

Wg. Cdr. M.S. Mander (15034-h) F(P) Presently Lodged in District Jail, Chandigarh Through His Father, Onkar Singh Versus Union of India Through Secretary Ministry of Defence, New Delhi and Others

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Court : Armed forces Tribunal AFT Principal Bench New Delhi

Decided On : May-14-2010

Judge : S.S KULSHRESHTHA, MEMBER & HONOURABLE MR. JUSTICE LT. GEN. S.S DHILLON, MEMBER

Appeal No. : T.A NO. 14 OF 2010 & (WRIT PETITION (C) NO. 5158 OF 1999)

Judgement :

1. Five persons, including the appellant, who was the first accused, were tried by the General Court Martial for offences punishable under Sections 302, 325 and 342 read with Section 149 of the Indian Penal Code. The first accused (Wg. Cdr. M.S Mander) has filed the present petition challenging GCM proceedings, whereby he was found guilty of Charge Nos. 3, 4 and 5 and the offence under Section 304 Part II read with Section 149 of the Indian Penal Code and sentenced to undergo rigorous imprisonment for five years and to be cashiered. On confirmation, the Chief of Air Staff remitted the five years rigorous imprisonment to two years rigorous imprisonment and confirmed the sentence of cashiering.

2. The facts of the case as set out by the petitioner, in brief, are: On 3.3.1998, Airman (Signalman) Garje misbehaved with the wife of Flt. Lt. Verma, when he had gone to repair the telephone at his residence. Flt. Lt. Verma reported the matter to the petitioner, who in turn, reported it to the Station Commander on phone. The Station Commander directed the petitioner to further inquire into the matter before taking any action. The petitioner asked Flt Lt Verma to arrange the presence of Signalman Garje. When he did not turn up, he was asked to be brought by sending someone personally. On questioning, Signalman Garje denied having done anything and gave an evasive reply in a taunting way. Thereupon, the petitioner ordered him to be kept in the Guard Room for further interrogation. While on way to the Guard Room in the Gypsy of the petitioner, in which three or four officers were also sitting, Signalman Garje jumped off the vehicle and started running on the kacha side. The officers, who were in the vehicle, followed him. While running, Signalman Garje fell into a ditch, his face down to the earth. He was taken to hospital for medical aid, where he died. The petitioner and four other accused persons were tried by the GCM and sentenced. The CAS, while confirming the findings of the GCM, in respect of the first accused (the petitioner), remitted the sentence of rigorous imprisonment from five years to two years and confirmed the punishment of cashiering and in respect of the other accused, remitted the sentence and commuted the punishment of cashiering to forfeiture of two years past service for the purpose of promotion and two years service for the purpose of increased pay and pension and to be severely reprimanded. Against the punishment and sentence awarded to the petitioner, he has come in appeal.

3. Counsel for the petitioner has contended that the accused-appellant felt humiliated for having been wrongly charged for an offence which he never committed and arbitrarily put to trial. He was given strikingly disproportionate and harsh sentence which is indicative of the biased attitude. The case is based on no evidence and the GCM appears to have been swayed by irrelevant considerations. The evidence has not been appreciated correctly by the GCM. It came to the conclusion merely on conjectures and surmises.

