

(2009) 04 MAD CK 0221
In the Madras High Court
Case No : Writ Petition No. 35830 of 2005

Ex. Nk. D.R. Sri Raman

APPELLANT

Vs

Union of India (UOI)

RESPONDENT

Date of Decision : 15-04-2009

Acts Referred:

Army Act, 1950 — Section 34, 35, 36, 37, 38
Army Rules, 1954 — Rule 106, 133, 149
Constitution of India, 1950 — Article 226, 227, 32
Penal Code, 1860 (IPC) — Section 302, 307
Ranbir Penal Code, 1989 — Section 302, 41(2)

Citation : (2009) 4 MLJ 226

Hon'ble Judges : K. Chandru, J

Bench : Single Bench

Advocate : T. Arulraj, for the Appellant; G. Sankaran, for the Respondent

Judgement

K. Chandru, J.—The petitioner in this writ petition challenges his conviction for life imprisonment, reduction in rank and dismissal from

service w.e.f. 23.11.2000 imposed by the Summary General Court Martial for the civil offence in terms of Section 69 of the Army Act, 1950.

Subsequent to the penalty handed down to the petitioner, he was given the custody to the Doda District Police (J&K State). He was detained in

the police custody till 24.1.2001. Thereafter, he was lodged in Central Prison at Chennai on 27.1.2001 and transferred to Central Prison, Vellore

on 7.4.2001. He has been languishing in jail since the last 8 years. His appeal against the verdict of the Summary General Court Martial to be

made to the Chief of Army Staff was also rejected.

2. The writ petition filed by the petitioner challenging the aforesaid order was admitted on 10.11.2005. On notice from this Court, the respondents

have filed a reply affidavit dated 20.2.2007.

3. The petitioner joined the Indian Army on 27.10.1984 as a Sepoy. Subsequently, he was promoted as Lans Naik and Naik. He had participated

in several army operations including in Sri Lanka (1987-88), Assam (1993), Manipur (1997) and Gadgil (1998-99). Out of the 16 years of

service put in by the petitioner, he had spent 10 years in the field involving sensitive operations.

4. During the petitioner's last tenure in J&K State in 1998-99, he was posted to No. 8, Rastriya Rifles in Madras and was in the Panyala Post for

Counter Insurgency operations in the District Doda. The village Panyala is about 8 kms from Gundha. The post was manned by one Subedar

C.Nalinakshan and 15 other ranks together with 5 SPOs.

5. On 27.7.1999, the petitioner was one of the NCOs present along with 15 other ranks present in the post. It is alleged that the petitioner had

consumed country liquor in the morning and developed heated arguments with Subedar Nalinakshan, which ended in exchange of abuses and fist

fight.

6. It was further alleged by the respondents that at about 15.15 hrs. when the Subedar Nalinakshan was standing outside his room under a tree in

Panyala Post, the petitioner went to get his signature on the duty roster. When Subedar refused to sign and asked him to come again at 17 hrs,

once again they quarrelled. Therefore, infuriated by the abuses made by Subedar Nalinakshan, the petitioner went inside his room and picked up

his rifle (AK 47). He came out of his room and fired two rounds. Because of the firing, the Subedar Nalinakshan, who received bullet injuries on

his chest, died on the spot. The incident was not reported to the superiors at the headquarters at Gundha. On the otherhand, it was informed that

the Subedar was killed due to the firing by the militants. The Subedar Nalinakshan was declared dead by Capt.Aruna Gupta, RMO on 28.7.1999.

7. Subsequently, a Court of Enquiry (COE) was ordered and it was the stand of the respondents that it was the petitioner who killed Subedar

Nalinakshan. Based on the above COE Report a Summary General Court Martial was ordered against the petitioner. The petitioner was

convicted for a civil offence u/s 302, RPC (Ranbir Penal Code). The Summary General Court Martial ordered by the GOC Counter Insurgency

Force Delta. The sentence handed over to the petitioner was confirmed by the said officer on 10.1.2001. Pursuant to the order passed, the

petitioner was dismissed from service and reduced in rank. He was sent to serve his present term from 23.11.1999 onwards as noted already.

