Before Uma Nath Singh and Rajan Gupta, JJ.

NO. 3380027K NK SHINDER SINGH,—*Petitioner*

versus

UNION OF INDIA AND OTHERS,—*Respondents*

C.W.P. No. 1491 of 2000

21st July, 2008

Constitution of India, 1950—Act.226—Army Act, 1954—S.112—Army Rules, 1955—RI.22—Summary General Court Martial proceedings—Five army personnel staying in one army tent—Quarrel after consumption of liquor—Charges against petitioner of committing murder of two fellow army personnel—Confessional statement by petitioner—Two witnesses also deposing against petitioner—Petitioner failing to establish any enmity with witnesses to falsely implicate him—Petitioner failing to raise any objection at any stage during Court of Inquiry and Summary General Court Martial proceedings—Conduct of trial in accordance with procedure established under provisions of law—Sufficient evidence before Summary General Court Martial—No interference in exercise of writ jurisdiction to challenge validity of conviction and sentence—Petition liable to be dismissed.

Held, that impugned trial has been conducted strictly in accordance with the procedure established under the provisions of Army Act and Army Rules. As Commanding Officer of 10 Sikh Regiment, the parent organization of petitioner, was still the Commanding Officer of accused, proceedings of hearing of Charges were rightly conducted only in his presence. Thus, Rule 22 of the Army Rules, was duly complied with. As regards the military reputation of petitioner, he never raised this point before the Summary General Court Martial, and looking to the nature of offence committed by the petitioner, his character and military reputation were not at stake, nor involved in any manner. Accused-petitioner on the other hand was charged with offence of committing murder of two fellow army personnel.

(Para 10)

Further held, that we do not notice any infirmity whatsoever in notification of Ministry of Defence, dated 5th September, 1977 to hold that the proceedings of Summary General Court Martial were conducted in violation of provisions of Section 9 and Section 3(i) of the Army Act. Thus, the submission as such by the petitioner is also rejected.

(Para 11)

Further held, that there was sufficient evidence before the Summary General Court Martial and there is no allegation that any provision of law was ignored or the prescribed procedure was violated. Thus, the facts and circumstances of instant case do not warrant our interference in exercise of writ jurisdiction.

(Para 13)

T. S. Sangha, Senior Advocate with Sandeep Bansal, Advocate, *for the petitioner.*

Kamal Sehgal, Advocate, for *the Union of India.*

UMA NATH SINGH, J.

(1) This writ petition has been filed to seek the following reliefs :

> "(i) a writ of certiorari quashing the impugned trial proceedings by the Summary General Court Martial, impugned findings and sentence, dated 10th June, 1998, passed by Summary General Court Martial and impugned order, dated 10th August, 2000 (Annexure P-4) ;
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> (ii) a write of *mandamus* directing the respondents of reinstate the petitioner with all consequential benefits and reliefs to the petitioner ;
>
> (iii) in the alternative a writ of *mandamus* directing the respondents to release petitioner on bail during pendency of present petition ;

(iv) any other appropriate writ, order or direction which this Hon'ble Court may deem fit and proper in facts and circumstances of present case ;

(v) filing of certified copies of Annexures P-1 to P-4 may please be dispensed with ;

(vi) service of prior notices on the respondents may please be dispensed with ;

(vii) writ petition may please be allowed with costs throughout in favour of the petitioner."

(2) From the averments made in this writ petition, it appears that the petitioner was enrolled in Army on 11th December, 1980 and after a service of more than 18 years, in August, 1996, during his posting with 10 Sikh Regiment of Infantry, he was sent for a field firing exercise on attachment to 6 Armoured Regiment. Thus, for the period of firing exercise, the petitioner was placed under the Commanding Officer of 6 Armoured Regiment. During course of that exercise, the petitioner and four other army personnel was directed to move with 6 Armoured Regiment. Other four army personnel who moved with the petitioner, were Naib Subedar Manjit Singh, Hav. Hardayal Singh, Sepoy Ram Partap and Sepoy Balwinder Singh. While moving for the exercise destination, they reached near a Railway Station known as Bari Brahmana where they camped for night stay on 13th August, 1996. Tents of other units of 6 Armoured Regiment were also pitched side by side in close vicinity. All five companions of the petitioner had a stay together in the same tent and during that night, they also consumed liquor in heavy quantity. This is also alleged that they picked up quarrel over consumption of liquor and after they were asleep, in the morning of 14th August, 1996, two out of 5 occupants of the tent of petitioner, namely Naib Subedar Manjit Singh and Hav. Hardayal Singh were found dead with multiple injuries. Having learnt about this incident in the morning, their official Superiors in Army were immediately informed, who rushed to the spot. Civil police of that place was also informed about this incident. After civil police and military police reached the spot, rest other three army personnel who also occupied that tent, namely Sepoy

