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May 9.

THE STATE OF ANDHRA PRADESH

v.

N. VENUGOPAL AND OTHERS

(P. B. GAJENDRAGADKAR, K. N. WANCHOO and K. C. DAS GUPTA JJ.)

Criminal Law—Limitation—Prosecution of Police Officers—Police Officer torturing suspects during investigation—Whether acts done under the provisions of law—Madras Police Standing Orders, Or. No. 145—If has the force of law—Whether mandatory—Madras District Police Act, 1859 (Mad. 24 of 1859), s. 53.

During the course of the investigation of a case of housebreaking and theft information was received that R had received the stolen article. The appellants, who were a Sub-Inspector of Police, a Head Constable and a Constable, respectively, took R into custody on January 6, 1957. Less than three days later R was found lying dead with a number of injuries on the body. The appellants were prosecuted for having caused injuries to R, acting in concert for the purpose of extorting from him information which might lead to the detection of an offence and restoration of stolen property, and also for having his body thrown at the place where it was ultimately found with the intention of screening themselves from punishment. The appellants pleaded *inter alia* (1) that the prosecution was barred by limitation by reason of the provisions of s. 53 of the Madras District Police Act, 1859, and (2) that the trial of the appellants was vitiated by the fact that the completion of the investigation of their case was done by an Inspector of Police and this contravened the Madras Police Standing Orders under which investigation in cases against the police for torture and causing death had to be conducted by a person of the rank of Assistant or Deputy Superintendent of Police or by the Sub-Divisional Magistrate.

Held that the prosecution of the appellants was not barred by limitation under s. 53 of the Madras District Police Act, 1859..

No provision of law authorised police officers to beat a person with a view to induce him to make statement; and

though in the present case the act of beating was alleged to have been done when the appellants were engaged in investigation, there could be no reasonable connection between those acts and the process of investigation. The acts complained of could not be said to have been done or intended to be done under any provision of the Madras District Police Act or the Code of Criminal Procedure or any other law conferring powers on the police, and, consequently, s. 53 of the Madras District Police Act had no application to the present case.

Virupappa Veerappa Kadampur v. *The State of Mysore*, [1963] Supp. 2 S.C.R. 6, followed.

Held further, that the provisions of the Madras Police Standing Order No. 145 were nothing more than administrative instructions by the Government of Madras and did not have the force of law; that, in any case, the requirement of the Standing Order was merely directory and not mandatory, and non-compliance did not make the investigation of the case illegal; and that even assuming that the Standing Order had the force of law, the trial of the appellants would not be rendered invalid unless it was shown that miscarriage of justice had been caused on account of the illegal investigation.

H. N. Rishbud and Inder Singh v. *The State of Delhi*, [1955] 1 S.C.R. 1150, followed.

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 142 of 1961.

Appeal by special leave from the judgment and order dated August 31, 1960, of the Andhra Pradesh High Court in Criminal Appeal No. 551 of 1958.

A. S. R. Chari, K. R. Chaudhuri and *P. D. Menon*, for the appellant.

N. N. Keswani, for the respondents.

1963. May 9. The Judgment of the court was delivered by

DAS GUPTA J.—The three respondents, Venugopal, Rangaswamy and Subbaiah were tried along with one Mittala Kamal Sab by the Session Judge,

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Anantapur Division, on a number of charges. Kamal Sab was acquitted of all the charges against him, but these three respondents were convicted of several offences. All three of them were convicted under ss. 348, 331, and 201 read with s. 109 of the Indian Penal Code. Venugopal was further convicted under s. 343 of the Indian Penal Code. For the offence under s. 348 the respondents were sentenced to suffer rigorous imprisonment for two years; for the offence under s. 331 of the Indian Penal Code each of them was sentenced to rigorous imprisonment for five years; for the offence under s. 201 read with s. 109 of the Indian Penal Code they were sentenced to rigorous imprisonment for three years each. Venugopal was sentenced to one year's rigorous imprisonment under section 343 of the Indian Penal Code. All of them were acquitted of the charge under s. 302 read with s. 34 of the Indian Penal Code. The sentences imposed on them were directed to run concurrently. These orders of conviction and sentence were set aside by the High Court of Andhra Pradesh in appeal and the three respondents have been acquitted of all the charges. Against that decision the State of Andhra Pradesh has filed the present appeal after obtaining special leave from this Court.

