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STATE OF MADHYA PRADESH
v.
SHYAMSUNDER TRIVEDI AND ORS.

MAY 9, 1995

B

[DR. A.S. ANAND AND M.K. MUKHERJEE, JJ.]

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Indian Penal Code 1860—S.304 Part II r/w S.34—Death in police custody—Sub-Inspector, Head Constables and Constable beating and torturing murder suspect to death—Members of local bar deposing about accused transporting dead body of the deceased from police station to hospital for post mortem—Trial Court and High Court acquitting accused policemen since direct evidence not available—Held, accused policemen directly or indirectly involved in torture and death of the victim; guilty of offence under S.304 Part II r/w S.34.

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Indian Penal Code 1860—Ss.201, 218—Death in police custody—Sub-Inspector present at police station where murder suspect beaten and tortured to death—Sub-Inspector preparing roznamcha that dead body found near tree outside police station—Recording panchnama that cause of death not known, no injuries marks found and requesting Municipal Council for cremation of 'lavaris' person—Held, Sub-Inspector prepared false documents with a view to screen the offence—rightly convicted.

E

Code of Criminal Procedure 1973—S.313—Incriminating material not put to accused while recording statement—Held, accused was seriously prejudiced and no conviction could be recorded for offence of causing disappearance of evidence.

F

Code of Criminal Procedure 1973—Section 357—Death in police custody—Accused policemen sentenced to imprisonment as well as fine—Court directs entire amount of fine to be paid to heirs of the deceased.

G

Criminal Law—Sentence—Mitigating factors—Death in police custody—Accused Sub-Inspector held guilty of culpable homicide—Long lapse of time and accused already serving two years' for other offences—Held, balance to be struck between human factor and interests of victim of crime; accused sentenced to two years' RI and fine.

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Code of Criminal Procedure 1973—Section 235 (2)—Death in police custody—Police excesses—Need for Court to deal with cases in a realistic manner and with sensitivity, discussed—Legislature asked to bring changes to curb custodial crime—Constitution of India—Article 21. A

During the intervening night of October 13 & 14, 1991 deceased NB was brought by RR, Head Constable and GU, Constable to the Rampura police station for interrogation as a suspect in a murder case. There SST, Sub-Inspector and RNS, Head Constable joined RR and GU in beating, torturing and causing the death of NB. The news of NB dying in police custody leaked out and local residents including lawyers keeping a watch over the police station saw the dead body wrapped in a blanket being brought out of police station and being placed in a jeep at about 2 p.m. on October 14, 1991 by SST, RR and RNS. They followed the jeep to the hospital and persuaded the doctors not to conduct post-mortem till the arrival of the higher authorities. The Additional District Magistrate who was appointed Enquiry Officer found that NB died in police custody due to extensive beating for which SST and RR were held directly responsible. The post-mortem showed 14 extensive external injuries and the medical opinion was that NB had died of shock resulting from the injuries. B
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During enquiry it came to light that SST had prepared false entries to show that NB had been released from police custody after interrogation on October 13, 1991 itself and that at 7 a.m. on October 14, 1991 information had been received regarding 'one unknown person' (lavaris) near a tree. SST also prepared a panchnama of the dead body recording that cause of death was not known and that no injury marks were found on the body. Thereafter, SST addressed a letter to the Administrator, Municipal Council, Rampura on October 14, 1991 requesting for the arrangement of the cremation of a 'lavaris' (unknown) person. E
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The accused policemen were charged with the offences of rioting, murder, fabricating documents and causing disappearance of evidence. The Trial Court acquitted all the accused of all the charges. Partly allowing the appeal of the State of M.P., the High Court set aside the acquittal of SST for the offences of causing disappearance of evidence and fabricating documents and sentenced him to two years' RI. However, the acquittal of SST for the offence of murder as well as the acquittal of the other accused were maintained. The State of M.P. appealed to this Court. G
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A Allowing the appeal, this Court

