from his nostrils, when brought to the MI Room by Captain Bharat Singh (PW20) and Nb Sub R.S.Sharma (PW11). PW2, Maj.(Mrs)R.Sidhu prepared the case sheet in respect of the deceased and produced the same during the trial as Ext.N. She prepared also the death certificate of the deceased and proved the same as Ext.O. It is also alleged that PW2, Maj. (Mrs)R.Sidhu, after declaring the deceased as dead, informed about the incident to the military police authorities, the civil police,

the DDMS 16 Corps and the duty clerk of 275 Recovery Company. The dead body of the deceased was handed over to the civil police on the next morning.

3. It is also alleged that PW4, Sub. V. Janki Raman, and PW11, Nb.Sub. R.S. Sharma, went to PW20, Captain Bharat Singh, who was in the Mechanic Transport Office and appraised him of the incident. Thereafter all of them went to the Recovery Platoon lines and when PW4, Sub. V. Janki Raman, and PW20 Captain Bharat Singh, started climbing the steps to the first floor, they saw the applicant coming down the steps with the weapon, 5.56mm INSAS Rifle, hung on his shoulder. When PW20, Captain Bharat Singh, asked the applicant, Satheesh kya kar diya re, the applicant replied, Saab mein aapko sab batata hoon, maine to usko itna hi bolatha ki yah MT Platoon wale meat day ke din der se khana kyon khate hein. At that occasion, the applicant voluntarily started taking the weapon off his shoulder and PW20, Captain Bharat Singh, took the weapon to his possession and handed over the same to PW11, Nb.Sub. R.S. Sharma. At that time, PW20, Captain Bharat Singh, checked the rifle and found the same to be in firing mode without changing the position of the safety catch. After that, on the order of Captain Bharat Singh, the applicant was taken to the quarter guard by PW4, Sub. V. Janki Raman. It is also alleged that PW4, Sub. V. Janki Raman, while taking the applicant to the Quarter Guard asked him as to what happened and why he did so, he replied, hamne jo karna tha kar diya, Aapne jo karna hai, kar lo. It is also alleged that PW20, Captain Bharat Singh, after a day or two of the incident, asked the applicant when he was in the Quarter Guard regarding the incident, he replied that, Naik S.Govind was having his food at the platform in the roll call ground. The applicant further replied that, he was going to fill his water bottle and when he crossed the deceased from side, he asked the deceased as to why the persons of Mechanical Transport Platoon used to have late dinner on meat issue days. On asking this, the deceased abused the applicant, left his food and stood up. He further asked the applicant as to how dare he to say like this. The applicant further stated before PW20, Captain Bharat Singh, that when he reached the ration store, the deceased also reached there from behind him. Two people held the applicant from behind and one bullet was fired. It is also alleged that PW4, Sub. V. Janki Raman, after placing the applicant in the Quarter Guard went to the place of occurrence where he was handed over, four 5.56mm empty fired cases by

Havildar Ram Narain, who recovered the same from the place of occurrence. The recovered fired cases were wrapped in a cloth and safely kept in the Quarter Master store. In the next morning, PW4, Sub. V. Janki Raman, again went to the place of occurrence and recovered one fired case of 5.56mm which was also wrapped by him in the same cloth and placed in the ammunition store along with the other four empty fired cases.

4. It is also alleged that on 14.7.1999, Mr.Mumtaz Hussain Shah, the Maharir Head Constable at Police Station Nagrota received a telephonic message from 275 Recovery Company, EME regarding the incident, who in turn conveyed the message to PW28, Mr.Praveen Kumar Sharma, SHO, Nagrota, who was on a patrolling duty. So, PW28, Mr.Praveen Kumar Sharma, immediately went to the police station and then to the place of occurrence along with 2 3 other police personnel, where he met with PW4, Sub. V. Janki Raman, who informed him about the incident. He requested PW4, Sub. V. Janki Raman, to give him the details of the incident through proper authority, that is, CO. Accordingly, the FIR, Ext.FF was registered at the Police Station, Nagrota in the night of occurrence at 12 45 Hours. The police registered the case and proceeded to hold the investigation.

5. During the investigation, PW.28 Mr.Praveen Kumar Sharma, SHO, Nagrota visited the place of occurrence and found blood on the spot. He took samples of the blood stained soil as well as simple soil and also prepared the site plan, Ext.EE. While proceeding further to hold the investigation, he took into possession the weapon and the empty cartridges from 275 Recovery Company, EME and also took into possession few live cartridges for the purpose of comparative study at the Forensic Science Laboratory. He had also shifted the dead body of the deceased to the Government Medical College, Jammu, for post-mortem examination. He prepared also the Inquest Report, Ext.GG. The weapon and the empty cartridges, after being sealed in accordance with the rules, were produced before the Naib Tahsildar, Nagrota, who sent the same to Forensic Science Laboratory, Jammu along with the forwarding letter, Ext.HH, for examination. He interrogated the applicant and recorded the statements of all relevant witnesses and prepared the investigation report and forwarded the same to the Chief Judicial

Magistrate concerned with the charge sheet under Section 302 of Ranbir Penal Code against the applicant.

6. It is also relevant to state that PW29, Dr. B.R. Sharma posted at Government Medical College, Jammu, as Assistant Professor in the Department of Forensic Medicine and Toxicology, conducted the post-mortem examination on the dead body of the deceased on 15.7.1999 and found the following ante-mortem injuries on the dead body of the deceased.

(i) A fire arm entry wound 2mm round, over the front of chest in line with the anterior axillary fold 8 below the left shoulder tip directed posteriorly and to the right side, lacerating the intervening soft tissues, left lung, left atrium, the bullet lodged in the thoracic spine. This bullet was recovered and handed over to the IO, Mr.Praveen Kumar, SHO, Nagrota.

(ii) A fire arm entry wound 2mm round, over the deltoid region of left arm 6 below the shoulder tip directed medially having an exit on the antero medial aspect of left arm 3 below the axilla. Intervening soft tissues were lacerated.

(iii) A fire arm entry wound 2mm oval over the lateral aspect of left thigh 5 below the hip joint directed upwards and posteriorly having an exit 1 lateral to the anal opening on the left side. Intervening soft tissues were lacerated.

After the post-mortem examination, PW29, Dr.B.R.Sharma, prepared the post-mortem examination report, Ext.II. On the basis of the post-mortem examination, Dr.B.R.Sharma, formed the opinion that the death of the deceased occurred due to haemorrhage and shock as a result of injury to the thoracic organs caused by the projectile of a rifle. He recovered one bullet from the thoracic spine and handed over the same to the Investigating Officer, PW28, Mr.Praveen Kumar Sharma. This witness had also got done the X-rays of the chest and abdomen of the dead body of the deceased. Taking into account the nature of the injuries, PW29, Dr.B.R.Sharma, formed the opinion that the deceased was fired from a distant range.