Of the three respondents, Venugopal was the Sub-Inspector of Police, Vempalli police station, in Cuddapah District from July 20, 1956, to February 22, 1957; Rangaswamy was a Head Constable attached to the same police station from May 4, 1955 to February 20, 1957; Subbaiah was a Police Constable at that police station from April 10, 1955 to February 20, 1957. On July 21, 1952 Mittala Kamal Sab, a resident of Vempalli town lodged at the Vempalli police station an information of house-breaking and theft in his house. After investigation a charge-sheet was submitted by the police against one Patra Obanna and three other persons. Those three were arrested and tried and convicted on October 31, 1962;

but Patra Obanna remained absconding and the case against him remained pending in the Magistrate's Court. After sometime the Magistrate wrote to the District Superintendent of Police of Anantapur, requesting him either to withdraw the case or to try and arrest Patra Obanna.

Thereafter, Venugopal, who was then the Vempalli Sub-Inspector of Police, took action in this matter and his attempt to arrest Patra Obanna met with success. Patra Obanna was actu lly arrested on January 6, 1957. On the same da e on being informed by him that he had given the g ld gajjalu which formed part of the stolen property to a person in Kadiri Taluk, Venugopal proceeded to Kadiri police station. On the night of January 6, Venugopal, accompanied by Constables of the Kadiri police station and Rangaswamy and Subbaiah, who had come with him to Kadiri went to Dasaravandlapalli in Gandlapenta police station and there on the identification of Patra Obanna as the person to whom he had given the gold gajjallu took one Arige Ramanna into custody. The police party then returned with Arige Ramanna to Kadiri police station. Less then three days later Arige Ramanna was found lying dead not far from the house of one Sugali Baginigadu, in Udumulagutta Thanda, in Kadiri village. There were a number of injuries on the body. The prosecution case is that these injuries had been caused by the three rerpondents acting in concert for the purpose of extorting from him information which might lead to the detection of an offence and restoration of stolen property. It is also the prosecution case that for this purpose these three respondents wrongfully confined Arige Ramanna in a room at the Kadiri police station and it was there when he was thus confined that the injuries were caused. The prosecution case further is that when after infliction of the injuries Arige Ramanna appeared to be in a bad state these respondents had him

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removed from the police station and his body thrown at the place where it was ultimately found with the intention of screening themselves from punishment.

As to the events which led to such acts by the respondents, the prosecution story is that Arige Ramanna had on being interrogated at the Kadiri police station given information that he had sold the gajjalu to Appalla of Nallasanivandlapplli. Following up this information the three respondents accompanied by Patra Obanna and Arige Ramanna went to that village and qeustioned Nallasani Appalla. One gold gajjlu was seized from his house and to check on Arige Ramanna's statement that this had been sold by him to Appalla in the presence of Fakruddin of Kataruppalli, the Sub-Inspector tried to contact Fakruddin. Fakruddin was found at Madanapplli on January 8, 1957; but he denied any knowledge about the sale of gold gajjalu by Arige Ramanna to Appalla. The respondent Venugopal then returned to Kadiri police station bringing Arige Ramanna and Appalla with him. It was then the early morning of January 9, 1957. Both Arige Ramanna and Appalla were then taken by Venugopal into the Sub-Inspector's room at Kadiri police station. Subbaiah and Rangaswamy also went into the room. There, after some further interrogation, Arige Ramanna was beaten up by Subbaiah, Rangaswamy, and Kamal Sab, who was the complainant in the theft case, under the instructions of Venugopal.

These three respondents as well as Kamal Sab pleaded not guilty. We are not concerned with the case of Kamal Sab. He was acquitted by the Session Judge and after the State's appeal against the acquittal order was dismissed by the High Court the State has not sought to appeal against that order of dismissal.

