OM PRAKASH

v.

UNION OF INDIA & ORS.

(Criminal Appeal No.1112 of 2011)

JULY 09, 2015

[DIPAK MISRA AND N.V. RAMANA, JJ.]

Penal Code, 1860: s.304 Part II r/w s.34 – Conviction and sentence of 7 years RI imposed by General Court Martial confirmed by Armed Forces Tribunal – Fight ensued between the appellant and another army official in a farewell party – Deceased tried to intervene and was abused by the appellant – After the party was over PW6 entered his barrack and found deceased in pool of blood – Deceased was rushed to hospital where he was declared dead – Appellant surrendered at the police station and stated that he had stabbed one person with a knife – Held: There was ample incriminating circumstances against the appellant and the complete chain of circumstances consistent only with hypothesis of the guilt of the appellant –Minor discrepancy did not destroy the prosecution case – Testimony of witnesses stood firm during cross-examination – The confessional statement made by the appellant was voluntary – There was no infirmity in the conviction order.

Dismissing the appeal, the Court

HELD: 1. The evidence brought on record established that on the fateful day, there was a farewell party, in which drinks were served; that the appellant entered into an altercation with PW5, whereby the

A appellant fought with him and abused him and consequently PW5 slapped the appellant; that the appellant abused PW5 and the deceased; that the said altercation was intervened by PW4, and at that juncture he directed PW6 and PW7, to take the accused to his B living barracks; that as per the directions of the authority PW-6 and PW-7 guided the appellant to the barracks; that the deceased was found lying on the floor bleeding from mouth and nose and the appellant was found lying on his bed on his stomach with hands C folded beneath in the same room by PW26, at about 0030 hours when he had returned to the barracks; that on being alerted by PW 26, PW13 and PW12 had made arrangements for taking the deceased for medical aid; that apart from the deceased and the appellant, no one D else was present in the room as per the testimony of PW18, PW26, PW12 and PW13; that PW18, and PW13, had witnessed the appellant leaving the room quietly via the rear door; that the appellant was absent from the 'fall E in parade' that was conducted at 0200 hours; and that at 0150 hours the Commanding Officer, and PW15, met the appellant at PS Babina, wherein the appellant had surrendered. [Para 9] [478-E-H; 479-A-D]

F 2. The said established facts which are founded on proper appreciation of the evidence by the forums below make clear that the chain of circumstances was complete. What has weighed with the forums below was that the appellant was present in the room and had G escaped. The circumstances that really weighed against the appellant were that he had indulged in an altercation in the party; that he was in a drunken state and he was alone present in the room; and that he had escaped by the rear door. He being present at the H police station and not being present at the "fall in

parade" is circumstance which would go against him. He was not able to give any explanation about his presence at the police station and the factum that on being informed by the Head constable, the army officers arrived at the concerned police station. The series of circumstance clearly established the guilt of the accused and the minor discrepancies really did not create any kind of dent in the testimony of the prosecution witnesses to treat them as reproachable and remotely did not destroy the prosecution version. The statement of the appellant recorded in the proceeding under Rule 23 was proved during the GCM. Despite roving cross-examination, both the witnesses firmly stood embedded to their version. The appellant was asked whether he was inclined to make a statement and also apprised that he was not obliged to say anything unless he wanted to say. That apart, a warning was given to him that whatever he would say would be taken down in writing and given in evidence. Thus, there was no compulsion. It was a voluntary statement and that it had been done under a statutory Rule. [Paras 10, 13, 14] [479-E-H; 480-A-D; 483-C-E; 485-B-C]

Hema v. State **2013 (3) SCR 1: (2013) 10 SCC 192;** *Union of India v. Major Rabinder Singh* **2011 (15) SCR 793: (2012) 12 SCC 787;** *Appabhai v. State of Gujarat* AIR **1988 SC 696;** *Rohtash Kumar v. State of Haryana* **2013 (3) SCR 884: (2013) 14 SCC 434;** *Bachan Singh v. Union of India and* others **2008 (10) SCR 668: (2008) 9 SCC 161 – relied on.**

