

Devendra Singh Rajput Vs. Gp. Capt. S.K. Sharma and Others

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Court : Armed forces Tribunal AFT Regional Bench Kolkata

Decided On : Mar-10-2011

Judge : Sadhan Kumar Gupta, Member (Judicial) & the Honourable Justice Lt. Gen. K.P.D. Samanta, Member (Administrative)

Appeal No. : Application No: OA “ 33 of 2011

Appellant : Devendra Singh Rajput

Respondent : Gp. Capt. S.K. Sharma and Others

Judgement :

Sadhan Kumar Gupta, Member (Judicial)

1. This Original Application/Appeal has been preferred by the appellant/accused against the order of conviction as passed in the GCM.

2. On the basis of the allegation that the accused/appellant caused murder of JWO, D.C.Mishra, he was charged Under Section 71 of the Air Force Act for committing a civil offence, that is to say, murder punishable u/s 302 of the Indian Penal Code and for the offence u/s 71 of the Armed Forces Act for committing a civil offence, that is to say, using arms for unlawful purpose punishable u/s 27 of the Arms Act, 1959. On the basis of those charges, one GCM was convened and witnesses were examined from both the sides and after hearing the parties, the GCM was pleased to hold the accused/appellant guilty for both the charges and sentenced him :

- a) To suffer Civil imprisonment for life;
- b) To be dismissed from the service; and
- c) To be reduced to the ranks.

3. As the accused/appellant is aggrieved by the said decision of the GCM, so he has preferred this appeal before this Tribunal.

4. It will be better, first of all, to mention the allegations on the basis of which the GCM was commenced against the accused/appellant. It is the case of the prosecution that the appellant was detailed for Guard Duty from 18.00 hrs of 15th September, 2008 to 07.00 hrs of 16th September, 2008. The appellant failed to report for guard duty at the time fixed and for that purpose the JWO, Gogaon, the Orderly Officer, reminded him about the guard duty. Although at the outset, the appellant showed ignorance about the guard duty, however, he requested JWO, Gogaon to seek re-allotment of his duty from JWO D.C.Mishra, (hereinafter referred to as the deceased) on the ground that he was looking after his wife, who had undergone an abortion in the morning. As the deceased refused to accept the request of the appellant, so JWO Gogaon informed him to report for his duty. The appellant was compelled to report for guard duty at about 19.30 hrs of 15.9.2008. He was issued with Sten MC No. SS07157, Butt No. 131 for performing the guard duty. He was also issued with 20 live rounds of 9 mm ammunitions along with Pouch and Chain. The appellant performed his guard duty from 20.20 hrs to 22.20 hrs and again from 03.00 hrs to 05.00 hrs on 16.9.2009 and went to sleep thereafter. He got up at 06.05 hrs, picked up his loaded Sten MC and came to the Tech Flt. Hanger. There he met MWO, P.C.Ghose and asked him as to whether he allotted the guard duty to him. As Mr. Ghose denied the allegation, so the appellant was of the impression that Sergeant Sharma, JWO must have put him to duty in spite of his difficulties. He then checked the shift of JWO Mishra and was looking for him. It is the case of the prosecution that thereafter when the accused/appellant met the deceased, then they had some conversations and all on a sudden, the accused/appellant shot directly at the deceased in point blank range over the issue of allotment of duty on that day when his wife was seriously ill due to abortion. On the basis of this allegation, a court of enquiry was held and

thereafter summary of evidence was recorded. Thereafter, following charges were framed against the accused/appellant:-

First Charge Committing a civil offence, that is to say, murder, punishable under Section 302 of the Indian Penal Code, 1860, -

Section 71 Air Force Act, 1950

In that he,

at 5 Wing, Air Force on 16 Sep. 2008, by causing death of 637030-K JWO D C Mishra, RDO/Flt. As a bullet fired from the service Sten MC Sl. No. SS07157, Butt No. 131, committed murder.

