



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

Date of decision: 10th OCTOBER, 2025

IN THE MATTER OF:

+ **W.P.(C) 8701/2017**

S N JHA

.....Petitioner

Through: Mr. Jayant K. Sud, Sr. Adv. with Mr. Durga Dutt, Mr. Sahib Kochhar, Ms. Shayal Anand, Mr. Sai Manik Sud and Mr. Aryan Mishra, Advocates.

versus

UNION OF INDIA AND ANR

.....Respondents

Through: Mr. Vikrant N. Goyal, Mr. Sumit Goswami and Mr. Arun Kumar Yadav, Advocates.

CORAM:

HON'BLE MR. JUSTICE SUBRAMONIUM PRASAD

HON'BLE MR. JUSTICE SAURABH BANERJEE

JUDGMENT

SUBRAMONIUM PRASAD, J.

1. The present writ petition impugns the order dated 06.04.2015 passed by the General Security Force Court [“**GSFC**”] of the Border Security Force [“**BSF**”] and the subsequent orders of the Appellate Authority dated 27.04.2016, upholding the order passed by the GSFC. By way of the said order dated 06.04.2015, the Petitioner was tried under Section 46 of the BSF Act, 1968 [“**BSF Act**”] and found guilty under Section 307 of the Indian Penal Code, 1860 [“**IPC**”] and sentenced to be dismissed from service.

2. Shorn of unnecessary details, facts as noted from the petition are that the Petitioner was enrolled in BSF on 15.05.1980 as a Constable (General Duty) [“**Constable/GD**”]. Upon having completed his basic recruit training,



the Petitioner joined 52 Battalion [“**Bn**”], BSF and thereafter, served in 89 Bn, 04 Bn, 192 Bn, 20 Bn, Ftr. HQ BSF, North Bengal and 29 Bn. After getting promoted to the rank of Sub-Inspector (GD) [“**SI/GD**”], the Petitioner joined 111 Bn on 22.05.2009.

3. As per the Spot Verification Report recorded by one Gentinlal, the then Commandant of 111 Bn, on 21.02.2013 at about 0630 hours, the Petitioner was detailed as party commander at CI (Post) Kilomi of Ex-111 Bn for special patrolling in the company area of responsibility. The Petitioner directed Assistant Sub-Inspector/General Duty Sita Ram [“**ASI/GD**”] to give a report as to whether the patrol party was ready to proceed or not. However, in response, ASI/GD Sita Ram Singh replied to the Petitioner by stating that it was not his duty to give a report to the Petitioner and rather, it was a duty of the senior most non-commissioned officer. Thereafter, the Spot Verification Report records that the Petitioner went inside the barrack and picked up his carbine machine butt no. 59, body no. 9177 with 2 magazines and 35 rounds of 9 mm ball, and came out of the barrack. Upon seeing the cocking of the carbine machine by the Petitioner, ASI Sita Ram Singh, who was standing behind SI Gohizhe Sema, fled away. Shortly thereafter, the Petitioner fired 3 rounds from his carbine machine gun, all three of which hit the ground, barely missing SI Gohizhe Sema, who was standing nearby, briefing the patrol party. Immediately thereafter, SI Gohizhe Sema took the carbine machine gun from the Petitioner and deposited the same with the Company’s Keeper of Technical Equipment [“**KOTE**”].

4. The Spot Verification Report also records that the Petitioner stated that there was no intention on his part to harm anyone by firing the 3 rounds



from his carbine machine gun, although he did have a verbal altercation with ASI Sita Ram Singh earlier.

5. After the aforesaid incident, the Petitioner was placed under suspension *vide* an order of the even date, while ASI Sita Ram Singh was also placed under suspension *vide* an order dated 22.04.2013.

6. A One-Man Staff Court of Inquiry [“**SCOI**”] was ordered by the Competent Authority to be conducted by U.C. Hazarika, DIG, BSF, Silchar. The SCOI, in its Inquiry Report dated 10.04.2013 observed that the firing of 3 rounds from the personal weapon of the Petitioner was due to negligence, however, the main person being the cause behind the entire incident was ASI Sita Ram Singh, who indulged in arguments with the Petitioner and defied orders of his seniors. The SCOI also observed that Inspector Ram Prasad, who was sent to Kilomi in order to take over charge of ‘E’ Coy., was also blameworthy for his failure in exercising proper command and control over the activities and functions of the Coy.

7. Subsequently, in order to adduce more facts by recording statements of additional witnesses, an Additional SCOI was ordered, which rendered observations in its Inquiry Report dated 15.02.2014, which were synonymous to those contained in the Report dated 10.04.2013.

8. Keeping in view the findings of the Inquiry Report dated 15.02.2014, the Commandant of 111 Bn BSF, Y. M. Upadhyay passed an order dated 28.04.2014 in the presence of the Petitioner as well as an Independent Witness ASI Pohop Singh, ordering Deputy Commandant of the 111 Bn BSF, Ashikho Peter, to carry out Record of Evidence [“**ROE**”] as per Rule 48 of the BSF Rules.

9. During the ROE proceedings, several witnesses were examined by the department, and the Petitioner was granted the opportunity of their cross-



examination as well. Thereafter, as per the requirement of Rule 48(3) of the BSF Rules, the Petitioner made a statement in which he stated that the firing of 3 rounds from his personal weapon was an accident and that he had no intention whatsoever of hurting ASI Sita Ram Singh. The Petitioner further stated that the entire incident occurred when he was trying to push open the door to the dining room, due to which his carbine machine gun hanging on his right shoulder slipped. When the Petitioner tried to catch hold of his weapon, the sudden action caused the accidental firing from the carbine machine gun and the bullets hit the ground on his right side at about 45 degrees, however, did not go near ASI Sita Ram Singh, who was standing in front of the Petitioner at about 90 degrees, near the patrolling party. The Petitioner further stated that he willingly and without any protest, handed over his weapon to the KOTE. The Petitioner also stated that he has been a well-performing officer in the BSF and that there have been no adverse reports against him in the past.

10. Considering the Record of Evidence, the Petitioner was chargesheeted under Section 46 of the BSF Act, 1968, for “*commission of a civil offence, that is to say an attempt to murder, punishable under Section 307 IPC.*”

11. The matter was placed before the D.K. Upadhyay, the Inspector General, Frontier HQ M&C, BSF, who considered the Record of Evidence and directed the Petitioner’s trial before the General Security Force Court [“**GSFC**”]. At the trial, the prosecution examined 9 witnesses, while the Petitioner declined to call any witness in his defence.

12. PW-1 Ex. SI Ghohizhe Sema deposed as follows:

- (i) The Petitioner was deployed as the Commander for special patrolling duty for the Chishilimi village on 21.02.2013 as per the orders of the Bn HQ on account of the Legislative Assembly



elections in Nagaland as also some information about militants' movement. On the said date, the Petitioner ordered PW-1 to get the patrolling party fall-in, following which PW-1 blew the whistle and asked the detailed troops to draw their weapons from the Company's KOTE.

- (ii) While the PW-1 was briefing the patrolling party, the Petitioner was inside the SO's barrack, when suddenly there was firing and one bullet passed from his back side and two bullets passed from his front side, while the direction of firing was from PW-1's left side.
- (iii) When PW-1 turned towards his left side, he saw the Petitioner holding his 9 MM Carbine Machine Gun in both hands and at the same time, PW-1 saw ASI (GD) Sita Ram Singh running towards the back side of the SO's barrack. Immediately, PW-1 snatched the 9 MM Carbine Machine Gun from the Petitioner and handed it over to Head Constable [**"HC"**] Kishan Singh and asked him to deposit the weapon in the Company KOTE.
- (iv) Upon cross-examination by the Defending Officer, PW-1 deposed that he did not see the Petitioner aiming at anybody, however, when he saw the Petitioner after the three gunshots were fired, the barrel of the gun was pointing towards PW-1.
- (v) PW-1 also stated in his cross-examination that he did not hear any altercation, nor did he hear the Petitioner saying "*main tujhe maar dunga*," to ASI (GD) Sita Ram Singh.