The defence of these three respondents was that they had nothing to do with the injuries that were found on Arige Ramanna's body. The fact that Arige Ramanna was taken into custody and brought by them to the Kadiri police station was not disputed, though they dispute the correctness of the prosecution story that this happened on Jauuary 6, 1957. They do not also deny the visit to Appalla and the seizure of a gold gajjalu from his house and the visit thereafter to Madanapplli to meet Fakruddin nor the fact that Fakruddin denied having witnessed any sale of gold gajjalu. Their case however is that after the return from Madanappalli both Arige Ramanna and Appalla were asked to go away and they went away and did not come to the police station at all. After this they say they as well as Obanna came to the police station and slept there. According to them, the whole story of Arige Ramanna being taken into the Sub-Inspector's room and being beaten up there and then being taken away from there is entirely false.

On a consideration of the evidence, oral and documentary, and the statements of the accused persons the Sessions Judge believed the prosecution case about the confinement and beating up of Arige Ramanna by these appellants and that when Arige Ramanna was in a bad state after receiving the injuries they got him removed from the police station. He also rejected the defence contention that the investigation in the present case had not been made in accordance with the law. Accordingly, the Session Judge convicted these respondents, as already stated, under sections 348, 331 and 201 read with s. 109 of the Indian Penal Code. The learned Judge also held that as after the arrest of Arige Ramanna on the night of January 6, 1957 he was not sent to the magistrate and kept in restraint for three days, the respondent Venugopal committed the further offence under s. 343 of the Indian Penal Code. He

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found that the case against Kamal Sab had not been proved and acquitted him of all the charges.

When the appeal preferred by Venugopal, Rangaswany, and Subbaiah came up for hearing before the High Court of Andhra Pradesh a preliminary point was raised on their behalf that the prosecution was barred by reason of the provisions of s. 53 of the Madras District Police Act, 1859 (hereinafter referred to as the "Police Act"). Thereupon Basi Reddy J, before whom this point was raised framed the following question :

> "In the circumstances of this case, is the prosecution of the appellants barred by limitation by reason of the provision of section 53 of the Madras District Police Act, 1859 ?"

and referred it for determination by a Division Bench of two judges. The Division Bench to whom the case was referred, referred this question and a further question framed by them, *viz.*, In what circumstances, the bar of limitation prescribed by s. 53 of the Madras District Police Act would be available to an accused officer ?, for determination by a Full Bench. After discussing the relevant legal provisions and authorities the Full Bench disposed of the matter in these words :—

> "We would therefore answer the first question referred to us by saying that the bar of limitation prescribed by s. 53 of the Act would be available to an accused officer only when the act complained of has been committed in the discharge of his official duties. We have already laid down that the question as to whether a particular act would be regarded as having been done in the discharge of one's official duties would have to be determined on the facts and particular circumstances

of the case. It is unnecessary for us to answer the second question. This will be decided by a Single Judge."

The appeal then came to be heard by Mr. Justice Anantanarayana Ayyar. The learned Judge was of opinion, after considering the decision of the Full Bench and certain observations in some other cases, that if the police officers were alleged to have committed the acts complained of "when" they were investigating into the cases of house-breaking and theft, s. 53 of the Police Act would apply. Observing that there was no doubt or dispute about the fact that these officers were investigating the case of house-breaking and theft officially at all material times they were alleged to have committed the offences which formed the subject matter of the charges, he concluded, that as the prosecution was made beyond the period prescribed in s. 53 of the Police Act they were entitled to an acquittal. He proceeded however to consider the case also on the merits and came to the conclusion that on facts also there was room to doubt the guilt of these officers on the charges. In this view of the law and facts the learned Judge set aside the orders of conviction and sentence passed by the Trial Court and acquitted these three respondents of the charges framed against them.

In our opinion, the High Court is clearly wrong in thinking that the prosecution was barred by s. 53 of the Police Act. That section provides in the first place for a period of limitation for certain actions and prosecutions and makes certain other provisions in respect of civil actions with which we are not concerned. The actions and prosecutions for which the limitation is prescribed can be best understood from the actual words used by the legislature, which are these :—

"All actions and prosecutions against any person, which may be lawfully brought for anything

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done or intended to be done under the provisions of this Act or under the provisions of any other law for the time being in force conferring powers on the police shall be commenced within three months after the act complained of shall have been committed and not otherwise."