Second Charge Section 71 Air Force Act,

Committing a Civil offence, that is to say using arms for an unlawful purpose, punishable under Section 27 of the Arms Act, 1959

In that he,

At 5 Wing, Air Force on 16 Sep. 2008, fired one bullet from service Stn. MC, Serial No. SS 7157, But No. 131 at 637030-K JWO D.C.Mishra RDO/Flt., which resulted in his death on the same day.

5. The court martial proceeding was conducted on the basis of those charges, which were read over and explained to the accused/appellant during such proceeding. Before the Court Martial, the prosecution, in order to prove the charges, examined altogether 31 witnesses. It will be better for us to have a glance in respect of the statements, as made by the witnesses, before the GCM.

PW-1 is MWO P.C.Ghose. He was present very near to the place of occurrence when the incident took place. He stated that he did not hear any conversation between the accused and the deceased. He further stated that he was aware that the appellant was in a depressed condition.

PW-2 is Dr. Dipak Kr. Mirdha. He conducted the post-mortem examination on the dead body of the deceased. According to this witness, he found two injuries, one in the front side and another on the back side of the dead body. He was of the clear opinion that those injuries were caused due to gun shot. In his evidence, he has stated that the entry of the wound was from the back side and the exist wound is on the front abdomen.

PW-3 is the WO S.P.Dixit. He was also present near the place of occurrence when the incident took place. According to him, he heard that the deceased in a loud voice asked Kya hai.

PW-4 is the Cpl. L.A.Singh. He also came to the spot after the incident.

PW-5, Flt. Sergeant J. Kumar. According to this witness he was aware that the wife of the accused had undergone abortion on that date i.e. 15.9.08 and he noticed that the appellant at that time was uncomfortable.

PW-6 is Sgt. S. Bose. This witness also stated that the accused told him about the illness of his wife and the alleged hostile atmosphere against him in the Section.

PW-7 is Sjt. A.K.Chauhan. He was also aware of the condition of the wife of the accused and that the accused was in a depressed condition. This witness claimed that he went to the spot immediately after the incident with the revolver in his hand and at that time the accused surrendered before him and handed over the gun which was in his hand to this

PW. PW-8 is the MWO (HFO) M.M.Rout. He also came after the incident.

PW-9 is Cpl. Mukesh Yadav. He reached the PO when the deceased was being removed to AF Hospital.

PW-10 is the CPI. Mukesh Yadav. He narrated the position of the dead body which was lying on the floor.

PW-11 is Cpl. V.K.Singh. This witness narrated the frustrated mental condition of the accused as was informed to him by the accused.

PW-12 is the Sgt. Rati Ram. He was posted in the AF Hospital and attended the deceased.

PW-13 is Wing Commodore PSIS Paul. He was the medical officer attached to the AF Hospital. According to this witness, the bullet entered into the abdomen of the deceased from the front side and it came out from the back side of the body.

PW-14 is Sgt. Rajendra Kumar. He was posted at the material time in the AF Hospital. He signed in the seizure list.

PW-15 is Cpl. R.K.Biswal. He is a formal witness, who was detailed to take the body of the deceased.

PW-16 is the Sgt. P.K.Verma. He took the photographs of the place of occurrence. According to this witness, he took the deceased to the AF Hospital. He has claimed that the appellant had altercations with the deceased on previous occasion. He has further stated that the deceased used to tell the accused to take more responsibility.

PW-18 is the Sgt. P.K.Tiwari. He reached the PO after the incident. He also narrated that the accused was insulted.

PW-19 is Sgt. Mahesh Kumar. In his cross examination he admitted that he did not maintain good relation with the accused. PW-20 is JWO D.C.Chaturvedi. He was a formal witness.

PW-21 is JWO H.A.Gagaon. According to this witness the accused on previous occasion narrated his family problems and was in a depressed condition.