13. PW-2 Constable K. Koteswara Rao deposed as follows:

- (i) It is stated that on 20.02.2013, PW-2 was ordered by Inspector Ram Prasad, Officiating Company Commander to detail one



Special Patrolling/Area Domination Patrolling [“ADP”] for 21.02.2013. In compliance, PW-2 made a list, received approval from Inspector Ram Prasad on 21.02.2013 and individually informed all the detailed personnel. Thereafter, PW-2 went to the Company clerk office and sometime later, he heard, “*a sound as if someone had thrown stones on the CGI sheet.*” Upon checking, PW-2 came to know that there had been a firing by the Petitioner.

- (ii) It is stated by PW-2 that entries regarding the firing incident in the GD register were made by Constable Sandeep Kumar Singh, who was maintaining the GD register.

14. PW-3 HC Kishan Singh deposed as follows:

- (i) PW-3 stated that he was detailed as a member of the special patrolling party in the evening roll call conducted on 20.02.2013, for 21.02.2013.
- (ii) On 21.02.2013, the patrolling party was present at about 0615 hours in the volleyball ground getting briefed by Ex. SI Gohizhe Sema/PW-1, while the Petitioner was standing near SO’s barrack and ASI (GD) Sita Ram Singh was standing in front of the Petitioner.
- (iii) There was some conversation between the Petitioner and ASI (GD) Sita Ram Singh about reporting of the patrolling party, wherein the Petitioner told ASI (GD) Sita Ram Singh, “*nafri pura karke mere ko report do,*” to which ASI (GD) Sita Ram Singh replied by saying “*main report nahi dunga, aapki party mein jo senior hai wo report dega.*” At this point, Ex. SI Gohizhe Sema/PW-1 informed the Petitioner that it was getting late, upon



which the Petitioner replied by saying “*achchha chalte hain*,” and went inside the SO’s barracks.

- (iv) While PW-3 was concentrated on the briefing, he suddenly heard a burst fire from the SO’s barrack side, and saw the Petitioner standing near the SO’s barrack gate with the 9 MM Carbine Machine Gun in his hands. At the same time, PW-3 saw ASI (GD) Sita Ram Singh running behind the SO’s barrack.
- (v) Immediately upon noticing, Ex. SI Gohizhe Sema/PW-1 took the weapon from the Petitioner. Thereafter, Inspector Ram Prasad ordered PW-3 to take away the Petitioner’s weapon and get the same deposited in the Company KOTE. Accordingly, PW-3 followed the order and the patrolling party marched for patrolling at the Chishilimi village.
- (vi) Upon returning from the patrolling to CI Post Kilomi, PW-3 came to know that the Petitioner was sent to CI Post Chozuba, while ASI (GD) Sita Ram Singh was sent to HQ 111 Bn BSF, Satakha.
- (vii) On his cross-examination by the Defending Officer, PW-3 stated that he did not hear any altercation between the Petitioner and ASI (GD) Sita Ram Singh.
- (viii) PW-3 upon further questioning stated that he did not know whether there was any argument between the Petitioner and ASI (GD) Sita Ram Singh before the special patrolling party fall-in and, “*it all started when Ex. SI Gohizhe Sema was briefing the patrolling party.*” In particular, PW-3 also stated that when the Petitioner and ASI (GD) Sita Ram Singh were arguing, the Petitioner seemed to be normal without any anger on his face.



- PW-3 also claimed to have not heard the Petitioner warn ASI (GD) Sita Ram Singh by saying, “*thairo abhi batata hun.*”
- (ix) In response to certain questions posed by the GSFC, responses of PW-3 were as follows:

"QUESTIONS ASKED BY THE COURT"

I did not do 'Khali Kar drill' before depositing 9MM CM of the accused in Coy kote.

It was a three round burst fire from the 9MM CM of the accused.

Two bullets hit on the ground in front of Ex. SI Ghohizhe Sema and the third one to his back side on the ground.

The 9MM CM of the accused did not fall on the ground before or after the firing.

After the firing, there was no unusual expression on the accused face.

It was only ASI (GD) Sita Ram Singh who ran away from the place of incident on the firing.

On being asked by the Court as to why only ASI (GD) Sita Ram Singh ran away from the place of incident after firing, the witness says, "sir jab do aadmi mai tu-tu mai-mai hogi or fire hoga to dusra aadmi bhagega hee".

The witness further clarify that the firing took place after the arguments between the accused and ASI (GD) Sita Ram Singh, that's why ASI (GD) Sita Ram Singh ran away on firing.

NO QUESTION SUGGESTED BY THE PROSECUTOR ON COURT QUESTIONS



**QUESTION SUGGESTED BY DEFENDING
OFFICER ON COURT QUESTIONS**

I can say with confidence that the 9MM CM did not fall on the ground before or after the firing.

The Witness does not desire his statement to be read over to him.

The provisions of BSF Rules 89 and 90 are complied with."

15. PW-4 HC Varghese O A deposed as follows:

- (i) PW-4 was detailed for special patrolling duty for 0630 hours on 21.02.2013. On the patrolling day, in between briefing of the patrolling patry, Ex. SI Gohizhe Sema/PW-1 asked the Petitioner, "time ho gaya, chalna hai ki nahi," to which the Petitioner replied, "chalo chalte hain."
- (ii) One or two minutes after the above conversation, there was a sudden burst fire, responding to which Ex, SI Gohizhe Sema/PW-1 rushed towards the Petitioner, snatched the 9 MM Carbine Machine Gun from the Petitioner and said "aapne kya kiya ye," to which the Petitioner replied, "mere se galti se fire ho gaya."
- (iii) In consonance with PW-3, the PW-4 stated that upon returning from the patrolling to CI Post Kilomi, the PW-4 came to know that the Petitioner was sent to CI Post Chozuba, while ASI (GD) Sita Ram Singh was sent to HQ 111 Bn BSF, Satakha.
- (iv) Upon his cross-examination by the Defending Officer, PW-4, in consonance with PW-3's deposition, stated that he did not hear the Petitioner saying, "thairo abhi batata hun." PW-4 also stated that



there was no argument between the Petitioner and ASI (GD) Sita Ram Singh when PW-4 joined the patrolling party at about 0625 hours on 21.02.2013.

- (v) PW-4 also deposed that the Petitioner did not oppose when Ex. SI Gohizhe Sema/PW-1 snatched the magazine of the Petitioner's 9 MM Carbine Machine gun from him. Rather, according to the PW-4, the Petitioner looked scared after the firing incident.

16. PW-5 HC Ramashray Thakur deposed as follows:

- (i) PW-5 took over charge of KOTE NCO of 'E' Coy, 111 Bn BSF at CI Post Kilomi from HC Lakhvinder Singh Lakkha.
- (ii) On 21.02.2013 at 0605 hours, PW-5 issued weapons to the special patrolling party. He also issued a 9 MM Carbine Machine Gun, Butt No. 59, Body No. JJ-9177, along with 2 magazines and 35 rounds of ball ammunition to the Petitioner.
- (iii) At about 0625 hours, when PW-5 was sitting in the KOTE, he heard a sound of burst fire, and immediately went outside to find out what happened. At that time, HC Kishan Singh/PW-3, upon the order of Inspector Ram Prasad came to PW-5 with a 9 MM Carbine Machine gun, and upon asking, PW-5 came to know that the same belonged to the Petitioner.
- (iv) During the course of depositing the Petitioner's weapon in the KOTE, PW-5, following the proper "*Khali Kar Drill*," found that there were only 32 rounds, instead of 35 rounds issued to the Petitioner at 0605 hours on 21.02.2013. Upon enquiring about the same, PW-5 was handed over 3 Equivalent Full Charges [**"EFCs"**], meaning that 3 rounds were fired from the 9 MM Carbine Machine gun.