It is plain that in order that any person against whom a prosecution has been launched can get the benefit of the three months period of limitation thus prescribed, it must appear either, (i) that the act complained of was done under the provisions of the Police Act or (ii) the act complained of was done under the provisions of some other law in force conferring powers on the police or (iii) the act complained of was intended to be done under the provisions of the Police Act, *i. e.*, though strictly speaking the act was not done under the provisions of the Act, the intention of the accused in doing the act was to act under the provisions of the Police Act or (iv) the act complained of was intended to be done under the provisions of some other law in force conferring powers on the police *i.e.*, though the act was strictly speaking not done under the provisions of such other law the intention of the accused in doing the act was to act under such provisions.

The Police Act contains several provisions under which the police officers or other persons may act or intend to act. Section 6 vests in police authorities appointed under the Act all powers not inconsistent with the provisions of the Act which up to the passing of the Act belonged by law to the existing police authorities. Section 7 confers full powers of a magistrate on the Inspector-General of Police and authorises the State Government to vest the District Superintendents of Police with all or any of these powers. Under s. 9 the Inspector-General may from time to time frame rules and regulations *inter alia*

for collecting and communicating intelligence and information; section 21 describes the duty of every police officer to be "to use his best endeavours and ability to prevent all crimes, offences and public nuisances; to preserve the peace; to apprehend disorderly and suspicious characters; to detect and bring offenders to justice; to collect and communicate intelligence affecting the public peace; and promptly to obey and execute all orders and warrants lawfully issued to him." Section 42 which is the next section in the act—the original sections 22 to 43 having been repealed by the Central Act XVII of 1862—empowers any police officer above the rank of a constable or any member of the Madras Fire Service above the rank of a fireman to do a number of things. These include the closure of a street or passage in or near which any fire is burning and the breaking into or through, or pulling down or using the passage of houses or other appliances, any premises for the purpose of extinguishing the fire.

The effect of s. 53 of the Police Act is that all prosecutions whether against a police officer or a person other than a police officer (*e.g.*, a member of the Madras Fire Service, above the rank of a fireman acting under s. 42 of the Act) must be commenced within three months after the act complained of, if this act is one which has been done or intended to be done "under" any of the provisions detailed above. The protection of s. 53 is not confined however only to acts done or intended to be done under the provisions of the Police Act. It extends to acts done or intended to be done under the provisions of any other law conferring powers on the police. One such law is the Code of Criminal Procedure which confers numerous powers on the police in respect of arrest, search and investigation. Among other laws conferring powers on the police may be mentioned the Opium Act, the Excise Act, the Petroleum Act, etc.

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Any prosecution in respect of any act done or intended to be done under the provisions of any of these laws has also to be commenced within three months of the act complained of. It is clear that if in any of these cases the prosecution is commenced beyond three months after the act complained of, it will be the duty of the courts to dismiss the same. But it is equally clear that unless the act complained of appears to have been done or intended to be done "under" the provisions of the police Act or of the other laws conferring powers on the police the protection of s. 53 will not be available. Thus, if the prosecution is for an offence under s. 341 of the Indian Penal Code said to have been committed by the act of closing a street or passage in or near which a fire is burning in exercise of powers under s. 42 (b) of the Police Act, or for an offence under s. 426 of the Indian Penal Code said to have been committed by the pulling down of a house for the purposes of extinguishing a fire, under s. 42 (c) of the Police Act, the prosecution must fail unless brought within three months of the act complained of. So also if a police officer is prosecuted for an offence under s. 323 of the Indian Penal Code said to have been committed in making an arrest, the prosecution must fail unless commenced within three months of the act complained of.

It is easy to see that if the act complained of is wholly justified by law, it would not amount to an offence at all in view of the provisions of s. 79 of the Indian Penal Code. Many cases may however arise where in acting under the provisions of the Police Act or other law conferring powers on the police the police officer or some other person may go beyond what is strictly justified in law. Though s. 79 of the Indian Penal Code will have no application to such cases, s. 53 of the Police Act will apply. But s. 53 applies to only a limited class of persons. So, it becomes the task of the court, whenever

any question whether this section applies or not arises to bestow particular care on its decision. In doing this it has to ascertain first what act is complained of and then to examine if there is any provision of the Police Act or other law conferring powers on the police under which it may be said to have been done or intended to be done. The Court has to remember in this connection that an act is not "under" a provision of law merely because the point of time at which it is done coincides with the point of time when some act in the exercise of the powers granted by the provision or in performance of the duty imposed by it. To be able to say that an act is done "under" a provision of law, one must discover the existence of a reasonable relationship between the provisions and the act. In the absence of such a relation the act cannot be said to be done "under" the particular provision of law.