PW-22 is SI Biswaranjan Banerjee. He is the Sub-Inspector of the West Bengal Police and was attached with the concerned police station at the material time. Initially when the FIR was lodged he held the inquest and also took up initial investigation.

PW-23 is Constable Anil Baran Das. He took step for sending the dead body for post mortem examination.

PW-24 is JWO R.S.Malik. This witness has stated in his evidence that on that date he was posted at Armoury and he handed over the Sten MC and live cartridges etc. to the accused.

PW-25 is Cpl. Rambabu. He also confirmed that the Sten MC was handed over to the accused.

PW-26 is JWO Satpal. He confirmed that the guard order was issued by the competent authority.

PW-27, 28 and 29 being Sgt. S.K.Sharma, Cpl. G.G.Patro and Sgt. G.N.Sadh are all formal witnesses and their statements are not very relevant for the purpose of this hearing.

PW-30 is Mr. A.Sengupta. At the relevant time he was posted as Sr. Scientific Officer in the Ballistic Division of FSL, Govt. of West Bengal. According to this witness the bullet entered into the body of the deceased from the front side and went off from the rear side. He has categorically mentioned that on his examination of the Sten Gun as well as the bullet, he was of the opinion that the said bullet was actually fired from the said Sten Gun which was recovered from the possession of the accused. He has clearly denied that the nature of the injury as sustained by the deceased due to the gun shot, could not be caused by way of ricocheting, as claimed.

PW-31 is Wing Commander N.K.Kohli. He recorded the summary of evidence so far this matter is concerned.

6. We have considered the oral evidence as adduced in connection with this case by the PWs as indicated above.

7. In connection with this matter, we are getting three expert witnesses, viz. PW-2, Dr. Midha, who conducted the post mortem examination on the body of the deceased, PW-13, Wing Commodore Paul, Medical Officer of Air Force Hospital and PW-30 Mr. A. Sengupta, Sr. Scientific Officer.

8. Id. advocate for the accused argued much on the evidence of PW-2 where he opined that the bullet entered from back side of the deceased and went out from the front side of the body, while PW-13 opined that the bullet entered from the front side and it went out from the back side of the body. By showing this contradiction, the Id. advocate tried to impress upon this Court that the version of the PW-13 should not be believed and that the statement of PW-2, being the post mortem doctor, should be given credit. By pointing out this discrepancy, he argued that if the version of the PW 2 is accepted, then it will establish the defence version that the deceased was hit by a bullet being ricocheted from a hard substance and entered into his body and thereby causing his death. However, we find from the evidence of the PW-13, who is also a medical officer and who examined the deceased immediately after his death, that he gave statement to the effect that the bullet entered from his front side and went off the body through the back side. As a medical officer, he had the first hand opportunity to look into the position of the wound on the body of the deceased. The view, as expressed by the PW-13 in this respect, finds support from the statement, as made by the PW 30, Mr. A. Sengupta, the Sr. Scientific Officer. He, in his evidence has categorically observed that the nature of the injury, as was found on the body of the deceased, suggests that the bullet entered from the front side and it went off the body through the back side. In support of his contention, he has given scientific reasons and in our opinion, there is nothing to disbelieve such statement of the PW-13 and PW-30. It is not known as to why the PW-2, the post mortem doctor gave a different opinion. However, so far as the present case is concerned, the alleged discrepancy, if any, has little bearing or significance. The fact remains that there was bullet injury on the body of the deceased and it is also the fact that the accused, when apprehended, had the fire-arm in his hand along with bullets. The scientific officer stated in his evidence that on examination of the gun as well as the bullet, by which the deceased was hit, he found that the said gun and the bullet matched together and on examination, he was of definite opinion that the said bullet was fired from the gun, which was seized from the accused. In fact, the accused also did not deny that actually he opened fire from the said gun. However, the accused had put forward a claim to the effect that he opened fire on another direction in order to draw the attention of others in respect of alleged