- (v) Later, upon arrival of Gentinlal, Commandant 111 Bn BSF, to CI Post Kilomi, PW-5 was ordered to wrap the weapon and keep the same in safe custody of KOTE.
- (vi) In support of his testimony, PW-5 produced Daily Arms In/Out Register of 'E' Coy 111 Bn BSF, which contained the signature of the Petitioner after his weapon was deposited in the KOTE. PW-5 also produced the History Sheet and Repairs/Inspection Report of the Petitioner's 9 MM Carbine Machine gun, which depicted that the weapon had been in the name of the Petitioner since 22.08.2012. The 9 MM Carbine Machine Gun, wrapped as per the instructions of Gentinlal, Commandant 111 Bn BSF was also produced by PW-5 before the GSFC.
- (vii) Upon his cross-examination by the Defending Officer, in particular about PW-5's statement given during the ROE, PW-5 stated as follows:

"CROSS EXAMINATION BY THE DEFENDING OFFICER

Ex. 81 Ghohizhe Sema gave me one magazine filled with live rounds, the accused gave me second magazine filled with the live rounds and SI V Kaku gave me 03 EFCs.

The attention of the witness is drawn towards his statement during ROE wherein, he stated "Since the weapon was deposited and not the magazines and round, so I went to SI S N Jha and got two magazines and 32 live rounds from him and deposited In the kote". The said portion in the manuscript ROE, at page No.43, is put in inverted comma and side lined by the Law Officer in red ink.



The witness states that whatever he is telling now before the Court is correct."

17. PW-6, ASI (GD) Sita Ram Singh, deposed as follows:

- (i) On 11.12.2012, the Petitioner told PW-6 that PW-6 would not be performing the duties of Company Havildar Major [**"CHM"**], and instead the same would be performed by Ex. SI Gohizhe Sema/PW-1, in whose absence HC Subhash Chandra was detailed to look after the CHM duties.
- (ii) Later, PW-6 was again asked to perform CHM duties by Vikash Chhetri, AC/Adjutant, as per the Battalion Routine Order [**"BRO"**].
- (iii) When the 'E' Coy was deployed at CI Post Kilomi on 29.01.2013, Inspector A.A. Khan took over the charge of Officiating Coy Commander, however, later from 02.02.2013, Inspector Ram Kishan took over the charge till 08.02.2013 and subsequently, the Petitioner took over the charge.
- (iv) PW-6 also described an instance of argument that took place around 0530 hours on 21.02.2013, which is being extracted below:

"...At about 0530 hrs, I went to Coy Comdr's room, which was a part of SO's Mess/barrack, and asked him about RCP/ MVCP timings. He told me that no timing was yet decided and he would let me know later. I asked him, "sir kya RCP/MVCP duty aapne lagaya hai ya company babu ne". He told me that he had detailed RCP/MCVP. At the same time, the accused, from partitioned room of the SO's barrack, said "tere ko koi sak hai kya, CHM hai to kya duty nahi karega". I said to him that I was talking to the Coy Comdr, so he (the accused) should not disturb and being CHM, if I was to go for duty I will hand over the charge of CHM to the next senior NCO and



I was just confirming it with the Coy Comdr. Then, the accused said "ye Delhi nahi hai, vigilance nahi hai, duty karne main fat raha hai, yahan sabko duty karna padega". I said, "mai koi bhi duty kar sakta hun or jo Delhi jata hai teen saal k baad vapas aata hai or duty karna hee padta hai...."

- (v) Later, when PW-6 along with other troops went to the main gate of CI Post Kilomi to fill water in the sintex tanks, the Petitioner shouted, "*CHM kahan hai,*" hearing which PW-6 went up to the Petitioner. Then, the Petitioner asked the PW-6 to report the Petitioner after falling-in of the patrolling party. In response, PW-6 said that he was not in the patrolling party and, "*...party mein ek SI sahab hai unko savdhan karke main kaise report de sakta hun.*" Against this, the Petitioner said, "*tum thairo main tumhe dekhta hun,*" and went inside the SO's barrack, came out, and fired at PW-6, due to which PW-6 ran away.
- (vi) After running away from the SO's barrack to the OR's mess, PW-6 encountered HC Subhash Chandra, to whom PW-6 described the incident. He proceeded to get inside the store room whose door HC Subhash Chandra locked from outside, as PW-6 conveyed his apprehension that the Petitioner might come after PW-6.
- (vii) Later, PW-6 was called by the Coy Commander, who made PW-6 talk to Gentinlal, Commandant 111 Bn BSF and describe the entire incident. PW-6 was asked not to give anything in writing and straightaway report to HQ 111 Bn BSF, Satakha.
- (viii) Upon cross-examination by the Defending Officer, PW-6 stated as follows:



"CROSS EXAMINATION BY THE DEFENDING OFFICER

When the accused said, "turn thairo main tumhe dekhta hun" and went inside the SO's barrack, I did not think that he would kill me; rather I thought that he would report the matter to Officiating Coy Comdr, who was inside the SO's barrack.

The accused tried to kill me by aimed fire.

It is incorrect to suggest that I was not looking towards the accused when he came out of the SO's barrack and fired at me.

I saw the accused cocking his 9mm CM and firing while coming out of the SO's barrack.

At this stage the attention of the witness is drawn towards his statement in ROE wherein he stated as "as he came out with his weapon from the SO's dining room I saw him cocking his weapon at the door immediately I turned left than he fire and the bullet passed between SI Ghohizhe Sema and me than I run behind VIP room and SO's mess". The said portion at page No.15 of the manuscript ROE is put in inverted comma and side lined by the Law Officer in red ink.

Now the witness states that as soon as the accused cocked 9MM CM, he turned left, at the same time the accused fired and he did not see accused firing.

I did not see where the bullets hit.

I came on posting to 111 Bn BSF from Vigilance Branch, Pers Directorate, FHQ BSF, New Delhi.



I do not know whether HC Varghese O A was posted in Law Branch, FHQ BSF, New Delhi before 111 Bn BSF.

At the time of incident I did not know that HC Ramashray Thakur was posted in FHQ BSF, New Delhi before 111 Bn BSF.

I did not have differences with anyone in 'E' Coy before 21st Feb' 2013.

The RCP was detailed whenever there was any requirement to clear the road, blocked due to landslide or otherwise, but MVCP duties were carried out as per the order from Bn HQ.

on 21st Feb' 2013, I was detailed for RCP/MVCP duty, so I drew my weapon from the Coy kote at about 0610 hrs and signed in Daily Arms In/Out Register.

When I asked Officiating Coy Comdr about the RCP/MVCP timings, he told me that it would go around 0700 hrs.

I was detailed as RCP/MVCP Comdr.

When the accused called me, while I was filling water in sintex tank, Ct Paswan was with me and he also heard the accused calling me."

- (ix) Upon re-examination by the Prosecutor, PW-6 stated that when he saw the Petitioner cocking his 9 MM Carbine Machine Gun, he was holding the weapon in both hands in a battle crouch position.
- (x) In response to certain questions posed by the GSFC to the PW-6, he stated that before 21.02.2013, he did not have any differences



with the Petitioner herein. He further stated that he did not see any bullets passing between himself and Ex. SI Gohizhe Sema/PW-1.