7. It appears that the applicant instead of being tried by the regular criminal court in accordance with the provisions of the Code of Criminal Procedure, was handed over to the Army Authorities for being tried by a Court Martial under the Army Act, 1950.

8. It is also relevant to state that the appropriate Army Authorities convened a Court of Inquiry on 15.7.1999 to inquire into the incident. The Court of Inquiry assembled on 16.7.1999 and ultimately on 8.1.2000, the applicant was charge sheeted. So, the Summary of Evidence was ordered. Major Arun Chopra recorded the Summary of Evidence. After the recording of the Summary of Evidence was over, the GCM was convened by the appropriate authority, which comprises of Col.Randhir Singh as its Presiding Officer, and Lt.Col.(TS)Sreedharan Anil Kumar Narakesseri, Major Rathod Satyan D, Major Sachidananda Choudhary and Captain P S Sandhu as members thereof. Major Manoj AR, No.IC54990K of the DAJAG, Head Quarters, Northern Command was appointed as the Judge Advocate. Major Praveen Sharma and Mr.Yogesh Chander Vaid, a retired Additional Public Prosecutor, were respectively appointed as the Prosecutor and the Prosecution Counsel. Maj.Sudhakar Srivastava and Mr.S.S.Sahni, Advocate, were respectively appointed as the Defending Officer and the Defence Counsel. The accused was asked as to whether he had any objection against the nomination of the Presiding Officer and the Members of the GCM, but he replied that he had no objection and agreed to for being tried by the GCM so composed of. The GCM commenced on 19th October, 2000. The GCM proceeded to hold the trial of the applicant for the following charge:

Committing a civil offence, that is to say, murder, contrary to Section 302 of the Ranbir Penal Code, in that, he at field, on 14 Jul 1999, by intentionally causing the death of No.14546546X Nk/Dvr (MT) Shedole Govind of the same unit committed murder.

The applicant was read over and explained the charge, who pleaded not guilty and claim to be tried.

9. To prove the aforesaid charge, the prosecution examined 29 witnesses, PWs 1 to 29, and produced as many as 30 exhibits, Exts.K to NN, and proved the same.

10.1 PW1, Hav/MP Ram Singh, stated that he along with Sub.Pargat Singh went to the MI Room in the night itself and saw that the dead body of the deceased was kept in the MI Room and noticed two bullet wounds on the left side of the chest of the deceased. He recorded the statement of the Nursing Assistant. He prepared also the sketch showing the general layout of the site of the incident in eight sets, and proved the same during the trial as Exts.M to M7. He found blood marks one metre away from the right corner of the ration store and further noticed a pool of blood within an area of 5 to 6 metres in diameter and indicated the place as 'a' in the sketch. He did the work of preparing the sketch between 01 00 hours to 02 00 hours on 15.7.1999.

10.2 PW2, Maj.(Mrs) R. Sidhu, who was on DMO duty in the Section Hospital, had examined the deceased and after the examination declared him dead and found the injuries, already disclosed in para 2 of this order, on the dead body of the deceased. In the witness box, she proved the injuries as also the case sheet of the deceased and the death certificate as Exts.'N' and 'O'. She further proved the fact that she informed about the incident to the military police authorities and the duty clerk of 275 Recovery Company. She deposed that the dead body of the deceased was handed over to the civil police in the next morning.

10.3 PW3, Nb.Sub. Manik Chand P, had issued the 5.56mm INSAS Rifle with butt No.4 to the applicant on 14.7.1999 at about 18 00 hours and obtained his signature on the Arms Issue Register. He proved all these facts in the witness box and also produced the Arms Out Going Register along with the extract of the relevant page (Page 110), marked as Ext.P and proved the signature of the applicant on the document as Ext.P1. He further proved the authority letter for issue of Arms/Ammunition dated 14.7.1999 issued by Capt.L.Chaudhary as Ext.Q. This witness proved the signature of Capt.L.Chaudhary and the applicant on the authority letter respectively as Exts.Q1 and Q2. This witness further proved the fact that the rifle issued to the applicant was in serviceable condition. According to this witness, at about 22 45 hours, on 14.7.1999, Cfn.S.K.Dwivedi, came to his house and informed him to go immediately to the unit and open the Kote. So, he immediately went there, where he found Nb Sub D J Mhaske standing with a weapon along with Nb Sub R.S.Sharma. On the directions of Nb Sub D J Mhaske,

this witness opened the Kote and deposited the rifle given by Nb Sub D J Mhaske as per the directions of Captain Bharat Singh. Accordingly, he held the rifle by its sling and placed the same in a corner and after that, he closed the Kote. He further stated that at about 23 15 hours, Captain Bharat Singh also had come there and asked about the weapon. He opened the Kote and handed over the weapon by its sling to Captain Bharat Singh. Captain Bharat Singh then checked the barrel and the magazine and gave it back to the witness, which he kept in the Kote and closed the same.

10.4. PW4, Sub. V. Janki Raman, had proved the issue of five rounds of 5.56mm Insas ammunition to the applicant on 14.7.1999 at 18 40 hours on the basis of the authority letter, Ext.R, and made an entry to that effect in the Ammunition Issue Register at page 98 (Ext.S). This witness proved Exts.R and S and also the signature of the applicant on Ext.S, which has been marked as Ext.'S1'. This witness further stated that at about 21 45 hours, Hav.T.P.Selvam (PW 10) and the deceased came to his office and invited him to attend a tea party in the empty barrack and after attending the party he went to the JCO Mess at about 22 15 hours and took his food. Before he could finish the dinner, he heard the sound of cracker like burst and after about 10-15 seconds he heard similar successive sound of firing. This witness proved also that he along with Captain Bharat Singh (PW20) went to the lines and started climbing the steps, they saw the accused coming down the steps with his weapon, which he handed over to Captain Bharat Singh. This witness further proved that Captain Bharat Singh took into possession the weapon and instructed him to take the applicant in custody and lock him in the Quarter Guard. This witness further stated that on being asked as to what happened, the applicant replied to him that, Hamne jo karna that kar diya, Aapne jo karna hai kar lo. In order to carry out the direction of Captain Bharat Singh, this witness locked the applicant in the Quarter Guard and after that he went to the place of occurrence where some other persons were also assembled and were involved for searching for empty fired cases. This witness further stated that Hav.Ram Narain handed him over four 5.56 mm INSAS empty fired cases found at the place of occurrence. At that moment, Capt.L.Choudhary (PW25) also reached there, who directed the witness to wrap the recovered four 5.56 INSAS empty cases in cloth and keep the same in the Quarter Master Room. This witness

proved also the arrival of the police. He further stated that the next day in the early morning, he went to the place of occurrence and recovered from there one more fired case of 5.56 INSAS ammunition and after wrapping the same along with the other four cases in cloth, placed them in the ammunition store. This witness proved the sketch map, Ext.M1 and identified the place 'b' shown in the sketch map as the place where the dead body of the deceased was found. He further proved place 'c' where from he recovered one empty case on 15.7.1999. During the cross examination, the witness stated that, he handed over the five fired cases to the police on 20th July, 1999. But he could not recollect the date on which the five live rounds of 5.56 mm INSAS ammunition was handed over to the police. On being reexamined, this witness stated that the second Additional Sessions Judge, Jammu vide his order dated 21.6.2000 ordered the In Charge Malkhana, Saddar Court, Jammu to hand over the seized articles. The order of the additional Sessions Judge is on record as Ext.U. In compliance of the order of the court, this witness was detailed to collect the material articles. Accordingly, he went to the Court Malkhana on 22.6.2000 and collected the materials along with the certificate 'V'. This witness has also disclosed the details of the materials he collected, which we do not consider to repeat.