injustice that was caused to him and he was not aware as to how the said bullet injured the deceased. In addition to that, he tried to establish that the bullet might have ricocheted from a hard substance and hit the body of the deceased. However, this theory has been totally discarded by the scientific expert, who in his opinion clearly stated that the injury, as sustained by the deceased, could not be caused, if a bullet is ricocheted from a hard substance. We find nothing to disbelieve the statement of the scientific expert. Under such circumstances, we are unable to accept the defence contention that he did not directly hit the deceased with the bullet but it ricocheted after hitting a hard substance and caused injury upon the said deceased causing his death. This argument, as advanced by the Id. Advocate for the accused, is, therefore, rejected.

9. Id. Advocate for the accused further argued that there was no eye witness in respect of the commission of the offence. However, it appears from the statements made by the PW 1, PW-3 and PW 7 that immediately after hearing the sound of gun fire, they rushed to the site and found that the deceased was lying on the ground and the accused was standing with the gun in his hand. In connection with this case, the accused himself preferred to give evidence. If we look into the evidence as given by the accused, then it will appear that he did not deny that all those witnesses came to the P.O. immediately after the incident. There is nothing on record to show that the accused had enmity with those witnesses and for that reason, they deposed falsely against him. On the contrary, the accused himself corroborated the statements as made by those witnesses and admitted that he fired at a different angle and he was not aware as to how and in which manner the deceased sustained bullet injury. This statement of the accused clearly shows that he was in person present at the P.O. with gun in his hand and the deceased was lying on the ground. This fact coupled with the evidence of the PW 30, Mr. Sengupta, who stated in his evidence that the gun and the bullet, which were seized, clearly established that the said bullet was fired from the gun of the accused. As such, this fact which was supported by the scientific expert together with corroboration of those PWs, who reached the spot immediately after occurrence along with the statement, as made by the accused before the court martial, clearly established the circumstances leading to the fact that the accused actually fired from his gun causing death of the deceased. It may be pointed out

here that we have already discarded the theory of the deceased being injured by a bullet, which was ricocheted from a hard substance after it was fired by the accused. As such, the chain of circumstances, as discussed above, clearly point out to the commission of the offence by the accused and none else.

10. Ld. Advocate for the accused tried to establish the fact that injustice was done to the accused in giving him the night duty ignoring the fact that his wife had undergone abortion on that date and was in a precarious condition. However, no such reliable evidence has been adduced in support of such contention. Only the accused relied upon his own statement and stray evidences of the witnesses, as made by them, admitting that the accused informed them about the condition of his wife. However, that is not sufficient to establish this fact. Be that as it may, even if that condition existed at the material time, that does not mean that the same will give licence to the accused to kill a person. As such, we find no relevancy in this claim so far as this hearing is concerned.

11. So, from the discussion made above, it is absolutely clear that it is the accused, who, opened fire from his gun causing bullet injury on the body of the deceased which ultimately resulted in his death. To our mind, the question as to whether the bullet entered from the front side or from the back side of the body of the deceased is not of much significance. The fact remains that such injury was caused from the gun shot fired by the accused from his gun. We have already pointed out that as per evidence of the Scientific Officer, the question of injury being caused by way of ricochetting has been ruled out. This Scientific Officer being PW-30 was cross-examined by the accused and we find that the statement made by him in his chief remained unshaken even after cross examination. This witness was considered to be an expert as per provision of the Indian Evidence Act. So, his opinion in this respect can safely be relied upon and we are of the opinion that the GCM has done nothing wrong in accepting the opinion as given by this expert. So, the fact remains that it has been established beyond doubt that it is the accused, who actually fired at the deceased causing injury on his body which ultimately resulted in his death. Under such circumstances, in our considered opinion, the decision of the GCM in holding the accused guilty for the offence of murder and also for using arms for an unlawful purpose, should not be interfered

with.