4. The petition is resisted by the respondents contending, inter alia, that the accused-appellant was found guilty of four charges for culpable homicide not amounting to murder under Section 304 Part II read with Section 149 IPC in conjunction with Section 71 of the Air Force Act, for wrongly confining the deceased under Section 342 IPC read with Section 71 of the Air Force Act, for behaving in a manner unbecoming the position and the character of an officer under Section 45 of the Air Force Act and for an act prejudicial to good order and air force discipline by adopting improper method of investigation of alleged offence by deceased Garje. The accused appellant was convicted by the GCM after following due process of law. He was duly represented by counsel and neither had he objected to being tried by the GCM nor objected to any of the members at any stage, in spite of specific question put to him by the GCM to this effect. With regard to the misbehaviour of deceased Garje towards the wife of Ft. Lt. Verma, the GCM had gone in depth to ascertain the allegations, but no substantial evidence was found. The petitioner was found guilty for adopting improper method of investigation for an offence alleged to have been committed by deceased Garje. The evidence on record suggested that some of the accused had picked up the deceased from his billet, taken him to the squadron Air Crew Rest Room (ACRR) and closed the ACRR shutters after he was taken inside. After some time, the deceased was seen running out of the ACRR crying bachao, bachao. While the remaining accused persons were chasing the deceased, the accused-appellant was found positioning his vehicle at a place where the deceased was seen running. After he was caught, the deceased was put in the vehicle driven by the accused-appellant and was taken away. Later on, the appellant-accused brought the deceased in an unconscious state to the Station Sick Quarters. When he was medically examined, he was found to be in coma, suffering from severe head injury and multiple superficial injuries, including diffused swelling over scrotal sac. Though the deceased was operated upon on the same night, he succumbed to his injuries the next day. The sequence of events would itself show that the deceased was lifted by the accused-appellant and other accused. He was given fatal blows; resultantly he succumbed to his injuries. The materials and evidence on record substantiate the culpability of the accused-appellant. Even the inculpatory circumstances appearing against the accused-appellant also show his involvement in the crime.

5. PWs 1 to 35 were examined on the side of the prosecution and DWs 1 to 8 were examined on the side of defence.

6. PW 1 Cpl. Ajith Kumar, PW 2 Cpl. Varghese, PW 22 LAC. Sharma, PW 25 LAC Narendra, PW 26 AC Sajish and PW 28 Cpl. Choudhary have shared the same signal billet and heard Ft. Lt. Verma and Ft. Offr. Srivastava shouting at the deceased. They saw the accused-appellant sitting in the gypsy at the steering wheel. They deposed to have seen the deceased being taken away by them in the gypsy. It is an undisputed fact that the deceased was taken by the accused persons from his barrack for the purpose of interrogation, as is clear from the defence version.

7. PW 3 is Sqn. Ldr. C.S Patankar, to whom Ft. Lt. Verma had complained about the misconduct of the deceased towards his wife. Though there is a difference with regard to the date of the complaint, PW 3 has stated that on 6.3.1998 Ft. Lt. Verma rang him up and told him that the deceased had misbehaved with his wife. When he was asked whether it was a case of trivial nature, his reply was that it was only a matter of misbehaviour. However, Ft. Lt. Verma requested him to send the deceased to ACRR, which was declined by PW 3. Later, he stated to have been told by Sqn. Ldr. Arvind Sharma on telephone that the deceased was brought to the Station Sick Quarters by the accused persons with serious head injuries. He is not an eye witness to the incident.

8. PW 4 MWO MS Majithia was standing outside the desk under the tree facing the rear side of Blast Pen No. 14 when he saw one man in civil dress running from ACRR hut towards the rear side of Pen No.14 and behind him Flg. Offr. Shahab (fourth accused) running and just one or two steps behind him Ft. Lt. Verma (third accused) was following. He heard the fourth accused shouting Pakdo, Pakdo. When LAC Swar tried to catch the deceased, he pushed his hand away. He also saw Ft. Lt. Menon, the second accused, crossing the front side of Pen No.14 by running. PW 4 is an eye witness to the incident, but he has not given any details about the injuries sustained by the deceased.

9. PW 5 JWO YK Sharma, PW 6 Sgt. Singh, PW 7 Cpl. Rajeev Gupta, PW 8 AC Mohsin and PW 9 LAC Swar have given identical statements to the effect of having seen a person in civil dress being chased by Flt. Officer Shahad, Flt. Lt. Verma, Flt. Lt. Menon and the appellant-accused sitting behind the steering wheel of the Gypsy. It is to be noted that there is consistency in the prosecution version that the deceased was being chased by the appellant-accused and the other accused.