This aspect of the matter was emphasized by this Court recently in *Virupappa Veerappa Kadampur* v. *The State of Mysore* (1) when examining the language of a similar provision in the Bombay District Police Act.

These principles apply equally to the decision of the question whether the act complained of was "intended to be done" under the provisions of the Police Act or some other law conferring powers on the police. When we apply these principles to the facts of the present case we look in vain for any provision of law—whether under the Police Act or under some other law under which the acts complained of, *viz.*, beating a person suspected of a crime or confining him or sending him away in an injured condition can be said to have any relation. Mr. Keswani tried to say—it is fair to him to state—rather faintly—that these acts were done under the provisions of s. 161 of the Code of Criminal Procedure. That section empowers any police officer

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investigating a crime or any other police officer acting on his requisition to examine orally any person supposed to be acquainted with the facts and circumstances of the case. The section further provides that such person shall be bound to answer all questions relating to such case put to him by such officer, other than questions answers to which would have a tendency to expose him to a criminal charge or to a penalty or forefeiture. By no stretch of imagination can it be said that the provisions of this section authorise the officer examining a person to beat him or to confine him for the purpose of inducing him to make a particular statement. It is worth noticing here s. 163 of the Code of Criminal Procedure. The first sub-section of s. 163 prohibits any police officer from making any inducement, threat or promise for the purpose of obtaining a statement. The second sub-section provides that no police officer shall prevent by caution or otherwise any person from making a statement which he may be disposed to make on his own free will. The provisions of s. 163 thus emphasised the fact that s. 161 of the Code of Criminal Procedure does not authorise the police officers to beat or to confine a person with a view to induce him to make a statement.

The act of beating or the act of confining was, it is true alleged to be done at a time when Venugopal was engaged in investigation, But it is not possible to see what reasonable connection these acts had with the process of investigation. Nor can one see how the act of sending away the injured person had any relation to the process of investigation.

The High Court fell into the error of thinking that whatever a police officer does to a person suspected of a crime at a time when the officer is engaged in investigating that crime should be held to

be done in the discharge of his official duties to investigate and as such under the provisions of the law that imposed this duty on him. This view is wholly unwarranted in law.

In our opinion, it cannot possibly be said that the acts complained of in the present case were done or intended to be done under any provision of the Police Act or the Code of Criminal Procedure or any other law conferring powers on the police. Section 53 of the Police Act had therefore no application to this case.

After holding that the prosecution was barred under s. 53 of the Police Act, the High Court still proceeded to consider the merits of the case and recorded a conclusion that the evidence left room for doubt as regards the guilt of the accused on the different charges. When the High Court held that the conviction had to be set aside on the preliminary ground that the prosecution had been commenced in contravention of s. 53, it might have chosen not to examine the merits of the case. When it did choose, however, to do so, it was necessary that this should be done with proper care. We are constrained to say that the examination of the evidence was done by the High Court in what can only be called a cursory or casual manner. It has been necessary therefore for us to try to assess the evidence for ourselves.

But before we proceed to the discussion of the evidence we must consider a contention raised on behalf of the respondents that the very trial was vitiated by the fact that the investigation was not done in accordance with law. The argument is that under the Madras Police Standing Orders, the investigation in cases against the police for torture and causing death has to be conducted by a person of the rank of Assistant or Deputy Superintendent of police

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or by the Sub-Divisional Magistrate. In the present case, though the initial investigation was conducted by the Sub-Divisional Magistrate, Penkondu, it was taken up from him by an Inspector of the Police, C.I.D., Hyderabad. It was this Inspector of Police who completed the investigation and submitted the charge-sheet. It has to be noticed that the respondents do not say that the investigation was not in accordance with the provisions of the Code of Criminal Procedure. Their case, as raised before the Session Court, apparently at the time of argument and again repeated here is that the investigation by the Inspector contravened the Madras Police Standing Orders.