12. Mr. Ganguly, Id. Advocate for the appellant/accused tried his best to impress upon this Court that the action of the accused/appellant cannot be said to be intentional and the GCM was duty bound to take into consideration the mental condition of the accused/appellant just prior to the incident. In support of his contention, Mr. Ganguly pointed out to the statement of the accused as well as to the statements, as made by some of the witnesses, in order to establish that due to illness of the wife of the appellant, he was in a disturbed mental condition and when his request for changing the guard duty was not adhered to, he could not control himself and out of anger, he opened fire which unfortunately resulted in the death of the accused. In this respect, we have already pointed out that besides the oral statement, there is nothing on record to establish the physical condition of the wife of the appellant, as alleged. Mr. Ganguly further pointed out that the accused had no intention in his mind to kill the deceased and he opened fire with the sole intention to draw attention of his colleagues and senior officers regarding the alleged injustice that was done to him. However, we find no corroboration of this statement. We have already pointed out that as per opinion of the Scientific Officer, the accused fired at the deceased at a point blank range and the contention of the bullet hitting the deceased on the back side after the alleged ricocheting, has no leg to stand upon. In this respect, Mr. Mukherjee, Id. Advocate for the respondents drew our attention to the evidence of the accused himself as well as of some other witnesses wherefrom it appears that the accused with the gun in his hand searched for the deceased and at that time he expressed his intention that he was going to kill the deceased, who was responsible for the alleged guard duty allotted to him on that date ignoring the difficulties of the accused/appellant in his personal life. It is in the evidence that the accused/appellant uttered that the deceased must die for this and for that reason he went to that spot, although his duty hour was over, to search for the deceased and ultimately killed him. The behaviour of the accused/ appellant in this respect just prior to the incident necessarily indicates his intention to teach a lesson to the deceased.

13. Mr. Ganguly, Id. Advocate for the accused/appellant argued that considering the mental distressed condition with which the accused/appellant was suffering at the material time, he should not have been convicted for the offence u/s 302 of Indian Penal Code and at best the authority concerned could have convicted him for the offence u/s 304-Part II of IPC.

14. It is the settled position of law that all murders are culpable homicides but not vice-versa. In the decision reported in 2009(3) SCC (Cri) 1169 (Daya Nand vs- State of Haryana), the Honble Apex Court quoted the Virsa Singhs case as reported in AIR 1958 SC 465, to the effect that in order to establish that there is a case for Sec. 304, Part II of IPC, the court must take into consideration some relevant factors. In Para 16 of the said judgement of Virsa Singhs case, it has been observed

The question is not whether the prisoner intended to inflict a serious injury or a trivial one but whether he intended to inflict the injury that is proved to be present. If he can show that he did not, or if the totality of the circumstances justify such an inference, then, of course, the intent that that the section requires is not proved. But if there is nothing beyond the injury and the fact that the appellant inflicted it, the only possible inference is that he intended to inflict it. Whether he knew of its seriousness or intended serious consequences, is neither here nor there. The question, so far as the intention is concerned, is not whether he intended to kill, or to inflict an injury of a particular degree of seriousness, but whether he intended to inflict the injury in question; and once the existence of the injury is proved the intention to cause it will be presumed unless the evidence or the circumstances warrant an opposite conclusion.

15. On the basis of these guidelines, the evidence as available in connection with this case should be taken into consideration.

16. We have considered the relevant provisions as mentioned in Sec. 304, Part-II of IPC which runs as follows:-

Section 304 : Whoever commits culpable homicide not amounting to murder, shall be punished with imprisonment for life, or imprisonment of either description for a

term which may extend to ten years, and shall also be liable to fine, if the act by which the death is caused is done with the intention of causing death, or causing such bodily injury as is likely to cause death;

Or with imprisonment of either description for a term which may extend to ten years, or with fine, or with both, if the act is done with the knowledge that it is likely to cause death, but without any intention to cause death, or to cause such bodily injury as is likely to cause death.