Ram Partap, Sepoy Balwinder Singh and Naik Shinder Singh (petitioner herein), were taken in custody, and during the pre-trial inquiry of this case, the petitioner suffered a confessional statement. That apart, statement of Sepoy Ram Partap, who turned to be an approver in this case, was also found to contain a lot of incriminating informations against the petitioner. After pre-trial investigation of this case was over, accused petitioner Naik Shinder Singh was read over the charges under Section 69 of the Army Act and 302 of Ranbir Penal Code by Commanding Officer of 10 Sikh Regiment, his parent Army Organization, and tried upon the aforesaid charges by way of a Summary General Court Martial. On conclusion of that trial, the petitioner was found to be guilty of offences charged with for having committed murder of two fellow army personnel. Consequently, he was visited with a sentence of life imprisonment on both counts, apart from reduction in rank from Naik to Sepoy with an order of dismissal from service. In this background, petitioner Shinder Singh has filed the instant writ petition to seek the aforesaid reliefs. During the pendency of this writ petition, a learned Single Judge of this Court released the petitioner on bail by suspending his sentence towards one of the reliefs prayed for in the writ petition. That order of bail seems to have been challenged by way of Special Leave Petition before Hon'ble the Supreme Court which is pending to await disposal of this writ petition.

(3) We have heard learned counsel for parties and perused the writ record.

(4) During the course of arguments, learned counsel for the petitioner submitted that this is not a case of that kind which would necessitate invoking of the provisions of Section 112 of Army Act for holding the trial of accused petitioner by way of Summary General Court Martial. Provisions of Section 112 of the Army Act, on reproduction, read as under :—

> "112. **Power to convene a summary general court-martial.**— The following authorities shall have power to convene a summary general court-martial, namely :—
>
> (a) an officer empowered in this behalf by an order of the Central Government or of the [Chief of the Army Staff] ;

(b) on active service, the officer commanding the forces in the field, or any officer empowered by him in this behalf;

(c) an officer commanding any detached portion of the regular Army in active service, when, in his opinion, it is not practicable, with due regard to discipline and the exigencies of the service, that an offence should be tried by a general court-martial"

In order of articulate his contention further, learned counsel also took us to the provisions of Section 3 of Army Act, which contain the definition of active service as :—

"3. Definitions : In this Act, unless the context otherwise requires,—

(i) "active services", as applied to a person subject to this Act, means the time during which such person-

(a) is attached to, or forms part of, a force which is engaged in operations against an enemy, or

(b) is engaged in military operations in, or is on the line of march to, a country or place wholly or partly occupied by an enemy, or

(c) is attached to or forms part of a force which is in military occupation of a foreign country."

According to learned counsel, the petitioner was not engaged in an army operation against enemy, for such operation also, there are certain requirements under the Army Act which are contained in the provisions of Section 3(x) thereof as :

"(x) "enemy" includes all armed mutineers, armed rebels, armed rioters, pirates and any person in arms against whom it is the duty of any person subject to military law to act ;"

Learned counsel aslo contends that since charges against the petitioner were not heard by the Commanding Officer, 6 Armourd Regiment, as

provided in Rule 22 of the Army Rules, a serious prejudice has been caused to the right and interest of petitioner. Rule 22 of the Army Rules is reproduced as :—

"22. **Hearing of charge.**—(1) Every Charge against a person subject to the Act shall be heard by the Commanding Officer in the presence of the accused. The accused shall have full liberty to cross-examine any witness against him and to call such witness and make such statement as may be necessary for his defence :

Provided that where the charge against the accused arises as a result of investigation by a Court of inquiry, wherein the provisions of rule 180 have been complied with in respect of that accused, the Commanding Officer may dispense with the procedure in sub-rule (1).

(2) The Commanding Officer shall dismiss a charge brought before him if, in his opinion the evidence does not show that an offence under the Act has been committed, and may do so if, he is satisfied that the charge ought not to be proceeded with :

Provided that the Commanding Officer shall not dismiss a charge which he is debarred to try under sub-section (2) of Section 120 without reference to superior authority as specified therein.