B HELD : 1.1. SST, RLS, RR and GU were definitely present at the police station and were directly or indirectly involved in the torture of N and his subsequent death while in police custody as also in making attempts to screen the offence to enable the guilty to escape punishment. Their offence would, thus, squarely fall under Section 304 Part-II/34 IPC. [58-H]

C 1.2. The High Court erroneously overlooked the ground realities that rarely in cases of police torture or custodial death, direct ocular evidence of the complicity of the police personnel would be available, when it observed that 'direct' evidence about the complicity of these respondents was not available. Police personnel prefer to remain silent and more often than not even pervert the truth to save their colleagues, and the present case is an apt illustration, as to how one after the other police witnesses feigned ignorance about the whole matter. [58-F-G]

D 2. The death report and panchnama are false documents prepared by SST with a view to screen the offence. It is not imaginable that SST and others, particularly RR and GU, would not have known the identity of the deceased. [53-G]

E 3. Since the incriminating material appearing in the prosecution evidence against certain accused who were charged for an offence under Section 201 IPC only was not put to them in their statements recorded under Section 313 Cr.P.C. and no opportunity was afforded to them to explain those circumstances, they had been seriously prejudiced and no conviction could therefore, be recorded against them for the offence under Section 201 IPC. [55-C]

F 4.1. SST is convicted under section 304 Part II/34 IPC and sentenced to suffer rigorous imprisonment for two years and to pay a fine of Rs. 50,000. The long lapse of period is indeed a consideration which may weigh in favour of the respondents for not being awarded a long sentence of imprisonment but then the interests of the victim of the crime have also been kept in view. [61-H, F]

G 4.2. RNS, RR and GU are convicted and sentenced to suffer rigorous imprisonment for one year each and to pay a fine of Rs. 20,000 each, and in default of payment of fine to undergo rigorous imprisonment for one year more for the offence under section 304-II/149 IPC. The entire amount

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of fine on realisation shall be paid to the heirs of the deceased by way of compensation. [62-B-C] A

5.1. Police excesses and the mal-treatment of detainees/undertrial prisoners or suspects tarnishes the image of any civilised nation and encourages the men in 'Khaki' to consider themselves to be above the law and sometimes even to become law unto themselves. [59-E] B

5.2. Keeping in view the dehumanising aspect of the crime, the flagrant violation of the fundamental rights of the victim of the crime and the growing rise in the crimes of this type the Government and Legislature should bring about appropriate changes in the Law not only to curb custodial crime but also to see that it does not go unpunished. [60-D-E] C

Fourth Report of the *National Police Commission* (June 1980); 113th Report of the *Law Commission*, referred to.

5.3. The Courts are also required to have a change in their outlook and attitude particularly in cases involving custodial crimes and should adopt a realistic rather than a narrow technical approach. [60-F] D

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 217 of 1993.

From the Judgment and Order dated 21.1.87 of the Madhya Pradesh High Court in CrI.A.No. 382 of 1983. E

Sakesh Kumar, Uma Nath Singh and Gautam Bose for the Appellant.

R.K. Jain, B.B. Dubey and C.L. Sahu for the Respondent No. 1. F

S.S. Tiwari, R.C. Asthana and B.S. Banthia for the Respondent Nos. 2-7.

The Judgment of the Court was delivered by

DR. ANAND, J. On the fateful night, intervening 13th and 14th October, 1981, the uncivilised method of interrogation of a suspect took its toll and a fatal blow was inflicted on human dignity when custodial violence claimed yet another victim - Nathu Banjara. But for the vigilance of some members of the Bar of Rampura and the loud protestations of some of the residents of the village the crime could have gone unnoticed and unpunished. G H

A According to the prosecution case on 13th October, 1981 respondent No. 4 Rajaram, Head Constable and respondent No. 5, Ganniuddin, Constable brought one Nathu Banjara of village Dhabala Deval to police station Rampura for interrogation as a suspect in a murder case. At the police station respondent No. 1 Shyam Sunder Trivedi, Sub-Inspector;