17. In Part II of this Section, it has been clearly mentioned that it must be established that the accused had no intention to cause the death (emphasis supplied) although it was within his knowledge that it may likely to cause death. So the question of intention is very relevant for coming to a decision as to whether a person should be held guilty for the offence u/s 304-Part II, IPC. We have already pointed out that the evidence as adduced in connection with this GCM clearly shows that the accused had the intention to kill the deceased. It is the established position of law that in order to get the benefit of Sec. 304, Part II, IPC, all those factors, as discussed above, should be taken into consideration for assessing the nature of the guilt. Mr. Ganguly has pointed out that the accused was provoked by the action of the deceased and as such as he was unable to control himself, so accidentally the bullet was fired resulting to the death of the deceased. No doubt, provocation is an important factor in order to come to a conclusion as to whether the accused is entitled to get the benefit of Sec. 304, Part II of the Indian Penal Code. However, for this purpose, the accused must establish that due to grave provocation, as given by the deceased, he could not control his anger and resultantly caused unintentional death of the deceased. So far as this case is concerned, we find from the evidence on record that the accused/appellant tried to establish that knowing fully well about the family problem of the accused/appellant, the deceased intentionally put him on guard duty and when he reported for the said duty, he taunted him by saying that ultimately he had to perform his duty. This, according to the appellant/accused, was a provocation. With respect to the submission, as made by the Id. Advocate for the accused/appellant, we must say that we are unable to accept this contention. This alleged incident cannot, under any stretch of imagination, be

considered to be provocation, far less to speak of grave provocation. If the accused/appellant was aggrieved by the decision of the deceased in giving him the guard duty on that date, then he could have taken other recourse instead of taking vital decision of killing the deceased. As such, we are unable to agree with this argument that there was grave provocation to the accused/appellant which prompted him to take such extreme action.

18. Mr. Ganguly, the Id. Advocate for the appellant relied upon the decision of the Honble Orissa High Court reported in 2007(3) E.Cr.N, 1407 (State of Orissa vs- Ratnakar Pradhan and 3 others) and also the decision of the Honble Madras High Court, reported in 1997(3) Crimes 146 (Venkatesan vs- State). Mr. Ganguly, particularly, laid much stress on the decision reported in 1997(3) Crimes page 146 (supra) wherein the Honble Madras High Court held that where the words and gestures uttered by the deceased gave rise to grave and sudden provocation, then the offence would fall under Sec. 304, Part II of IPC. There cannot be any two opinion in respect of the ratio as decided in the said decision, However, in order to get the benefit of the decision, the appellant/accused must prove that the words and gestures of the deceased were of grave provocation (emphasis supplied) compelling the appellant to open fire at the deceased. We have pointed out that the appellant has failed to establish that the words of the deceased were nothing but grave and sudden provocation in nature. As such, in our considered view, this decision is not at all helpful for the purpose of this hearing.

19. It is the settled position of law that as per Sec. 300 IPC culpable homicide is murder, if the act by which the death is caused is done with the intention of causing the death. So, it appears that the culpable homicide is genus and murder its species. Further, all murders are culpable homicides but not vice-versa. Exceptions have been provided to Sec. 300 of IPC, which stipulates those circumstances in which culpable homicide would not amount to murder and would be punishable u/s 304. When there is both intention and knowledge in committing an offence, the same will come within the purview of Sec. 304-Part I of the IPC and where it is only a case of knowledge but no intention to cause murder or bodily injury, it may be a case u/s 304, Part II of the IPC. So far as this case is concerned, it has been established that the accused intended to cause death of

the deceased and as such he cannot be given the benefit of Sec. 304, Part II, IPC. In this respect, we can mention the exception (1) to Sec. 300 IPC wherein it has been laid down:-

Exception 1. - Culpable homicide is not murder if the offender, whilst deprived of the power of self-control by grave and sudden provocation, causes the death of the person who gave the provocation or causes the death of any other person by mistake or accident.