8. It is the stand of the petitioner that it was Subedar Nalinakshan who was drunk and was abusing the petitioner and his group in the morning of

27.7.1999. This led to a scuffle and subsequently everything was pacified. The petitioner, with reference to the said incident, in paragraphs 6 to 9

in the affidavit filed in support of the writ petition, had averred as follows:

6. At about 1515 hours when I was resting in my living place there were sounds of gun shots and I rushed with my rifle along with others who

followed me as was the practice followed. All of us went up to the sentry post and fired in the direction of jungle from where gunshots were heard

along with others. After the firing subsided, Nk.P.Vasantharajan reported to the Company Head Quarters on radio that Subedar C.Nalinakshan

was killed by militant fire. The HQ ordered us to proceed on search which we did and we returned back to the duty post in the night. I learnt that

during this time Major Suresh Babu, ""Bravo"" Coy Commander of 8 Rashtriya Rifles had arrived at the post with Tracker dogs and carried out

investigation. On the early next morning i.e. at about 0500 hrs on 28.7.99 Counter Intelligence Force Delta personnel led by Captain Rai Singh

Gujjar, GSO 3 (Int) of Head Quarters 4 sector arrived there and searched the area with tracker dogs. The Tracker dogs sniffed the body of

Subedar C.Nalinakshan and went up to nearby water stream adjacent to footpath leading to jungle and came back without any result. This

operation was carried out twice till morning 7 am.

7. At about 0730 hours the GSO 3 conducted an enquiry about the incident and other general conditions of living and of welfare.

8. The body of the deceased Subedar C.Nalinakshan was removed for Post Mortem on 28.7.1999 at about 2 pm. On 29.7.99 at 0830 hours all

of us were marched to the Battalion HQ at Arun Doda which is 8 km away from the post. Soon after arrival at the battalion HQ at 1730 hours, I

was placed on Quarter Guard and was severely thrashed by Lt Col Mohandasan, Captain Navin Bindre and another officer. I was threatened that

I would be shot dead by Army firing squad if I did not confess that I killed

Subedar C.Nalinakshan. I was forced to write a confession statement that I shot and killed Subedar C.Nalinakshan under coercion and threat. Ever since I was placed under quarter guard on chains and was tortured every day.

9. After 3 days a Court Inquiry was conducted on 27.7.1999, more like a formality, followed by recording of Summary of Evidence and Additional Summary of Evidence, the proceedings which lasted till 09.4.2000. I did not understand any of the proceedings nor was I lent any assistance.

9. In support of the above assertion that the petitioner was kept chained to the window bar, the petitioner had enclosed a set of photographs in the additional typed set of papers, dated 25.6.2007.

10. The counsel for the petitioner (nominated by the T.N.State Legal Services Authority) submitted that the petitioner though was given the assistance of a civilian Advocate during the proceedings, he was not allowed to help the petitioner effectively. The witnesses who were examined during the enquiry were tutored. The evidence that was produced was only circumstantial evidence and extra judicial confession allegedly made by the petitioner. He also brought out the discrepancies in the evidence of PW1, PW5, PW6 and PW7. He stated that some witnesses have gone back on their recorded statements during the Summary General Court Martial and are unreliable. The socalled extra judicial confession was obtained by applying third degree methods and the petitioner was tortured beyond imagination. This can be verified from the evidence of PW3

Capt.Aruna Gupta. In her cross-examination, she had admitted as follows:

On 30 July 1999, the accused came to the MI Room and complained that he was beaten by one or two officers, whose names I do not recollect. I examined the accused but did not observe any marks of injury.

It is correct to suggest that I had prescribed medicine to the accused.

It is correct to suggest that I had given medicine to the accused because he had complaint of being hit and of pain.