10. PW 10 Sgt. Khan has stated that on 6.3.1998, having been posted as In-charge OPS at the Control Tower. When he left the tower at about 1730 hours, after the last landing of the aircraft, he saw a light blue Gypsy parked on parallel taxi track facing towards 23 dumbel. He saw four to five persons surrounding one man in civil dress in front of the Gypsy. The man appeared to him to be wearing white coloured shirt and khaki colour pants. Out of the group, someone was catching his hair and some pulling the shirt. Thereafter, he observed that the man was lying on the ground. He subsequently saw that the man in the centre got up and ran towards the kutchra area. Once the man in civil dress started running, others started chasing him. He observed that four persons were in overalls, in addition to the accused-appellant, who was wearing a deep blue track suit. At one place he saw that the Gypsy bumped a little bit as if it had gone inside a ditch or coming up or going over some sudden high place. Another time he saw that at the left side of the Gypsy all these men had gathered at one place and everybody's hands and legs were moving. What exactly was being done by the hands and the feet were not seen by him. He saw all this from the control tower which was at a height of 20 ft.

11. PW 11 Sgt. Tiwari, a crash crew in CFT on duty from 1330 to 1930 hrs. has stated of having heard the sound ladayi horaha hai, mar peet, he came out and saw four persons were trying to catch a person. By the side, there was a Gypsy also. He has stated that he did not see as to who was in the Gypsy.

12. PW 12 AC Sawant, who had with him a binocular, was at ATC. At about 1730 hours, after the flying was over, he saw one blue coloured Gypsy coming from 05 direction and going towards 23 end on parallel taxi track. The Gypsy stopped 200 -300 metres short of 5 to go marker. 4-5 persons came out from the Gypsy. One person was in civil dress, light coloured shirt and khaki pants, surrounded by others. He saw the five persons hitting the man in civil dress with hands and legs. Then the man in civil dress got up and started running to the kutchra. He was watching this incident through binoculars. The man in civvies was running and behind him, four persons were chasing him. One of them went back to the Gypsy and started following in the Gypsy. Then he saw some movement like stamping, but could not see exactly as to what was happening. It was like stamping. Then he saw the man in civil dress being carried by the four persons, two by catching his legs and two by catching hands, and loaded him in the rear side of the Gypsy. The Gypsy went back to parallel taxi track and moved towards the traffic barrier to MOF side. The last seen position of Gypsy and the running man gave him the impression that the Gypsy had hit him.

13. PW 13 Flg. Offr M. Vijaykumar, who was at the ATC Tower, has stated that at about 1730 hrs. on 6.3.1998, Sgt. Khan told him about a Gypsy parked on parallel taxi track. After some time, he saw a blue coloured Gypsy, appeared to be soft top, which he had seen earlier used by the appellant-accused. One person appeared to be dressed in plain white coloured shirt and khaki pants was surrounded by four to five persons and was resisting being caught. He saw one person getting up from the parallel taxi track and trying to run away from the spot. While he was doing it, others were trying to catch him. There appeared to be a scuffle between that man in shirt and the others. Though the incident took place at a distance of about 350 yards, he claimed to have seen the incident with the help of binoculars. But it is not clear as to how he could identify from such a distance even if he had the binocular, more so when PW 12 Sawant is categorical in his statement that there was no other person at that time in the tower.

14. PW 15 Wg. Cdr. E Ranjan Rao (Retd) claimed to have noticed the accused-appellant sitting behind the steering wheel in his Gypsy at the relevant time. Then he saw some people in flying overall and another person who looked like an NCSE walking towards the Gypsy. Thereafter he saw the first accused in his Gypsy entering the DSS dispersal area from the road leading from technical gate side. He was speaking on telephone. From the way he was speaking, he could make out that it was Station Commander on the other

side. After the conversation, when enquired, he was told that some army chap who was with the signal selection had misbehaved with Flt Lt Verma's wife and that they had brought the said army jawan to question him at the ACRR. He further claimed to have been told by the accused-appellant that: while in the process of questioning, the army jawan started acting in an odd fashion, he started shouting things to the effect that aag laga dhunga, jahaz thod dhunga and on pacifying him he calmed down. Again after some time he started behaving in an odd manner. Then they decided to hand him over to the security section and at that moment he again started shouting and started running out of ACRR. The officers who were in ACRR ran behind him, then caught him and decided to take him in the Gypsy to hand him over to the security section. While he was being taken to the security section, somewhere near the place on runway where one enters the SEW section, he jumped out of Gypsy and hit his head on the ground. Then as people got down from the Gypsy and approached him he started running so the officers had to chase him and catch him and subsequently on being caught, he collapsed. Then they took him to the SSQ, but since the head injury was quite grievous he was unconscious and was being evacuated to Hospital.