We have already pointed out that the accused/appellant has failed to establish that there was grave and sudden provocation prompting him to take such fatal action. However, if we look into the said exception (1) to Sec. 300, IPC then it will appear that even if there is grave and sudden provocation, that will not ipso facto results in awarding the benefit of that exception. Such exception is subject to the provisos mentioned therein. In the second proviso it has been laid down

Secondly,-- That the provocation is not given by anything done in obedience to the law, or by a public servant in the lawful exercise of the powers of such public servant.

Here, admittedly the deceased passed a direction upon the appellant to perform guard duty on that particular day and as per law he was authorized to pass such direction, As such, it cannot be said under any stretch of imagination that by way of directing the accused/appellant to perform the guard duty on that day, the deceased gave provocation not to speak of grave and sudden provocation, as alleged by the accused/appellant. Under such circumstances, we are of the opinion that the accused is not entitled to get the benefit of exception(1), as provided u/s 300 IPC.

20. Therefore, from our above discussion, we are of the opinion that the prosecution has been able to prove beyond any doubt that it was the accused who actually caused the death of the deceased intentionally by way of firing from his fire arm. The evidence as adduced in this respect on behalf of the prosecution together with the evidence as made by the accused himself before the GCM, undoubtedly raises finger to the accused/appellant that actually he committed the

offence. There is no room for coming to a different conclusion in this respect.

21. Ld. Advocate for the appellant/accused argued by way of referring to the statement as made by the accused/appellant before the GCM, in order to point out to the mental condition of the accuse/appellant at the relevant time. He further pointed out that the statement shows that the appellant is a deeply religious and sentimental man and could not control his anger on that particular moment. We are not impressed with this argument. The question whether the accused is a religious man or not, is not at all relevant for the purpose of this hearing. Even if he is a religious man, then he should behave like a religious man and not like a beast, who cannot control its anger and will not hesitate to cause death or injury to others. Religion does not teach that a person should act like a fanatic and will not tolerate others even if he is not agreeable with another persons action. The Id. Advocate for the accused/appellant submitted that a grave injustice was done to him by allotting such guard duty although his family was in a precarious condition. We have already pointed out that no material has been produced to establish this fact. Even if for arguments sake we accept the version of the appellant/accused, that does not support the action as taken by him by way of killing his higher officer. There are several other remedies available to him. But the accused, being a member of the disciplined force with arms in his hand preferred not to take step in that respect and took the law in his own hand, only to teach a lesson to the deceased. This conduct of the accused/appellant, in dealing with his superior, who performed his official duty by allotting guard duty in the name of the accused/appellant, is deplorable and cannot be supported at all. If this attitude is tolerated and lesser punishment is imposed upon the appellant, then it will create a bad precedent in the disciplined force and may encourage others to take similar steps. No doubt, the accused/appellant has his family members, but at the same time, we must not forget about the deceased. He must have his family members, who were in all probability dependent upon him. The family members were deprived of the company and help as well as guidance of the deceased due to the act of the accused/appellant. This aspect should also be taken into consideration while considering the nature of the offence, as committed by the accused/appellant. To our mind, the GCM authority was perfectly justified in imposing the sentence, as passed by it, in respect of the charges framed against

the accused/appellant. During the pendency of this appeal, the appellate authority also considered the appeal as preferred by the accused/ appellant and did not prefer to interfere with the finding of the court martial authority. We do not find any illegality in this respect so far as imposition of punishment is concerned and as such we are of the opinion that this Tribunal should not interfere with the finding of the GCM which was subsequently confirmed by the appellate authority. The appeal being devoid of merit, should, in our opinion, be rejected.

22. In the result, the original application is dismissed on contest but without cost.

23. Let a plain copy of this order be handed over to the Id. Advocates for both the sides.

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