

Judgment made by the General Court Martial

[Signed] Chairperson: Kiran Shamsher Thapa, Major General,
[Signed] Member: Bishnu Bahadur Gurung, Brigadier General,
[Signed] Member: Sharad Kumar Neupane, Brigadier General,
[Signed] Member: Hemanta Raj Kunwar, Colonel,
[Signed] Member: Ajit Singh Thakuri, Colonel,
[Signed] Representative of Legal Department: Nirendra Prasad Aryal,
Colonel

Case: Including the reported death of a civilian in the barrack who had been brought there after arrest

Plaintiff: His Majesty's Government (Royal Nepal Army)

Vs.

Defendants: (1) Bobby Khatri, Colonel No. 1242, Signal Directorate,
(2) Sunil Prasad Adhikari, Captain, No. 2584 of Birendra Peace Keeping Operations Training Centre,
(3) Amit Pun, Captain, No. 2827 of Birendra Peace Keeping Operations Training Centre

Enclosed documents:

1. Information received to the Military Operations Division, the Office of the Chief of Staff from the Paanchkhaal Barrack on 17 Feb 2004 -----1
2. Letter demanding information by the Mil. Asst. to CoAS with regard to Maina Sunar from the Military Operations Division on 04 March 2004 -----1
3. Letter written on 04 April 2004 by the Military Operations Division, the Office of the Chief of Staff to Mil. Asst. to CoAS-----1
4. Letter, attached with a newspaper clipping regarding Maina Sunar, written on 21 April 2004 by the Office of the Adjutant General (Human Rights Cell) to the Military Operation Division, Office of the Chief of Staff for taking necessary action -----1
5. Letter written on 23 April 2004 to the Department of Military Secretary to assign a Court of Inquiry Board and a letter sent by the Department on 28 June 2004 -----3
6. A submission made by the Office of the Adjutant General (Human Rights Cell) made on 29 April 2004 to the Chief of Army Staff -----1
7. A 4-page report submitted by UNDP's senior advisor David Johnson to the Legal Department on 18 June 2004-----1
8. A letter sent by the Office of the Adjutant General (Human Rights Cell) to the Military Operations Division on 28 July 2007, along with a 3-page report of ICRC-----1
9. A submission made by the Office of the Adjutant General (Human Rights Cell) to the Chief of Army Staff on 29 Sept 2004-----1
10. Letter written on 05 October 2004 by the Adjutant General to the No. 9 Brigade to carry out an investigation and submit a report-----1
11. Letter, attached with 6 pages, written on 08 October 2004 by the Office of the Adjutant General (Human Rights Cell) to the Military Operation Division demanding information -----1
12. Letter written on 13 Feb 2004 by the Military Operations Division, Chief of Staff to the concerned Directorate/Training Center/Company demanding information about Maina Sunar from them -----1

Full translation (revised)

13. Message sent on 14 October 2004 by the Paanchkhaal Barrack to the Military Operations Division, Chief of Staff regarding Bimala Bika and Maina Sunar-----1
14. Receipt that the Shatrumardan Barrack received Bimala BK on 18 Feb 2004-----1
15. Letter written by the Military Operations Division, Chief of Staff on 16 October 2004 providing information to the Office of the Adjutant General (Human Rights Cell) -----1
16. Message sent on 04 December 2004 by the No. 9 Brigade to the Paanchkhaal Barrack-----1
17. Message sent on 09 December 2004 by the Paanchkhaal Barrack to the No. 9 Brigade-----1
18. Follow-up messages sent on 03 December 2004 and 22 December 2004 by the Office of the Adjutant General (Human Rights Cell) to the No. 9 Brigade requesting the investigation report-----2
19. Message sent on 28 December 2004 by the No. 9 Brigade to the Operations Department (Human Rights Cell) -----1
20. Letter written on 04 Feb 2005 from the Office of the Adjutant General to the No. 9 Brigade-----1
21. Eight-page message sent on 17 Feb 2005 by the Paanchkhaal Barrack to the Adjutant General-----1
22. A photocopy of a news article headlined "Ultimately, Maina was confirmed to be killed" published in a weekly magazine on 23 Feb 2005 -----1
23. A submission made on 14 Feb 2005 requesting that an investigation into Maina Sunar be carried out by the Royal Nepal Army Headquarters -----1,
24. Letter dated 03 April 2004 of the District Administration Office -----1
25. 9-page opinion along with a 41-page statement submitted by the Court of Inquiry Board constituted under the chairmanship of Colonel Mohan Bahadur Basnet-----1,
26. Charge-sheet -----3,
27. Opinion submitted on 14 March 2005 by the Office of the Adjutant General (Legal Department) to the Chief of Army Staff regarding the formation of the General Court Martial -----1,
28. Letter written on 14 March 2005 by the Office of the Adjutant General (Legal Department) to the Military Secretariat with regard to keeping the accused in the barrack -----1,
29. Authorization letter provided on 14 March 2005 by the Chief of Army Staff in accordance with Section 98 of the Army Act with regard to trying the case after constituting a General Court Martial under the Chairmanship of Major General Kiran Shamsheer Thapa -----1,
30. Letters regarding the formation of a General Court Martial -----3
31. Oaths taken by representatives of Court Martial and Legal Section and the accused -----3
32. Letters written by the Military Operations Division, Chief of Staff and the Office of the Adjutant General (Legal Section) as commanded by the General Court Martial and those received, and messages -----9
33. Letter written on 11 May 2005 by the Office of the Adjutant General (Legal Department) to the Barrack regarding not allowing the accused in detention to make phone-calls and meet their relatives -----1,
34. A total of 102-page accounts given by the accused and those concerned before the General Court Martial -----1,