Gilbert Pereira v. State of Karntaka **AIR 2004 12 SCC 281: 2004 (3) Suppl. SCR 711;** *Ravindran v. Superintendent of Customs* **(2007) 6 SCC 410;** *Rumi Bora Dutta v. State of Assam* **(2013) 7 SCC 417 – referred to.**

A **Case Law Reference**

2004 (3) Suppl. SCR 711	**referred to.**	**Para 6**
(2007) 6 SCC 410	**referred to.**	**Para 8**
B **(2013) 7 SCC 417**	**referred to.**	**Para 8**
2013 (3) SCR 1	**relied on.**	**Para 10**
2011 (15) SCR 793	**relied on.**	**Para 10**
C **AIR 1988 SC 696**	**relied on.**	**Para 10**
2013 (3) SCR 884	**relied on.**	**Para 10**
2008 (10) SCR 668	**relied on.**	**Para 13**

D CRIMINAL APPELLATE JURISDICTION: Criminal Appeal No. 1112 of 2011.

From the Judgment and Order dated 05.04.2010 in TA/617/09 in [W.P. (C) No. 7266 of 2009] of the Armed Forces E Tribunal Principal Bench, New Delhi.

Mohit Kumar Shah for the Appellant.

R. Balasubramaniam, Amarendra Bal, Vikas Malhotra, F B.V. Balram Das and Anil Katiyar for the Respondents.

The Judgment of the Court was delivered by

DIPAK MISRA, J. 1. The present appeal, by special leave, is directed against the judgment of affirmation of conviction G and order of sentence passed by the Armed Forces Tribunal, principal Bench, New Delhi (for short "the tribunal") in T.A. 617 of 2009 whereby the tribunal has confirmed the conviction under Section 304 Part-II, I.P.C. and the sentence of seven years of rigorous imprisonment imposed by the General Court H Martial held at Babina in the State of Madhya Pradesh vide

order dated 24.2.2007 and further has maintained the order dated 18.3.2008 passed by the Chief of Army Staff under Section 164(2) of the Army Act, 1950 (for brevity "the Act"). A

2. Be it stated, the initial order was challenged before the High Court of Delhi in W.P.(C) No. 7266 of 2009 and after coming into force of the Armed Forces Tribunal Act, 2007 (for short 'the 2007 Act') and the constitution of the tribunal the matter was transferred to the tribunal wherein it was treated as an appeal under Section 15 of the said enactment. B

3. The facts necessary to be exposited for adjudication of this appeal are that on 3rd of April, 2006, a 'Barkhana' was organized at 85, Armoured Regiment to bid farewell to the outgoing Risaldar, Major Madan Lal. At the Barkhana venue some heated arguments took place between the appellant and Risaldar, Nand Lal Prasad, PW5, and in course of argument said Nand Lal Prasad slapped the appellant. However, the matter was defused with the intervention of Major Raj Nandan, PW4, who instructed Lance Dafdar Anil Kumar, PW6 and Lance Dafadar Murari Singh, PW7, to take the accused to his living barracks of Headquarter Squadron. C D E

4. As per the prosecution version during the altercation and assault between the accused and Nand Lal Prasad, deceased Dafadar Ram Pratap had tried to intervene and was abused by the accused. After the accused had left for the barracks of the Headquarter, about 12.30 a.m., Sowar Balwinder Singh, PW6, came to the line after finishing his duties allotted to him, and after entering the room switched on the light and found Dafadar Ram Pratap was lying in a pool of blood and blood was also oozing out from his mouth. He was immediately shifted to the Army Hospital where he was declared dead. About 1.30 a.m. on 4.4.2006, information was received from the police station Babina by the 85, Armoured Regiment that a person belonging to their regiment had F G H

A surrendered at the police station and stated that he had stabbed one person with a knife. On receipt of the said information, the concerned J.C.O. was sent to the police station where he saw that Dafadar Om Prakash was present. After receiving the information from the J.C.O., the Commanding
B Officer, Col. Rajiv Chib, PW27, along with Lt. Col. Atul Kumar Bhat, PW15, reached the police station Babina about 1.50 a.m. and enquired from the accused about the details to which he confessed that he had stabbed the deceased. Thererafter, an F.I.R. was lodged by the Adjutant Captain Abhishek, PW3,
C and the accused was handed over to the Military Police. As the narration would further unfurl, the proceedings of the General Court Martial (GCM) under the Army Act was initiated by order dated 8.10.2006 passed by Major General A.K. Singh, General
D Officer Commanding, 31st Armoured Division.