If a gunshot wound is received from a distance of 1000 meters, there will be no charring and the size of the entry wound would be large.

I did not take the measurement of the entry and exit wounds.

11. It is also seen from the records that the extra judicial confession made by the petitioner and marked as Ex.II, written in Hindi with English

script. At the top of the confession, it is written as "Certificate". Neither the petitioner nor the witnesses had affixed their signatures in the socalled

extra judicial confession. One of the the two persons who signed as a witness to the extra judicial confession, viz., Subedar Nalanan (PW23) had

stated in his evidence which is found in page 130 of the typed set, which is as follows:

I instructed him to sit on the base of the flag which is made of cement.

Likewise, the second witness, Capt.S.K.Mondal, (PW22) (typed set 123 and 125) had deposed as follows:

When I reached the Mandir Location, I saw the accused sitting on the steps and writing on a piece of paper and handed it over to Sub.Nalanan.

Sub.Nalanan and I thereafter signed on the same paper.

It is stated that the flag staff spoken to by PW23 and the steps of the Mandir spoken to by PW23 are 50 feet away from each other. Therefore,

the confession itself is shrouded in mystery. It is also not clear as to why in spite of the voluntary confession allegedly made by the petitioner on

27.7.1999, the police complaint was made only on 07.12.1999 and an FIR was registered on 25.12.1999.

12. The said extra judicial confession was heavily relied upon by the General Summary Court Martial and in the findings in paragraph "m" dated

23.11.2000, it was recorded as follows:

(m). ...Thereafter the accused made a voluntary written extra judicial confession (Exhibit "II") wherein he admitted that in consequence to an

argument and tempers being hot (garma garmi) he(the accused) fired two bursts of bullets from his AK-47 rifle at Subedar C.Nalinakshan, who

died due to the firing. Therefore his statement viz-a-viz the statement of other prosecution witness with regard to sequence of events and the timing

of their occurrence are supported in material matrix. It is further in the evidence of Captain SK Mondal (PW-22) and Subedar Nalanan (PW-23)

that he (the accused) voluntarily without any threat, coercion or inducement gave the said extra judicial confession.

13. The learned Counsel also brought to the notice of this Court the submission of the defence counsel made before the Court Martial with

reference to the accounting of ammunitions and arms to prove the offence. He referred to that portion of the submission found in page Nos. 205

and 206 of the typed set, which was not considered by the authorities. The said submission may be reproduced below:

"Another vital piece of evidence in the matter pertains to the seizer of the Arms which is alleged to have been used in the commission of offence

and the cartridges both live and empty as seized from the accused and from the place of occurrence, under ordinary circumstances the investigating

agency had to seize the weapon of offence as early as possible and send it to the chemical examination and also collect the empty cartridges from

the spot and a duty was cast upon investigating agency to prove the following facts.

That the weapon of offence seized was used in the commission of offence. That the cartridges issued to the accused were the same which were

used by the accused in the commission of offence. That the remaining cartridges seized were identical with those used. That there was no

possibility of weapons of offence having been used again after the commission of offence. That the weapons of offence was seized from the

accused or from any other place at the instance of the accused.

The sequence of the seizer of weapons of offence as per the prosecution shows that it has been seized by the I/O Mr. Mohd Sabir on 25.12.1999

from D.Coy.Kote of 8 RR Battalion Hqr. as per the statement of Mohd Sabir ASI investigation officer of Police Station Doda, whereas prior to

that the weapon of offence was issued to Sep.Brijender Singh on 09.9.1999 as per the ammunition and Arms register of D Coy. and the statement

of Kote NCOs Bharat Kumar which is sufficient to show that the chemical test conducted is not safe to be relied. As it has passed on to different

hands after the commission of occurrence and had enough time to temper with this piece of evidence. This cast serious doubts upon the fact as to

whether the seized weapon of offence was at all used in the commission of offence or not.