18. PW-7, Huska Sema, DC of 111 Bn BSF stated as follows:

- (i) On 21.02.2013, PW-7 received a call from the Petitioner, who informed PW-7 that he had accidentally fired 03 rounds from his 9 MM Carbine Machine Gun at CI Post Kilomi, while he was preparing to go for special patrolling duty. Having been informed of the same, PW-7 enquired about the incident from Inspector Ram Prasad, Officiating Commander, 'E' Coy, who told PW-7 that he was not clear as to how the firing occurred but confirmed that the same was done by the Petitioner.
- (ii) Later, PW-7 got a call from Gentinlal, Commandant, 111 Bn BSF, who ordered PW-7 to place ASI (GD) Sita Ram Singh/PW-6 at Bn HW and the Petitioner at CI Post Chozuba.
- (iii) In support of his testimony, PW-7 produced the Special Situation Report [**"Sitrep"**] regarding the firing incident, the Spot Verification Report prepared by Gentinlal, Commandant, 111 Bn BSF, a detailed report of the incident, an eye sketch of the place of incident, as well as the instructions regarding the 'Do's and Don'ts' of handling weapons issued by Special Director General, Force Headquarters, New Delhi on 23.08.2010 before the GSFC.
- (iv) PW-7 also stated that he did not have any knowledge about the position of the Petitioner, ASI (GD) Sita Ram Singh/PW-1 or Ex. SI Gohizhe Sema at the time of firing incident on 21.02.2013.
- (v) Upon being questioned by the GSFC, PW-7 stated that he did not know about any differences between the Petitioner and ASI (GD) Sita Ram Singh/PW-1 prior to the firing incident. He further stated



that the 'Do's and Don'ts' of handling weapons issued by Special Director General, Force Headquarters, New Delhi on 23.08.2010 laid down *inter alia* instructions for handling of a 9 MM Carbine Machine Gun, stating, "***ho sake to magazine tabhi chadayen jab aavashakata ho.***" [emphasis supplied]

19. Additional Witness PW-8, Inspector Ram Prasad deposed as follows:

- (i) PW-8 described an instance of argument between the Petitioner and ASI (GD) Sita Ram Singh that took place on 21.02.2013 at about 0530 hours, in the following manner:

".....On 21st Feb' 2013, at about 0530 hrs, I was sitting in my room and having morning tea. ASI (GD) Sita Ram Singh came to my room and asked me as to who detailed him for RCP/MVCP duty. I told him that he was detailed by me keeping in view the elections in Nagaland. At the same time, the accused said from his room that the duties were detailed by the Coy Comdr only. The witness clarifies that the SO's barrack was partitioned in three portions; in the first portion Officiating Coy Comdr's residence, in the middle portion SO's dining hall and in the third portion other SO's, including Sub Insp and Asstt Sub Insp, residence was there. The accused said to ASI (GD) Sita Ram Singh, "agar aapse duty nahi hota to Delhi chale jao". ASI (GD) Sita Ram Singh said, "main aap se baat nahi kar raha, main Coy Comdr sahab se baat kar raha hun." I pacified the situation and asked the accused to put on his uniform, have breakfast and get ready for the special patrolling duty for which he was detailed, and ASI (GD) Sita Ram Singh to fall-in the remaining troops, carry out the maintenance of the post and fill water in the sintex tanks....."

- (ii) PW-8 also stated that on the even date at about 0615-0620 hours, he heard a sound of burst fire. Upon checking, he found the



- Petitioner to be standing in front of the SO's barrack gate. When PW-8 asked the Petitioner about the firing sound, the Petitioner said, "mere se galti se fire ho gaya," responding to which the PW-8 questioned as to how the Petitioner could do such an act. Immediately, PW-8 reported the incident to Gentinlal, Commandant 111 Bn BSF, who ordered PW-8 to take away the weapon from the Petitioner and have the same deposited in the Company KOTE.
- (iii) PW-8 stated that after the firing incident, there was pessimism in the Coy.
- (iv) Upon being cross examined by the Defending Officer, PW-8 deposed as follows:

"CROSS EXAMINATION BY THE DEFENDING OFFICER"

On 17th Feb' 2013, DIG SHQ BSF, CI (Ops) Manipur visited CI Post Kilomi. At that time, myself and the accused, Coy 2IC, were not present in the Post. The DIG tasked ASI (GD) Sita Ram Singh, CHM of 'E' Coy, for maintenance the OR's dining hall. ASI (GD) Sita Ram Singh informed me about the same when I returned back to the CI Post Kilomi from duty.

I asked ASI Sita Ram Singh to maintain the OR's dining hall as ordered by the DIG.

The task given by the DIG was not finished by 19th Feb' 2013, so I, along with the accused, got it completed by the jawans.

As it was election time the jawans were detailed for extra duties and while detailing them for



working, it was also ensured that they do not get over burden.

On 20th Feb' 2013 when I gave report to Comdt 111 Bn BSF at about 2000 hrs, he told me that there were reports regarding the militants movement and ordered me to increase the patrolling in area. So, I detailed the troops for RCP/MVCP duties and asked the Coy clerk to display the same on notice board.

I don't know whether the Coy clerk displayed duties on the notice board or not, because I did not check back.

The distance between the SO's barrack gate and the bathroom where I was having bath at the time of incident is about 8-10 yards.

I did not hear the accused calling ASI (GD) Sita Ram Singh.

I did not hear the accused asking ASI (GD) Sita Ram Singh to report him.

I did not hear the accused saying "thairo tumhe batata hun".

The monthly program of MVCP duties used to be given by Bn HQ;

When ASI (GD) Sita Ram Singh came to my room at around 0530 hrs, I told him that RCP/MVCP party would go for duty at 0700 hrs and before that he should get maintenance of the post and fill water in the sintex tank with the help of available troops.



After the firing incident when I talked to the Comdt, he asked me to make him talk to the accused and ASI (GD) Sita Ram Singh."

- (v) On being questioned by the GSFC, PW-8 stated that before calling Gentinlal, Commandant 111 Bn BSF, he came to know that while Ex. SI Gohizhe Sema/PW-1 was briefing the special patrolling party, the Petitioner and ASI (GD) Sita Ram Singh/PW-6 were having arguments over reporting of the patrolling party.
- (vi) When a specific question regarding the use of 9 MM Carbine Machine Gun was posed by the GSFC, PW-8 stated that he used to brief the troops in the evening roll calls at CI Post Kilomi that for a 9 MM Carbine Machine Gun, the magazine would not be fitted and would be kept inside the pouch.
20. Lastly, Additional Witness PW-9, Constable Sandeep Kumar Singh of 111 Bn BSF deposed as follows:
- (i) PW-9 was performing GD duties at 'E' Cy 111 Bn BSF and at the time of incident on 21.02.2013, he endorsed entries in the GD register regarding the firing incident on the orders of Inspector Ram Prasad/PW-8. In support of his deposition, PW-9 produced the GD Register before the GSFC.
21. After the prosecution evidence was led, the Petitioner made his statement under Rule 93 of the BSF Rules, wherein he stated as follows:
- (i) On 20.02.2013 at 1700 hours during the evening roll call for duties for the next day, he was detailed as the Commander of the special patrolling duty, which included Ex. SI Gohizhe Sema/PW-1, ASI (G) Shamsheer Bahadur, two Head Constables and 16 Constables.



- (ii) After the roll call, ASI (GD) Sita Ram Singh/PW-6 gave the Petitioner the roll call report. Subsequently, the Petitioner briefed the troops detailed for the special patrolling duty about the route to be followed, the timings of marching, i.e., 0630 hours on 21.02.2013 and for making necessary arrangement for the patrolling duty.
- (iii) On 21.02.2013 at about 0500 hours, ASI (GD) Sita Ram Singh/PW-6 went to the Officiating Coy Commander's room and asked him as to who detailed him for the duty. At this time, the Petitioner was doing yoga in his room, and overheard the conversation between ASI (GD) Sita Ram Singh/PW-6 and the Officiating Coy Commander. The Petitioner, through his room, responded that he was himself detailed for special patrolling duty for 40 kms and as such, he could not have detailed ASI (GD) Sita Ram Singh/PW-6 for any duties. Responding to this, ASI (GD) Sita Ram Singh/PW-6 said, "*main company ka CHM hun, main aapko kuchh nahi samajhta, app company ka kya ho or bakwash kar rahe ho.*" While saying all this, ASI (GD) Sita Ram Singh/PW-6 came towards the Petitioner's room and the Officiating Coy Commander followed him. ASI (GD) Sita Ram Singh/PW-6 was told by the Officiating Coy Commander to fall-in the troops, while the Petitioner was asked to get ready for the special patrolling duty.
- (iv) At 0600 hours, ASI (GD) Sita Ram Singh/PW-6 blew his whistle and fall-in the Coy troops in the volleyball ground and separated the troops detailed for RCP/MVCP duty from those detailed for special patrolling duty.