5. Be it noted, the accused was charged for the offences under Section 302 of I.P.C. for intentionally causing death of Ram Pratap of his unit, but subsequently stood convicted for culpable homicide not amounting to murder under Part-II of
E Section 304, I.P.C. As is demonstrable, the prosecution in order to substantiate the charge had examined as many as 31 witnesses and during the court martial number of documents were exhibited. The Court Martial relied on Exbt. 36 which
F was recorded at the time of summary of evidence wherein the accused had admitted that the deceased and he were involved in a fight. He had also stated that the deceased in the room had abused him and tried to kick him but failed in the attempt and when the accused stood up on 'charpai' the deceased
G boxed him on the face and at that time he pushed him back with both hands as a result of which he fell on the box and was hurt on his back. As the statement further proceeds, the deceased left the room and came back within five minutes. The accused, in the meantime, had picked up the knife from
H the locker and kept it on the box. While he was sitting in the

'charpai' the deceased came into the room and caught hold of the neck of the appellant and pulled him towards his own locker. The appellant got hold of the knife and stabbed the deceased on the chest so that he would leave his neck. Apart from the aforesaid, a confessional statement made by the accused to Col. Rajiv Chib, Commanding Officer of the regiment, PW27, at police station that he had stabbed the deceased was also given credence to. The testimony of Lt. Col. Atul Kumar Bhat, PW15, who had witnessed the confession was also taken into consideration. In addition, during the court martial the corroborating statement of Court Witness No. 7 Naib Subedar J.M. Sharma, wherein the accused had stated to CW-7 at Police Station on 4th of April, 2006 about the incident that was caused due to anger and intoxication, was also exhibited. The GCM also believed that part of the testimony of CW-7 wherein he had stated that from the condition of dress worn by the accused, it appeared that he was involved in a quarrel, for the accused had a minor bruise on his right temple of the head. The GCM referred to the evidence of Major (Dr.) M.C. Sahoo, PW1, and Dr. R.K. Chaturvedi, PW28, who had deposed that the stab wound injury inflicted on the chest of the deceased was sufficient in ordinary course of nature to cause death. The GCM also took certain circumstances, namely, that the deceased was lying on the floor in a pool of blood; that the accused was found lying on the 'charpai' in the room in an injured condition; that he was present in the room and eventually held thus:-

> "Even though the accused had no intention to kill the deceased, the accused should be knowing the consequences of his action. The accused should be conscious, that by stabbing at chest, which is a vital part of a human body, the injured person is likely to die, due to the effect of such injury. A man expects the natural consequences of his action. By causing such bodily injury

A on Dafadar Ram Pratap, the accused should be knowing that death is the likely consequence of that injury even though accused never intended to kill Dafadar Ram Pratap.

B Hence the court finds him Not Guilty of committing a civil offence that is to say Murder contrary to Sec. 302 of IPC but Guilty of committing a civil offence that is to say, culpable homicide not amounting to murder under Part-II of Sec. 304 of IPC."

C

6. In appeal the tribunal after adverting to the facts and the evidence brought on record took note of the chain of circumstantial evidence brought on record and opined thus:-