It is again worth considering that the alleged weapon of offence has not been recovered at the instance of the accused disclosure as it has been

corroborated from the prosecution witnesses that the Arms ammunition and equipment was picked up from the auditorium site on 29th July 1999

evening when the jawans were taken in Mandir site.

In these circumstances, the recovery of the weapon of offence in the present case has absolutely no merit, and cannot be read against the accused.

Another vital issue regarding the recovery pertains to the cartages issued to the accused and thereafter recovered from incident site. As per the

prosecution the accused was issued cartages bearing Lot No. 9/90 whereas those shown to have been recovered bear the Lot. No. 10/90.

Furthermore the remaining 78 cartages which were seized as per prosecution version and 87 as per accused affirmation handed over to

N.Sub.Muruganandan on supradnama by ASI Mohd Sabir I/O on 25th Dec.1999 when he had taken Arms and empty cartages from D

Coy.Kote. The same have not been produced before this Court nor their Lot. No. proved.

Therefore, he submitted that it is dangerous to convict a person on the basis of such evidence and, that too, with a life imprisonment.

14. Mr. G.Sankaran, learned Additional Central Government Standing Counsel submitted that the procedure for conducting a Summary General

Court Martial was scrupulously followed and only on the basis of the recorded evidence, the petitioner was imposed with the sentence. He also

submitted that the petitioner's action does not come within the exception to Section 302, RPC and he was given the due punishment.

15. He placed reliance upon the decision of the Supreme Court in Union of India (UOI) and Others Vs. Major A. Hussain (IC-14827), in

paragraphs 22 and 23, which may be usefully reproduced below:

Para 22. We find the proceedings of the General Court-Martial to be quite immaculate where trial was fair and every possible opportunity was

afforded to the respondent to defend his case. Rather it would appear that the respondent made all efforts to delay the proceedings of the court-

martial. Thrice he sought the intervention of the High Court. Withdrawal of the defence counsel in the midst of the proceedings was perhaps also a

part of his plan to delay the proceedings and to make that a ground if the respondent was ultimately convicted and sentenced. Services of qualified

defending officer were made available to the respondent to defend his case, but he had rejected their services without valid reasons. He was

repeatedly asked to give the names of the defending officers of his choice but he

declined to do so. The court-martial had been conducted in accordance with the Act and Rules and it is difficult to find any fault in the proceedings. The Division Bench said that the learned Single Judge minutely examined the record of the court-martial proceedings and after that came to the conclusion that the respondent was denied reasonable opportunity to defend himself. We think this was a fundamental mistake committed by the High Court. 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.

Para 23. 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 composition 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 specialised part of overall mechanism by which the military discipline is preserved. It is for the

special need for the armed forces 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 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, the Army Rules, Defence Service Regulations and other Administrative Instructions of

the Army, 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 the court-martial unless it is shown that the 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 powers to award punishment.

16. But, it must be noted that the said judgment came to be considered by a subsequent judgment of the Supreme Court in *Union of India and*

Others Vs. Himmat Singh Chahar, . Paragraph 4 of the judgment is relevant and it may be usefully extracted below:

Para 4. Since the entire procedure is provided in the Act itself and the Act also provides for a further consideration by the Chief of the Naval Staff

and then by the Union Government then ordinarily there should be a finality to the findings arrived at by the competent authority in the court-martial

proceedings. It is of course true that notwithstanding the finality attached to the orders of the competent authority in the court-martial proceedings

the High Court is entitled to exercise its power of judicial review by invoking jurisdiction under Article 226 but that would be for a limited purpose

of finding out whether there has been infraction of any mandatory provisions of the Act prescribing the procedure which has caused gross

miscarriage of justice or for finding out that whether there has been violation of the principles of natural justice which vitiates the entire proceedings

or that the authority exercising the jurisdiction had not been vested with jurisdiction under the Act. The said power of judicial review cannot be a

power of an appellate authority permitting the High Court to reappraise the evidence and in coming to a conclusion that the evidence is

insufficient for the conclusion arrived at by the competent authorities in court-martial proceedings. At any rate it cannot be higher than the

jurisdiction of the High Court exercised under Article 227 against an order of an inferior tribunal....