- (v) With the remaining troops, ASI (GD) Sita Ram Singh/PW-6 went to fill water in the sintex tanks which were kept near the main gate of CI Post Kilomi.
- (vi) At 0620 hours, the special patrolling party was being briefed ASI (GD) Sita Ram Singh/PW-6 by Ex. SI Gohizhe Sema/PW-1 and around 0625 hours, the Petitioner went to the Coy signal centre to collect a Motorola Set. After this, the Petitioner went to the Coy KOTE and drew his 9 MM Carbine Machine Gun, 02 magazines and 35 rounds, which were kept in a paper cartoon. He inspected his weapon by following the '*Khali kar drill*' and went to his room, where he wore a synthetic pouch, filled both the magazines with the ammunition – 17 rounds in one magazine and 18 rounds in another and fitted one magazine on the 9 MM Carbine Machine gun and kept the second magazine in the pouch. The Petitioner, then, sling armed the weapon on his right shoulder. However, the Petitioner also deposed that during the '*khali kar drill*', he forgot to change the lever position of his weapon to 'Safety' mode.
- (vii) When the Petitioner was coming out of the SO's barrack, he pushed the main gate, which used to close by itself and as he stepped out of the gate, the 9 MM Carbine Machine gun slipped from his right shoulder and he grabbed it with his right hand before it could fall on the ground. However, as soon as he grabbed the 9 MM Carbine Machine gun and pulled it up, there was a fire from the weapon. Immediately, the Petitioner pressed the magazine catch with his left hand, removed it and kept it in his pouch. The Petitioner, thereafter, again, sling armed the 9 MM Carbine Machine gun on his right shoulder.



- (viii) A minute or two after the firing incident, ASI (GD) Sita Ram Singh/PW-6 came from the main gate of CI Post Kilomi to the ground and went away through the gap between the SO's barrack and VIP room.
- (ix) Inspector Ram Prasad/PW-8 came from his room to the Petitioner and asked, "*fire kahan ho gaya*," to which the Petitioner responded by saying, "*meri galti se accidental fire ho gaya*."
- (x) Subsequently, the Petitioner also stated that when the 9 MM Carbine Machine gun slipped from his shoulder, its cocking handle got stuck with his synthetic pouch.
- (xi) Upon cross examination by the Prosecutor, the Petitioner stated that he did not have any enmity with ASI (GD) Sita Ram Singh/PW-6 prior to collective training of 'E' Coy at HQ 111 Bn BSF Satakha. He also stated that on 21.02.2013, when he asked ASI (GD) Sita Ram Singh/PW-6 to report him after the special patrolling party is ready, ASI (GD) Sita Ram Singh/PW-6 said, "*yeh mera kaam nahi hai*." The Petitioner reported this behavior of ASI (GD) Sita Ram Singh/PW-6 to the Coy Commander. However, the Petitioner stated that when ASI (GD) Sita Ram Singh/PW-6 argued with the Petitioner on 21.02.2013, the Petitioner did not get angry.
- (xii) The Petitioner further stated that he wrote a complaint against ASI (GD) Sita Ram Singh/PW-6 regarding the argument on 21.02.2013.
- (xiii) The Petitioner further stated that he did not have any argument with ASI (GD) Sita Ram Singh/PW-6, when he came to the Officiating Coy Commander's room in the morning on



21.02.2013. Yet, whatever transpired between the Petitioner and ASI (GD) Sita Ram Singh/PW-6 at about 0500 hours on 21.02.2013 was a trivial matter and he did not consider the same as an argument.

- (xiv) The Petitioner stated that he had the 9 MM Carbine Machine gun as his personal weapon since 1997, when he was promoted to the rank of Head Constable. However, the Petitioner further deposed that he did not know anything about the Standard Operating Procedure [**“SOP”**] regarding the fitting of the magazine on the 9 MM Carbine Machine gun while proceeding on duties.
- (xv) Upon being questioned by the Prosecutor, the Petitioner stated that the when 9 MM Carbine Machine gun is kept in the sling arms position on right shoulder, its cocking handle remains on the right side, away from the body.
- (xvi) The Petitioner further stated that he did not know where ASI (GD) Sita Ram Singh/PW-6 was when the firing incident occurred, at which stage, the Prosecutor drew the Petitioner’s attention to his statement in the ROE, wherein the Petitioner had stated that ASI (GD) Sita Ram Singh/PW-6 was standing right in front of the Petitioner at 90 degrees near the patrolling party, but the bullets did not go that side. Faced with this, the Petitioner stated that at the time of firing incident, ASI (GD) Sita Ram Singh/PW-6 was standing behind Ex. SI Gohizhe Sema/PW-1 right in front of the Petitioner, about 13 yards away and the bullets hit the ground 45 degrees towards the right side at a distance of 4-5 yards away from the Petitioner himself.



(xvii) On being questioned by the GSFC, the Petitioner explained that he fitted the magazine on the 9 MM Carbine Machine gun because there was information regarding the movement of underground militants and that he had knowledge about the cease fire between the security forces and underground militants.

(xviii) The Petitioner further stated that when the weapon slipped from his shoulder, he grabbed it with his right hand only in pistol grip position, which is when his index finger pressed the trigger and the firing occurred.

22. After the evidence was recorded, the GSFC formulated three facts in issue to be considered as follows:

"FIRST ISSUE OF THE CHARGE

That on 21st Feb' 2013, at about 0630 hrs, No.800025847 SI (GD) Shambhu Nath Jha and No.86003445 ASI (GD) Sita Ram Singh were present at the CI Post Kilomi.

SECOND ISSUE OF THE CHARGE

That on 21st Feb' 2013, at about 0630 hrs. No.800025847 SI (GD) Shambhu Nath Jha fired 03 shots of 9MM CM. Butt No.59, Body No.JJ-9177 at ASI (GD) Sita Ram Singh.

THIRD ISSUE ON THE CHARGE

That the accused fired said shots with intent to kill ASI (GD) Sita Ram Singh."

23. On 06.04.2015, the GSFC returned a finding of guilt against the Petitioner and inflicted the punishment of dismissal from service upon the Petitioner.



24. The sentence and findings of the GSFC was confirmed by the Confirming Authority *vide* order dt. 06.11.2015. Subsequent to the disposal of the pre-confirmation petition filed by the Petitioner, the findings and sentence of the GSFC were confirmed by the Addl. DG, BSF (Eastern Command) *vide* their letter dated 12.11.2015. An administrative order to this effect was issued by the Commandant of the 111 Bn BSF *vide* a letter dated 16.11.2015.

25. Learned Senior Counsel appearing for the Petitioner has submitted as follows:

- (i) The Petitioner has served in the BSF 35 years with a distinguished and unblemished record.
- (ii) The Petitioner was denied a fair hearing and the outcome of the trial before the GSFC was pre-determined. For instance, the DIG of the Unit, who downgraded the Petitioner's Annual Confidential Report [“**ACR**”] influenced the proceedings against the Petitioner with a vendetta.
- (iii) The Respondents' refusal to provide documents like note sheets justifying the escalation of charges violated the procedural fairness, contravening the standards of fairness laid down by the Apex Court in Maneka Gandhi v. Union of India, (1978) 1 SCC 248.
- (iv) The witnesses that deposed before the ROE as well as GSFC consistently admitted to the accidental nature of firing and rejected the claims of animosity between the Petitioner and ASI (GD) Sita Ram Singh.
- (v) The award of dismissal as a punishment for an unintentional act violated the principal of proportionality and fails the test of



proportionality laid down by the Apex Court in Ranjit Thakur v. Union of India, (1987) 4 SCC 611.