15. PW 16 Lac. Saini had seen the Gypsy and one person in civil dress was being chased by some persons.

16. PW 17 Sqn. Ldr. GSPN Chowdary claimed to have recorded the complaint regarding the faulty telephone. Telephones 299 and 331 were recorded on AFTR. Telephone 299 was in ATC tower and 331 at FCC. The tapes, after recording is completed, were handed over to the SATCO.

17. PW 18 Cpl Reddy, the duty photographer on the relevant date, has stated that as informed by Sqn. Ldr. Patankar, who was his Section Commander, he went to PBM Mortuary and took photographs of the body of the deceased. PW 19 JWO Shankar Tanti prepared the site plan and took the photograph of the vehicle track and blood marks.

18. PW 20 Sqn. Ldr. Arvind Sharma gave first aid to the deceased being the Duty Medical Officer. He found that the deceased's breathing, when he was brought to him, was abnormal, i.e. noisy and rapid. He had suffered severe head injury. He noticed the following superficial injuries on the body of the deceased:

(a) There was a full thickness laceration or cut of lower lip closer to left angle of mouth. This wound was still bleeding and there was a dried up blood stream on this wound to the left ear.

(b) His chin was showing multiple contusions and abrasions.

(c) There was abrasion on the bridge of the nose.

(d) There was contusion under right eye.

(e) His scalp hair was slightly matted due to dried up blood.

(f) There was no frankly bleeding wound elsewhere on the body.

All other injuries were in the form of abrasions and contusions.

Besides this, he also noticed a large contusion over right collar bone (clavicle) and another contusion on lower part of chest on right side. In this case, since timely surgical intervention was necessary, he recommended the direct transfer of the patient to the PBM Hospital. The injury report was also proved by PW 20.

19. PW 21 Cpl. Krishnan gave statement to the effect that as stated by Flt. Lt. Verma, the deceased was brought in a serious condition and he opened the emergency room. The deceased was lying on the floor of the Gypsy. With the help of the officers, who brought the deceased in the Gypsy, the deceased was removed from the Gypsy and taken to the emergency room. He observed a cut on the nose bridge of the deceased and his lip was cut. Clotted blood was also seen emerging from the left corner of the lip.

20. PW 23 Fg. Offr. VP Singh is a formal witness who brought the movement folder register in respect of the

deceased and Exhibit AH death certificate along with other documents.

21. PW 24 Head Constable Kumbh Singh has stated about the recording of the FIR No. 55/98 dated 9.3.1998 in respect of the incident which happened at AF Stn Nal during March 1998. He also proved the memo taking the shirt of the deceased during the course of investigation.

22. PW 29 Anoop Singh, Inspector, Crime Branch was, at the relevant time, the SHO of Gangashahr Police Station, who investigated the case and recorded the statement of some of the witnesses.

23. PW 30 Cpl. Yadav is Punch witness of the sketch plan. PW 31 JWO RS Tomer has no direct knowledge about the incident. On 6.3.1998, he was away from the station. Later he visited the site along with the civil police. PW 32 Sqn. Ldr. Sandeep Singh referred the injured to PBM Hospital after arranging ambulance.

24. PW 33 Dr. Shiv Rattan Kochar has done autopsy on the body of the deceased and found the following ante-mortem injuries:

1. Stitched wound 24 cm in circumference inverted-U-shaped with 24 stitches inside on right side fronto-parieto-temporal region with diffuse swelling. Scalp was shaved.

2. Abrasion with diffuse-swelling over bridge of nose of size 1.5 cm x cm.

3. Abrasion 2.0 x cm on the right eye just below lower eye lid with clotted blood. TA NO. 14 OF 2010 18

4. Contusion over mucal surface of lower lip with stitched wound 1.5 cm long with three stitches with swelling of upper lip. The contusion was bluish discoloured.

