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UNION OF INDIA AND ORS.

v.

J.S. BRAR

OCTOBER 9, 1992

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[Dr. T.K. THOMMEN, V. RAMASWAMI AND
S.P. BHARUCHA, JJ.]

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Army Act, 1950/Army Rules 1954: Sections 69, 160, 164/Rules 68, 70—Court Martial—Findings recorded and sentence awarded—Confirming Authority ordering Revision—Retracted confession of co-accused—Additional evidence taken—Reasonable opportunity for Cross-examination of witnesses—Finding of guilt and award of sentence—Confirmation by Competent Authority—Whether suffers from jurisdictional error—Revision proceedings—Whether vitiated.

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The Respondent-accused who was a Major in the Indian Army was charged with the offence punishable under Section 69 of the Army Act, 1950 read with S.379 IPC. Of the two charges of allegedly stealing articles from the Department of Salvage he was found guilty of one charge and was cashiered and sentenced to one year rigorous imprisonment. In respect of the other charge he was acquitted. However, the Confirming Authority ordered revision of the findings of the General Court Martial (GCM) for recording fresh evidence and reconsideration. Consequently the GCM was again constituted and proceedings commenced against the accused. Additional evidence was taken and the accused was found guilty of both the charges. He was cashiered and sentenced to one year rigorous imprisonment which was confirmed by the Competent Authority.

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The accused filed a petition before the Government which was rejected. Thereafter, he challenged the order by way of a Writ Petition before the High Court and the High Court set aside the revised findings of the GCM and the sentence imposed. Against the High Court's order, the Union of India preferred the present appeal.

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On behalf of the appellant it was contended that sufficient opportunity was given to the accused to cross-examine the witnesses and to let in fresh evidence; and that there was ample independent evidence to fully support the findings reached by the GCM.

On behalf of the Respondent, it was contended that apart from the evidence of accomplices and co-accused or the retracted confession of a co-accused which was obtained by inducement and threat, there was no evidence which rationally led to the conclusion that the Respondent was guilty of the charges brought against him; and that the finding of guilt against the accused was not confirmed by the Competent Authority leading to jurisdictional error which vitiated the entire proceedings.

Allowing the appeal, this Court,

HELD: 1. The High Court was not justified in interfering with the findings and sentences rendered by the GCM and confirmed by the Chief of the Army Staff. [923-G]

2. Even assuming that the evidence of PWs. 1, 2, 3 and 19 was tainted by reason of their being accomplices or co-accused, as they are sought to be characterised by the respondent, and it was not taken into account, all the other witnesses unmistakably support the prosecution case. They speak to the presence of the accused at the time and place of the offence and his active participation in the commission of the crime as well as the attempt made by him to suppress evidence by threatening the concerned witnesses or tampering with the relevant documents. These witnesses having deposed on behalf of the prosecution, and the defence having been afforded reasonable opportunity to cross-examine them, their evidence as such is not inadmissible, for it is at worst the evidence of accomplices, which can be safely taken into account, if corroborated in material particulars by other independent evidence. [921 A-D]

3. As regards the retracted confession attributed to the 4th accused, the confession as such is of no value, particularly because it is retracted, except as a reassurance when reliable evidence has already been adduced on behalf of the prosecution. [921-G]

Capt. Harish Uppal v. Union of India & Ors., [1973] 3 SCC 319; *Ram Narain v. State of Rajasthan*, [1973] 3 SCC 805; *Chonampara Chellappan v. State of Kerala*, [1979] 4 SCC 312; *Bhuboni Sahu v. The King*, AIR 36 (1949) Privy Council 257; *Shrishail Nageshi Pare v. State of Maharashtra*, [1985] 2 SCC 341; *Brij Bhushan Singh v. Emperor*, AIR 33 (1946) Privy Council 38; *Abdul Sattar v. Union Territory, Chandigarh*, [1985] supp. SCC 599 and *Mohd. Hussain Umar Kochra Etc. v. K.S. Dalipsinghi & Anr. etc.*, [1979] 1 SCR 130, relied on.