26. *Per Contra*, learned SPC appearing for the Respondent/BSF, has submitted as under:

- (i) The writ petition is liable to be dismissed inasmuch the same sets out no valid grounds which may warrant judicial review and the sentence awarded to the petitioner is not disproportionate to the offence committed by the petitioner and the present case is not that typical case, wherein this Court should entertain any judicial review in GSFC proceedings.
- (ii) The GSFC trial was conducted strictly in accordance with Rule 45(1)(i) of the BSF Act and Rules, wherein witnesses were examined and documents have been exhibited and the GSFC has given a well-reasoned order on specific findings.
- (iii) The GSFC has meticulously analyzed the oral and documentary evidence, and the findings arrived are detailed, well-reasoned and are based on corroborated facts and as such the impugned order does not call for any interference by this Court. Even though there was no procedural irregularity or arbitrariness, in any case, this Court may not override or dilute a conviction rendered by a competent authority/ GSFC after full trial.
- (iv) In a case of judicial review of the GSFC proceedings, the petitioner must demonstrate that the punishment imposed or the procedure adopted was so unreasonable or unjust that it shocks the judicial conscience of the Court, and that there was a violation of the principles of natural justice.



27. It is necessary at this stage to delineate the parameters that govern the High Court's oversight of a Security Force Court. Interference by a High Court in exercise of its power of judicial review under Article 226 of the Constitution of India is justified only where: (a) the court-martial is improperly convened or constituted; (b) mandatory statutory procedure or principles of natural justice are violated; or (c) the findings are perverse, i.e., wholly unsupported by evidence or against the weight of evidence. These parameters have been consistently affirmed by the Apex Court and several High Courts.

28. In Syed Yakoob v. K.S. Radhakrishnan & Ors., **1963 SCC OnLine SC 24**, the Apex Court has laid down the limits of the High Court's jurisdiction to issue a writ of *certiorari* under Article 226 of the Constitution of India as below:

“7. The question about the limits of the jurisdiction of High Courts in issuing a writ of certiorari under Article 226 has been frequently considered by this Court and the true legal position in that behalf is no longer in doubt. A writ of certiorari can be issued for correcting errors of jurisdiction committed by inferior courts or tribunals: these are cases where orders are passed by inferior courts or tribunals without jurisdiction, or is in excess of it, or as a result of failure to exercise jurisdiction. A writ can similarly be issued where in exercise of jurisdiction conferred on it, the Court or Tribunal acts illegally or properly, as for instance, it decides a question without giving an opportunity, be heard to the party affected by the order, or where the procedure adopted in dealing with the dispute is opposed to principles of natural justice. There is, however, no doubt that the jurisdiction to issue a writ of certiorari is a supervisory jurisdiction and the Court exercising it is not entitled to act as an appellate Court. This limitation necessarily means that



findings of fact reached by the inferior Court or Tribunal as result of the appreciation of evidence cannot be reopened or questioned in writ proceedings. An error of law which is apparent on the face of the record can be corrected by a writ, but not an error of fact, however grave it may appear to be. In regard to a finding of fact recorded by the Tribunal, a writ of certiorari can be issued if it is shown that in recording the said finding, the Tribunal had erroneously refused to admit admissible and material evidence, or had erroneously admitted inadmissible evidence which has influenced the impugned finding. Similarly, if a finding of fact is based on no evidence, that would be regarded as an error of law which can be corrected by a writ of certiorari. In dealing with this category of cases, however, we must always bear in mind that a finding of fact recorded by the Tribunal cannot be challenged in proceedings for a writ of certiorari on the ground that the relevant and material evidence adduced before the Tribunal was insufficient or inadequate to sustain the impugned finding. The adequacy or sufficiency of evidence led on a point and the inference of fact to be drawn from the said finding are within the exclusive jurisdiction of the Tribunal, and the said points cannot be agitated before a writ Court. It is within these limits that the jurisdiction conferred on the High Courts under Article 226 to issue a writ of certiorari can be legitimately exercised (vide Hari Vishnu Kamath v. Syed Ahmad Ishaque (1955) 1 SCR 1104 Nagandra Nath Bora v. Commissioner of Hills Division and Appeals Assam (1958) SCR 1240 and Kaushalya Devi v. Bachittar Singh AIR 1960 SC 1168.

8. It is, of course, not easy to define or adequately describe what an error of law apparent on the face of the record means. What can be corrected by a writ has to be an error of law; hut it must be such an error of law as can be regarded as one which is apparent on the face of the record. Where it is manifest or clear that the conclusion of law recorded by an inferior Court or



Tribunal is based on an obvious misinterpretation of the relevant statutory provision, or sometimes in ignorance of it, or may be, even in disregard of it, or is expressly founded on reasons which are wrong in law, the said conclusion can be corrected by a writ of certiorari. In all these cases, the impugned conclusion should be so plainly inconsistent with the relevant statutory provision that no difficulty is experienced by the High Court in holding that the said error of law is apparent on the face of the record. It may also be that in some cases, the impugned error of law may not be obvious or patent on the face of the record as such and the Court may need an argument to discover the said error; but there can be no doubt that what can be corrected by a writ of certiorari is an error of law and the said error must, on the whole, be of such a character as would satisfy the test that it is an error of law apparent on the face of the record. If a statutory provision is reasonably capable of two constructions and one construction has been adopted by the inferior Court or Tribunal, its conclusion may not necessarily or always be open to correction by a writ of certiorari. In our opinion, it is neither possible nor desirable to attempt either to define or to describe adequately all cases of errors which can be appropriately described as errors of law apparent on the face of the record. Whether or not an impugned error is an error of law and an error of law which is apparent on the face of the record, must always depend upon the facts and circumstances of each case and upon the nature and scope of the legal provision which is alleged to have been misconstrued or contravened.”

29. Further restricting the interference of High Courts in a properly convened court martial that has carried out proceedings in accordance with the procedure prescribed, the Apex Court in Union of India and Ors. v. Major A. Hussain, **1998 (1) SCC 357**, has observed as follows:



“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.

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 specialized 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.”

30. The Apex Court in B.S. Hari v. Union of India & Ors., (2023) 13 SCC 779 reiterated that the High Court, while exercising jurisdiction under Article 226 of the Constitution, is empowered to examine whether the



findings recorded are based on any rational evidence or whether the proceedings stand vitiated by perversity, arbitrariness, or procedural unfairness. The constitutional power of judicial review is not fettered by technicalities and may be invoked where injustice is apparent on the face of the record.

31. Keeping the aforesaid parameters in mind, this Court shall now deal with the submissions advanced by the parties.

32. The foundational basis of the case against the Petitioner was the accidental firing of 3 rounds of gunshots from the 9 MM Carbine Machine Gun, being the personal weapon of the Petitioner, having occurred in the backdrop of the alleged animosity between the Petitioner and ASI (GD) Sita Ram Singh. In this background, the following extracts from the testimony of the Petitioner are essential to be taken into account:

“STATEMENT OF THE ACCUSED

xxx

At about 0625 hrs, I went to the Coy kote and collected a Motorola Set. After that, I went to the Coy kote and drew my 9MM CM, 02 magazines and 35 rounds, kept in a paper cartoon. After coming out of the Coy kote, I inspected my weapon by following the "khali kar drill" and went to my room. In the room, I wore the synthetic pouch, filled both the magazines with the ammunition; 17 rounds in one magazine and 18 rounds in another, and fitted one magazine on the 9MM CM and kept the second magazine in the pouch. I sling arm the 9MM CM on my right shoulder.

xxx

At this stage, the witness states that during the statement he missed the fact that when he did 'khali kar drill' after drawing the weapon from kote, he forgot to change the change lever position



to '8'. He also recalls that when the 9MM CM slipped from his shoulder its cocking handle stuck with the synthetic pouch.

CROSS EXAMINATION BY THE PROSECUTOR

I did not have enmity with ASI (GD) Sita Ram Singh prior to collective training of 'E' Coy at HQ 111 Bn BSF, Satakha.

xxx

On 21st Feb 2013 when ASI (GD) Sita Ram Singh argued with me, I did not get angry.

xxx

Whatever happened between me and ASI (GD) Sita Ram Singh on 21Feb' 2013 at about 0500 hrs was a trivial matter and that all happens regarding the detailment of the duty, so I do not consider that as an argument.