17. Further, the said judgment in *Major A.Hussain's case*, (cited supra) came to be quoted with approval by the Supreme Court in *Union of India*

and *Others Vs. R.K. Sharma*, . The Supreme Court made the following observations in paragraph 13, which are as follows:

Para 13. In our view, the observations in Ranjit Thakur Vs. Union of India (UOI) and Others, extracted above, have been misunderstood. In that

case the facts were such that they disclosed a bias on the part of the Commanding Officer. In that case the appellant Ranjit Thakur had fallen out of

favour of the Commanding Officer because he had complained against the Commanding Officer. For making such a complaint the Commanding

Officer had sentenced him to 28 days" rigorous imprisonment. While he was serving the sentence he was served with another charge-sheet which

read as follows:

Accused 1429055-M Signalmán Ranjit Thakur of 4 Corps Operating Signal Regiment is charged with-

Army Act, Disobeying a lawful command given by his

Section 41(2). superior officer

In that he,

at 1530 hours on 29-5-1985 when ordered by JC 106251-P Sub Ram Singh, the Orderly Officer of the same Regiment to eat his food, did not

do so.

On such a ridiculous charge rigorous imprisonment of one year was imposed. He was then dismissed from service, with the added disqualification

of being declared unfit for any future civil employment. It was on such gross facts that this Court made the observations quoted above and held that

the punishment was so strikingly disproportionate that it called for interference. The above observations are not to be taken to mean that a court

can, while exercising powers under Article 226 or 227 and/or under Article 32, interfere with the punishment because it considers the punishment

to be disproportionate. It is only in extreme cases, which on their face show perversity or irrationality that there can be judicial review. Merely on

compassionate grounds a court should not interfere.

18. Once again the judgment in Major A.Hussain's case (cited supra) was referred to in a subsequent decision of the Supreme Court in Pradeep

Singh v. Union of India and Ors. reported in (2007) 11 SCC 612 and in paragraph 10, it was observed as follows:

Para 10 ""Proceedings of a Court Martial are not to be compared with the proceedings in a criminal court under the Code of Criminal Procedure,

1973 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 specialised part of overall mechanism by which the military discipline is preserved. It is for the special

need for the armed forces that a person subject to the 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 the Evidence Act are applicable. A Court Martial has also

the same responsibility as any court to protect the rights of the 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, the Army Rules, Defence Service Regulations and other Administrative Instructions

of the Army, it is manifestly clear that the procedure prescribed is perhaps equally fair if not more than a criminal trial provides to the accused....

19. It must also be stated that the Supreme Court in *Ranjit Thakur Vs. Union of India (UOI) and Others*, , while dealing with the Army Act and

the procedure to be followed in Court Martial proceedings, in paragraphs 10, 11 and 12 had observed as follows:

Para 10. The "Act" constitutes a special law in force conferring a special jurisdiction on the court-martial prescribing a special procedure for the

trial of the offences under the "Act" Chapter VI of the "Act" comprising of Sections 34 to 68 specifies and defines the various offences under the

Act". Sections 71 to 89 of Chapter VII specify the various punishments. Rules 106 to 133 of the Army Rules, 1954 prescribe the procedure of,

and before, the summary court-martial. The Act and the Rules constitute a self-contained code, specifying offences and the procedure for

detention, custody and trial of the offenders by the courts martial.

Para 11. The procedural safeguards contemplated in the Act must be considered in the context of and corresponding to the plenitude of the

summary jurisdiction of the court-martial and the severity of the consequences that visit the person subject to that jurisdiction. The procedural

safeguards should be commensurate with the sweep of the powers. The wider the power, the greater the need for the restraint in its exercise and

correspondingly, more liberal the construction of the procedural safeguards envisaged by the statute. The oft-quoted words of Frankfurter, J. in

Vitarelli v. Seaton 359 US 535 are again worth recalling:

...if dismissal from employment is based on a defined procedure, even though generous beyond the requirements that bind such agency, that

procedure must be scrupulously observed.... This judicially evolved rule of administrative law is now firmly established and, if I may add, rightly so.