B respondent No. 3 Ram Naresh Shukla, Head Constable alongwith respondent Nos. 4 and 5 gave beating to Nathu Banjara and tortured him with the intention of extracting a confession of guilt from him in connection with the murder of one harijan women of village Singharia Piparia. As a result of the extensive injuries caused to Nathu, he died in police custody at the police station Rampura. At about 2.00 p.m. on 14.10.1981, the dead body

C of the deceased Nathu was removed in a jeep, belonging to the fisheries department Rampura to the hospital for post-mortem examination with the ultimate object of cremating the deceased, as an 'unclaimed body', for which respondent No. 1 had already initiated some steps. Some residents of the village including some members of the Bar of Rampura who had come to know about the torture of Nathu at the police station, kept a watch

D over the police station and on noticing the removal of the dead body of Nathu in the jeep, they followed the jeep and reached the hospital. The dead body was removed to the mortuary. The members of the Bar and others requested Dr. Naraindas Neema PW22 not to perform the autopsy till the arrival of higher authorities. Naib Tehsildar Rathore PW10 who arrived at the hospital in the meanwhile got the mortuary locked and sealed at the insistence of the protestors. On telephonic information given to the District Magistrate about the protests at the hospital and the gathering of a large crowd, the Superintendent of Police and the Additional District Magistrate PW20 reached the hospital in the evening. A written report

E Ex.P/1 signed by some of the residents of Rampura was given to the District Magistrate who ordered the holding of a magisterial enquiry into the matter. Shri Bhat PW20, the Additional District Magistrate was appointed as the Enquiry Officer. He commenced an enquiry immediately and prepared the panchnama Ex.P/22 of the dead body and sent it for post-mortem examination vide requisition memo Ex.P/6, which was also

F signed by respondent No. 1 Shyamsunder Trivedi. The post-mortem examination was conducted by Dr. Mehta PW7. The Doctor in the post-mortem report, Ex.P-7, noticed the following multiple injuries on the deceased:

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H 1. Irregular reddish blue contusion of 3 cm x 2 cm on the Rt. lower eye lid Zygomatic area of Rt. side of face.

2. There are two contusions of reddish blue in (torn) oblique and parallel form outer to inner border of middle of left scapula upper 8 cm x 4 cm, lower 6 cm x w cm. A
3. There are multiple reddish blue contusions imposed on each other in all directions in the area of 5 to 8 cm on lower aspect of back of left side of chest. B
4. There are multiple reddish blue contusions imposed on each other of variable shape, size and direction in the area of 7 cm x 10 cm area of middle of Rt. scapula to lower part of back of Rt. side of chest. C
5. Oblique reddish blue contusion from lower part of chest to lumber on Rt. side verticle 10 x 2 cm.
6. Two cross reddish blue contusions of 4 cm x 2 cm size in the left lumber area on the back. D
7. There are four reddish blue contusions of variable length from 4 to 6 cm x 2 cm size on outer aspect of left shoulder and middle and outer of left upper arm, imposed on each other.
8. There are two oblique contusions of reddish blue colour from 3 to 4 cm x 2 cm on the outer upper aspect of Rt. upper arm. E
9. Redish blue two paraller contusions oblique on outer aspect of Rt. elbow 2 cm x 2 cm each.
10. Two oblique reddish blue contusions with swelling and body crepitus on dorsum of Rt. hand 3 to 4 cm x 2 cm. F
11. Oblique reddish blue contusion 4 cm x 2 cm on the dorsum of left hand.
12. Multiple reddish blue contusions of variable sizes, direction, shape in the area of 10 cm x 12 cm on the back and outer aspect of left gluteal area super imposed on each other. G
13. Transversely placed reddish blue contusions two in number parallel 5 cm x 2 cm each on back and middle of left eye. H

A 14. Multiple reddish blue contusions on the right gluteal area in veriable directions, sizes and shapes imposed on each other in area of 8 cm x 10 cm on the back and outer aspect of Rt. gluteal area.