Order No. 145 of the Madras Police Standing Orders prescribes the procedure in respect of charges of torture or of death or grievous hurt against a police officer. This order it may be mentioned, superseded the previous order No. 157 on the subject and was in force in 1957. The main features of the procedure when the case occurs in the Mufassal in the State of Madras are that :—

(1) A Gazetted Police Officer on hearing of such an occurrence on a complaint made to him or otherwise should immediately start an informal investigation but when an information is received by a police officer below the rank of Assistant or Deputy Superintendent of Police, he should instead of making an investigation himself report the case to his Assistant or Deputy Superintendent of Police. In either case a report should be sent to the Revenue Divisional Officer;

(2) The Revenue Divisional Officer should conduct an informal enquiry to see whether there are grounds for launching a criminal prosecution and to fix the responsibility on individual officers;

(3) Where a complaint has been filed in the Court of a judicial magistrate as regards the

occurrence the Revenue Divisional Officer should after arriving at his own findings keep them confidential and decide on the further course of action in the light of the judicial decision when it is available;

(4) When no complaint has been filed in the court of the Judicial Magistrate the Revenue Divisional Officer should after completing the investigation submit his report to the Collector. The Collector shall where necessary issue instructions for laying a formal complaint by the Revenue Divisional Officer before the Court of the 1st Class Judicial Magistrate.

It is contended that the provisions of the Code of Criminal Procedure for investigation of crime are superseded by this Standing Order and so the investigation by the Inspector, C.I.D., was illegal. In our opinion, there is no substance in this argument. It appears to us that this Standing Order is nothing more than administrative instructions by the Government of Madras and has not the force of law. It is worth noticing in this connection that in the Madras Police Standing Orders as published by the Government of Madras it is mentioned in the prefatory note that the orders marked with asterisk were issued by the Inspector-General of police under s.9 of the Madras District Police Act. The Standing Order 145 is not marked with asterisk and it could be safely held that it was not issued under s. 9 of the Madras District Police Act. The marginal note against the order as printed shows that it was issued by a Government Order of the Home Department dated October 12, 1955. It does not appear that this was done under any statutory authority. There can be no doubt that quite apart from the fact that the Government may and often should issue instructions to its officers, including police officers, such instructions have not however the authority of law. We are not satisfied therefore that the Standing Order No. 145 had the force of law.

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We are further of opinion that, in any case, the requirement of this order was merely directory and not mandatory. Non-compliance with the provisions of this order therefore does not make the investigation of the case illegal.

It is also to be mentioned that no objection that the investigation had been conducted in violation of the Standing Orders appears to have been taken at any stage earlier than the trial in the Sessions Court. It will be proper to hold therefore on the authority of *Rishbud's Case* (1), that even if the provision that the investigation had to be held and completed by a Magistrate had the force of law and was mendatory the trial would not be rendered invalid unless it was shown that miscarriage of justice had been caused on account of the illegal investigation. Learned Counsel was not able to show how the accused were in any way prejudiced by reason of the fact that the investigation was completed by the Inspector of Police. We have therefore no hesitation in rejecting the contention raised on behalf of the respondent that the trial was bad in law because investigation was completed by an Inspector of Police. (See Munnalal's Case, Criminal Appeal Nos. 102-104 of 1961, decided on April 17, 1963).

Turning now to the evidence in the case we find it proved by unimpeachable evidence, and also undisputed fact that Arige Ramanna was taken away from his house by these respondents and was with them on January 8, 1957. It is also clearly proved and is not disputed that Arige Ramanna's dead body was found on January 9, lying by the side of a hut in Sugali Tanda. The report of the Asstt. Civil Surgeon who held the *post mortem* examination of the body on January 11, 1957 shows that the body bore nine injuries. Seven of these were contusions on different parts of the body and two abrasions. One of the contusions on the right parietal scalp had

(1) [1955] 1 S. C. R. 1150.

the internal injury of the congestion of the brain with capillary haemorrhage corresponding to it. The doctor's report shows that this injury would be necessarily fatal. The question is: Has the prosecution been able to prove beyond reasonable doubt its case that these injuries were caused on the morning of January 9, at Kadiri police station by these accused persons.

[After discussing the evidence His Lordship proceeded.]