5. Bruise 2.5 cm x 1.0 cm on chin with swelling and tissue staining.

6. Abrasion 1.0 x cm, 3.0 x cm on left clavicular region.

7. Abrasion 1.0 x cm on right clavicular region.

8. Multiple abrasions scratch type linear, in shape, irregularly placed vertically, obliquely and horizontally at site ranging from 10 x 0.1 cm to 1.5 x 0.1 cm over right side of front and lateral aspect of chest abdomen and right thigh with the clotted blood.

9. Multiple abrasions of the description as in injury No.8 on left arm, elbow, forearm and dorsum of hand.

10. Three parallelly placed abrasion () of size 5 cm x 2 mm to 1.5 cm x 2 mm on left flank (lumbar region).

11. Multiple abrasions, scratch type on left knee and tibial shin of size 4.0 x 0.1 cm to 2 x 0.1 cm.

12. Abrasions rough type 4.0 x 1.5 cm as right tibial shin lower 1/3rd and ankle.

13. Multiple abrasions scratch type of dimension and description as in injury No.8 on both thighs anteriorly.

14. Diffuse swelling over scrotal sac. On dissection ante mortem haematoma as dark coloured blood with contusions of covering of both sides of testes. According to PW 33, the injury to the skull and brain was sufficient to cause death in the ordinary course of nature.

25. PW 34 Dr. LN Aggarwal, a Neuro Surgeon, had attended to the deceased on being referred to him from the surgical unit. PW 35 Dr. RK Gahlot has stated that the post-mortem on the body of the deceased was conducted by a board of two doctors, Dr. SK Kochar and Dr. Ashok Parmar. PW 35 did not see the deceased at any time when he was hospitalised for treatment and after death. Based on the documents available on record, he gave statement as a witness.

26. On a careful scrutiny of the entire evidence adduced by the prosecution, it is explicit that there was a

complaint from Flt. Lt. Verma with regard to the misconduct or misbehaviour of the deceased towards his wife and in regard thereto, report was made to Sqn. Ldr. Patankar (PW 3). PW 3 also made it clear that such misconduct on the part of the deceased was brought to his notice on the same day in the morning. However, when Flt. Lt. Verma requested him to send the deceased to him to obtain certain clarifications, he declined. Subsequently the matter appears to have been brought to the notice of the accused appellant, who was, at the relevant time, the Commanding Officer of 37 Sqn. Later, Flt. Lt. Verma asked the deceased to report to him. Since he did not turn up, Flt. Lt. Verma along with Flg. Offr. Srivastava went to the billet of the deceased and forcibly took him in the Gypsy driven by the appellant-accused. Some of the witnesses have seen the deceased being taken away in the Gypsy and chasing him along the road. Some of the witnesses have also seen movement of hands and legs of the accused persons which gave the impression that the deceased was being beaten up. The deceased tried to run away from the clutches of the accused persons and in the scuffle, he fell into a ditch from where he was lifted up. There is no denial by the defence against this part of the evidence adduced by the prosecution witnesses. But they have a different version. According to them, since the deceased misbehaved with the wife of Flt. Lt. Verma, he was questioned. Since his reply was evasive, he was taken from the billet in a Gypsy and while running, he jumped from the Gypsy and started running. He was chased and in the process, he fell into a ditch, thereby he sustained serious injuries, which resulted in his death.

27. It is for the appellant-accused to explain the inculpatory circumstances appearing against him. The need of law to examine the appellant-accused with reference to the incriminating circumstances appearing against him in the prosecution evidence is not for obscuring of a ritual trial, nor is it a mere formality. It enables the Courts to be appraised of what the indicted person has to say against the circumstances against him proved by the prosecution. The answer to this question may be a flat denial or outright repudiation of those circumstances. But, in this case, the appellant-accused preferred to adduce evidence to prove his innocence.