A 4. The Act and the Rules do not require reasons to be given for the findings and sentences rendered by the Court Martial. In the instant case, in the absence of reasons, it is not possible to say whether the GCM had placed any reliance at all on the testimony of the so called accomplices or the retracted confession of co-accused, in coming to its findings against the accused. As stated earlier, the findings are fully supported by other evidence which is unimpeachable. [921-H; 922-A]

S.M. Mukherjee v. Union of India, [1990] 4 SCC 594 and *Ram Sarup v. The Union of India & Anr.*, [1964] 5 SCR 931, relied on.

C 5. The Act and the Rules specifically provide for additional evidence being taken by the Court upon an order of revision. It cannot be said that no reasonable opportunity was given to cross-examine the Brigadier. The proceedings show that he was summoned by the Court in terms of section 160 to depose as a witness consequent upon the order of the Revisional Authority and was allowed to be cross-examined at length by the defence, although, as permitted by the Rules, questions were required to be put to the witness through the Court. [922 B-D]

D 6. In the instant case, the General Officer Commanding, U.P. Area, had been empowered by the Central Government by warrant as the Confirming Authority. Under rule 70, he may either "confirm or refuse confirmation or reserve confirmation for superior authority". The General Officer Commanding, U.P., being so empowered to reserve confirmation for the superior authority, did reserve by his Order dated 31.7.1985 the findings and sentences for such confirmation. That authority, being the Chief of the Army Staff, confirmed the findings and sentences of the GCM vide his order dated 29.8.1986. The revised findings and sentences of the GCM thus stand confirmed by the competent authority. Hence the question of jurisdictional error does not arise at all. [923 E-F]

CIVIL APPELLATE JURISDICTION : Civil Appeal No.1797 of 1992.

G From the Judgment and Order dated 14.2.91 of the Allahabad High Court in Civil Miscellaneous Writ Petition No. 9319 of 1988.

V.R. Reddy, Additional Solicitor General, Ms. Sushma Suri, S.N. Terdol and Ashok K. Srivastava for the Appellants.

H Jagdev Singh Manhas for the Respondent.

The Judgment of the Court was delivered by

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DR. THOMMEN, J. The appellant-the Union of India challenges the judgment of the Allahabad High Court setting aside the revised findings of the General Court Martial ('the GCM') and the sentences imposed, as confirmed by the Order of the competent authority dated 29.8.1986, in respect of the present respondent- J.S. Brar, who was a Major in the Indian Army until he was cashiered by the aforesaid Order. Allowing the Civil Misc. Writ Petition No.9319 of 1988, the High Court by the judgment under appeal found that sufficient opportunity was not given to the respondent (also referred to as 'the accused') to cross-examine witnesses summoned after the order of revision or to let in fresh evidence to rebut their evidence. The High Court, however, found that the relevant provisions of the Army Rules, 1954 ('the Rules') had been sufficiently complied with and there was no defect in the investigation of case. So stating, the High Court, without quashing the proceedings, directed reconstitution of the GCM so as to afford a fresh opportunity to the accused to cross-examine the witnesses examined after the order of revision as well as let in fresh evidence on his behalf to rebut their evidence.

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The accused was charged with the offence punishable under section 69 of the Army Act, 1950 (hereinafter referred to as 'the Act') read with section 379 of the Indian Penal Code. Two charges were framed against the accused in respect of articles alleged to have been stolen on 27.9.1983 and 9.2.1984 from the Department of Salvage. On 14.2.1985, the accused was found guilty of charge No.2 relating to the incident of 9.2.1984 and was cashiered and sentenced to one year of rigorous imprisonment. In respect of charge No.1 relating to the incident of 27.9.1983, the accused was acquitted. The Confirming Authority, however, ordered, under section 160 read with rule 68, revision of the findings of the GCM for recording fresh evidence and reconsideration.

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Subsequent to the order of the Confirming Authority, the GCM was again constituted and proceedings commenced against the accused. Additional evidence was taken in terms of section 160 read with rule 68 by examining Brig. S.C. Chatrath, Capt. Raghunandan, Shri Bhojraj and others. On examination of these witnesses, the GCM found the accused guilty of both the charges and sentenced him to be cashiered and to suffer rigorous imprisonment for one year. The Confirming Authority confirmed the findings and sentences rendered by the GCM by Order dated 29.8.1986.