10.5. PW5, CHM. Om Prakash, was posted as the Guard Commander of In gate. He has proved that he was on duty on 14.7.1999 from 7 pm to 6 am of 15.7.1999 during the aforesaid period. He further proved that when he attended the fall in at 16 45 hours, there were only two guards, Lance Naik Hardev Singh and the applicant, on duty. This witness proved also the relevant extracts, Ext.T, of the original guard book regarding the duty and further stated that the entries in Ext.T from Sl.No.3 to 5 were in his own handwriting. At about 22 30 hours, Sepoy Lallan Prasad woke up this witness and told that he heard some sound. He woke up and woke all the guards up. He found that one of the sentries, ie., the applicant was not present in his charpoy. He proceeded to the lines to look for the applicant. He admitted that he did not report the authorities regarding the absence of the accused.

10.6. PW6, Cfn. VM/MV Hardev Singh was on Ingate duty along with the applicant. He proved the fact that he was on Ingate duty along with the applicant.

He took the dinner with the deceased and further proved the factum of hearing of cracker burst sound. This witness further proved that between 19 15 hours and 19 30 hours, the deceased came in a vehicle, which he halted outside the Ingate and informed that OC, Lt.Col.HS Pathania had asked to get the axle of his vehicle changed and when this witness informed him that he was on duty,the deceased stated that the OC particularly asked the witness to do the said job, so he would get the duty changed. After saying so, the deceased left the empty barrack with the vehicle. At about 20 30 hours Lance Naik Rajender Kumar replaced the witness from duty. He then went for dinner and met the deceased in the dining hall for dinner. This witness further proved the hearing of cracker like sound at the time of incident.

10.7. PW7, Sepoy Lallan Prasad, was also on guard duty at the Ingate on 14.7.1999. This witness proved the fact that the applicant had handed over his weapon without ammunition while going for dinner at about 21 10 hours. The applicant returned at about 21 50 hours after taking the dinner and took back his weapon from the witness. According to this witness, at about 22 30 hours, he heard the sound of firing and after about 20 seconds he again heard the sound of four shots being fired. So he woke up Hav.Om Prakash, who inturn woke up the sentries, but at that time, the applicant was not present there. So, according to this witness, the applicant was not present at the Ingate duty at the time of hearing of sound of firing.

10.8. PW8, Sepoy Driver/MT Mahadev, was the mess commander from 1.7.1999 to 31.7.1999 in 275 Recovery Company. This witness proved the fact that the applicant met him between the fencing near the ration store and the water tank and told him that on meat issue day, the mess commander was supposed to be in the mess. This witness further proved the hearing of the sound resembling a tyre burst at about 22 30 hours.

10.9. PW9, Sepoy RM Allauddin Khan, has stated that he lives on the first floor of the OR living lines along with the applicant and four other personnel. This witness had not given any material evidence except the narration with regard to attending the dinner and his movement on 14.7.1999. According to this witness, the general

behavior of the applicant was good. He had never seen the applicant quarelling with anyone.

10.10. PW10, Hav. Dvr/MT TP Selvam, had attended the farewell party where the deceased met him and told for the replacement of the axil of the vehicle, Lt.Col.Pathania's jonga, which was to be transferred to 197 Independent Field Workshop. This witness went to the dining hall and after taking the dinner went to the lines and when he reached the ration store he found the deceased in a fallen position, so he lifted and put him in 1 x 1 ton vehicle. He has also proved the hearing of sound of crackerlike burst.

10.11. PW11, Nb.Sub. R.S. Sharma, stated that on 14.7.1999, he was the duty JCO. After stating with regard to guard duty deployment, this witness stated that he heard the cracker like sound and after a few minutes four repeated sounds. So, he went to the MT gate where he was informed that the sound came from the lungar side. So he went to the lungar. On reaching the roll call ground, he saw a person coming from 15-20 metres and then identified him as Havildar P N Sharma, who on being asked, told that, Naik Satheeth ne Naik Govind ko goli mar diya. This witness further proved that the applicant came down from the first floor and handed over his weapon, 5.56mm INSAS Rifle to Captain Bharat Singh, who handed it over to this witness and directed him to hand it over to Nb Sub DG Mhaskey. This witness further stated that the deceased was taken to the MI Room on a vehicle and after that as per the instructions of Captain Bharat Singh, he went to the place of incident and cordoned off the spot and deputed a sentry there. Lt.Col. H.S.Pathania arrived there, to whom also the witness narrated the incident. Then he went to the kote and found Nb Sub Mhaskey standing with the weapon recovered from the applicant. This witness then called the kote NCO and as per the instructions of Captain Bharat Singh got the weapon deposited there through Havildar Manik Chand. This witness also assisted the investigating agency during the investigation. This witness proved the sketch map also.

10.12. PW12, Lance Naik M.C.Maity, has proved the factum of hearing of noise of cracker burst, arrest of the applicant and transportation of the dead body to MI Room. He has further proved that after the incident of firing, he rushed and went to

the living lines of Recovery Platoon where he saw the applicant standing on the verandah of the first floor. He further proved that Captain Bharat Singh called the applicant from the ground floor and then the applicant went to the ground floor and handed over the weapon to Captain Bharat Singh.

10.13. PW13, Hav. P.N. Sharma, has also proved the story of cracker burst like sound and then came out of his room and went down the steps to the ground floor. When he moved down the steps, he saw the applicant approaching the verandah. So, he asked the applicant from where the sound emanated, but he did not pay any attention and kept moving forward along with the rifle, 5.56mm INSAS. Then the witness went to the place of occurrence and found the deceased lying there. He further noticed the blood marks on the vest of the deceased and also on the left side of chest and stomach portion. He further noticed that the deceased was in a very serious condition. When Captain Bharat Singh asked as to the whereabouts of the applicant, the witness stated that he had gone towards the lines. So Captain Bharat Singh, Subedar Janki Raman, Nb.Sub. RS Sharma and he himself went towards the lines, the applicant came down from the first floor and handed over the rifle to Captain Bharat Singh. Then, on the orders of Captain Bharat Singh, Sub.Janki Raman took the applicant into custody and shifted him to Quarter Guard.