Brief details of the case

1. Information was received to the Military Operations Division, Chief of Staff that when Maina Sunar was being brought after arrest, she tried to escape near the Hokse jungle of Kavre district on 16 Feb 2005 by throwing herself from a vehicle and was warned to halt and to return to the van but she continued to escape towards the jungle and a security action taken resulted in her death, and the news was disseminated accordingly.
2. As the Office of the Mil. Asst. to CoAS had sent a letter to the Military Operations Division, Chief of Staff on 03 March 2004 over the disappearance since two weeks of Maina Sunar who was arrested and taken away by security forces in the early morning of 17 Feb 2004 from the Pokharichauri area of Kavre district for providing necessary information, the Military Operations Division, Chief of Staff submitted the details of facts as given in above-mentioned in No. 1 to CoAS and this was provided by the Mil. Asst. to CoAS as information to different diplomatic missions and those concerned.
3. As the victims, other national and international institutions and embassies time and again disagreed with the details furnished by different departments and branches of the Royal Nepal Army and sought to take information time and again, a Court of Inquiry was formed on 28 June 2004 under the chairmanship of Lt. Col. Jit Bahadur Gurung of the Directorate of Peacekeeping Operation regarding the disappearance of Maina Sunar, and though the Adjutant General also sent a letter on 05 October 2004 to the Brigade Commander of No. 9 Brigade to do a Court of Inquiry, no reports of both of the Courts of Inquiry could be received on time due to different reasons and circumstances.
4. In view of the concerns raised by newspapers, different embassies, national and international organizations related to human rights including the United Nations over the death of local Rina Rasaili and Subhadra Chaulagain on 13 Feb 2004 and of Maina Sunar on 17 Feb 2004 in the area of Pokharichauri of Kavre District, when the Office of the Adjutant General (Legal Department) recommended that it deems necessary that the Royal Nepal Army Headquarters itself form a Board and carry out an investigation, the Board was formed as per the directive of the CoAS given on 14 Feb 2005 comprising Col. Mohan Bahadur Basnet, a Major with knowledge on army police and a Legal Department representative, and the Board was formed accordingly, the Board carried out the investigation and submitted the following opinions on 14 March 2005:
 - a) Maina Sunar, a resident of Kharelthok, was arrested and brought to the Paanchkhaal Barrack on a tip-off provided by Bimala BK, a girl, who was detained in the Paanchkhaal Barrack at that time.
 - b) After the reporting of the Commander of the operation team Major Niranjana Basnet, the then captain, about the arrest of Maina Sunar to the then Acting Officer In-charge of the Barrack Colonel Bobby Khatri, an interrogation was held as per the direction and in presence of the Acting Officer In-charge of the Barrack.
 - c) Maina Sunar who was brought to the Barrack at 8:30 AM on 17/02/2004 (2060/11/05), in good condition was interrogated from the beginning by drowning in water, and since nothing was disclosed from her, she was given an electric shock on her wet body as per the order of the Colonel Bobby Khatri, and as she was loosening, she was taken to the nearby canteen to feed rice, but the girl did not eat rice and foamed at the mouth and died at 11:30 AM.