28. DW 1 Cpl. Kumar, who was in charge of No. 2 Airmen Mess, which was in front of SNCOs Mess, has stated that for proper maintenance of the mess, the appellant-accused used to take keen interest. On 6.3.1988 at about 1700 hours, the appellant-accused visited the mess to verify its general conditions. After having interactions with the airmen at the mess, he went towards his Gypsy. At that time, Flt. Lt. Verma and Flg. Offr. Srivastava and another person, who was in civil dress, approached him. The person in civil dress was made to sit at the rear seat of the Gypsy and the appellant-accused went away in the Gypsy.

29. DW 2 Mrs. Navyate Verma, wife of Flt Lt. Verma, made a categorical statement that the deceased was wearing a camouflaged uniform had come to her house to repair the telephone. She took him to the bedroom where the telephone was installed and went back to the kitchen. After some time, since he did not come down, she went upstairs to enquire whether the work was completed or not. There she saw him sitting in the bed doing nothing. When he was asked phone theek ho gaya hai?, he said ha, mem sab, phone theek ho gaya. Then she told him acha, theek hai, you can go now. He then told her mem sab, mujhe pani pila dijiye. She told him to come down and have the water. When she gave him water, he was standing near the dining table. After taking the water, he started speaking irrelevant things. Since his facial expression was not good, she asked him to leave the place. But instead of leaving the place, he was talking irrelevant things to her. Then she thought of going upstairs, but he tapped her on her back. He continued to make demand for one or other thing. Again she asked him to leave the place and she went to the upstairs.

30. DW 3 Flt. Lt. Sandeep Singh has stated that on the date in question, he had to go to Delhi to drop his wife and to deliver a floppy at HQ WAC, IAF as scheduled earlier. He was to leave by Bikaner Mail leaving at 1945 hrs. Therefore, he requested Flg. Offr. Srivastava to drop him at the Railway Station. Flg. Offr. Srivastava, who is the fifth accused, came to his house at about 1715 hrs and enquired as to what time he wanted to leave. DW 3 told him that he would have to leave at about 1800 hrs. Then he left the house after tea. He came back at 1800 hrs. and dropped DW 3 and his wife at the Railway Station.

31. DW 4 Flg. Offr. KJ Mahendra has stated that on 6.3.1998, he had flown. After landing, he taxied the aircraft

back to Pen No.7. After switching off, he went to DSS to inform about the bird hit and then proceeded to ACRR. When he was sitting at the hut outside the ACRR, he met Sqn. Ldr. Subramaniam, who was informed about the bird hit. Sqn. Ldr. Subramaniam asked him to inform Flt. Lt. Menon, who was expected to reach there any time. While there, DW 4 met the appellant-accused who had come in a Gypsy along with Flt. Lt. Verma and one civilian. He was informed about the bird hit. He saw the civilian when he came out of the Gypsy from the rear side of the vehicle. Then DW 4 went to the Orderly room, ACRR. When he came out, he saw the Gypsy driven by appellant-accused moving on the loop taxi track and stopping in front of BP 13. Then he saw three persons, viz. third accused, Flg. Offr. Shahab and one civilian, walking from behind BP 14 towards the Gypsy and the second accused (Flt. Lt. Menon) walking in front of BP 14 on the loop taxi track towards Gypsy. They got inside the Gypsy and moved forward.

32. DW 5 Flg. Offr. V. Malhotra has stated that at the relevant time, he was living in at Officers Mess of AF Stn. Nal. On 6.3.1998, he had flown a sortie. He had gone for a medium level strike sortie, wherein DW 5 was his No.2. Flt. Lt. Menon and DW 5 landed at 1705 hrs after him. His was the last aircraft to land on that day. While he back tracked the aircraft on the runway, Flt. Lt. Menons aircraft followed his. DW 5 had entered the dispersal through F link and switched off the aircraft in BP 18. Flt. Lt. Menon had parked his aircraft in BP 17 and both went back to DSS. Thereafter, DW 5 left for RandSS. On the way, when he crossed BP 20, he saw his COs Gypsy crossing F link. While the Gypsy was turning towards the barrier, a person emerged from the rear of Gypsy, he toppled and fell down. Thereafter the person got up and started running towards kutcha area. He also saw the second accused (Flt. Lt. Menon) coming out from the front left side of the Gypsy, which was stopped. When he gestured to him inquiring as to what had happened, he waved at him with his right hand as if asking DW 5 to continue. DW 5 then turned next to E link.