(3) After compliance of sub-rule (1), if the Commanding Officer is of opinion that the charge ought to be proceeded with, he shall within a reasonable time—

(a) dispose of the case under Section 80 in accordance with the manner and form in Appendix-III ; or

(b) refer the case to the proper superior military authority ; or

(c) adjourn the case for the purpose of having the evidence reduced to writing ; or

(d) if the accused is below the rank of Warrant Officer, order his trial by a summary court-martial :

Provided that the Commanding Officer shall not order trial by a summary court-martial without a reference to the officer empowered to convene a district court-martial or on active service a summary general court-martial for the trial of the alleged offender unless—

(a) the offence is one which he can try by a summary court-martial without any reference to that officer ; or

(b) he consider that there is grave reason for immediate action and such reference cannot be made without detriment to discipline.

(4) Where the evidence taken in accordance with sub-rule (3) this rule discloses an offence other than the offence which was the subject of the investigation, the Commanding Officer may frame suitable charge(s) on the basis of the evidence so taken as well as the investigation of the original charge."

(5) Learned counsel also referred to Rule 180 of Army Rules, which provides for a special procedure when character of a person is subject to Army Act, to point out another instance of prejudice being caused to the petitioner. Rule 180 of the Army Rules reads as :

"180. **Procedure when character of a person subject to the Act is involved.**—Save in the case of prisioner of war who is still absent whenever any inquiry affects the character or military reputation of a person subject to the Act, full opportunity must be afforded to such person of being present throughout the inquiry and of making any statement, and of giving any evidence he may wish to make or give, and of cross-examining any wintess whose evidence in his opinion, affects his character or military reputation and producing any witnesses in defence of his character or military reputation. The Presiding Officer of the Court shall

take such steps as may be necessary to ensure that any such person so affected and not previously notified receives notice of and fully understands his rights, under this rule."

Learned counsel contends that application of the petitioner in the nature of appeal under Section 164 (2) of the Army Act, submitted to Government of India at the post confirmation stage was also not considered on merits, and it was, rather, summarily rejected,—*vide* the order Annexure P-4. Sub-Section (2) of Section 164 of the Army Act read reads as :

"164. Remedy against order, finding or sentence of Court-martial :

(1) xx xx xx xx

(2) Any person subject to this Act who considers himself aggrieved by a finding or sentence of any court-martial which has been confirmed, may present a petition to the Central Government, (the Chief of the Army Staff) or any prescribed officer superior in command to the one who confirmed such finding or sentence, and the Central Government, (the Chief of the Army Staff), or other officer, as the case may be, may pass such orders thereon as it or he thinks fit."

Learned counsel points out yet another instance of prejudice while submitting that a prayer for adjournment to prepare this case by his counsel appointed by the Army authorities to defend him, was also not acceded to by the Summary General Court Martial. In addition to aforesaid submissions, learned counsel also argued that there is a vital contradiction in the statements of witnesses as regards the exact description of pick axe, the weapon of offence, in as much as some of the prosecution witnesses have stated that the said axe was without handle, whereas both pick axes produced before the Summary General Court Martial were found to be fitted with handles. According to learned counsel, even the sole eye witness Sepoy Ram Partap could

not identify the pick axes alleged to have been used in commission of this offence. Learned counsel also argued that as per FSL report, no blood stains were noticed on these two pick axes either. He also questioned the credibility of confessional statement of accused-petitioner relied upon for recording his conviction. According to learned counsel, the said confessional statement of petitioner has been manufactured after his signatures were forcibly taken on blank papers during pre-trial investigations of this case. Learned counsel referred to provisions of Rule 182 of the Army Rules, to argue that materials collected during pre-trial investigation would not be admissible in evidence. Learned counsel also argued that the sole eye witness Sepoy Ram Partap Singh was firstly tortured and then produced before the Summary General Court Martial to give a statement, and as per testimonies of PW-13 Naik Mohammad Safiq, and PW16 Sepoy Gurnek Singh, Sepoy Baljinder Singh who stayed inside army Jonga throughout that night was also noticed while entering the army tent 2-3 times during night hours between 00.30 hrs. to 02.15 hours. Therefore, he could have noticed the assaults while being caused by petitioner, if so, or else Baljinder Singh would have himself committed that offence. Further, no blood stains were noticed on the clothes of petitioner to suggest that he had caused the injuries as found on the persons of both deceased army-personnel. Learned counsel also pointed out that though Sepoy Ram Partap Singh (PW10) has stated that he had noticed the petitioner while inflicting injuries on the person of deceased Hardial Singh, but there is not corroborative piece of evidence on record to suggest that the accused alone inflicted those injuries on the person of Hardial Singh. Moreover, the findings of Summary General Court Martial indicate that the conviction of accused-petitioner in respect of murder of Hav. Hardial Singh has been recorded only on the basis of circumstantial eivdence by way of inference and further from the written statement submitted on behalf of respondents, this is clear that the accused had only intention to cause injuries and not the death, as alleged, therefore, the act of petitioner would constitute an offence of culpable homicide not amounting to murder which is punishable under Section 304 Part-II of R.P.C.