B The doctor opined that the cause of death was shock as a result of the *extensive external injuries* and that the death had taken place within 24 hours preceding the post-mortem examination.

C Shri Bhat, PW20, the Enquiry Officer during the course of inquiry examined some witnesses and seized various documents. After conclusion of the enquiry he submitted his report, Ex. P/28 on 15.10.1981. The Enquiry Officer, PW20, found that during the night intervening 13th and 14th October, 1981, deceased Nathu Banjara died in police custody at Rampura police station due to extensive beating given to him and held respondent No. 1 Shyamsunder Trivedi, SI and respondent No. 2 Rajaram to be directly responsible for causing those injuries. The report was sent to the D Circle Inspector Narayangarh where on its basis, case FIR, Ex. P/31 was registered by Circle Inspector G.S. Tomar PW 21 on 15.10.1981. During the investigation of the case, letter Ex.P/9 written by S.I. Shyamsunder Trivedi respondent No. 1 to the Administrator Municipal Committee asking him to make necessary arrangements for the cremation of a dead body of an unknown person was also seized from Naib Tehsildar Rathore, PW10. E Further investigation was later on carried out by CID Inspector G.S. Rai, PW 23, who seized some more incriminating documents and examined some of the witnesses. At the conclusion of the investigation, the respondents were arrested and a challan was filed against them. The respondents were committed to stand their trial before the Additional Sessions Judge.

F Whereas S.I. Shyamsunder Trivedi, respondent No. 1 was charged with offences under Section 302/149, 147, 201, 342 and 218 IPC; Rajaram respondent No. 2 was charged with offences under Section 147, 302/149, 201 and 342 IPC; respondent No. 3 Ramnaresh Shukla, respondent No. 4 Ram Partap and respondent No. 5 Ganniuddin were charged with offences G under Section 147, 302/149 and 201 IPC. Respondent nos. 6 & 7 Ramesh Chander and Goverdhan were charged with offences under Section 201 IPC only. After trial of the case, the First Additional Sessions Judge, Mandasaur acquitted all the respondents of all the charges vide his order dated 14.5.1983. The State of Madhya Pradesh went up in appeal against H the order of acquittal dated 14.5.1983 to the High Court of Madhya

Pradesh. vide its judgment dated 21.1.1987, the High Court maintained the acquittal of respondent nos. 2 to 7 but set aside the acquittal of respondent No. 1 Shyamsunder Trivedi for offences punishable under Sections 218, 201 and 342 IPC and sentenced him to undergo rigorous imprisonment for 2 years on each of the two counts under Sections 218 and 201 IPC and six months rigorous imprisonment for the offence under Section 342 IPC. The sentences were, however, directed to run concurrently. His acquittal for the offence under Section 302/149 and 147 IPC was, however, maintained. Shyamsunder Trivedi, respondent No. 1 filed a special leave petition challenging his conviction and sentence but the same was dismissed. A review petition filed by him also failed. This appeal by special leave has been filed by the State of Madhya Pradesh questioning the acquittal of respondent No. 1 for the offences under Sections 302/149 IPC and 147 IPC and of respondents 2 to 7 for the offences with which they were charged.

We have heard learned counsel for the parties and perused the record.