- d) The Board advised to take action against Colonel Bobby Khatri, Captain Sunil Prasad Adhikari and Captain Amit Pun in accordance with the Army Act 1963 (2016) for her death occurred as a result of extreme torture inflicted on her immaturely and very carelessly when there were other options, although the torture was inflicted on her with the intent of interrogation, not killing.
5. Although it appeared that the torture of Maina Sunar during interrogation was not with the intent of killing, the method of interrogation was torturous, and taking into account the wrong procedures after the death, Colonel Bobby Khatri seemed to have committed the act very carelessly; with the advice of the Department of the Adjutant General (Legal Department) on 03/05/2004 (2061/12/01) to form the General Court Martial for the trial of the case, the court was formed on the same date as per the authorization letter given in accordance with Section 98 of the Army Act 1963 by the Chief of Army Staff to form a General Court Martial, with the Chairmanship of the Major General Kiran Shamsher Thapa, the bench was established in the Royal Nepal Army Headquarters and it started to work from 15/04/2005 (2062/01/02).
6. This Court recorded the testimonies of a total of 13 persons including the following accused and other related persons, by establishing the bench in Paanchkhaal Barrack on 15/05/2005 (2062/02/01) and in the office of RNA Headquarters on the remainder days; the statements of 102 pages have been enclosed with this document:
- 1) Bobby Khatri, Colonel of Shree Signal Directorate,
 - 2) Niranjana Basnet, Major of Shree Ransingh Dal Battalion,
 - 3) Krishna Dhvaj Thapa, Major of Shree Shatrumardan Company,
 - 4) Sunil Prasad Adhikari, Captain of Birendra Peace Keeping Operations Training Centre,
 - 5) Amit Pun, Captain of the same Center,
 - 6) Man Bahadur Basnet, Junior Commissioned Officer (Jamdar) of the same Center,
 - 7) Surendra Bahadur Karki, Junior Commissioned Officer (Jamdar) of the same Center,
 - 8) Khadga Bahadur Karki, Sergeant Non-commissioned Officer (Hudda) of the same Center,
 - 9) Santa Bahadur Limbu, Sergeant Non-commissioned Officer (Hudda) of the same Center,
 - 10) Bhupal Basnet, Sergeant Non-commissioned Officer (Hudda) of the same Center,
 - 11) Krishna Thapa, Soldier of the same Center,
 - 12) Dil Bahadur Basnet, Soldier of the same Center,
 - 13) Shyam Bahadur Lopchan, Gunman of Ransingh Dal Battalion deputed to Birendra Peace Keeping Operations Training Centre.

Findings of the Court

On the basis of all the gathered evidences, facts and information found in the attached documents, inspection of the crime spot, the place where Maina Sunar was interrogated, testimonies made by accused persons and related persons, study of the orders and instructions issued by the RNA Headquarters regarding the compliance of the Army Act 1963, human rights laws and humanitarian laws, and of relevant existing Acts and laws, advice of the Board of the Court of Inquiry, other information and facts received by this court, discussion held between the Chairperson and members of this court, and legal advice received by the representative of the Legal Department, the General Court Martial formed in accordance with Section 102 of the Army Act 1963 with the authorization of under Section 98 of the same Act, and which has jurisdiction in accordance with Section 61 of the Army Act 1963 is to resolve the following questions appeared before this

General Court Martial before making a decision in accordance with the authorization of Section 107 of the same Act:

1. Whether the team gone to arrest Maina Sunar and Devi Sunar was in connection with fulfilling its duty or not? Did the team has any reason to arrest Maina Sunar or not?
2. Did the situation require the interrogation to be carried out immediately or not?
3. Could the method of interrogation be said to be correct or not?
4. Was Maina Sunar killed as a result of extreme torture or not?
5. Was the procedure adopted after the death of Maina Sunar was correct or not?
6. Are the incidents of Maina Sunar and Rina Rasaili interrelated or not?
7. Are any military personnel directly or indirectly responsible for the death of Maina Sunar or not?