D "The appellant/accused himself reached at the Police Station Babina and reported with regard to the incident and desired him to be taken into custody. From the statement of the PW31 Constable Clerk Munna Lal Verma who informed to the military authorities about the surrender E of the accused at Police Station Babina. It was also clarified by him in his statement that it was the intervening night of 3/4th April 2006 at about 1.30 hours or 2.00 a.m. the accused came to the Police Station and was slightly frightened and told that in the Unit there was Barakhana F party. He had quarrel with few people and so he be protected. The timings when the accused surrendered at the Police Station would itself reconcile with the time of the causing of the fatal injury and it would lead to the conclusion that after causing injuries when PW13 Dafadar G Muneshwar Shah and PW23 Acting Lance Dafadar Vikram Singh reached at that room, he slipped away from that place and could possibly reached at Police Station at 1:30 or 2:00 a.m. on the intervening night of 3/4th April, 2006. There the accused also confessed his guilt before H PW3 Abhishek Sharma that he had caused stabbed injury

to Dafadar Ram Pratap. The testimony of these witnesses could not be assailed. However, PW29 Sub Inspector Lal Singh made it clear that on the first day the accused confessed his guilt and for that an application was also moved before the Magistrate but on next day he did not give his confessional statement. The fact remains that before informant Captain Abhishek Sharma he confessed his guilt and his testimony remained uncontroverted and it was supported by the statement of PW30 Lt. Col. Sandeep before whom in the course of Summary of Evidence the accused produced original copy of the statement (unsworn statement) vide Exbt. 36. In his statement he has also admitted his guilt. There is ample incriminating circumstances appearing against the appellant and proving the complete chain of circumstances consistent only with hypothesis of the guilt of the appellant. Each circumstance are appearing to be incriminating in nature and in totality the conclusion established the guilt of the appellant. In that regard, reliance may be placed on ***Gilbert Pereira v. State of Karntaka AIR 2004 12 SCC 281*** wherein it was held as under:

The incriminating circumstances proved against the appellant form a complete chain of circumstances which is consistent only with the hypothesis of guilt of the appellant. Each circumstance is incriminating in nature and the totality of circumstances conclusively establishes the guilt of the appellant.

10. From such incriminating circumstances which were incompatible with the innocence of the guilt of any other person the GCM was justified in drawing the inference of guilt of the accused/appellant."

Being of this view, the tribunal concurred with the opinion expressed by the GCM.

A 7.-We have heard Mr. Mohit Kumar Shah, learned counsel for the appellant for the appellant and Mr. B.V. Balram Das, learned counsel for the respondent.

8. It is submitted by learned counsel for the appellant that B the substantial evidence which has been relied upon for recording the conviction by the GCM and the tribunal cannot form the foundation of conviction, for the confession made by the appellant at the police station in presence of the authorities cannot be taken into consideration, and that apart C heavy reliance placed on the statement recorded in the summary enquiry under Rule 23 of the Army Rules, 1954 (for short "the Rules") is totally sans legal substratum. Learned counsel would submit that the tribunal has failed to analyse the unacceptable and incurable discrepancies in the evidence D of witnesses and, in fact, at places has relied upon certain hearsay evidence which make the analysis perverse and in the ultimate eventuate the judgment has become absolutely dented. It is urged by him when the weapon of causing injury, that is, the knife has not been recovered, and the evidence E as brought on record would show that apart from the appellant other persons were also present in the room while the deceased was murdered, the circumstantial evidence could not have been regarded to have brought home the charge against the accused. Learned counsel would submit that the F presence of the accused at the time of incident as per the evidence available on record is doubtful and, therefore, the conclusion that has been arrived at deserves to be dislodged on the bedrock that it does not meet the criteria of proof as G per the principles laid down by this Court in relation to acceptance of the circumstantial evidence. Learned counsel has seriously criticized the approach of the tribunal in appreciation of the evidence on the ground that it is extremely perverse and does not withstand scrutiny. To bolster his H submissions, he has commended us to decisions in

Ravindran v. Superintendent of Customs[1] and ***Rumi Bora Dutta v. State of Assam***[2]. A