That Nathu deceased was brought from his village Dhabala Deval to Rampura police station by Head Constable Rajaram and Constable Ganjuiddin on 13.10.1981 in the evening for interrogation as a suspect in a murder case has not been disputed either in the courts below or before us. From the evidence of Dr. Mehta, PW7 who conducted the post-mortem on the dead body of Nathu it is established that the death of Nathu was homicidal and not natural and was as a result of extensive external injuries received by the deceased. While the prosecution case was that Nathu died while in police custody on account of torture and excessive beating given to him at the police station, the defence set up by the respondents and particularly respondent no. 1, Shyamsunder Trivedi, at the trial was that Nathu had been released from police custody at about 10.30 p.m., after interrogation on 13.10.1981 itself vide entry Ex. P/22A in the Roznamcha and that at about 7.00 a.m. on 14.10.1981, a death report Ex. P/9 was recorded at the police station, Rampura at the instance of Ramesh respondent No. 6, to the effect that he had found "one unknown person" near a tree by the side of the tank rigging with pain in his chest and that as soon as respondent No. 6 reached near him, the said person died. The further case set up by Trivedi, respondent No. 1, was that after making a Roznamacha entry at 7.00 a.m. about his departure from the police station he (respondent No. 1 Shyamsunder Trivedi) and Constable Rajaram respon-

A dent proceeded to the spot where the dead body was stated to be lying for conducting investigation under Section 174 Cr.P.C. He summoned Ramesh Chander and Goverdhan respondents to the spot and in their presence prepared a panchnama Ex.P/27 of the dead body recording the opinion therein to the effect that no definite cause of death was known. The

B panchnama was signed by Respondents Ramesh Chander and Goverdhan Lal. Requisition for post-mortem examination Ex.P/6 was made by Trivedi respondent No. 1, in which again it was stated that the cause of death was not known. It was also stated in it that respondent No. 1 had examined the body of the deceased, after removing the clothes of the deceased, but had not found *any injury marks on the body*. The return entry Ex.P/20 was made

C in the roznamcha giving the time of return of respondent No. 1 and others at the police station at 12.20 p.m. After preparing the panchnama, Ex.P/27 respondent No. 1 addressed a letter Ex. P/9 to the Administrator, Municipal Council, Rampura, on 14.10.81, requesting him to make *immediate* arrangements for the cremation of "a *lavaris*" person. The Ad-

D ministrator in turn directed the CMO to take immediate action and the CMO endorsed the communication to the Accountant directing him to grant Rs. 150 towards expenses for cremation. However, before the respondents could succeed in cremating the body, the events took a different turn as already noticed by us while narrating the prosecution case.

E The High Court after appreciating of the ocular evidence and the other material on the record rightly observed :

F "..... and there remains no doubt, on a proper appreciation of evidence of these witnesses that the dead body of the deceased Nathu was taken out from the Police Station Rampura on 14.10.1981. The necessary inference which follows is that the deceased Nathu Banjara died in police custody in Rampura Police Station and further that the deceased Nathu Banjara remained at the police station right from the time he was brought there in the evening on 13.10.1981 under custody till the time his dead body

G came out from the Police Station. The case set up by the defence on the basis of a Roznamcha (Ex. P/22-A) prepared at the Police Station is that the deceased Nathu had been released from Police custody after interrogation at 10.30 p.m. The deceased Nathu had admittedly been brought to Rampura Police Station in police

H custody by bus from his village, a distance of 100 Kms. or so and

it would be normally expected that the police would arrange the facility of return to his distant village by bus which is not the case here. At any rate it is difficult in the circumstances to believe that after having been brought in police custody from a distance of 100 Kms. he was let off that very night and left to his fate at Rampura. The Roznamcha (Ex. P/22- A), in our opinion, sets up a story which is intrinsically not reliable in the circumstances. This document appears to have been prepared to conceal the truth that the deceased Nathu died in police custody".