(6) On the other hand, learned counsel for the Union of India, representing Army Authorities, submitted that,—*vide* Ministry of Defence Notification No. SRO 17-E, dated 5th September, 1977, area of Jammu and Kashmir was also included for the purpose of treating army duties in that area as active service. Thus, an argument that questions the holding of Summary General Court Martial proceedings would carry no force. Learned counsel refers to confidential letter No. 2004/10/ SIKH/A1, dated 13th August, 1998 to reiterate that provisions of Rule 22 have been duly complied with. Besides, this is also his contention that most of the arguments of learned counsel for the petitioner relate of pre-trial investigation materials which do not form parts of evidence adduced during Summary General Court Martial proceedings, therefore, the same need not be gone into. As regards contention that petitioner's application submitted to Central Government under his statutory right, at post confirmation stage, was not considered on merits, learned counsel for the Union of India submitted that there is no statutory requirement to give reasons while passing orders on such applications, and only for that reason, it cannot be presumed that there was a non-application of mind on merits. While answering the submission made by learned counsel for the petitioner that the sole eye witness was tortured and then made an approver to extract testimony against the petitioner, learned counsel for the Union of India submitted that this allegation relates to pre-trail investigation and not to the Summary General Court Martial proceedings. As regards denial of opportunities to learned defence counsel for preparation of his case, this is submitted on behalf of the Union of India that initially Mr. Jitendra Jaswal, and thereafter Shri Sukhdeo Singh Chib appeared as defence counsel for the petitioner. Learned defence counsel was granted adjournment to prepare his case, but it was not open to say that the Court martial proceedings were to proceed only according to defence counsel's convenience. Further, the argument that the provisions of Rule 180 of Army Rules relating to character and military reputation of the petitioner, were not complied with, is answered by submitting that this argument also relates to the stage of only pre-trial investigation and despite having opportunities during Summary General Court Martial proceedings to raise such objections, they were never raised and, rather, the petitioner

confessed his guilt before the Court. Now, it would not be open for the petitioner to raise such objections in this writ petition.

(7) We have carefully considered rival submissions and perused the writ record. While exercising writ jurisdiction against an order of a General Court Martial, we are not to examine facts and averments like an appellate Court. A judgment of Hon'ble the Apex Court in **Union of India and others** *versus* **Major A. Hussain (1),** in paras 21 and 22 has clarified the position as :

> "21. ..... It was not necessary for the High Court to minutely examine the record of the General Court Martial as if it was sitting in appeal. We find that on merit, the High Court has not said that there was no case against the respondent to hold him guilty of the offence charged.
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> 22. Though court martial proceedings are subject to judicial review by the High Court under Article 226 of the Constitution, the court martial is not subject to the superintendence of the High Court under Article 227 of the Constitution. If a court martial has been properly convened and there is no challenge to its compositions and the proceedings are in accordance with the procedure prescribed, the High Court or for that matter any Court must stay its hands. Proceedings of a court martial are not to be compared with the proceedings in a criminal Court under the Code of Criminal Procedure where adjournments have become a matter of routine though that is also against the provisions of law. It has been rightly said that court martial remains to a significant degree, a specialized part of overall mechanism by which the military discipline is preserved. It is for the special need for the armed forced that a person subject to Army Act is tried by court martial for an act which is an offence under the Act. Court martial discharges judicial function and to a great extent is a Court where provisions of Evidence Act are applicable. A court martial has also the same responsibility as any Court to protect the rights of the

(1) AIR1998 S.C. 577

> accused charged before it and to follow the procedural safeguards. If one looks at the provisions of law relating to Court martial in the Army Act, it is manifestly clear that the procedure prescribed is perhaps equally fair if not more than a criminal trial provides to the accused. When there is sufficient evidence to sustain conviction, it is unnecessary to examine if pre-trial investigation was adequate or not. Requirement of proper and adequate investigation is not jurisdictional and any violation thereof does not invalidate that Court martial unless it is shown that accused has been prejudiced or a mandatory provision has been violated. One may usefully refer to Rule 149 quoted above. The High Court should not allow the challenge to the validity of conviction and sentence of the accused when evidence is sufficient, court martial has jurisdiction over the subject matter and has followed the prescribed procedure and is within its power to award punishment."