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A The accused thereupon filed a petition before the Government of India under section 164(2) of the Act. The Government of India rejected the petition vide order dated 25.1.1988. These orders confirming the findings and sentences against the accused were challenged by him successfully in the High Court in the writ proceedings from which the impugned judgment arises.

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The Additional Solicitor-General, Mr. V.R. Reddy, appearing for the Union of India, submits that the High Court was wrong in stating that sufficient opportunity was not given to the accused to cross-examine witnesses or to let in fresh evidence on his behalf. A number of witnesses, he says, have spoken in clear terms to the guilt to the accused. Additional evidence was let in as permitted by the Act and the Rules and as required by the order of revision. All such witnesses were allowed to be cross-examined in terms of relevant provisions of the Act and the Rules. Apart from the retracted confession of a co-accused or the testimony of certain witnesses, referred to by the defence as accomplices, there was ample independent evidence to fully support the findings reached by the GCM.

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Mr. Jagdev Singh Manhas, appearing for the accused, however, submits that the only evidence against the accused was the retracted confession of Pradhan, accused No.4, and the evidence of certain accomplices or co-accused, such as PWs.1, 2, 3 and 19. He further submits that Pradhan's confession was obtained by inducement and threat and that he had subsequently retracted from it. No reliance should have been placed on that confession. Furthermore, Brig. Chatrath, who was directed by the Confirming Authority to be examined, was not allowed to be freely cross-examined by the defence counsel. Apart from the evidence of accomplices and co-accused or the retracted confession of accused No.4 i.e. Pradhan, there was no evidence which rationally led to the conclusion that the respondent was guilty of the charges brought against him. In any view, Mr. Manhas submits, a jurisdictional error has occurred vitiating the entire proceedings in so far as the finding of guilt against the accused was not confirmed by the competent authority. The last submission regarding jurisdictional error does not appear to have been urged before the High Court. Nevertheless, we shall deal with these submissions.

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We have been taken through the proceedings of the GCM. We find that a number of witnesses had been examined on the side of the prosecution. PWs 1 to 10, 12 to 14, 17 to 19, 24, 26 to 28, 34, 37 and 38 deposed on the side of the prosecution in respect of the offences alleged against the

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respondent, who is accused No.2. Assuming that the evidence of PWs. 1, 2, 3 and 19 was tainted by reason of their being accomplices or co-accused, as they are sought to be characterised by the respondent, and it was not taken into account, all the other witnesses unmistakably support the prosecution case. They speak to the presence of the accused at the time and place of the offence and his active participation in the commission of the crime as well as the attempt made by him to suppress evidence by threatening the concerned witnesses or tampering with the relevant documents.

We see no substance in the contention that the evidence of PWs. 1, 2, 3 and 19 has in any manner vitiated the proceedings. They had spoken to the incident, although they themselves had been proceeded against separately in summary proceedings. Having deposed on behalf of the prosecution, and the defence having been afforded reasonable opportunity to cross-examine them, their evidence as such is not inadmissible, for it is at worst the evidence of accomplices, which can be safely taken into account, if corroborated in material particulars by other independent evidence. As regards the objection concerning the retracted confession attributed to the 4th accused, Pradhan, it may be stated that the confession as such is of no value, particularly because it is retracted, except as a reassurance when reliable evidence has already been adduced on behalf of the prosecution. See *Capt. Harish Uppal v. Union of India & Ors.*, [1973] 3 SCC 319; *Ram Narain v. State of Rajasthan*, [1973] 3 SCC 805; *Chonampara Chellappan v. State of Kerala*, [1979] 4 SCC 312; *Bhuboni Sahu v. The King*, AIR 36 (1949) Privy Council 257; *Shrishail Nageshi Pare v. State of Maharashtra*, [1985] 2 SCC 341; *Brij Bhushan Singh v. Emperor*, AIR 33 (1946) Privy Council 38; *Abdul Sattar v. Union Territory, Chandigarh*, [1985] Supp. S.C.C. 599 and *Mohd. Hussain Umar Kochra Etc. v. K.S. Dalipsinghji & Anr. etc.*, [1970] 1 SCR 130.