We are in complete agreement with the High Court in so far as the above findings are concerned. We agree with the High Court that Nathu Banjara died in police custody as a result of extensive beating given to him and that the respondents had created false clues and fabricated false evidence to conceal the truth that Nathu had died in police custody. We are of the opinion that Trivedi SI recorded Panchnama Ex. P/27 of the dead body, an intrinsically false document, with a view to screen the offence. The Panchnama which records that Trivedi respondent No. 1 had examined the dead body of the deceased after removing the clothes and found *no injuries on the body*, is totally belied by the post-mortem report Ex. p/7, which shows that there were multiple injuries on different parts of the body of the deceased. Further, the attempt of Trivedi to cremate the dead body in hot haste by addressing a letter Ex. P/9 to the Administrator, Municipal Council, Rampura also unmistakably points towards his guilt. It is significant to note that Trivedi, who prepared the Panchnama Ex. P/27 allegedly after seeing the dead body near the tank described the deceased as a "lavaris", although admittedly the deceased had been brought by the police from his village for the purpose of interrogation and had been interrogated at the police station by SI Trivedi and others. It is not imaginable that SI Trivedi and others, particularly Rajaram Head Constable and Constable Ganniuddin would not have known the identity of the deceased. We are of the opinion that the death report Ex. P/21 and the Panchnama Ex. P/27 are false documents and were prepared by SI Trivedi with a view to screen the offence.

The High Court while dealing with the case of Trivedi, SI and finding him guilty of certain offences convicted him thus :

"The accused Trivedi Sub-Inspector is, therefore found guilty being

- A a public servant framing incorrect writing and record with intent to save persons responsible for beating the deceased Nathu Banjara and causing his death in the Police Station, Rampura and is also found guilty of giving false information to screen offenders from legal punishment. As such, he is convicted of the offences punishable under sections 218 and 201 of the Indian Penal Code.
- B He is sentenced to two years' rigorous imprisonment for each of the two offences. The sentences shall, however, run concurrently."

The acquittal of Trivedi, SI for offences under Section 147 and 302/149 IPC was however, maintained by the High Court.

- C The High Court upheld the acquittal of respondents 6 & 7 Ramesh Chander and Goverdhan Lal for offences under Section 201 IPC on the ground that the incriminating material against them was not put to them during their examination under Section 313 Cr. P.C. and no opportunity had been given to them to tender and explanation in that behalf.

- D The High Court acquitted the remaining accused namely, Ram Pratap, Ram Naresh Shukla, Raja Ram and Ganniuddin respondent No. 2 to 5 observing :

- E As regards the remaining four accused-respondents No. 2 to 5 viz., Rampratap, Ramnaresh Shukla, Rajaram and Ganniuddin no evidence what-so-ever has been adduced by the prosecution to show that they were the persons responsible for causing injuries to the deceased. Even the facts as to at what time the deceased was given beating in the police station and who were the police persons on duty at the police station at the time when beating was given to the deceased Nathu Banjara, have, not been proved by the prosecution. Consequently, in the absence of evidence against the accused persons as to their presence or participation at the time injuries were caused to the deceased Nathu, it is not possible to find the said four accused guilty of causing injuries to the deceased Nathu Banjara. As regards the charge aforesaid four accused respondents, there is *no definite evidence to show that* the deceased Nathu Banjara was detained in the Police Station, Rampura, during the night intervening 13th and 14th October, 1981 by *these respondents or at their instance*. The only evidence is that the accused-respondents Rajaram and Ganniuddin to the Police Sta-
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tion for interrogation. It was the responsibility of the Station House Officer to release the deceased after interrogation which was not done and for which the Head Constable or constables in the absence of any positive evidence against them, cannot be held responsible." A

We are in agreement with the High Court that since the incriminating material appearing in the prosecution evidence against respondent No. 6 & 7, who were charged for an offence under Section 201 IPC only was not put to them in their statements recorded under Section 313 Cr.P.C. and no opportunity was afforded to them to explain those circumstances, they had been seriously prejudiced and no conviction could therefore, be recorded against them for the offence under Section 210 IPC. Their acquittal, in the peculiar facts and circumstances of the case, therefore does not call for any interference by us and upholding their acquittal, we dismiss the appeal against them. B C