10.14. PW14, Lance Naik Rajender Kumar, was on sentry duty at Ingate after replacing Lance Naik Hardev Singh at about 2030 hours. At that time, the applicant was also there. At about 21 15 hours, the applicant proceeded to take his dinner. This witness further proved that at about 22 30 hours he was woken up by Havildar Om Prakash who required other sentries also to get up. At that time the applicant was not present at that place. After about ten minutes, he got information that the applicant had killed the deceased.

10.15. PW15, Mr.Harnam Chand Bhagat, was the Head of Physics and Ballistics Section in the Forensic Science Laboratory, Jammu. He had scientifically examined the blood stained soil and plain soil and prepared the report, Ext.W, and proved the same during the trial. This witness further stated that he had counter signed the report issued by the Ballistic Expert, Mr.Sarwar Hussain Bukhari,

Scientific Assistant, FSL, Jammu pertaining to the test conducted on the fire arm and fired ammunition sent for forensic examination relating to the accused. This witness also proved the correction in Ext.W.

10.16. PW16, Mr.Sarwar Hussain Bukhari, was posted as the Scientific Assistant(Ballistics) in the Forensic Science Laboratory, Jammu. This witness proved the fact that he received seven packets for test out of which three packets were marked by the police as 'C', 'D' and 'E' and the other four packets were marked as 'A', 'B', 'F' and 'G'. He found the seal of the Executive Magistrate on the packets in tact and the same tallied with the specimen seals sent separately. Packet 'C' contained one 5.56mm INSAS Rifle, bearing body No.15445837 with the year of manufacture as 1994. Packet 'D' contained five spent cartridges, all bearing head stamp marking KF 97, 5.56mm INSAS Rifle. Packet 'E' had one deformed bullet. This witness further proved that Barrel wash examination of the rifle revealed that barrel was containing nitrite, lead and copper. These radicals could not have been detected had the weapon not been fired through. This witness stated that he conducted test firing through the rifle and used six live rounds for the same. After that he compared the test fired cartridges with the evidence cartridges under the comparison microscope in juxta position as well as composite matching and found that the characteristics marks of firing pin indentation and corresponding ejector marks were tallying with each other. On the basis of this exercise, the witness arrived at the conclusion that the 5.56mm INSAS Rifle bears the signs of discharge and was found in the normal working condition. The spent cartridges had been fired through the aforesaid rifle. The deformed bullet marked in the lab could have been fired through the aforesaid rifle. The witness, in addition to the aforesaid facts, proved also the report prepared by him as Ext.X. In this way, the witness proved the fact that rifle which was handed over to the applicant for performing the guard duty at Ingate on 14.7.1999 at about 18 hours and was recovered from his possession by Captain Bharat Singh was the rifle wherefrom the spent cartridges recovered from the place of occurrence and the deformed bullet recovered from the body of the deceased had been fired. The witness during cross examination clarified that he was not in a position to say the exact time of firing and the distance wherefrom the firing was made.

10.17. PW17, Nb Sub. Charan Singh, stated that he was woken up by the Guard Commander, Havildar G.Vishvanath (PW21), who told him about the incident. This witness immediately checked physically the arms and ammunition of the guards of his unit and found the same in order. He further proved the fact that the deceased was shifted from the place of occurrence on a vehicle.

10.18. PW18, Sepoy Driver/MT Sajal Sinha, was on duty as sahayak to OC, Lt.Col.H.S.Pathania. On 14.7.1999, at about 20 00 Hours, he was required to distribute food in the mess as Sepoy Mahadev had to attend a tea party. So he went to the mess at about 20 30 hours and started distributing the food. At about 21 30 hours the applicant also came in the mess and was given food. This witness remained in the mess thereafter. At about 22.30 hours, he heard the sound of firing and proceeded towards that side where people had been moving.

10.19. PW19, Nb.Sub.V.Ramakrishnan, was performing the duties as Administrative JCO at Corps Surveillance Centre (CSC), 16 Corps, on 14.7.1999. This witness has proved the factum of hearing of sound of fire and on hearing the sound, he came outside the room to know the reason of firing. The Guard Commander G.Viswanathan informed him that in the firing one person had fallen down and another person was seen running away with a weapon in his hand. This witness then informed the incident to the duty officer, Major A.Ganguly.

10.20. PW20, Captain Bharat Singh, was performing the duties of Mechanical Transport Officer and Officer in Charge, Light Repair Workshop on 14.7.1999. At about 22 35 hours, this witness heard a sound resembling the bursting of a cracker and similar sounds after a gap of 10-15 seconds. After about 5 minutes, the duty JCO, Nb.Sub Sharma came to his office followed by Sub Janki Raman, who informed that Naib S.Govind ko to Satheesh ne gira diya. The witness then asked as to what they meant by 'gira diya, it was replied that Naik Satheesh ne Naik Govind ko teen char goli mar diya aur woh Ration Store ke bagal me pada hai. Naik Satheesh apne Recovery Platoon ke upar wale verandah mein hathiyar leke khada hai aur koi uske pas jane ki himmat nahi kar raha hai. (The accused has fired three or four rounds on Naik S.Govind, who is lying near the Ration store. The accused is standing with a weapon in the verandah at the first floor of his

Recovery Platoon lines and no person is having the courage to go near him). This witness further stated that he along with Naib Sub R.S.Sharma and Subedar Janki Raman reached the Mechanical Transport gate , took two armed sentries to accompany him. This witness further stated that he then went to the Recovery Platoon lines, when he reached near the Recovery Platoon lines, Havildar PN Sharma also met him, who on being enquired informed that , Saab, mujhe to lagta hai usne sara hi magazine khali kar diya hai aur hathiyar ko apne kandhe mein latkakar khada hai.(Sir, I think that he has emptied the whole magazine and he is standing with the weapon hung on his shoulder). This witness then reached the staircase of the Recovery Platoon lines and saw the applicant coming down the stairs with his weapon, 5.56mm INSAS Rifle, which he had placed on his left shoulder. This witness further stated that when he asked the applicant, Satheesh, kya kar diya re, he then replied that, Saab, mein aapko sab batata hoon, main to usko itna hi bola that ki yeh Mechanical Platoon wale meat day ke din der se khana kyon khathe hein. When the applicant came closer to the witness, his right hand was held by the witness with his left hand, and with his right hand held the weapon and took it away from his possession. After that, the applicant was sent to the Quarter Guard through Sub.Janki Raman and other 2 or 3 jawans. The rifle recovered from the possession of the applicant was given to Nb.Sub.R.S.Sharma with the direction to deposit in the Unit kote at a separate place. PW 20, Captain Bharat Singh further stated that he, thereafter, went to the ration store followed by the Junior Commissioned Officers and Jawan standing there and found the deceased lying on his back near the ration store and further found that blood was oozing from his left shoulder region. The witness further stated that he felt the pulse of the deceased, so he thought that he could be saved and accordingly got arrangement of a 1 x ton vehicle and evacuated the deceased to the MI room. This witness then went to the MI room where he saw the deceased being shifted to the emergency patient room and required the nursing assistant standing there for caling a doctor. He further stated that he informed to Lt.Col.H.S. Pathania regarding the incident on phone. This witness further stated that PW2,Major (Mrs)Sidhu arrived in the MI Room and examined the deceased and declared that he was dead. This witness further stated that he went to the unit kote and found the kote NCO, Manik Chand, and Hav.R.S.Sharma at the door of the kote. On