When all these circumstances are considered together they show one clear connected picture that intent upon getting some clue about a gold gajjalu which had been stolen from Kamal Sab's house in 1952 and exasperated by what he thought to be Arige Ramanna's deliberate attempt to conceal the truth, Venugopal brought Arige Ramanna back to Kadiri police station on the morning of January 9, 1957 and there under his instruction, his subordinates the two police constables, Rangaswamy and Subbaiah beat up Arige Ramanna and between them inflicted the injuries which were ultimately discovered by the doctor.

It is not possible to accept Venugopal's suggestion that after he returned from Madanappalli to Kadiri early in the morning of January 9, he asked Arige Ramanna and Nallasani Appalla to go away. It would not be normal human conduct for him to acknowledge defeat at that stage and the probabilities of the case strongly support what is proved by the direct evidence of the witnesses that Arige Ramanna was taken by him to Kadiri police station on the morning of January 9, and not allowed to go away.

We are unable to find a single circumstance inconsistant with the prosecution case that these three respondent beat up Arige Ramanna at Kadiri police

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station for the purpose of extorting from him information as regards the disposal of a gold gajjalu that might lead to further detection in connection with the case of house-breaking and theft committed at the house of Kamal Sab in 1952.

The circumstances that have been established are in our opinion incapable of explanation of any other reasonable hypothesis than the truth of the prosecution case that these respondents voluntarily caused hurt to Arige Ramanna for the purpose of extorting from him information regarding the disposal of the gold gajjalu which might lead to fuller detection of the crime. The circumstances speak so clearly that any other view would, we think, be unreasonable, arbitrary and indeed perverse.

On a consideration of the injuries that were caused, we do not find it possible to be certain that the respondents had the intention of causing grievous hurt to Arige Ramanna. What is proved beyond doubt however is that they voluntarily caused hurt to Arige Ramanna for the purpose mentioned above. Thereby, they committed an offence under s. 330 of the Indian Penal Code, though not under s. 331 of that Code.

In view of this conclusion from the circumstantial evidence adduced in the case it is hardly necessary to discuss the direct testimony given by Nallasani Appalla, the prosecution witness No. 1. As however the Trial Court on a consideration of the evidence believed it to be substantially true except as regards the fourth accused Kamal Sab, who is no longer before us, and the High Court has expressed a contrary opinion, we shall briefly refer to his evidence.

We think it proper to point out that the judgment of the High Court does not contain any discussion worth the name of what this witness has said or

of the reasons which induced the High Court to characterize it as "unreliable".

[After discussing the evidence His Lordship proceeded.]

On a consideration of all the circumstances of the case, we are of opinion that the Session Judge was right in his assessment of this witness's testimony against these three respondents and the High Court was worng in considering his evidence as wholly unreliable.

Nallasani's evidence by itself would be sufficient to prove that the accused had committed an offence under s. 330 of the Indian Penal Code. But the circumstantial evidence we have discussed above s › clearly establishes their guilt for this offence that it is unnecessary to seek any further support for it.

For the reasons mentioned above, we have come to the conclusion that the decision of the High Court that there was any doubt about the truth of the prosecution case that these respondents beat up Arige Ramanna does not bear scrutiny and is wholly unjustified. The interests of justice demand that the High Court's decision on this question should not be allowed to stand.

Accordingly, we set aside the order of High Court acquitting the respondents altogether in respect of injuries caused to Arige Ramanna, and convict them all of an offence under s. 330 of the Indian Penal Code.

On behalf of the State Mr. Chari does not press the appeal against the acquittal of the respondents on the other charges, *viz*., ss. 343, 348 and s. 201 read with s. 109 of the Indian Penal Code.

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The learned Session Judge awarded a sentence of five years' rigorous imprisonment for the offence under s. 331 of the Indian Penal Code. Though we have altered the conviction to one under s. 330 of the Indian Penal Code, we do not think we shall be justified in reducing the sentence. A serious view cannot but be taken of such a barbarous method of dealing with persons suspected of a crime as was committed by these respondents in this case. It is necessary that deterrent sentences should be inflicted for such an offence when established.

Accordingly, we convict the respondents under s. 330 of the Indian Penal Code and we sentence each of them to five years' rigorous imprisonment.

The appeal is thus allowed in part and is dismissed as regards the acquittal of the respondents on other charges. The accused to surrender to their bail.

Appeal allowed in part.