We are, however, not impressed with the approach of the High Court in dealing with the case of the other respondents as well as with the acquittal of Trivedi Respondent no. 1 for the offences under Section 147 and 302/149 IPC. Having recorded a clear and conclusive finding, and on a proper appreciation of the evidence, that the deceased Nathu Banjara had remained in custody at the police station right from the time he was brought there in the evening on 13.10.1981 by constables Rajaram Respondent No. 4 and Ganniuddin Respondent No. 5 till the time his dead body was removed from the police station on the next day and that the respondent No. 1 and others had with a view to conceal the truth created false evidence and fabricated false clues, the High Court could not have acquitted SI Trivedi respondent, whose presence at the police station was amply established by the prosecution evidence, of the offence of causing multiple external injuries to the deceased which ultimately resulted in the death of Nathu. Similarly, the materials on the record established not only the presence of respondents 3, 4, and 5 at the police station during the period Nathu had remained in custody but also their participation in the removal of the dead body to the hospital with a view to screen the offence. D E F G

PW1 Subhash Chandra, Advocate, PW 4 Radheshyam, advocate, PW 8 Ram Chandra Karel, Advocate and PW18 Virendra Singh Nahha, advocate amongst others deposed at the trial that they had seen the body of the H

- A deceased being taken out of the police station and put in a jeep which had arrived at the police station Rampura and that the jeep proceeded towards the Civil hospital. From the testimony of these witnesses it clearly emerges that news that Nathu had died in police custody at Rampura police station had already leaked out and the witnesses and some others were keeping a
- B watch at the police station to see as to how the police would try to dispose of the dead body. These witnesses further deposed that they saw a dead body wrapped in a blanket being brought out from the police station and being placed in a jeep belonging to the fisheries department at about 2.00 p.m. on 14.10.81 Ram Chandra Karel, PW8 who was the Secretary of the Rampura Bar Association at the relevant time clearly deposed that while
- C the dead body was being put inside the jeep the face of the deceased had got uncovered and had become visible and that since he had heard about the death of Nathu, he saw the face of the deceased whom he identified as Nathu Banjara. According to Advocate Subhāsh Chandra PW1, 3 persons including Rajaram Head Constable had put the dead body inside the jeep
- D after bringing it out from the police station. He had also seen Trivedi Sub-Inspector respondent No. 1 talking to the driver of the Jeep Prabhulal, PW3 and that at that time besides Respondent No. 1. Rajaram Mishra and Shukla respondents were also present there. His testimony has been corroborated by PW4 who named Ram Pratap, Rajaram and Shukla respon-
- E dents as the persons who had brought out the dead body from the police station and put it in the jeep. PW4 further deposed that after coming to the court he had even telephoned the police station and asked Trivedi Sub-Inspector whether one Banjara had died in the police station and Trivedi had told him that he would meet him in the court and let him know
- F the details. Advocate Ram Chandra Karel, PW8 corroborated the testimony of PW1 and PW4 and deposed that he had himself seen Rajaram and Shukla respondents alongwith one other constable bringing the dead body, wrapped in a blanket, from police station and putting it in the jeep, while Trivedi SI. Respondent No. 1 was standing there. He went on to add that respondents Rajaram and Shukla also sat in the jeep, which left for
- G the hospital with the dead body. This witness had also telephoned to Trivedi, Sub-Inspector at about 11.00 a.m. to confirm about the death of Nathu inside the police station but Sub-Inspector Trivedi denied the incident. PW1, PW4, PW8 and PW18 as already noticed had followed the jeep and went to the hospital. According to PW8 when he reached the hospital,
- H he saw the jeep standing there and Rajaram Head Constable was also