He that takes the procedural sword shall perish with that sword.

Para 12. ""The history of liberty"" said the same learned Judge ""has largely been the history of observance of procedural safeguards""(1942) 318 US

332.

20. On the strength of these legal pronouncements and the factual matrix set out herein, the learned Counsel for the petitioner submitted that the

delay in lodging the FIR was not satisfactorily explained by the respondents. While the alleged confession was dated "nil" but said to have been

obtained on 27.7.1999 the police complaint was lodged on 07.12.1999 and an FIR was registered only on 25.12.1999.

21. In this context, the learned Counsel relied upon the judgment of the Supreme Court in Thulia Kali Vs. The State of Tamil Nadu, . He placed

reliance upon the following passage found in paragraph 12, which may be usefully reproduced below:

Para 12. ...The object of insisting upon prompt lodging of the report to the police in respect of commission of an offence is to obtain early

information regarding the circumstances in which the crime was committed, the names of the actual culprits and the part played by them as well as

the names of eyewitnesses present at the scene of occurrence. Delay in lodging the first information report quite often results in embellishment

which is a creature of afterthought. On account of delay, the report not only gets bereft of the advantage of spontaneity, danger creeps in of the

introduction of coloured version, exaggerated account or concocted story as a result of deliberation and consultation. It is, therefore, essential that

the delay in the lodging of the first information report should be satisfactorily explained....

22. On the non-accounting of the arms and ammunition used in the commission of offence, the petitioner relied upon the following judgment of the

Supreme Court in Puran Singh Vs. State of Uttaranchal, , wherein more or less similar circumstances came up for consideration. The following

passages found in paragraphs 20 and 25 may be usefully extracted below:

Para 20. The FIR was registered u/s 307 IPC on the basis of the report dated 3-8-1979 by Pratap Singh, Pradhan, but Rajpal Singh died and the

case was registered u/s 302 IPC. It was stated that ""as the death of the injured Rajpal Singh was caused due to intentional gunshot by accused

Puran Singh s/o Bhag Chand, therefore, the accused Puran Singh is taken into custody and the weapon used in murder i.e. Gun No. 1319/V-

1970, Licence No. 697/ML4/34-V and two empty cartridges bore 12 recovered from the accused and sealed it at the spot in presence of the

witnesses"".

Para 25. The report of the forensic science laboratory dated 28-11-1979 is also on record. It states that the laboratory received a letter from the

Chief Judicial Magistrate, Chamoli (Gopeshwar) along with two 12 bore K.F. Special emptied cartridges marked as ECs 1 and 2 and one piece

of gun 12 bore single-barrelled No. 1319. It was then stated that the examiner fired five shots from the gun which were marked as TC 1 to TC 5.

TC 1, TC 2 and TC 5 misfired and rest fired successfully. Regarding EC 1 and EC 2, it was stated that there had been signs of firing pin. But on

EC 2, the signs were not specific. Cap of EC 1 had sign of breach and EC 2 had minor sign of breach. On the basis of the examination, a

conclusion was given which is in the form of result which reads as under:

Result.- (A) The cartridge in question EC 1 was not fired from the single-barrelled 12 bore No. 319 marked 1/79 gun.

(ii) The cartridge in question EC 2 has no comparative feature with shot fired from Gun No. 1319 12 bore marked 1/79.

(B) On the chemical examination of fouling matter from the gun the nitrate was found from the gun so it is concluded that after last shot the gun was

not cleaned but on 3-8-1979 whether or not shot was fired from gun designative scientific opinion is not a possibility.

It is thus clear that as per ballistic expert's opinion, cartridge EC 1 was not fired from the single-barrelled 12 bore No. 1319 said to have been

used by the accused. In our opinion, therefore, the appellant-accused is entitled to benefit of doubt.