being asked, they showed the weapon of the applicant placed on a shelf in the kote which was visible from the door. The witness was shown four empty cases which was recovered from the place of occurrence. Then he checked the weapon of the accused and found the magazine thereof empty. This witness further pressed the trigger of the rifle and found the same in the firing mode. He, however, did not change the position of the safety cap, and handed it over to Hav.Manik Chand to keep it back at the same place after segregating it from other weapons. He had given instructions not to touch the weapon in any way. The five empty cartridges was recovered by Sub Janki Raman. This witness proved the site plan and other relevant spot position.

10.21. PW21, Hav. G.Vishvanath, was detailed as Guard Commander of the Sentries who were placed as guards on the vehicle which was used as the kote of his Unit. This witness produced the Guard Register of CSC and proved the relevant entries dated 14.7.1999, as Ext.Y. The sentries had put their signature against their respective entries on Ext.Y at about 20 30 hours on 14.7.1999. This witness further proved the hearing of fire shots as stated by other witnesses. This witness found the deceased lying near the ration store in an injured condition. This witness further proved various locations as per Ext.M5.

10.22. PW22, Nb.Sub. D.N.Nainwal proved the fact that Summary of Evidence was recorded in respect of the applicant in January 2000. He was detailed as an independent witness during that period. The Summary of Evidence was recorded by Capt (now Major) Arun Chopra. This witness further stated that the statement of the applicant was also recorded during Summary of Evidence and at that time he was also present there. The witness proved the statement of the applicant as Ext.Z.

10.23. PW23, Mr.K.K.Raina, was posted as the Scientific Officer in the Biology and Serology Division, FSL, Jammu. He stated that, he had received four sealed packets from the Ballistic Division on 5.11.1999 for examination. The said packets were the four packets out of the seven sealed packets sent by the police to FSL, Jammu. The seal of each packet was found in tact and the same tallied with the specimen seal forwarded by the Magistrate. Each of the said articles was

subjected to chemical, microbiological and serological examination. This witness found the presence of blood in the article found in packet 'A', 'F' and 'G' marked as Exts.K-1211/99 to 1216/99, except K- 1212/99. This witness could not determine the origin and group of blood in Exts.K-1211/99, K-1213/99 to K-1215/99 due to the reason that the exhibits were found to be in disintegrated condition. This witness further stated that human blood was detected in Ext.K-1216/99 kept in packet 'G', but the group of blood could not be ascertained because of the presence of interfering substances. On the basis of the examination, the witness prepared the report dated 18.11.1999 and proved the same in the court during trial as Ext.AA.

10.24. PW24, Gnr.(Surveyor) Surender Khedar was on guard duty on 14.7.1999 on a vehicle, which was next to the living barracks of 20 SATA battery in the area of 275 Recovery Company, EME. He was on the second shift duty from 21 00 hours to 23 00 hours on 14.7.1999. This witness proved the story of hearing of burst fire. After this he went to the rear side of the vehicle and took a kneeling position. He saw a jawan running to the Recovery Company lines following the path crossing through his vehicle. This witness shouted at the said person by saying Ruko, Ruko (stop, stop). At that time, the person who was running away had been carrying away a weapon in his hand. Thereafter, this witness heard regarding the incident. This witness has also proved the sketch map.

10.25. PW25, Major L.Choudhary, got information about the incident at about 23 00 hours and rushed to the MI Room where he saw the deceased being examined by PW2, Maj.(Mrs.)R.Sidhu, who found him dead. Thereafter, this witness along with Nb.Sub R.S.Sharma and Subedar Janki Raman went to the place of incident. When he made enquiries from persons found there, they told that they had not seen anything. This witness proved that on 20.7.1999, the weapon, Rifle 5.56mm INSAS bearing butt No.4, Registered No.15446837 along with one sling and an empty magazine and five fired cases of 5.56 mm INSAS Rifle CTN with lot Number KF97, were handed over to the police after obtaining proper receipt. This witness proved the receipt, Ext.BB. This witness further identified his signature on the Arms Issue Register, Ext.P and the Ammunition Issue Register, Ext.S.

10.26. PW26, Lt.Col.Pathania Hardev Singh, was the OC of the 275 Recovery Company. According to this witness on 14.7.1999 he left the office at 11 20 hours on a jonga driven by the deceased. Enroute the deceased informed him that the axle of the jonga was defective and was required to be replaced. So he instructed for replacement. After 20 30 hours, he got a telephone call from Captain Bharat Singh informing that the applicant had killed the deceased and on hearing this incident, he went to the MI Room and found there the dead body of the deceased. He then went to the place of occurrence along with Captain Bharat Singh, where he was shown the place of occurrence. Then he went to the Quarter Guard where the applicant had been detained. The witness further stated that when he asked the applicant as to why he killed his driver, he told that he had asked the deceased as to why he used to have late dinner on meat issue days, but the deceased asked him as to who he was to ask him that question. Thereafter, both of them abused each other, then two persons came from behind and held the applicant and thereafter the weapon fired. This witness informed the higher authorities and directed one of the Unit officers to inform the police. This witness gave an application to lodge FIR addressed to the police station, Nagrota. Initially he had written the date 14.7.1999, but on being informed that it was past midnight, so he changed the date from 14.7.1999 to 15.7.1999 and initialled the amendment. This witness proved the Ext.CC and also the application for lodging the FIR, Ext.DD.

10.27. Gnr/DMT Gyan Singh was examined as PW27. This witness was on duty on the temporary vehicle based kote of his unit on 14.7.1999 from 21 00 hours to 23 00 hours. This witness proved that he had heard the sound of blast, then he again heard the same type of sound and as ordered by Hav.G.Viswanathan, he took the position. When he moved towards the eastern side of the vehicle, he saw that a person was lying on the ground, who was evacuated in a vehicle. This witness further proved the sketch of the spot.