33. DW 6 Wg. Cdr. P. Korla has stated that after receiving telephonic message about the bird hit, he went to inspect the aircraft. Being one of the members of Court of Inquiry to enquire into the circumstances under which the Signalman died, he had seen the ditch, which was about 2 to 3 ft in depth, with thorny bushes and stones inside. He was led to the spot by Sgt. Khan.

34. DW 7 GP Capt. Joseph Noronha stated that Flt. Lt. Verma was a very quiet and disciplined officer. Professionally Flt. Lt. Verma is said to be an average pilot. He was medically unfit after he met with an accident during his tenure. His behaviour towards his subordinates was normal.

35. DW 8 Capt. MS Kumar is stated to have been told about the incident wherein a person had gone to attend a telephone complaint at Flt. Lt. Vermas residence and misbehaved with his wife. He was also told about the subsequent events, including the death of the civilian.

36. The appellant-accused and the other accused gave their unsworn statement explaining the circumstances under which the deceased was taken for questioning with regard to the alleged misbehaviour. According to them, the deceased was taken in the Gypsy to enquire about the incident. But when he jumped from the moving Gypsy and started running, the accused persons chased and ultimately the deceased fell into the ditch which resulted in his death.

37. In order to explain the circumstances under which the deceased sustained the injuries, much thrust has been made that DW 5 had seen the deceased jumping down from the Gypsy. There was no cross examination. Even the nature of injuries is a decisive factor as to whether the resultant death was accidental or homicidal. The deceased sustained as many as 14 ante-mortem injuries, as is clear from the post-mortem report. Out of them, other than Injury No.1, which is at the temple, there were abrasions, contusions, bruises and swelling, all at the frontal side of the body. Accidental injuries are generally seen at the exposed parts of the body and mostly on the same side. The injuries sustained by the deceased at the temple can be either homicidal or accidental. While ascertaining whether the injuries at the temple are homicidal or not, we could see that there were no injuries or wounds on the back of fingers of the assaulted person (deceased) because if a blow is given by any blunt object, the person would voluntarily raise his hands to guard against such blow

and consequently the fingers would have sustained injuries. PW 33 Dr. Shiv Rattan Kochar, who had conducted autopsy on the body of the deceased, gave the opinion that the injuries sustained by the deceased could have been sustained by him by falling from the Gypsy. At the same time, he did not rule out the possibility of the injuries at the temple sustained by him could be homicidal too. Since all the 14 injuries were on front side of the body, according to PW 33, they might have been caused by friction by falling from the Gypsy. In such a situation, there appears to be no reason to disbelieve the defence version, more so when the testimony of the witnesses remained unimpeachable. Reliance can be had from Motis Medical Jurisprudence and Toxicology, 22 Edition, under the heading The Situation and Character of Wound.

38. The appellant-accused gave his unworn version indicating how the unfortunate incident had taken place. It was categorically stated by him in the statement that:

On 6.3.1998, Flt. Lt. Verma brought to my notice that an Army man had misbehaved with his wife when he had gone to his residence to repair the telephone on 03 Mar 98. I instructed F/L Verma to inform the man to report to me in the squadron on that day after flying was over.

He sat with me in my gypsy and as I was passing in front of signals billet, I saw a green Maruti car belonging to Fg Offr Srivastava parked there and saw F/L Verma and Fg Offr Srivastava coming out of the billet with a man in civil dress who I later learnt was signalman Garje. . and Flt. Lt. Verma told me that he was the man against whom he had complained. He also told him that Fg. Officer Srivastava had to go to town to drop F/L Sandeep Singh proceeding on leave and asked me if he could come with that man in my Gypsy.