Thus, from the aforesaid premises laid down by Hon'ble the Apex Court, it appears that if the evidence before the General Court Martial is sufficient, and the accused is not able to establish any prejudice being caused to him during such proceedings, this Court is not required to go for scrutiny thereof. Even issues like adjournments granted, not granted are to be tested only on that ground as in Defence Services certain standard of discipline is required to be maintained.

(8) Within the above parameters, we have examined the averments of this writ petition. Facts, which are disputed in nature, should not be gone into in exercise of our powers under writ jurisdiction, still in order to satisfy our judicial conscience that the petitioner was given a fair trial, we have perused the incriminating materials available before Summary General Court Martial, and now with army authorities assisting the Central Government counsel in this Court, which are highlighted in the submissions of learned counsel for the petitioner. There is no denial of the fact that five army personnel during their night stay were lodged in one army tent and out of them, only two were done to death in the night when all of them lay inebriated. This has also come in evidence that during the consumption of liquor, the petitioner had

a quarrel with Hav. Hardial Singh and Naib Subedar Manjit Singh, and he had threatened the deceased persons, in particular Hav. Hardial Singh, to see them in the morning. That threat was acted upon and out of five occupants of army tent, only 2 with whom the accused had picked up a quarrel, were found dead in the morning of 14th August, 1996. We have also examined the post mortem examination reports of dead bodies of the deceased persons. Extracts of both post-mortem reports, as narrated by the Autopsy Doctor, are reproduced as under :—

"On examination of the body of Naib Subedar Manjit Singh, I found the following injuries :—

(i) A split laceration 7 cms x 3 cms horizontally placed over the right supra orbital region.

(ii) A split laceration 7 cms x 3 cms obliquely placed over the forehead just above the bridge of nose.

(iii) A split laceration 6 cms x 2 cms obliquely placed over the left side forehead.

(iv) A lacerated wound 6 cms x 1 cm horizontally placed over the left supra orbital region, 1 inch below injury No. (iii).

(v) A lacerated wound 6 cms x 2 cms over the left fronts parietal region 1 inch lateral to the injury No. (iii).

On internal examination of head, there were commuted fractures of frontal and the parietal bones under the external injuries. Brain substance and meninges were lacerated. In the stomach there was a strong alcoholic odour and the presence of ethyl alcohol was confirmed by the chemical analysis conducted by FSL, Jammu and reported to me,—*vide* their report No. 566/FSL/96, dated 30th September, 1996.

In my opinion, the cause of death of Naib Subedar Manjit Singh was craneo cerebral damage as a result of head injury caused by a heavy blunt object."

xx xx xx

"On examination of the body of Havildar Hardial Singh, I found the following injuries :—

(i) A split laceration 9 cms x 6 cms over the left parietal region with underlaying commuted fracture of parietal bone with underlying laceration of the meningis and the brain substance.

(ii) A lacerated wound 7 cms x 6 cms over the left temporal region with underlying commuted fracture of the temporal bone with underlying laceration of the meningis and the brain substance.

The was strong alcoholic odour in the stomach which was confirmed by the report of FSL, Jammu,— *vide* their report No. 565/FS:/96, dated 30th September, 1996.

In my opinion, the cause of death in the case of Havildar Hardial Singh was craneo cerebral damage as a result of head injury caused by some heavy blunt object."

Thus, the injuries, as noticed by the Doctor in post mortem reports, suggest that the pick axe, a blunt implement, which was used in this offence, can cause these injuries. As per medical evidence given by Dr. B. R. Sharma (PW4), it was conclusively established that Naib Subedar Manjit Singh and Havildar Hardial Singh had died at about 2.00 a.m. on 14th August, 1996. Prosecution has produced two key witnesses of this incident, namely, Sepoy Balwinder Singh (PW9) and Sepoy Ram Partap Singh (PW10). Accused Shinder Singh was not able to establish any enmity with these witnesses so that they could have a grudge to falsely implicate him. Moreover, accused Shinder Singh made a confessional statement before these witnesses which has been found to be reliable by the Summary General Court Martial.