With regard to the first question, "Whether the team gone to arrest Maina Sunar and Devi Sunar was in connection with fulfilling its duty or not? Did the team has any reason to arrest Maina Sunar or not?", while studying the reported information provided by Bimala BK who was arrested on 13/02/2004 (2060/11/01) for her involvement in terrorist activities at Palanchowk Bhagawati area to the Paanchkhaal Barrack and the Advocacy Forum the account of Major Krishna Dhvaj Thapa, the Chief of Shatrumardan Company on question No. 2, 4 and 5 and documents submitted to the Court, account of Colonel Bobby Khatri on question No. 5, 7, 9 and 12, account of Major Niranjan Basnet on question No. 5, 6, 10 & 19, account of Captain Sunil Prasad Adhikari on question No. 5 and 21, account of Soldier Dil Bahadur Basnet on question No. 8, and other state of affairs, it is found that Bimala BK who was arrested by the Nepal Police on 13/02/2004 (2060/11/01) while she was doing recce of the Post of Nepal Police and documenting eye sketch and the number of the policemen and brought to the District Police Office in Dhulikhel told that she knew the terrorists at Kharelthok and Baluwa area and in order to inform about them stated that Commander of the area was Prabhu Neaupane and his associates were Devi Sunar and her daughter Maina Sunar; and with this information Shatrumardan Company asked the Barrack at Paanchkhaal, responsible for Kharelthok and Baluwa area, to proceed with other necessary actions and the same day it handed over Bimala BK to Captain Sunil Prasad Adhikari and on 16/02/2004 (2060/11/04), as Bimala BK informed that she could show the house of Devi Sunar and Maina Sunar and that Prabhu Neaupane may have been staying in the house, Major Niranjan Basnet¹ and Captain Sunil Prasad Adhikari made a plan for the operation as per the order of the Senior Officer of the Barrack, Colonel Bobby Khatri, the then Lieutenant Colonel and on 17/02/2004 (2060/11/05) at 4:00 AM, a security team of 1/12² and detainee Bimala BK went to Palanchowk Bhagawati, parked the vehicle there and went to the Kharelthok area and the team encircled the house shown by Bimala BK and searched for Devi Sunar but she had gone to the house of her mother at Pokharichauri area and Bimala BK identified Maina Sunar and she was arrested and the team asked her father Purna Bahadur Sunar to bring his wife Devi Sunar to the Paanchkhaal Barrack and the team returned the Barrack at around 9:00-10:00 AM; therefore, the order of Colonel Bobby Khatri to bring Maina Sunar and Devi Sunar and among them, the bringing of Maina Sunar to the Barrack by the team of Major Niranjan Basnet are the acts performed in order to fulfilling duty under the Terrorist and Destructive Activities (Control and Punishment) Act, 2001 and Section 24A of the Army Act 1963, and the bringing of Maina Sunar to the Barrack at 9:00-10:00 on 17/02/2004 (2060/11/05) looks reasonable.

With regards to the second question "Was there any situation that required the interrogation to be carried out immediately?", while studying the accounts of Captain Sunil Prasad Adhikari on question No. 5, Colonel Bobby Khatri on question No. 5, 7 and 9, Major Krishna Dhvaj

¹ Translator's Note: The original text says Niranjan Basnet, not Adhikari.
² Translator's Note: Meaning of this term is not clear.

Full translation (revised)

Thapa on question No. 2 and 4 and additional affirmation by Bimala BK on her information to the DPO in Dhulikhel and the situation of peace and security after the ceasefire in August 2003, the order by Colonel Bobby Khatri for Captain Amit Pun, who was mentally fresh after returning from home comparing to other officers engaged in whole night operation, to interrogate in order to collect information and facts was justifiable, given the terrorist Commander of that area Prabhu Neupane used to come to and stay in the house of the terrorists Bimala BK, Devi Sunar and Maina Sunar since he had special relation and contact with them, Devi Sunar was engaged in terrorist activities such as using weapons, and taking students to training after abducting them and in regard to Maina Sunar, according to the information provided by Bimala BK, she was trained and was a revolutionary student and Bimala BK showed the house of Maina Sunar and Devi Sunar at Kharelthok although the environment to interrogate adopting better techniques and procedures through written questionnaire with a good behavior, was not created after she was brought to Paanchkhaal Barrack on 17/02/2004 (2060/11/05) with the main intent of arresting so-called Commander of the area terrorist Prabhu Neupane and other terrorists on the basis of the information provided by Maina Sunar through interrogation, as soon as possible. Regarding the fact that after the incident, Prabhu Neupane was killed in the crossfire during the operation carried out by Shree No. 9 Brigade, and Kedar Acharya, who used to collect information regarding Maina Sunar by keeping in close contact with Devi Sunar, was also killed in the crossfire of the security forces, the need of Maina Sunar's urgent interrogation is corroborated..