10.28. PW28, Mr.Praveen Kumar Sharma, was posted as SHO, Nagrota from 21.4.1999 to 29.3.2000. He had investigated the case relating to the death of Naik S.Govind. He proved the FIR (Ext.FF), the sketch map and the site plan (Ext.EE), the inquest report (Ext.GG) and the forwarding letter to the Tahsildar (Ext.HH). This witness further proved that he took over the 5.56mm INSAS Rifle and the

empty fired cases from the Army as reflected in Ext.BB and sealed them along with other items as detailed in Ext.HH and again got them re-sealed from Nb.Tahsildar, Nagrota and then forwarded the same to Forensic Science Laboratory, Jammu for forensic examination.

10.29. PW29, Dr. B. R. Sharma had conducted postmortem examination on the dead body of the deceased. He has proved the post-mortem examination report Ext.II, the ante mortem injuries sustained by the deceased and the cause of death of the deceased. According to this witness, the cause of death of the deceased was haemorrhage and shock as a result of injury to the thoracic organs.

11. The GCM after recording the statements of the aforesaid prosecution witnesses and placing various exhibits on record, recorded the statement of the applicant as per the requirements of Army Rule 51(1), calling upon him to explain the evidence and circumstances appearing in evidence against him. The applicant admitted that he was posted to 275 Recovery Company located at Nagrota on 14.7.1999. He further admitted that he was detailed on guard duty on the Ingate at about 18 45 hours. He further admitted that he attended the fall in of the sentries along with Om Prakash (PW5) and Hardev Singh (PW6) with his weapon and thereafter he reported for duty at the Ingate. He further admitted that he was issued with 5.56mm INSAS Rifle with butt No.4 for the duty purpose. But he stated that he was not aware of the registration number of the rifle. He further admitted that five rounds of 5.56mm CTN were issued to him. He further admitted that he had gone for dinner after handing over his weapon to Sepoy Lallan Prasad (PW7), but on return to the Ingate after dinner he did not check the butt number of the weapon taken from Sepoy Lallan Prasad. He had denied the allegations made against him and further stated that he was forcibly taken away from the duty place Ingate and put in the Quarter Guard. He further stated that he had not heard the sound of any firing. He denied to have made any statement to the effect that, Saab, mein aapko sab batata hoon, maine to usko itna hi bolatha ki yet MT platoon wale meat day ke din der se khana kyon khate hein before Captain Bharat Singh. He further denied to have made any statement regarding the quarrel that had taken place between him and the deceased. The applicant was thereafter provided opportunity to examine his witnesses including making of his own

statement if he desired, but he declined to do so. Consequently, GCM heard both sides and concluded the trial.

12. The GCM after considering the entire evidence on record found the aforesaid charge proved beyond all reasonable doubts against the applicant and accordingly convicted and sentenced him as disclosed in the first para of this order.

13. The GCM seems to have recorded the finding of guilt mainly on the basis of the following circumstances established beyond all reasonable doubts by the prosecution.

(a). The evidence on record and the accompanying circumstances, reveal that the accused fired more than one shot at the deceased and in fact emptied his magazine during which three rounds hit the deceased.

(b). All the injuries on the deceased's body were inflicted on his left side, which included an injury to the thoracic region reflected as injury number 1 by PW29. Moreover, three of the four rounds fired in burst mode by the accused, hit the deceased, which suggests that the shots were aimed and fired only at the deceased.

(c). The conduct of the accused subsequent to the firing incident reveals his intention. It is revealed in the evidence of PW-13 that the accused did not pay attention to his query regarding the sound of firing and that he was murmuring to himself jo hona tha ho gaya, Aapne jo karna hai kar lo. This is indicative of his intention. The evidence of PW-4 reveals that on asking him as to why he did so, the accused replied, Maine jo karna hai kar diya, ab aapne jo karna hai kar lo. The accused voluntarily handed over his weapon to PW-20, before which he told, saab, main aapko sab batata hoon, maine to usko itna hi bola tha ki yeh MT platoon wale meat day ke din der se khana kyon khat hain.

(d). From the narration of the accused made to PW-20, when PW-20 recovered the weapon from him, and a day or two thereafter when he spoke to the accused from the quarter guard, as deposed by PW-20, the Court finds that the accused had some confrontation with the deceased prior to the firing incident regarding the

issue of meat to MT platoon personnel. The fact of a fight is also revealed from the evidence of PW-24 and PW-27, who identified that prior to hearing the first firing sound, they heard sounds of a quarrel or fight from near the lungar side of 275 Recovery Company EME, which is close to where the body of the deceased was found lying.

14. The learned counsel for the applicant submitted that none of the witnesses examined during the trial had seen the applicant committing the murder of the deceased. According to the learned counsel for the applicant, there was no direct evidence against the applicant. The whole case was based on circumstantial evidence, but the entire chain of circumstances leading to the guilt of the applicant were not complete. More so, the FIR was highly delayed.

15. The learned counsel for the applicant next submitted that if the facts alleged against the accused were treated to be true and fully proved, even then, the offence would fall within the category of culpable homicide not amounting to murder punishable under section 304 of the Ranbir Penal Code. In this connection, he submitted that the occurrence took place due to a sudden fight (scuffle) between the accused and the deceased, in the heat of passion upon a sudden quarrel, so the applicant stood provoked and as such the act of the applicant would not come within the category of murder.

16. Mr.K.M.Jamaludeen appearing for the respondents, on the other hand, submitted that there was adequate evidence against the applicant, despite the fact that none of the witnesses had seen the applicant committing the murder of the deceased. According to Mr.K.M.Jamaludeen, the accused was issued the rifle which was used for committing the murder of the deceased. The cartridges issued to him were not returned by him while handing over the rifle to Captain Bharat Singh and at that time the chamber of the rifle was empty. The applicant did not offer any explanation as to why he did not return the cartridges issued to him. Mr.K.M.Jamaludeen next contended that the prosecution has fully proved that the fired cartridges recovered from the place of occurrence were the cartridges issued to the applicant for performing the duty. The ballistic expert fully proved that the rifle issued to the applicant had been used for firing and as such, the

circumstances proved by the prosecution have fully established the charge against the applicant. More so, the gesture and conduct of the applicant after the incident also corroborate the evidence of his involvement in committing the murder of the deceased. According to Mr. Jamaludeen, it has come in evidence of PW3, Nb.Sub. Manik Chand, that the applicant did not pay any attention to his query regarding the sound of firing but murmured at that time that jo hona tha ho gaya, Aapne jo karna hai kar lo. The applicant in replying to PW4, Sub. V. Janki Raman, on his asking as to why it was done, told to him that, Maine jo karna hai kar diya, ab aapne jo karna hai kar lo. Mr. K.M. Jamaludeen then referred to the evidence of PW20, Captain Bharat Singh, to the effect that the applicant while handing over his weapon to him told, saab, main aapko sab batata hoon, maine to usko itna hi bola tha ki yeh MT platoon wale meat day ke din der se khana kyon khate hain and contended on the basis of this statement that there was adequate evidence against the applicant.