I wrote a complaint to Commandant 111 Bn BSF against ASI (GD) Sita Ram Singh regarding the arguments on 21st Feb 2013.

At about 0600 hrs ASI (GD) Sita Ram Singh fall-in the Coy troops in the volleyball ground and talking to them, at about 0610 hrs I asked him to report me after the special patrolling party is ready. He said, "yeh mera kam nahi hai". Then I went to Coy Comdr and reported about the behaviour of ASI (GD) Sita Ram Singh.

9MM CM is my pprsonal weapon since 1997, when I was promoted to the rank of Head Constable.

I don't know anything about the SOP in regard to fitting the magazine on 9MM CM while proceeding on duties.

xxx



QUESTIONS ASKED BY THE COURT

xxx

When the 9 MM CM slipped from my shoulder, I grabbed it with my right hand only in pistol grip position.

When I grabbed 9 MM CM with pistol grip, my index finger pressed the trigger and the firing occurred.”

33. There is a consistency between the testimony of the Petitioner and that of certain prosecution witnesses, inasmuch as what the prosecution witnesses described as animosity between the Petitioner and ASI (GD) Sita Ram Singh and/or an insubordination by the latter. Moreover, the Petitioner also described as a behavior he found appropriate to be reported to a higher authority.

34. What is further peculiar is that while the Petitioner pleads before this Court that he has served the BSF for more than 30 years with an outstanding record, the fact that it is his own admission before the GSFC that he did not know about any SOP for regarding the fitting of the magazine on the 9 MM Carbine Machine gun while proceeding on duties, is a contradiction which this Court finds odd.

35. Above all, this Court finds itself most persuaded by the following observations of the GSFC, rendered in the context of the Second Issue on Charge:

"The Court also does not believe him that the cocking handle stuck in the pouch which he was wearing at the time and the 9MM CM got cocked because it is in the general knowledge of the Court



as the members of the Force that if the SMM CM falls from the sling arm position it do not get cocked until the position of change lever is on A or R. It is in evidence before the Court and admitted by the accused in his statement on oath that when he drew his 9MM CM from the kote he did "Khali Kar Drill" and the Court believes that a soldier with 33 years of service out of which about 16 years with the 9MM CM as personal weapon would be knowing that the change lever position is kept on S after the "Khali Kar Drill". When the change lever position was not on A or R then, it is not possible that the 9MM CM would get cocked. The Court also does not believe that he grabbed 9MM CM before it could fall on the ground with his right hand in pistol grip position and his index finger pressed the trigger and the firing occurred because it is also with in the knowledge of the Court that if the 9MM CM is grabbed while falling from the sling arm position there are less possibilities that it would be grabbed with the pistol grip and the Index finger would press trigger as the trigger guard is there. Also, the Court believes that if the 9MM CM is grabbed with one hand in pistol grip position and the accidental firing occurred then the direction of the bullets would be towards the ground near by the firer and not at a 45 degree angle at a distance of 4-5 yards. The Court takes it that in all probabilities it was not an accidental fire but the accused aimed fire at ASI (GD) Sita Ram Singh. The Court believes that the bullets did not hit ASI (GD) Sita Ram Singh because as soon as he saw the accused cocking 9MM CM he turned towards his left side and ran away. In view of above the Court finds that on 2nd Feb' 2013, at about 0630 hrs. No. 800025847 SI (GD) Shambhu Nath Jha fired 03 shots of 9MM CM, Butt No. 59, Body No. JJ-9177 at ASI (GD) Sita Ram Singh. Hence, the Court takes this Issue as proved."



36. The above observation of the GSFC is based not only on the deposition of the various witnesses as also that of the Petitioner, but also on the general knowledge of the members of the GSFC as officers of BSF. In the opinion of this Court, this aspect has especially attained importance as a lot of light shines upon the Petitioner having inadequately performed the ‘*khali kar drill*’, the lever position of the 9 MM Carbine Machine gun, position of the weapon on the Petitioner’s shoulder, alleged falling of the weapon from the Petitioner’s shoulder, alleged accidental pressing of the trigger when the weapon fell from the Petitioner’s shoulder and the consequent alleged accidental firing having occurred as a result thereof – all of which *inter alia* had the ultimate effect of finding the Petitioner guilty. Therefore, insofar as such technicalities, this Court does not deem it fit to question the observation of the GSFC in any manner whatsoever.

37. Lastly, this Court deems it appropriate to recall the judgments of the Apex Court *qua* the essential conditions requisite for sustaining a conviction for an offence of attempt to murder.

38. In the State of Madhya Pradesh vs. Saleem @ Chamaru & Anr., (2005) 5 SCC 554, the Apex Court, while reappreciating the import of Section 307 IPC observed as under:

“12. To justify a conviction under this section, it is not essential that bodily injury capable of causing death should have been inflicted. Although the nature of injury actually caused may often give considerable assistance in coming to a finding as to the intention of the accused, such intention may also be deduced from other circumstances, and may even, in some cases, be ascertained without any reference at all to actual wounds. The section makes a distinction between an act of the accused



and its result, if any. Such an act may not be attended by any result so far as the person assaulted is concerned, but still there may be cases in which the culprit would be liable under this section. It is not necessary that the injury actually caused to the victim of the assault should be sufficient under ordinary circumstances to cause the death of the person assaulted. What the court has to see is whether the act, irrespective of its result, was done with the intention or knowledge and under circumstances mentioned in the section. An attempt in order to be criminal need not be the penultimate act. It is sufficient in law, if there is present an intent coupled with some overt act in execution thereof.

13. It is sufficient to justify a conviction under Section 307 if there is present an intent coupled with some overt act in execution thereof. It is not essential that bodily injury capable of causing death should have been inflicted. The section makes a distinction between the act of the accused and its result, if any. The court has to see whether the act, irrespective of its result, was done with the intention or knowledge and under circumstances mentioned in the section. Therefore, an accused charged under Section 307 IPC cannot be acquitted merely because the injuries inflicted on the victim were in the nature of a simple hurt.”

39. Discussing the judgment in Saleem @ Chamaru (Supra), the Apex Court in Surinder Singh v. State (Union Territory of Chandigarh), (2021) 20 SCC 24 observed as under:

“21. It is by now a lucid dictum that for the purpose of constituting an offence under Section 307IPC, there are two ingredients that a court must consider, first, whether there was any intention or knowledge on the part of the accused



to cause death of the victim, and, second, such intent or knowledge was followed by some overt actus rea in execution thereof, irrespective of the consequential result as to whether or not any injury is inflicted upon the victim. The courts may deduce such intent from the conduct of the accused and surrounding circumstances of the offence, including the nature of weapon used or the nature of injury, if any. The manner in which occurrence took place may enlighten more than the prudential escape of a victim. It is thus not necessary that a victim shall have to suffer an injury dangerous to his life, for attracting Section 307 IPC.

22. It would also be fruitful at this stage, to appraise whether the requirement of “motive” is indispensable for proving the charge of attempt to murder under Section 307 IPC.

23. It is significant to note that “motive” is distinct from “object and means” which innervates or provokes an action. Unlike “intention”, “motive” is not the yardstick of a crime. A lawful act with an ill motive would not constitute an offence but it may not be true when an unlawful act is committed with best of the motive. Unearthing “motive” is akin to an exercise of manual brain-mapping. At times, it becomes Herculean task to ascertain the traces of a “motive”.