With regard to the third question, " Could the method of interrogation be said to be correct or not?", while studying the accounts of Colonel Bobby Khatri in question No. 5, 8, 16, 23, 24, 31 and 34, Captain Sunil Prasad Adhikari in question No. 5, 7, 9 and 11, Captain Amit Pun in question No. 5, 6, 10, 13, 15 and 16, Sergeant Non-commissioned Officer (Hudda) Khadga Bahadur in question No. 5, 6, and 9, Soldier Krishna Bahadur Thapa in question No. 5, 6 and 16, Soldier Dil Bahadur Basnet in question No. 5 and 6, and the third line of the advice of the Board of Inquiry, this court does not view that the illegal inhuman and unnatural treatment and torture, and wrong technique and procedure of interrogation adopted in course of interrogation in order to find facts and to make a mental effect, such as the drowning of in a drum full of water, passing electric current on her wet body was correct and legal method of interrogation, although this was done in order to receive information from Maina Sunar about the specific Maoist activities in Kharelthok area and other important facts on 17/02/2004 (2060/11/05) at 10:00-11:00 AM, in the presence of officers and in an open place where all could view, and after there was no cooperation from Maina Sunar.

With regard to the fourth question, "Was Maina Sunar killed as a result of extreme torture or not?", while studying the accounts of Colonel Bobby Khatri in question No. 5, 8, 16, 21, 24, 25 and 31, Captain Niranjan Basnet in question No. 5 and 8, Captain Amit Pun in question No. 5, 6, 9, 10, 13, 16 and 19, Sergeant Non-commissioned Officer (Hudda) Khadga Bahadur in question No. 5, 6 and 9, Soldier Shree Krishna Thapa in question No. 5, 6, 16 and 17, Soldier Dil Bahadur Basnet in question No. 5, 6 and 9, Junior Commissioned Officer (Jandari) Surendra Bahadur Karki in question No. 5 and 11, and also the advice of the Board of Inquiry, since Maina was fine when she was brought to the Paanchkhaal Barrack from her home at Kharelthok on 17/02/2004 (2060/11/05), she was not shot dead by the security forces or anybody from the deployed team on the way from Kharelthok to the Barrack at Lamidanda with any reason. Although the cause of the death could not be established in the absence of a postmortem report, there is a clear indication that Maina died because of wrong techniques and procedures adopted during interrogation, when there were alternative ways of interrogations, and Maina Sunar's physical and mental conditions. Taking into account the conclusions presented above in regard to question No. 2 and 3 it does not appear that she was arrested without any reason and interrogated with bad intention and with the intent of killing, which is corroborated by the fact that she was brought to the Barrack in fine condition after her arrest. The existing evidences suggest that no military personnel had personal or inherited

read post-mortem report

Full translation (revised)

rivalry and intent of killing Maina Sunar but rather they intended to interrogate her as soon as possible and obtain important information from her and arrest a terrorist person or terrorist group, and after interrogation she was sent to have food, she complained of dizziness and after having food she vomited and with this she showed an abnormal behavior and started foaming at the mouth. Since she was found dead when a nurse was called to check her Maina Sunar was not killed or dead as a result of intentional severe torture but died unfortunately and accidentally due to wrong techniques used out of carelessness, fickleness and irrationality during the interrogation and also due to her own physical weakness, which is clear by the fact that she died at 12:00-13:00 hours between the Hawaghar and the temple in Paanchkhaal Barrack after one or two hours after the completion of the interrogation.

With regards to the fifth question, "Was the procedure adopted after the death of Maina Sunar was correct or not?", while studying the accounts of Colonel Bobby Khatri in question No. 5, 8, 17, 30, and 33, Captain Niranjan Basnet in question No. 5, 21 and 22, Captain Sunil Adhikari in question No. 5, Captain Amit Pun in question No. 5, 17, and 18, Junior Commissioned Officer (Jamdar) Surendra Bahadur Karki in question No. 5, Sergeant Non-commissioned Officer (Hudda) Khadga Bahadur in question No. 5 and Soldier Dil Bahadur Basnet in question No. 5, the advice of the Board of Court of Inquiry and also the judicial information received after the field visit by the Court, it appears that her dead body was ordered to bury outside the premises of the Barrack after she died in between one or two hours after she was sent to eat meal after the interrogation. Although Colonel Bobby Khatri stated that the dead body was ordered to be buried and buried by informing relevant subordinate agencies that a special incident had occurred and the documents prepared, just to avoid immediate blame against the Royal Nepal Army, the act of burying the body clearly turns out to be against the existing laws and regulations by going against the provisions of the existing laws in Nepal regarding the procedure if a claimed or unclaimed dead body is found and by whom it should be cremated, and the orders, instructions given by the Royal Nepal Army every now and then to comply to human rights and protect humanitarian laws.