The criticism against the evidence of PWs. 1, 2, 3 and 19 (assuming that they are accomplices) and against the retracted confession of Pradhan, loses importance in the teeth of independent evidence on record. Innumerable witnesses have spoken to the incident implicating the accused. They fully support the case of the prosecution.

The Act and the Rules do not require reasons to be given for the findings and sentences rendered by the Court Martial. See *S.N. Mukherjee v. Union of India*, [1990] 4 SCC 594, 617; *Ram Sarup v. The Union of India*

A & *Anr.*, [1964] 5 SCR 931. In the absence of reasons, it is not possible to say whether the GCM had placed any reliance at all on the testimony of the so called accomplices or the retracted confession of Pradhan in coming to its findings against the accused. As stated earlier, the findings are fully supported by other evidence which is unimpeachable.

B We see no merit in the contention that additional evidence ought not to have been allowed, for the Act and the Rules specifically provide for such additional evidence being taken by the Court upon an order of revision (see section 160 read with rule 68). Nor do we see merit in the contention that no reasonable opportunity was given to cross-examine Brig. C Chatrath. The proceedings of the GCM show that Brig. Chatrath, who was summoned by the Court in terms of section 160 to depose as a witness consequent upon the order of the Revisional Authority, was allowed to be cross-examined at length by the defence, although, as permitted by the Rules, questions were required to be put to the witness through the Court. However, towards the end of the cross-examination, the Court stated:-

D "Considering the trend of defence counsel in suggesting a number of questions, the court decide to ask him to give a list of all questions at one time so that the trial may be speedy".

E This shows that questions were required to be given in writing and the record indicates that questions were in fact given in writing and they were put to the witness and were answered. It may also be noted that this order was made by the court after a number of questions had been orally put to the witness by the defence counsel through the Court and answered by the witness. Significantly, the evidence of Brig. Chatrath shows that he was not in a position to speak to the confession made by Pradhan on 15.2.1984, for no such statement was recorded in the presence of the witness on 15.2.1984 and it does not form part of the record considered by the GCM. The evidence of Brig. Chatrath had, therefore, no value in regard to the confession alleged to have been made by the 4th accused Pradhan. In any view of the matter, the defence cannot legitimately complain that due opportunity was not given to cross-examine either Brig. Chatrath or any other witness. There was no failure of natural justice in any respect.

H We see no substance in the contention regarding jurisdiction. Section 154 of the Act says:-

"S. 154. Power to confirm finding and sentence of general court-martial. - The findings and sentences of general courts-martial may be confirmed by the Central Government, or by any officer empowered in this behalf by warrant of the Central Government."

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Rule 70 of the Rules says:-

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"Rule 70. Confirmation. - Upon receiving the proceedings of a general or district court-martial, the confirming authority may confirm or refuse confirmation, or reserve confirmation for superior authority, and the confirmation, non-confirmation, or reservation shall be entered in and form part of the proceedings."

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We see no merit in the respondent's submission on the basis of Paragraph 472 of the Regulations for the Army which is not statutory in character and which has to be read in harmony with the Act and the Rules. We see no conflict arising by reason of the Regulations.

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In the present case, the General Officer Commanding, U.P. Area, had been empowered by the Central Government by warrant as the Confirming Authority. Under rule 70, he may either "confirm or refuse confirmation or reserve confirmation for superior authority". The General Officer Commanding, U.P., being so empowered to reserve confirmation for the superior authority, did reserve by his Order dated 31.7.1985 the findings and sentences for such confirmation. That authority, being the Chief of the Army Staff, confirmed the findings and sentences of the GCM vide his Order dated 29.8.1986. The revised findings and sentences of the GCM thus stand confirmed by the competent authority. These orders were made in compliance with the relevant provisions of the Act and the Rules and are reasonably based on evidence.

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In the circumstances, the High Court was not justified in interfering with the findings and sentences rendered by the GCM and confirmed by the Chief of the Army Staff. Accordingly we allow the appeal and set aside the judgment of the High Court. However, in the circumstances of the case, we do not make any order as to costs.

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Appeal allowed.