

\* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ WP (C) No.1204 of 2000 & CM No.1951 of 2000

% Date of decision: 01.07.2008

CHARAN SINGH ...PETITIONER  
*Through:* Mr. Vinod Kumar, Advocate.

*Versus*

UNION OF INDIA & ORS. ...RESPONDENTS  
*Through:* Mr. Sri Bhagwan Sharma,  
Advocate with Major S.S. Pandey  
for the Respondents.

CORAM:  
HON'BLE MR. JUSTICE SANJAY KISHAN KAUL  
HON'BLE MR. JUSTICE MOOL CHAND GARG

- |    |                                                                           |    |
|----|---------------------------------------------------------------------------|----|
| 1. | Whether the Reporters of local papers may be allowed to see the judgment? | No |
| 2. | To be referred to Reporter or not?                                        | No |
| 3. | Whether the judgment should be reported in the Digest?                    | No |

SANJAY KISHAN KAUL, J. (Oral)

1. The petitioner was enrolled in the Army on 28.12.1991 and was serving with the 18 RR Battalion in Manipur area in 1996. The incident occurred on the intervening night of 5<sup>th</sup>/6<sup>th</sup> April 1996 when the petitioner and the deceased after performing their sentry duties together from 23:00 to 02:00 hours went to sleep on a blanket next to each other in the verandah of a quarter guard. The petitioner woke up around 03:45 hours and shot dead the deceased with his

rifle. The deceased died on the spot. The petitioner was apprehended and was tried by the Summary General Court Martial (SGCM) from 18.8.1997 to 12.9.1997. The statement of the accused was recorded where he accepted his guilt. The petitioner was held guilty of committing offence under Section 302 of the IPC having committed the murder of the deceased Lance Naik Birender Tiwari and was sentenced to life imprisonment and was dismissed from service on 12.9.1997. The post confirmation petition under Section 164 (2) of the Army Act has since been rejected and the petitioner has been undergoing sentence at District Jail, Bhiwani. The petitioner seeks to challenge these two orders.

2. Learned counsel for the petitioner initially did seek to canvass the proposition that a GCM should have been held and not an SGCM and the prosecution must stand on its own legs and not on the absence of any defence. The sum and substance of the plea of the learned counsel for the petitioner is that the petitioner possibly suffered momentary insanity and thus the benefit of Section 84 of the IPC should be available to him. In the absence of any motive it is pleaded in the alternative that the case falls under Section 304 Part II of the IPC.
3. Learned counsel for the petitioner after advancing the arguments fairly submitted that it would be difficult to

sustain these challenges in view of the nature of the statement made by the petitioner as also the evidence on record including of psychiatrists who confirmed that the mental state of the petitioner was normal. Thus three separate witnesses who are experts in the field have deposed in this behalf. Learned counsel, thus, confines his prayer only to the relief that in the given peculiar facts of the case the petitioner having already completed more than twelve (12) years of sentence it would be a fit case on completion of fourteen (14) years of sentence for consideration by the Army Authorities for review of sentence so that the petitioner may get his freedom as a mitigating circumstance on the expiry of fourteen (14) years.

4. We have applied our minds in this behalf more specifically to the statement made by the petitioner, which is as under:

“1.I No.3185440A Sepoy Charan Singh of 18 Rashtriya Rifles Battalion state the following.

2. My elder brother Mr. Rajbir Singh who is a farmer was forcibly caught by some govt official at the time of emergency and was forced to undergo vasectomy operation when he was 15 years old.

3. He got married without disclosing this case of vasectomy to the girl and her family. In later period when the girl came to know the fact that her husband is unable to produce a baby she made an illicit sexual relation with a young boy of our village and she became pregnant and a baby girl was born.

4. Later on the villagers came to know the illicit relation between my sister-in-law and the man.

5. Some villagers and my family members did not want the matter to come in open and tried for a mutual compromise and a proposal was put that I should marry my sister-in-law and give the name of a father to the baby. I spoke against the proposal but my family members and some villagers they kept on forcing me to get married with my sister-in-law. I did not want to marry a girl who is my sister-in-law as well as a woman of a questionable character.
6. I was called at home in the month of Nov 95 for my marriage with a girl. I took A/Leave on 24 Nov 95 and proceeded on leave. On reaching home I came to know that same story is being repeated and I was told to marry with my sister-in-law. I refused and after terminating my leave I joined the Bn.
7. The man who was sexually involved with my sister-in-law was also playing a game with me and he tried to convince my family members to get married me with my sister-in-law. Since then I was searching for an opportunity to take a revenge from him.
8. On 05 April 96 night I was on Quarter Guard duty and while I was asleep I dreamt a dream that I saw a light and goddess Lakshmi riding on a horse telling me that the man who had sexual relation with you sister-in-law is sleeping next to you is your enemy and you kill him and in dream I killed him. After few seconds in a scuffle I came to know that I have killed my friend L/NK Birender Tiwari in my dream. I don't know how that has happened and since then I have been repenting that I feel that I should die.
9. I also declare that L/NK Birender Tiwari and I were a good friend."

5. A perusal of the aforesaid statement shows that the petitioner was disturbed by the fact that family circumstances were being created for his marriage to his sister-in-law who is alleged to have given birth to a child out of an illicit relationship. The petitioner does not dispute that the deceased was a friend with whom he had no

enmity but the family circumstances were creating a situation where the petitioner wanted to take revenge from the person who had fathered the child from his sister-in-law. The petitioner claims to have dreamt that the said person is the one sleeping next to him though actually it was his friend who was sleeping next to him whom he shot him dead. The petitioner was repentant for what he has done.

6. Learned counsel for the respondents also submits that the normal practice is for such cases to come up for consideration for review of sentence on completion of fourteen (14) years in jail without remission.
7. It is not our jurisdiction to issue directions as the scope of this Court under Article 226 of the Constitution of India in such matters is limited. A Division Bench of this Court in Ex. Major R.S. Budhwar Vs. Union of India & Ors. 58 (1995) DLT 339 (DB) has observed that it is only in case of error of jurisdiction and lack of evidence that this Court would be required to come to the rescue of the petitioner but not to sit as a court of appeal or to substitute its opinion for that of the Court Martial. In another Division Bench judgement of this Court in Ex-Sepoy Rajbir Singh Vs. UOI & Ors. 35 (1988) DLT 312 it has been observed that while exercising our jurisdiction under Article 226 of the Constitution of India we cannot assess the merits of the case or alter the charge

or reduce the sentence. In fact, the plea in that case was similar of seeking conversion of a sentence awarded under Section 302 to one under Section 304 Part II of the IPC.

8. We, however, would not be without jurisdiction to observe that the facts of the present case are undisputedly peculiar in nature as the petitioner caused the death of his friend with no past enmity, motive or intention. The petitioner does appear to have been under some kind of a family pressure over an incident totally unrelated to the deceased and is repentant about the same. We, thus, consider it appropriate to say that on the expiry of fourteen (14) years of sentence of the petitioner the case of the petitioner be considered sympathetically by the concerned authorities for review/remission of sentence.

9. The petition stands disposed of with the aforesaid observations.

CM No.1951/2000

10. In view of the orders passed in the writ petition, the application does not survive for consideration and is disposed of.

SANJAY KISHAN KAUL, J.

JULY 01, 2008  
*b'nesh*

MOOL CHAND GARG, J.