With regard to the sixth question, "Are the incidents of Maina Sunar and Rina Rasaili interrelated or not?", while studying the allegations from various newspapers, persons related to national and international human rights, institutions and organizations, United Nations and various diplomatic corps - that Rina Rasaili was illegally killed five hours after an immoral act at a cowshed where she was taken when she was sleeping with Devi Sunar and as the security force which went with the intent of arresting Devi Sunar who was an eye-witness of the event, and did not find her, brought Maina Sunar as a captive and disappeared her - abovementioned attached documents, accounts of the accused persons and other related persons and advice of the Board of the Court of Inquiry it is found that Rina Rasaili and Subhadra Chaulagain were killed in an action in the Pokharichauri area of Dolakha District on 12/02/2005 (2061/11/1) whereas, the security force in Paanchkhaal went to arrest Devi Sunar and Maina Sunar on 17/02/2004 (2060/11/5) as per the information obtained by and with the assistance of Bimala BK on 13/02/2004 (2060/11/1), which means that the security force who was even not aware of the incident of the killing of Rina Rasaili had gone to arrest Devi Sunar, hence the allegation turns out to be baseless, evidence-less and hypothetical and therefore the incident of Rina Rasaili and of Maina Sunar do not appear to be interrelated.

Likewise, with regard to the allegations that Bimala BK was arrested on 11/02/2004 (2060/10/28) and detained in the Paanchkhaal Barrack and that she was continuously raped by unknown personnel of the Barrack from 15/02/2004 (2060/11/03) until 01/03/2004 (2060/11/18) for fifteen days, while studying the accounts of the accused persons and other relevant persons, a receipt submitted by Major Krishna Dhvaj Thapa and statement made before the Court, and the message dated 14/10/2004 (2061/06/28) from the Paanchkhaal Barrack, it seems that Bimala BK was not arrested on 11/02/2004 (2060/10/28) but on 13/02/2004 (2060/11/01) from Palanchowk Bhagawati and was taken to the District Police Office, Dhulikhel, where she was interrogated and the same day she was brought to the

Full translation (revised)

Paanchkhaal Barrack at 5:00 PM to take necessary action against her, where she was taken in a separate small room near the Quarter-guard, locked from outside, under the care of two sentries, and no one was allowed to interrogate her without the permission of the officer, and since Bimala was at Kharlethok during the night of 16/02/2004 until the morning of 17/02/2004 to show the house of Maina Sunar and Devi Sunar, and returned to the Paanchkhaal Barrack after the arrest of Maina Sunar, she does not appear to be in the Barrack at that night, and since Bimala BK seems to be handed over to the Dhulikhel District Police Office on 18/02/2004 (2060/11/06) in the receipt letter dated 18/04/2004 (2061/01/06), it seems that Bimala BK was not in the Barrack for more than five nights, the report reported to be prepared on the basis of Bimala BK's account turns out to be hypothetical, hence it should be informed by the Department of the Adjutant General (Human Rights Cell).

With regard to the final question, "Are any military personnel directly or indirectly responsible for the death of Maina Sunar or not?", while studying the accounts of Colonel Bobby Khatri, Major Niranjan Basnet, Captain Amit Pun, Soldier Dil Bahadur Basnet, Soldier Shree Krishna Thapa, Sergeant Non-commissioned Officer (Hudda) Khadga Bahadur made before the Court and the resolved questions on the advice of the Board of the Court of Inquiry, this General Court Martial decides following penalty for the following offences for the following military personnel who are found to have acted against Section 37, Section 54 and Section 60 of the Army Act 1963 and the repeated orders and instructions of the Royal Nepal Army on the compliance of human rights and protection of humanitarian laws, in the present case regarding the death of a civilian Maina Sunar, who was, was arrested on 17/02/2004 (2060/11/05) from her house in front of her parent and brought to the Barrack, burial of her body without completing the legal procedures:

Addendum

1. Since Colonel Bobby Khatri could not fulfill his responsibility by ordering Captain Sunil Prasad Adhikari and Captain Amit Pun to interrogate Maina Sunar who was brought to the Paanchkhaal Barrack in the morning of 17/02/2004 (2060/11/05), when he was in and out of the place of interrogation and obtaining information about the facts received during the interrogation which was being done carelessly and irresponsibly when there were other alternatives and did not intervene when the wrong procedure was being adopted and ordering to bury the dead body without following required procedures in accordance with the existing laws, and failed to adopt the instructions on the observance of human rights and humanitarian laws repeatedly issued by the Royal Nepal Army Headquarters, hence he committed the offence provided by Section 54 and 60 of the Army Act 1963, Colonel Bobby Khatri should be given six months' imprisonment in accordance with Section 54 and 60 of the Army Act 1963 commencing from the date 14/03/2005 (2061/12/01) when he was held in military detention, and his promotion should be held for two years in accordance with Clause (h) of Section 62(1) of the same Act.

2. Since Captain Sunil Prasad Adhikari did not use initiative, conscience and professional knowledge as per the requirement of his position, and did not use wisdom and conscience during interrogation while there were other alternatives, and did not behave humanely and kept on engaging in interrogation using wrong technique and procedure carelessly and irresponsibly which was not suitable to the level of an officer, it is found that he committed acts contrary to Sections 54 and 60 of the Army Act 1963 and the instructions on the observance of human rights and humanitarian laws repeatedly issued by the Royal Nepal Army, hence he should be given six months' imprisonment in accordance with Section 54 and 60 of the Army Act 1963 commencing from the date 14/03/2005 (2061/12/01) when he was held in military detention, and his promotion should be held for one year in accordance with Clause (h) of Section 62(1) of the same Act.

Full translation (revised)

3. Since Captain Amit Pun did not use initiative, conscience and professional knowledge as per the requirement of his position, and did not use wisdom and conscience, during interrogation while there were other alternatives, and did not behave humanely, and kept on engaging in interrogation using wrong technique and procedure carelessly and irresponsibly which was not suitable to the level of officer, it is found that he committed acts contrary to Sections 54 and 60 of the Army Act 1963 and the instructions on the observance of human rights and humanitarian laws repeatedly issued by the Royal Nepal Army, hence he should be given six months' imprisonment in accordance with Section 54 and 60 of the Army Act 1963 commencing from the date 14/03/2005 (2061/12/01) when he was held in military detention, and his promotion should be held for one year in accordance with Clause (h) of Section 62(1) of the same Act.
4. Since Maina Sunar who was arrested by the State could not be kept safely, a recommendation shall be made to His Majesty's Government to provide Rs. 150,000 (Rs. One Hundred and Fifty Thousand) as compensation to the closest heir of Maina Sunar and a request to His Majesty's Government to release the money very quickly and hand it over to her heir through the District Administration Dhulikhel, in presence of the Chief of Shatrumardan Company.
5. In addition to the compensation to be provided by His Majesty's Government as mentioned in Section (4), a total of Rs. 100,000 (Rs. One Hundred Thousand) shall be obtained as the reparation from the guilty officers and among them Colonel Bobby Khatri shall pay Rs. 50,000/(Rs. Fifty Thousand), Captain Sunil Prasad Adhikari Rs. 25,000/ (Rs. Twenty-five Thousand) and Captain Amit Pun Rs. 25,000/ (Rs. Twenty-five Thousand), and the sum shall be handed over, in accordance with the law, to the closest heir of Maina Sunar through the Commander in Dhulikhel in coordination and presence of the Chief District Officer of Kavre District.
6. Department of the Adjutant General (Legal Department) shall write to the District Police Office, Dhulikhel to complete the legal procedures in regards to the dead body of Maina Sunar reportedly buried outside the Army Barrack without authorization and without completing legal procedures.
7. Although the Royal Nepal Army Headquarters issued an instruction to carry out a Court of Inquiry with regard to the allegation against the State and the Royal Nepal Army regarding the violation of human rights and humanitarian laws in order to find out the facts about this incident, the report of the Court of Inquiry was not received in time, hence, now onwards an instruction has to be issued from the relevant department to all agencies to prioritize the inquiry of any allegations and submit reports.
8. Let this judgment be submitted to the Chief of the Army Staff for approval in accordance with Section 141 of the Army Act, 1963.

Date: 8 September 2005 (2062/5/23)