24. This Court has time and again ruled : (Bipin Kumar Mondal case [Bipin Kumar Mondal v. State of W.B., (2010) 12 SCC 91 : (2011) 2 SCC (Cri) 150] , SCC p. 97, para 23)

“23. ... that in case the prosecution is not able to discover an impelling motive, that could not reflect upon the credibility of a witness proved to be a reliable eyewitness. Evidence as to motive would, no doubt, go a long way in cases wholly



dependent on circumstantial evidence. Such evidence would form one of the links in the chain of circumstantial evidence in such a case. But that would not be so in cases where there are eyewitnesses of credibility, though even in such cases if a motive is properly proved, such proof would strengthen the prosecution case and fortify the court in its ultimate conclusion. But that does not mean that if motive is not established, the evidence of an eyewitness is rendered untrustworthy.”
(emphasis supplied)

[See : Shivaji Genu Mohite v. State of Maharashtra [Shivaji Genu Mohite v. State of Maharashtra, (1973) 3 SCC 219 : 1973 SCC (Cri) 214] and Bipin Kumar Mondal v. State of W.B. [Bipin Kumar Mondal v. State of W.B., (2010) 12 SCC 91 : (2011) 2 SCC (Cri) 150]]

25. *We are thus of the considered opinion that whilst motive is infallibly a crucial factor, and is a substantial aid for evincing the commission of an offence but the absence thereof is, however, not such a quintessential component which can be construed as fatal to the case of the prosecution, especially when all other factors point towards the guilt of the accused and testaments of eyewitnesses to the occurrence of a malfeasance are on record.*

26. *Applying these broad parameters to the facts and circumstances of the case in hand, we find the plea raised by the appellant devoid of any merit. The prosecution no doubt has failed to attribute any motive to the appellant for yearning to kill the complainant, however, as noted above, the absence of motive alone cannot abjure the guilt of the appellant. We are one with the concurrent findings of the two courts that the conduct of the appellant is sufficient to surmise that his action was intended*



to eliminate the complainant, and that his conviction under Section 307IPC is fully justified.”

40. It is also apposite to recall a recent judgment of the Apex Court in State of Himachal Pradesh v. Shamsheer Singh, **2025 SCC OnLine SC 807**, wherein the Apex Court has held that firing of gunshot is enough to establish intention to cause death for the offence of attempt to murder. The relevant observations of the Apex Court are as under:

“12. It may be emphasized that to attract Section 307 IPC, it is not necessary that the hurt should be grievous or of any particular degree. If hurt of any nature is caused and it is proved that there was intention or knowledge to cause death, Section 307 IPC would stand attracted.

13. In the case at hand, the accused-respondent fired from his service weapon AK-47 and since he was a constable in the army, he was well aware that gunshot from such a weapon, if hits anyone will certainly result in causing death. There is no denial of the fact that the injured had sustained four injuries, two each on both the upper thighs and they were of grievous nature. The injuries may not be life threatening, but it leaves no doubt that there was intention to cause death.”

41. Applying the law laid down by the Apex Court to the facts of this case, it is established beyond doubt that three bullets were indeed fired from the gun of the Petitioner. It is also borne out that there were some differences between the Petitioner and ASI (GD) Sita Ram Singh as also that after three bullets were fired from the weapon of the Petitioner, ASI (GD) Sita Ram Singh was seen fleeing from the place of occurrence. However, none of the witnesses have actually seen the Petitioner take an aim at the ASI (GD) Sita



Ram Singh and fire the gun. Rather, all the witnesses have deposed that they knew of an altercation having taken place after ASI (GD) Sita Ram Singh refused to carry out orders of the Petitioner.

42. This Court has also taken note of the findings contained in the Order dated 06.04.2015 passed by the GSFC through which it is clearly borne out that the 9 MM Carbine Machine Gun could not be fired on its own unless the trigger is pressed, which leads to a conclusion that there was an intention to fire the three bullets. What is further noteworthy is that the time gap between the altercation and the firing of the three bullets by the Petitioner is very short.

43. Be that as it may, this Court is, therefore, not in a position to re-appreciate the evidence in a writ proceeding and substitute its conclusion with the one arrived at by the GSFC, as a Writ Court does not perform the function of an Appellate Court, and less so of a Criminal Appellate Court in the matter of appreciation of evidence.

44. This Court, therefore, is not inclined to interfere with the finding of guilt arrived at by the GSFC. The only other question left is whether this Court must interfere with the quantum of punishment or not, particularly when the Petitioner is a part of the disciplined force and three bullets were fired from the Petitioner's gun. The fact that the Petitioner has stated that the firing was a mistake, would not be such a mitigating circumstance which would shock the conscience of this Court.

45. The Apex Court in UT of Dadra & Nagar Haveli v. Gulabhia M. Lad, (2010) 5 SCC 775 has observed as under:

“15. In a matter of imposition of punishment where joint disciplinary enquiry is held against more than one delinquent, the same or similarity of charges is not decisive but many factors as noticed above may be



vital in decision making. A single distinguishing feature in the nature of duties or degree of responsibility may make a difference insofar as award of punishment is concerned. To avoid multiplicity of proceedings and overlapping adducing of evidence, a joint enquiry may be conducted against all the delinquent officers but imposition of different punishment on proved charges may not be impermissible if the responsibilities and duties of the co-delinquents differ or where distinguishing features exist. In such a case, there would not be any question of selective or invidious discrimination.”

46. The Apex Court in Charanjit Lamba v. Army Southern Command, (2010) 11 SCC 314 has observed as under:

“19. That the punishment imposed upon a delinquent should be commensurate to the nature and generally of the misconduct, is not only a requirement of fairness, objectivity, and non-discriminatory treatment which even those form quality (sic) of a misdemeanour are entitled to claim but the same is recognised as being a part of Article 14 of the Constitution. It is also evident from the long line of decisions referred to above that the courts in India have recognised the doctrine of proportionality as one of the ground for judicial review. Having said that we need to remember that the quantum of punishment in disciplinary matters is something that rests primarily with the disciplinary authority. The jurisdiction of a writ court or the Administrative Tribunal for that matter is limited to finding out whether the punishment is so outrageously disproportionate as to be suggestive of lack of good faith.

20. What is clear is that while judicially reviewing an order of punishment imposed upon a delinquent employee the writ court would not assume the role of an appellate authority. It would not impose a lesser



punishment merely because it considers the same to be more reasonable than what the disciplinary authority has imposed. It is only in cases where the punishment is so disproportionate to the gravity of charge that no reasonable person placed in the position of the disciplinary authority could have imposed such a punishment that a writ court may step in to interfere with the same.”

47. Relevant paragraph of a judgment of the Apex Court in Union of India & Others v. P. Gunasekaran, (2015) 2 SCC 610 reads as under:-

"19. The disciplinary authority, on scanning the inquiry report and having accepted it, after discussing the available and admissible evidence on the charge, and the Central Administrative Tribunal having endorsed the view of the disciplinary authority, it was not at all open to the High Court to reappraise the evidence in exercise of its jurisdiction under Articles 226/227 of the Constitution of India.

20. Equally, it was not open to the High Court, in exercise of its jurisdiction under Articles 226/227 of the Constitution of India, to go into the proportionality of punishment so long as the punishment does not shock the conscience of the court. In the instant case, the disciplinary authority has come to the conclusion that the respondent lacked integrity. No doubt, there are no measurable standards as to what is integrity in service jurisprudence but certainly there are indicators for such assessment. Integrity according to Oxford Dictionary is “moral uprightness; honesty”. It takes in its sweep, probity, innocence, trustfulness, openness, sincerity, blamelessness, immaculacy, rectitude, uprightness, virtuousness, righteousness, goodness, cleanness, decency, honour, reputation, nobility, irreproachability, purity, respectability, genuineness, moral excellence, etc. In short, it depicts sterling



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character with firm adherence to a code of moral values."

48. Even though the Petitioner has rendered more than 30 years unblemished of service, the punishment of dismissal does not shock the conscience of this Court to award any lesser punishment or to remand the matter back to the Respondents for reconsideration of a lesser punishment.

49. With the above observations, the Writ Petition is dismissed.

50. Pending application(s), if any, are also disposed of.

SUBRAMONIUM PRASAD, J

SAURABH BANERJEE, J

OCTOBER 10, 2025

S. Zakir/AP