I sat in the garden and then called F/L Verma and Garje. After F/L Verma narrated his version, Garje told me Sahib Jhut Bol Raha Hai. I told him to mind his language and reminded him that complaint was very serious for which he could be Court Martialled and sent to jail. He was evasive in his replies to pointed questions and he tauntingly replied Main Army Ka Jawan hoon, Air Force Wale mera Kuchh nahi bigar sakte. I told F/L Verma that the man appeared to be a badmash. Take him to guard room and lock him up there. As I said this, he walked out of the garden and ran towards vehicles parked by side of Pen No. 14. Seeing such open defiance of authority, I had no option but to tell officers there to stop him. F/L Verma started running and F/O Shahab followed him. While the officers were much behind, I could see Galrje skirting Pen No.14 and going behind it into a kachcha area. Meanwhile F/L Verma and F/O Shahab closed in and all of them brought him to my gypsy. I told them to sit in the gypsy and apprehending that Garje could do anything, I decided to confine him to guard room. As the gypsy started, F/L Menon came from the left of the gypsy and gestured to talk to me. I told him to get into the gypsy. As we started from there, Galrje said that he never went to the officers residence. Mem sahib ko dekhne men galti hui hai. F/L Verma then suggested that he should first be identified by his wife before he is locked up in the guard room. This suggestion appealed to me and I turned the gypsy to the parallel T/T to proceed to married officers quarters, for verification of Garjes identity from Mrs. Verma.

As the gypsy was just short of E link and I slowed it down to turn towards the barrier, I heard a voice to stop the gypsy. The officers told me that Garje had jumped off. ..

This appears to be a natural statement of the appellant accused. Accident is an occurrence which a prudent person cannot foresee or foretell when he is at the steering wheel and the victim said to have jumped off from the rear side of the gypsy. There is no allegation that the deceased was thrown out from the gypsy. It was sudden and unexpected. From the statement of the appellant accused and other defence witnesses, it appears to be a sudden and unexpected jumping of the deceased from the gypsy.

39. As mentioned above, the injuries were in the nature of multiple abrasions, contusions and bruises, which could be caused by friction. Apart from the ocular witnesses, the only person who could be considered to be capable of satisfactorily explaining as to the circumstances leading to the incident is the person who drove the gypsy. There is no dispute on the point that the appellant-accused was driving the vehicle when the incident took place. He has stated as to how the injuries were sustained by the deceased. There is no direct

evidence to the incident. PW 1, who had seen the incident from a long distance with the help of a binocular, stated about the presence of the appellant-accused and other accused persons moving their hands and legs. The abrasions noted by PW 33 cannot be caused by beating by hands. In the given circumstances, the evidence of the person who drove the gypsy and described the sequence of events gets support from medical evidence.

40. It was further explained by the appellant-accused that after jumping from the gypsy, the deceased started running to katcha and the officers followed. But suddenly he fell face down into a ditch. Stains of blood were also found in the ditch, which is clear from the statement of PW 18. Injury No. 1, which is at the temple, as opined by the doctor, could be caused by falling or by any blunt object. As there is no evidence to the contrary, the defence version cannot be brushed aside. Identical is the unsworn statement of the co-accused. They have explained the inculpatory circumstances as to how the deceased sustained injuries.

41. The admitted position is that the deceased had misbehaved with the wife of Flt. Lt. Verma and he was taken by the accused persons for interrogation. He made an attempt to run away, in which he was caught. Again he was taken in the gypsy, from which he jumped off. The prosecution has been able to establish only the fact that the deceased was seen in the company of the appellant-accused and other co-accused. No overt act was attributed to the appellant-accused. As regards PW 13 Flg Offr M Vijaykumar is concerned, he could not identify the presence without binocular or what happened at a distance of about 400 metres. He could at best identify the number of persons present there instead of identifying them. The statement regarding the cause of injuries sustained by the deceased as explained by the defence witnesses finds support from medical evidence.

42. Therefore, in the absence of evidence, the case against the appellant-accused cannot stand. The findings and convictions are not sustainable. In the result, the appeal is allowed setting aside the conviction and sentence awarded to the appellant-accused. The appellant-accused shall be deemed to be in service till the date of superannuation in the present rank and be entitled to pension thereafter. No order as to back wages.

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