(9) Besides, this accused has also been alleged to have held threats to these witnesses, firstly at the scene of incident, and then in quarter guard of 14 Raj. Rifle. Regarding eye witness accounts of Sepoy

Ram Partap Singh (PW10), he had witnessed the accused-petitioner during the act of killing of deceased persons. His statement has been found to be consistent and unambiguous in Court of Inquiry ; Summary evidence, and Summary General Court Martial proceedings. It appears from the evidence of Sepoy Ram Partap Singh (PW10) that has given a vivid and graphic description as to how this offence was committing and also identified the petitioner while engaged in committing the murder of Naib Subedar Manjit Singh in the light that was falling on him. In his cross-examinations, this witness has reiterated his examination-in-chief and clarified the ambiguities as suggested by the defence. He has stated that he was threatened by the petitioner and his relatives who had come to meet this witness. In the Court of Inquiry, petitioner Shinder Singh stated that he could not get sleep becuase of hurt caused by Havildar Hardial Singh which kept brewing up in his mind. At 2.00 O'clock in night, the petitioner got up from his bed and went to pick up the pick-axe lying at the entrance of tent from the road side. That pick-axe was the same which had been used for pitching their tents. Petitioner removed the handle of pick-axe ; held it from narrow end and then peeped out through the tent flap to see as to whether any Sentry was standing nearby. On confirming that no one was near the tent, the petitioner hit Naib Subedar Manjit Singh twice on his forehead. He then shifted to right and caused three blows on left temple of deceased Havildar Hardial Singh. Thereafter, the petitioner watched closely to find out as to whether there was any blood stain on the pick-axe and noticed the presence of blood stains in the street light coming on him. He cleaned the pick-axe by dipping his hand in the water and wipping the stain in a steel Dallu filled half with water, which was lying near the central standing pole of the tent. However, he did not check the pick axe again for stains and fitted the handle back and placed by pick-axe at the spot from where it had been lifted. In the Court of Inquiry, the petitioner admitted that when he saw the injury on head of Naib Subedar Manjit Singh, who did not respond, he got frightened as he never intended to kill him. However, if relevant portions of statement of Sepoy Ram Partap Singh (PW10), are read in the light of statement given before the Court of Inquiry by the petitioner, it is found fully established that the accused-petitioner alone has committed the offence

with an intention of cause death. Relevant portions of statement of Sepoy Ram Partap Singh (PW10), on reproduction, read as :

"xx xx xx xx

Havildar Hardial Singh, Sepoy Balwinder Singh, myself and the accused went to take a bath in the factory area behind our tent, leaving Naib Subedar Manjit Singh in the tent only. There, before taking bath, we consumed one bottle of rum. On coming back inside the tent, we all i.e. Naib Subedar Manjit Singh, Havildar Hardial Singh, Sepoy Balwinder Singh, myself and the accused started drinking rum. I consumed 4-5 pegs of rum. I do not know how much others consumed, as we were drinking in steel glasses.

After we had consumed about two and a half bottles of rum, Havildar Hardial Singh said that it was enough, but the accused told Havildar Hardial Singh that we will drink more. Havildar Hardial Singh then told the accused to take out a bottle of rum, but the accused insisted that he will have whisky. Havildar Hardial Singh then handed over the keys of his suit case to the accused, upon which the accused took out a bottle of whisky and gave it to Havildar Hardial Singh. Havildar Hardial Singh made one peg of whisky and gave it to Naib Subedar Manjit Singh. Thereafter, he made another peg and gave it to the accused, but the accused refused and said "Main Aapki Daru Naih Piunga". Naib Subedar Manjit Singh told the accused that no money will be charged from him and that he should have the whisky. To this, the accused said, "Sulle, Main Aapki Daru Nahib Piunga, Main Aapki Daru Ki Bund Marta Hoon", and started abusing Naib Subedar Manjit Singh. Havildar Hardial Singh told the accused that Naib Subedar Manjit Singh was his own JCO and why should he abuse him (Naib Subedar Manjit Singh). On this the accused abused Havildar Hardial Singh. Havildar Hardial Singh got annoyed and therefore, he after catching the accused by his joora gave 10-12 blows to the accused by his fist. The accused did not retaliate

physically but said, "Aap Mere Major Ho, Aur Maro, Main Aap ko Savera Dekh Loonga".