17. We have considered the rival submissions and perused the evidence on record. It is fully proved beyond all reasonable doubts that at about 10.30 pm (22 30 hours) on 14.7.1999, a cracker like sound was heard and after a gap of 10-15 seconds four similar sound was heard from the lungar side in the Unit area of 275 Recovery Company, EME. It is also proved beyond all reasonable doubts that the deceased was killed near the ration store in the unit area, who had sustained three ante mortem wounds, first over the front of chest, second over the deltoid region of the left arm and the third over the lateral aspect of left thigh. The deceased was taken to Section Hospital but was found dead by PW2, Maj (Mrs)R.Sidhu. The learned counsel for the applicant did not dispute the murder of the deceased in the aforesaid manner. He however tried to contend that the murder was not committed by the applicant nor there was any adequate evidence to prove that the applicant was the culprit. We have, therefore, to see whether or not the charge against the applicant was proved beyond all reasonable doubts.

18. We have already referred to the relevant evidence in para 10.1 to 10.29 of this order and as such we do not consider it proper to repeat the same. The evidence on record has proved beyond all reasonable doubts the following incriminating circumstances against the applicant.

(1) The applicant was deputed to perform the guard duty at the Ingate of 275 Recovery Company, EME in the night of 14/15 July 1999 and he performed the duty as such, for which he was issued a 5.56mm INSAS Rifle with butt No.4 the same day at about 18 00 hours by PW3, Naib Sub. Manik Chand P, who obtained the applicant's signature on the Arms Issue Register at that time. The issue of the said rifle to the applicant has been proved by PW 3, Nb.Sub.Manik Chand P, which has also been corroborated by the extract of the relevant page (Page 110) of the Arms Outgoing Register (Ext.P) and the signature of the applicant (Ext.P1) and the authority letter (Ext.Q) issued by Captain L.Chaudhary and also the signatures of Captain L.Chaudhary and the applicant on the authority letter, respectively Exts. Q1 and Q2.

(2) It is also fully proved beyond all reasonable doubts that the applicant was issued five rounds of 5.56 mm INSAS ammunition the same day at about 18 40 hours on the basis of the authority letter, Ext.R. This fact has been fully proved by PW4, Sub.V.Janki Raman, which finds corroboration also from the entries made at page 98 of the Ammunition Issue Register (Ext.S) and the signature of the applicant (Ext.S1).

(3) PW13, Hav.PN Sharma is the first person to whom the applicant met after the firing sound. This witness on hearing the sound moved from his room which was on the first floor of the Recovery Platoon Lines and was going down the steps to the ground floor. At that time, he saw the applicant approaching the verandah of the ground floor with the aforesaid rifle. The witness enquired into from the applicant regarding the sound but he did not pay any heed to the request but kept moving forward. PW13, PN Sharma, has proved that at that time, the applicant was murmuring to the effect, Jo hona tha ho gaya ab apne jo karna hai, kar lo (What had to happen has happened, and now you may do what you want to do).

(4) The applicant was supposed to be on guard duty at the Ingate of 275 Recovery Company at the time of hearing of sound of firing,i.e.,10.30 pm, but at that time he was not on duty. This fact has been proved by PW 14, Lance Naik Rajender Kumar and other witnesses (PW5, Cfn.Om Prakash and PW7 Sepoy Lallan Prasad) who were on guard duty.

(5) When Captain Bharat Singh (PW20) wanted to know as to the whereabouts of the applicant, he was told by PW13, Hav.P.N.Sharma that the applicant had gone towards the lines. So, PW20 Captain Bharat Singh, PW4 Captain Bharat Singh and PW11 Naib Sub.R.S.Sharma went towards the lines. When they reached the Recovery Platoon lines staircase, they saw the applicant coming down the stairs with the aforesaid 5.56mm INSAS rifle, which had been placed by him on his left shoulder. PW20, Captain Bharat Singh asked the applicant Satheesh, kya kar diya re he replied Saab mein aapko sab batata hoon, maine to usko itna hi bolatha ki yah MT Platoon wale meat day ke din der se knaha kyon khate hain. This fact has been proved by PW20 Captain Bharat Singh and the other witnesses present at that time.

(6) PW20, Captain Bharat Singh took the rifle in his possession from the applicant, whose chamber was empty, but the applicant did not hand over the five cartridges of 5.56mm INSAS ammunition issued to him by PW4, Sub.V.Janki Raman nor gave any explanation about the cartridges. This fact is also proved by the evidence of PW20, Captain Bharat Singh.

(7) Captain Bharat Singh handed over the aforesaid recovered rifle to Naib Sub.R.S.Sharma (PW11) with a direction to deposit it in the Unit Kote at a separate place. It was handed over by Nb.Sub.R.S.Sharma and Nb.Sub.DG Mhaskey to PW3, Nb.Sub.Manik Chand as per the directions of PW20, Captain Bharat Singh. Accordingly, PW3, Nb.Sub.Manik Chand, took the rifle in his possession and held the same by its sling and placed the same in a corner in the Kote and closed the same.

(8) After the recovery of the rifle from the applicant, he was taken into custody and was locked in the Quarter Guard and on being asked as to what had happened, he replied to PW4, Subedar V.Janki Raman, hamne jo karna tha kar diya, Aapne jo karna hai, kar lo. This statement was made by the applicant to PW4, Sub V.Janki Raman, while he was being taken to the Quarter Guard, as per the directions of PW20, Captain Bharat Singh. The rifle so kept in the kote was ultimately handed over to the police during the investigation for further course of action, which was ultimately sent to the Forensic Science Laboratory, Jammu for ballistic expert's

opinion.

(9) The four fired cases of 5.56 INSAS ammunition was recovered in the night of 14 July 2009 from the place of occurrence. On the next day, in the morning, the fifth fired ammunition of 5.56mm was also recovered from the place of occurrence and all these recovered cases of fired ammunition were wrapped in a cloth by PW4, Sub.V.Janki Raman, who as per the direction of PW20 Captain Bharat Singh got kept in the Ammunition Store, which were ultimately handed over to the police for investigation. The police, thereafter, sent the fired cases of 5.56mm INSAS ammunition also to Forensic Science Laboratory, Jammu for ballistic expert's opinion.

(10) PW16, Sarvar Hussain Bukhari, who was posted as the Scientific Assistant in the Forensic Science Laboratory, Jammu proved that he received seven packets for test out of which three packets were marked by the police as 'C', 'D' and 'E' and the other four packets were marked as 'A', 'B', 'F' and 'G'. He found the seal of the Executive Magistrate on the packets in tact, which tallied with the specimen seal sent separately. According to this witness, one packet contained one 5.56 mm INSAS Rifle bearing body No.15445837 with the year of manufacture as 1994. The packet 'D' contained five fired cartridges, all bearing head stamp marking KF 97, 5.56mm INSAS Rifle. The packet 'E' had one deformed bullet. This witness further proved that the barrel wash examination of the rifle revealed that barrel was containing nitrite, lead and copper. According to the witness, these radicals could not have been detected had the weapon not been fired.