9. Learned counsel appearing for the respondent, resisting the arguments canvassed by Mr. Saha, has urged that ample material has been brought on record by the B prosecution to establish the chain as required under the concept of circumstantial evidence and the minor discrepancies here and there would not destroy the prosecution case. Learned counsel would contend that 31 witnesses were examined during the GCM and their C deposition appreciated in entirety undoubtedly and decidedly bring home the charge leveled against the appellant. It is canvassed that the non-recovery of the kitchen knife with which the injury was caused does not mar the prosecution case. Emphasis has been laid on the statement recorded vide D Exhibit 36 under Rule 23 of the rules by Col. Sandeep Nagrat, PW 30, which has been corroborated by the court witness No.2, Risaldar Rajesh Kumar and on that base, it is urged that there is no reason to discard the version of the E prosecution. It is further argued that the appellant in his petition dated 30.05.2007 under Section 164 of the Army Act had admitted that he had used the vegetable knife in his self-defence which resulted in the death of the victim and he had no intention to cause the death and hence, the punishment F awarded was very harsh, and the said admission goes a long way to establish the case of the prosecution. Certain authorities have been cited to show how the proceedings before the GCM are meant for maintaining military discipline under the Act and how the statement recorded under Rule 23 G can be placed reliance upon.

8. First we shall record the injuries inflicted on the

[1] (2007) 6 SCC 410

[2] (2013) 7 SCC 417 H

A deceased. Dr. R.K. Chaturvedi, PW28, who had conducted the autopsy had found the following injuries on the body of the deceased:-

> "The two ante mortem injuries were found on the dead
> B body. The one which can be called Number 1 injury was stab wound on chest, at the left side of size 3 x 2 cms and the second injury was linear abrasion at right back side of chest. The size of linear abrasions was 3 ½ x 1 ½ cm.
>
> C
>
> The stab wound was 3 x 2 cm, at the margin of wound. The wound was deep upto chest cavity, it was sharp and averted meaning protruding outside.
>
> D The linear abrasion was below the lower angle of right scapula."

9. In the opinion of the autopsy surgeon the injury number 1 could be caused by knife which had caused the death of the deceased. From the evidence brought on record it has been E established that on 3.4.2006 there was a farewell party, that is, 'Barkhana' to bid farewell to Risaldar Major Madan Lal; that drinks were served in the said party; that the appellant had entered into an altercation with Risaldar Nand Lal Prasad, PW5, and the appellant had fought with him and abused him F and consequently PW5 had slapped the appellant; that the appellant had abused PW5 and the deceased; that the said altercation was intervened by Risaldar Major Raj Nandan Rai, PW4, and at that juncture he had directed Lance Dafadar Anil G Kumar, PW6, and Lance Dafadar Murari Singh, PW7, to take the accused to his living barracks; that as per the directions of the authority PW-6 and PW-7 had guided the appellant to the barracks; that the deceased was found lying on the floor bleeding from mouth and nose and the appellant was found H lying on his bed on his stomach with hands folded beneath in

the same room by Sowar Balwinder Singh, PW26, at about 0030 hours when he had returned to the barracks; that on being alerted by PW 26, Dafadar Muneshwar, PW13, and Sowar Nakul Prasad, PW12 had made arrangements for taking the deceased for medical aid; that apart from the deceased and the appellant, no one else was present in the room as per the testimony of Dafadar Major Ghanshyam Pukan, PW18, Sowar Balwinder Singh, PW26, Sowar Nakul Prasad, PW12 and Dafadar Muneshwar, PW13; that Dafadar Major Ghanshyam Pukan, PW18, and Dafadar Muneshwar, PW13, had witnessed the appellant leaving the room quietly via the rear door; that the appellant was absent from the 'fall in parade' that was conducted at 0200 hours; and that at 0150 hours the Commanding Officer, Col. Rajiv Chib, PW27, and Lt. Col. Atul Kumar Bhat, PW15, met the appellant at PS Babina, wherein the appellant had surrendered.

10. From the aforesaid established facts which are founded on proper appreciation of the evidence by the forums below, and we are inclined to think rightly, it is quite vivid that the chain of circumstances is complete. We have concurred with the analysis of the evidence after critically scrutinizing the evidence of the prosecution witnesses. What has weighed with the forums below is that the appellant was present in the room and had escaped. The circumstances that really weigh against the appellant are that he had indulged in an altercation in the party; that he was in a drunken state and he was alone present in the room; and that he had escaped by the rear door and his presence at the police station at an odd hour and his absence at the "fall in parade". Learned counsel for the appellant had endeavoured to argue that other persons were present in the room and for the said purpose he has shown some lines from here and there but the evidence read in entirety established beyond any shadow of doubt that the accused was alone in the room. He being present at the police station and