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"At about 02.00 hrs-02.15 hrs, on 14th August, 1996, I was woken up by a sound "Khar Khar". I had recognized that sound to be of Havildar Hardial Singh. I lifted my bed sheet from my face and saw that accused was hitting Naib Subedar Manjit Singh with a 'Gaintee' (pick axe). At this time, light was coming inside the tent from factory area and it was sufficient enough to recognize a person inside the tent. When the accused was hitting Naib Subedar Manjit Singh, no sound came from the body of Naib Subedar Manjit Singh".

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"When Sepoy Balwinder said, "Major Major" and shook Havildar Hardial Singh, the accused got up and said, "Ye Nahin Uthega, Isne Daru Jada Pi Hai". Sepoy Balwinder Singh told to take Naib Subedar Manjit Singh to Military Hospital. On this, the accused said, "No, first we will report to our senior officer and thereafter we will take Naib Subedar Manjit Singh to Military Hospital". Sepoy Balwinder Singh asked the accused as to what had he done

? The accused replied....."

"I have done whatever I had to do. If you tell anybody then I will not spare you also" (Jo kuch maine karna tha kar Diya, Agar Aapne Kisi ko bataya to Aapko bhi nahin Chhodunga)."

xx xx xx xx

"I had seen the accused hitting a 'Gaintee' 2-3 times on Naib Subedar Manjit Singh before I again took the bed sheet over me. Thereafter I did not remove the bed sheet from my face."

xx xx xx xx

"On cross examination, the witness said :

When I had seen the accused hitting Naib Subedar Manjit Singh, he was at a distance of 3-4 feet from me. At that time, he was standing behind the head of Naib Subedar Manjit Singh. He was facing in the direction of head of Naib Subedar Manjit Singh and his back was towards the side of railway tracks.

When I saw the accused, he was busy hitting Naib Subedar Manjit Singh. I cannot say whether or not he had noticed that I had seen him."

xx xx xx xx

"At the time when the accused had threatened me in the quarter guard of 14 Raj Rif, Sepoy Balwinder Singh had asked the accused as to why did he kill, to which the accused had replied, "Both were abusing me, I lost my temper. Therefore, I killed them and cooled my anger."

The accused had given the aforesaid reply voluntarily, on his own and no threat, coercion or promise was made to the accused to give the aforesaid reply.

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(10) Though, this has been submitted on behalf of the petitioner that Sepoy Balwinder Singh (PW9) and Sepoy Ram Partap Singh (PW10) were tortured to make statements against the accused, but in para 7 of written statement to this writ petition, this allegation has been specifically denied and rather, this is reiterated that the petitioner himself had confessed to his crime in the proceedings of Court of Inquiry. We have closely examined the possibility as alleged by the defence side that an outsider could also enter the tent and commit the offence. This appears from the statement of Ram Partap Singh that the accused was lying on his side in the tent and there is no evidence to suggest that one of the occupants of tent Sepoy Balwinder Singh (PW9), who had left the tent to sleep in RCL Jonga, returned inside the tent during the remaining part of night in an inebriated condition when all five army personnel were dead drunk. Moreover, during Court of

Inquiry and then during Summary General Court Martial proceedings, the petitioner did not impute any bias nor did he impeach the credibility of the Court or questioned the proceedings of Summary General Court Martial either. He did not allege that any provision of law was ignored and his right was prejudiced in any manner. Rather, the accused confessed his guilt. Needless to say that intention in such like cases are gathered from inference drawn from the attending circumstances like: nature of injuries; nature of weapon used, and the manner in which the offence was committed. It appears from the written statement that summary proceedings are resorted to only in order to deal with such cases expeditiously, and towards the need for maintaining discipline and keeping the moral of defence forces high. Impugned trial has been conducted strictly in accordance with the procedure established under the provisions of Army Act and Army Rules. As Commanding Officer of 10 Sikh Regiment, the parent organization of petitioner, was still the Commanding Officer of accused, proceedings of hearing of charges were rightly conducted only in his presence. Thus, Rule 22 of the Army Rules, was duly complied with. As regards the military reputation of petitioner, he never raised this point before the Summary General Court Martial, and looking to the nature of offence committed by the petitioner, his character and military reputation were not at stake, nor involved in any manner. Accused-petitioner on the other hand was charged with offence of committing murder of two fellow army personnel. Regarding submission questioning the justification for holding a Summary General Court Martial on the ground that the petitioner was not engaged in an active service, we are informed that the Central Government,—*vide* notification of Ministry of Defence, No. SRO 17-E, dated 5th September, 1977, also included the area of Jammu and Kashmir for the purpose of active service of army personnel. So far as the contention of learned counsel for the petitioner that learned defence counsel appointed by the army authorities was not given sufficient time to prepare his case is concerned, in para 16 of the written statement, it is categorically averred that learned counsel for the petitioner was left with ample time at his disposal to prepare the case. Assistance of a Defence Counsel was provided by the army authorities only because the accused had waved off his right to engage a counsel of his choice, however, Defence counsel, so appointed, conducted the case properly with utmost diligence