(11) PW16, Sarvar Hussain Bukhari further proved that he conducted the test firing through the aforesaid rifle and used six live rounds for the same and after that he compared the test fired cartridges with the cartridges recovered in the aforesaid manner under comparison microscope in junxta position as well as composite matching and found that the characteristics marks of firing pin indentation and corresponding ejector marks were tallying with each other. The witness, therefore, arrived at the conclusion that the 5.56mm INSAS Rifle bears the signs of discharge and was found in the normal working condition. He further opined that the fired cartridges had been fired through the aforesaid rifle. The deformed bullet

also could have been fired through the aforesaid rifle. This witness proved his report, Ext.'X' also.

19. With the aforesaid evidence, the prosecution has succeeded in proving beyond all reasonable doubts that the rifle which was handed over to the applicant on 14th July, 1999 at about 1800 hours for performing the guard duty at Ingate and was recovered from his possession by PW20, Captain Bharat Singh was the rifle wherefrom the spent cartridges recovered from the place of occurrence and the deformed bullet recovered from the dead body of the deceased had been fired.

20. There does not appear to be any reason to show that any other person had or could have used the aforesaid INSAS Rifle and the cartridges issued to the applicant. He had no doubt proceeded to take his dinner at 9.15 pm by handing over his rifle with its Chamber empty to PW7, Sepoy Lallan Prasad, but even at that time he kept the five cartridges with him and after coming back from the mess, he took the rifle back from PW7, Sepoy Lallan Prasad, at about 9.50 pm. So, there was not a least possibility of the weapon or the cartridges being in the possession of any other person other than the applicant at the time of the incident. Even as we have already observed, the applicant was not on Ingate guard duty at the time of the incident, ie, 22 30 hours. He has also not offered any explanation for his absence from the Ingate duty at that point of time. So, this circumstance further supports the applicant's involvement in committing the murder of the deceased.

21. So far as the contention with regard to the delay in lodging the FIR is concerned, it has no substance. The occurrence took place at about 22 40 hours on 14th July, 1999 and the FIR was lodged at 00 45 hours on 15th July, 1999 after about two hours of the incident. PW28, Praveen Kumar Sharma, has very clearly clarified the time of lodging of FIR even during the cross examination and according to him, the FIR was lodged at 12 45 hours at the midnight of 14/15 July 1999. His statement during cross examination is reproduced below:

The application for the FIR was received by me at 0045 hours on 15 July 1999. However, as per Exhibit FF, the time reflected is 1245 hours on 15 July 1999. By reflecting this time, I meant 1245 hours at midnight of night 14/15 July 1999.

In view of the aforesaid statement of PW 28, Praveen Kumar Sharma, the contention of the learned counsel for the applicant that there was delay in lodging the FIR has no substance. More so, the prosecution evidence is not only convincing and trust worthy, but is also free from any doubt and as such if there was some delay, the same cannot be taken as a ground to discard the fully proved case.

22. In our considered view, the aforesaid facts and circumstances of the case proved beyond all reasonable doubts by the prosecution, lead to one and only one conclusion that it was the applicant who killed the deceased with the rifle and the cartridges issued to him for performing the guard duty at Ingate of 275 Recovery Company in the night of 14/15 July 1999 in the aforesaid manner. The evidence on record does not lead to any other conclusion, whatsoever. In this view of the matter, the finding of guilt recorded by the GCM being based on legal evidence on record, is perfectly correct and requires no interference.

23. So far as the submission of the learned counsel for the applicant that only the offence under Section 304 of the Ranbir Penal Code was made out is concerned, it has no substance. There is no evidence of any sudden quarrel or scuffle. Apart from this, it may be mentioned that the story of scuffle appears to be baseless due to the simple reason that PW29, Dr.B.R.Sharma, has very clearly stated that the fire was made from a distant range, so there was no question of any sudden provocation as submitted by the learned counsel for the applicant. The learned counsel for the applicant, in order to substantiate the plea of scuffle referred to the opening address of the prosecution counsel, (Ext.L), the statement of PW24, Surender Khedar and the FIR. In our view, the address of the prosecutor cannot be taken as a legal evidence or circumstance to support the scuffle. The statement of PW24, Surender Khedar is of hearing of quarrel only. He had not stated anything with regard to scuffle. If some altercation or quarrel took place between the applicant and the deceased, the same could not be made the basis to hold that there was a scuffle. More so, according to the statement of PW8, Sepoy Driver/MT Mahadev, the mess commander, the applicant had been making enquiry even prior to the incident as to why MT people used to take dinner late in the night on meat issue days, which support the story that the applicant was aggrieved by the

conduct of MT people in taking the dinner late on meat issue days. So, the applicant, in such circumstances, had no occasion to be provoked all of a sudden. All the five cartridges had been used for killing the deceased, though he was hit by only three. If the applicant stood provoked due to the conduct of the deceased, even then, he was not justified in making 05 rounds of firing on the deceased, merely on account of a sudden quarrel. The circumstances under which the death of the deceased was caused was intentional and there was no evidence at all of any sudden and grave provocation. We are, therefore, of the view that according to the facts and circumstances of the case, the charge under Section 302 of the Ranbir Penal Code was proved beyond all reasonable doubts against the applicant and the submission of the learned counsel for the applicant that only the charge under Section 304 was made out has no substance.

24. Learned counsel for the applicant lastly tried to submit that there was no evidence to prove as to who recovered the five fired cases from the place of occurrence in the night of occurrence. In this connection, PW4, Subedar V.Janki Raman, has clarified the position that he was handed over the four fired cases by Havildar Ram Narain when he reached the place of occurrence in the night itself. More so, this circumstance is not very material in view of the fact that the evidence of the ballistic expert, clearly shows that the fired cases were fired from the rifle issued to the applicant and as such, non examination of the person who recovered the four fired cases from the place of occurrence is not material at all, especially when the fifth fired cases was recovered next morning from the place of occurrence as proved by the direct evidence of PW4, Sub. V.Janki Raman.

25. It is also significant to observe that the applicant had been represented by a lawyer during the GCM and had adequate opportunity and proper legal assistance to defend himself. He was not only provided adequate opportunity of adducing defence evidence but was properly heard by the GCM, therefore, no prejudice whatsoever was caused to the applicant's right of defence and as such we hold that the GCM proceedings was held judiciously, impartially and fairly, in accordance with law, and the conclusion of the GCM was perfectly correct, which requires no interference. Even on the point of sentence, the TA has no merit. In view of the fact that the applicant was found guilty of the charge under section 302

of the Ranbir Penal Code, no penalty less than life imprisonment could be inflicted against him and as such we do not see any reason to interfere with the sentence awarded by the GCM.

26. In view of the aforesaid, the Transferred Application has no merit and is accordingly dismissed.

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