23. On the alleged extra judicial confession made by the petitioner, the counsel stated that if the obtaining of the confession is unbelievable or

shrouded in mystery, then no reliance can be placed upon the same. In the present case, he was kept in custody and virtually was chained to the window bar during the relevant period.

24. He placed reliance upon the judgment of the Supreme Court in State of Haryana Vs. Ved Prakash, and relied upon the following passage

found in paragraph 5, which may be usefully reproduced below:

Para 5. ...Therefore, it sounds strange that the accused could have made an extra-judicial confession that too in the presence of P.W.31 Lal Chand

when both of them were strangers to the accused. It is equally surprising that Doctor kept ready a tape recorded anticipating his confession. It is

clear this is an evidence brought out by influence; may be perhaps when the accused was in police custody. The medical evidence also does not

support the extra-judicial confession when the Doctors and the post-mortem examination could not fix the cause for death.

25. He further placed reliance upon the judgment of the Supreme Court in Balwinder Singh Vs. State of Punjab, for the purpose of showing that

the extra judicial confession is shrouded in suspicious circumstances then no reliance can be placed upon the same.

Para 13. ...we find it rather difficult to accept that the appellant could have made any extrajudicial confession to her. The manner in which the

extrajudicial confession is alleged to have been made and the silence of PW 3 for three days in disclosing the same to the police, even though she

had admittedly been with the police between 21-3-1984 and 23-3-1984 renders it unsafe to rely upon her statement. This unexplained long delay

in lodging the first information report Ex. PB detracts materially from the reliability of the prosecution case in general and the testimony of PW 3 in

particular. We find that the alleged extrajudicial confession is surrounded by suspicious circumstances and the prosecution has not been able to

establish that the appellant had made any extrajudicial confession to PW 3 Satya Walia and therefore this circumstance remains unestablished.

26. The arguments of the learned Counsel for the petitioner merits acceptance. In the present case, the petitioner was kept in the custody of the

respondents and even chained to the window bar (the photographs produced before this Court confirm the same). The extraction of the extra

judicial confession shrouded in mystery inasmuch the petitioner who was

unfamiliar with writing in Hindi in Devanagiri script was made to write Hindi sentences with English alphabets. There is no date mentioned in the confession marked as Ex."II" in the Court Martial. The witnesses who have signed have also not assigned any date. The evidence of P.W.23 and P.W.22 also varies with reference to the place of writing of the confession statement. The doctor who deposed also spoke about the injuries on the body of the petitioner and the treatment given to him. There is a considerable delay in lodging the FIR. Further, the bullets and the rifle used for commissioning the offence were also not properly accounted for.

27. The respondents have not conducted the Court Martial within the ambit of the Army Act and the Rules framed thereunder. The Supreme Court in the decision referred to earlier had categorically stated that the law of evidence will apply to the Court Martial proceedings. It has also been consistently held by the Supreme Court that if there was a miscarriage of justice or an improper trial, then this Court under the power vested under Article 226 of the Constitution can exercise the power of judicial review over such proceedings of the Army authorities. In the present case, with such a thin evidence, it is highly improper and unjust to convict the petitioner with a life imprisonment.

28. In the light of the above, the writ petition is partly allowed and the conviction made against the petitioner D.R.Sri Raman (Convict No. 15693 lodged in Central Prison, Vellore-632 002) is hereby set aside and he shall be released from the jail custody forthwith. In other respects regarding the setting aside his dismissal from service as well as the reduction in his rank, this Court is not inclined to interfere with the same. However, there will be no order as to costs. This Court records the appreciation of the valuable help rendered by the counsel provided by the T.N. State Legal Services Authority.

29. Registry is directed to communicate the operative portion of this order to the Jail Superintendent, Central Prison, Vellore-632 002 for the purpose of releasing the petitioner D.R.Sri Raman (Convict No. 15693 lodged in Central Prison, Vellore-632002).