to protect the interest of accused during the Court Martial proceedings. Not only that, the petitioner also agreed and, rather, gave his consent to the appointment of said counsel. Moreover, Summary General Court Martial proceedings are of emergent nature and are not to be delayed by seeking adjournments. Further, as mentioned herein above, the accused did not raise any such objection at any stage during the Court of Inquiry and Summary General Court Martial proceedings. As regards the petition submitted to Central Government at post conformation stage by petitioner, there is no statutory requirement to give reasons, but that would not lead to an inference that there was a non application of mind on that petition.

(11) We have also examined the notification submitted on behalf of Union of India to prove that the petitioner was engaged in active service, even during his training in Jammu and Kashmir Sector. We do not notice any infirmity whatsoever in that notification to hold that the proceedings of Summary General Court Martial were conducted in violation of provisions of Section 9 and Section 3 (i) of the Army Act. Thus, the submission as such by learned counsel for the petitioner is also rejected.

(12) Hon'ble the Apex Court in a judgment reported in **(Major G. S. Sodhi *versus* Union of India) (2)** has held that if the petitioner does not allege *mala fide* and in the written statement it is averred that there was no *mala fide* on the part of officer participating in or conducting Court Martial proceedings, these proceedings should not be interfered with. Moreover, minor irregularities in complying with Rules like Rule 22 of the Army Rules are also to be ignored and such proceedings would not be vitiated on that count. In another judgment reported in **(Pradeep Singh *versus* Union of India and others) (3)** Hon'ble the Apex Court has reiterated the ratio of and observations made in Major A. Hassan's case *(supra)*. Hon'ble Court has further held that if a Court Martial has been properly convened and there is no challenge to its composition, and the proceedings are in accordance with the procedure prescribed, the High Court or for that matter, any Court must stay its hand. It was further held that the proceedings of a Court Martial are not to be compared with the proceedings in a Criminal

(2) AIR 1991 S.C. 1617
(3) 2007(2) RCR (Crl.) 889

Court under the Code of Criminal Procedure. This has also been observed that the High Court should not allow any challenge to the validity of conviction and sentence where evidence is sufficient. A Court Martial has the same responsibility as any other Court to protect the rights of accused. Further, the investigation part of case is non-jurisdictional.

(13) In the instant case also, as dicusssed herein above, there was sufficient evidence before the Summary General Court Martial and there is no allegation that any provision of law was ignored or the prescribed procedure was violated. Thus, the facts and circumstances of instant case do not warrant our interference in exercise of writ jurisdiction.

(14) Dealing with confessional statement during the Court Martial proceedings, a Division Bench of Delhi High Court in a judgment reported in **(Capt. Ashok Kumar Rana** *versus* **Union of India and others) (4)** has held that if a conviction has been recorded in Court Martial proceedings on the basis of confession of accused and he was given full opportunity to prove that the confession was not given voluntarily, the High Court is not expected to interfere under Article 226 with the order of conviction and sentence.

(15) As regards motive for commission of offence, the accused had quarreled with deceased persons and he nursed a grudge for being hurt by Hav. Hardial Singh, which kept brewing up during the night of incident. Thus, we are also in agreement with the Court that the accused had a motive to commit the offence in question.

(16) In view of the aforesaid, this writ petition, being devoid of merits, deserves to be rejected, and is thus dismissed.

(17) Before parting with this case, we would like to observe that there was no argument on the question of grant of bail in a writ petition either, therefore, we leave this question open. Petitioner Shinder Singh, who is on bail pursuant to the order of a Learned Single Judge of this Court dated 21st August, 2005, is directed to surrender to his bail bonds to undergo the rest part of sentence.

R.N.R.

(4) 1982 Crl. L. Journal NOC 120 (Delhi)