A not being present at the "fall in parade" are circumstances which would go against him. He has not been able to give any explanation about his presence at the police station and the factum that on being informed by the Head constable the army officers arrived at the concerned police station. There can be
B no cavil over the proposition as has been laid down by this Court in ***Hema v. State***[3], ***Union of India v. Major Rabinder Singh***[4], ***Appabhai v. State of Gujarat***[5] and ***Rohtash Kumar v. State of Haryana***[6] that the circumstances from which the conclusion of guilt is sought to be established must be
C conclusive in nature. In the case at hand the series of circumstance clearly establish the guilt of the accused and the minor discrepancies that have been pointed out by the learned counsel for the appellant, really do not create any kind of dent
D in the testimony of the prosecution witnesses to treat them as reproachable and remotely do not destroy the prosecution version.

11. Apart from the aforesaid evidence, we have to consider
E the evidentiary value of Exhibit 36, the statement recorded at the time of summary of evidence under Rule 23 of the Rules. The said Rule deals with procedure for taking down the summary of evidence. Rule 23 of the Rules being pertinent is reproduced below:-

F "**23. Procedure for taking down the summary of evidence.-** (1) Where the case is adjourned for the purpose of having the evidence reduced to waiting, at the adjourned hearing evidence of the witnesses who were present and gave evidence before the commanding
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[3] (2013) 10 SCC 192

[4] (2012) 12 SCC 787

[5] AIR 1988 SC 696

H [6] (2013) 14 SCC 434

officer, whether against or for the accused, and of any other person whose evidence appears to be relevant, shall be taken down in writing in the presence and hearing of the accused before the commanding officer or such officer as he directs. A

(2) The accused may put in cross-examination such questions as he thinks fit to any witness, and the questions together with the answers thereto shall be added to the evidence recorded. B

(3) The evidence of each witness after it has been recorded as provided in the rule when taken down, shall be read over to him, and shall be signed by him, or if he cannot write his name shall be attested by his mark and witnessed as a token of the correctness of the evidence recorded. After all the evidence against the accused has been recorded, the accused will be asked: "do you wish to make any statement? You are not obliged to say anything unless you wish to do so but whatever you say will be taken down in writing and may be given in evidence." Any statement thereupon made by the accused shall be taken down and read to him, but he will not be cross-examined upon it. The accused may then call his witnesses, if he so desires, any witnesses as to character. C D E F

(4) The evidence of the witnesses and the statement (if any) of the accused shall be recorded in the English language. If the witness of accused, as the case may be, does not understand the English language, the evidence or statement, as recorded, shall be interpreted to him in a language which he understands. G

(5) If a person cannot be compelled to attend as a witness, or if owing to the exigencies of service or any other grounds (including the expense and loss of time involved), H

A the attendance of any witness cannot in the opinion of the officer taking the summary (to be certified by him in writing), be readily procured, a written statement of his evidence purporting to be signed by him may be read to the accused and included in the summary of evidence.

B

(6) Any witness who is not subject to military law may be summoned to attend by order under the hand of the commanding officer of the accused. The summons shall be in the form provided in Appendix III.

C

12. As we have seen from the statement recorded in the said proceeding, all the safeguards were followed. The appellant, as has been indicated hereinbefore, had stated thus:-

D

"10. After Squadron Dafedar Major left, Lance Dafedar Chunbad Prasad reached. He was going on posting. He closed his bedding and got his luggage lifted by two Ors. He before leaving the barrack/room said to me, "Adjutant

E Mera, Officer Commanding Mera, Troop Leader Mera, Senior JCO Mera, Agar to Report Karega to Teri Maa Chudwa Doonga".

11. After this Dafedar Ram Pratap came inside the room

F while Lance Dafedar Chunbad Prasad and Dafedar Muneshwar Sah were standing outside the room. Dafedar Ram Pratap kicked me, but it hit the Charpoy. He said "Madarchod Raste Me Charpoy Dal Kar So Raha Hai". As soon, I stood up on the Charpoy, be boxed me on my

G face. At that time I pushed him back with both hands. He fell on the box. His vest got torn and was hurt on his back.

12. Thereafter, Dafedar Ram Pratap went out of the room. He came back to the room after approximately 5 minutes.

H I picked up my knife from locker and kept it next to me on

the box. I kept sitting on the Charpoy. He came back to room and got hold of my neck and pulled me towards his own locker. Meanwhile, I was hit by a stick on my shoulder. I got hold of the knife and stabbed him (Dafedar Ram Pratap) on the chest so that he would leave my neck. He fell on the ground between the two charpoys."

13. The said statement has been proven during the GCM vide Exhbt. 36 by Col. Sandip Nagra, PW30. It has also been supported by Risaldar Rajesh Kumar, CW2. Despite roving cross-examination, both the witnesses have firmly stood embedded to their version. The challenge to the said document shows the hollowness of assault on the part of the appellant. We may hasten to make it clear that we are not placing any reliance on the confession made by the appellant before the Army officers at the police station in the presence of police officers. We are restricting our analysis only to the statement recorded under Rule 23 of the Rules and how the testimony of the witnesses deposing about the statement have absolutely stood firm during cross-examination. In this regard, reference to the pronouncement in ***Bachan Singh v. Union of India and others***[7] would be seemly. In the said case, the appellant therein faced the GCM and was found guilty of the charge and sentenced to suffer two years imprisonment and dismissal of service. The said order was set aside by the learned Single Judge of the High Court against which the Union of India preferred a Letters Patent Appeal and that was allowed by the Division Bench. That led the appellant therein to approach this Court in appeal by special leave. The Court apart from taking note of the statement made by the appellant therein before the GCM also took note of the first summary evidence recorded in presence of the witnesses. In that context, the two-Judge Bench opined:-

[7] (2008) 9 SCC 161

A "**11.** The record of the Court Martial produced before us by the learned Additional Solicitor General would reveal that the GCM was held against the appellant on different dates at Udhampur. The record would disclose that the appellant had made voluntarily written confessional B statement before the GCM admitting the allegations levelled against him in the charge-sheet. On bare perusal of the GCM, it becomes quite clear that the proceedings were recorded by the GCM in the presence of the appellant, his defending officer and other witnesses. The C statements of Major S.K. Sareen, Smt Vidya Devi, Veena Kumari, Tara Chand, Rattan Singh, Prabhu Ram, Major S.B. Ambel, Pritam Singh, Capt. A.K. Chowdary, Major Amin Chand Bhattee were recorded by the GCM on behalf of the prosecution in support of the charge in the presence D of the appellant. The appellant was afforded full opportunity of cross-examining the witnesses but he did not avail of the said opportunity.

12. It appears from the record that despite giving warning E to the appellant to the effect that he was not obliged to make any confessional statement, the appellant made written confessional statement on 22-10-1980. The appellant made additional statement in addition to first summary of evidence on 10-9-1981 in the presence of F witnesses, namely, IC-25616Y Major S.L. Gautam, independent witness and Major Amin Chand, officer recording summary of evidence. It appears from the record that second additional summary of evidence recorded on G 10-9-1981 was in compliance with the Army Rules 23(1), 23(2), 23(3), 23(4) and 23(6) in which the appellant did confess his guilt."

14. Learned counsel would submit that there was a H confession which was retracted in the proceeding before the

GCM. But what we have noticed is that the GCM has relied on the statement made vide Ext. 36. On a studied scrutiny of the statement of the accused, we find that the appellant was asked whether he was inclined to make a statement and also apprised that he was not obliged to say anything unless he wanted to say. That apart, a warning was given to him that whatever he would say would be taken down in writing and given in evidence. Thus, there was no compulsion. It was a voluntary statement and the meat of the matter is that it had been done under a statutory Rule and has been proven to the hilt before the GCM. We repeat at the cost of repetition, nothing has been elicited in the cross-examination or brought on record which will make the statement hollow and unreliable.

15. In view of our aforesaid analysis, we find no merit in the appeal and accordingly the same stands dismissed.

Devika Gujral

Appeal dismissed.