standing near the jeep. PW8 Ram Chandra Karel met Dr. Neema PW and at that time Respondent Shukla was present with Dr. Neema. PW8 deposed that he told Dr. Neema that since the deceased had died as a result of beating given to him at the police station in police custody, the post-mortem of the dead body be not undertaken and that the doctor should await for the higher officials. PW3 Prabhulal, driver of the jeep, turned hostile at the trial but his evidence lends sufficient corroboration to the statements of PW1, PW4, PW8 and PW18 with regard to the removal of the dead body of the deceased from the police station to the hospital for post-mortem examination. The testimony of PW1, PW4, PW8 and PW18 who are independent persons and respectable members of the Bar at Rampura and who were subjected to searching and lengthy cross-examination has remained unshattered and has established beyond any reasonable doubt that the dead body of deceased Nathu was taken out from the police station Rampura and transported in the jeep of the fisheries department for post-mortem to the hospital and respondents Rajaram, Shukla and Trivedi SI definitely took part in the removal of the dead body. The evidence of these witnesses particularly PW4 and PW8 has impressed us. Their evidence is consistent and cogent and these witnesses had no reason to falsely implicate any of the respondents. These witnesses truthfully disclosed what they had seen. We find these witnesses to be witnesses of truth.

Indeed, there is no evidence to show that after Ganiuddin, respondent No. 5, who along with Rajaram respondent No. 4 had brought the deceased to the police station for interrogation, had at any time left the police station on the fateful night. In the face of the unimpeachable evidence of PW4 and PW8, we fail to understand how the learned Judges of the High Court could opine that there was no *definite evidence* to show the complicity of Ram Naresh Shukla respondent No. 3, Rajaram and Ganiuddin respondents 4 and 5 respectively in the crime alongwith SI Trivedi, respondent No. 1. The observations of the High Court that the presence and participation of these respondents in the crime is doubtful are not borne out from the evidence on the record and appear to be an unrealistic over simplification of the tell tale circumstances established by the prosecution. The following pieces of circumstantial evidence apart from the other evidence on record; viz.: (i) that the deceased had been brought alive to the police station and was last seen alive there on 13.10.81 : (ii) that the dead body of the deceased was taken out of the police station on 14.10.81

- A at about 2 p.m. for being removed to the hospital; (iii) that the deceased had died as a result of the receipt of extensive injuries while he was at the police station; (iv) that SI Trivedi respondent no. 1, Ram Naresh Shukla, Respondent No. 3, Raja Ram, respondent No. 4 and Ganiuddin respondent No. 5 were present at the police station and had all joined hands to dispose of the dead body of Nathu - Banjara; (v) that SI Trivedi, respondent No. 1 created false evidence and fabricate false clues in the shape of documentary evidence with a view to screen the offence and for that matter, the offender (vi) SI Trivedi respondent in connivance with some of his subordinates, respondents herein had taken steps to cremate the dead body in hot haste describing the deceased as a 'lavaris'; (vii) Rajaram and Ganniuddin respondents had brought the deceased to the police station from his village, and (viii) that police record did not show that either Rajaram or Ganniuddin had left the police station, till the dead body was removed to the hospital in the jeep, unerringly point towards the guilt of the deceased and the established circumstances coupled with the direct evidence of PW1, 3, 4, 8 and 18 are consistent only with the hypothesis of the guilt of the respondents and are inconsistent with their innocence. So far as respondent No. 2, Ram Partap Mishra is concerned, however, no clinching or satisfactory evidence is available on the record to establish his presence at the police station when Nathu deceased was being subjected to extensive beating or of his participation in the commission of the crime.
- E The High Court erroneously overlooked the ground realities that rarely in cases of police torture or custodial death, direct ocular evidence of the complicity of the police personnel would be available, when it observed that 'direct' evidence about the complicity of these respondents was not available. Generally speaking, it would be police officials alone who can only explain the circumstances in which a person in their custody had died.
- F Bound as they are by the ties of brotherhood, it is not unknown that the police personnel prefer to remain silent and more often than not even pervert the truth to save their colleagues, and the present case is an apt illustration, as to how one after the other police witnesses feigned ignorance about the whole matter.

G

From our independent analysis of the materials on the record, we are satisfied that respondents 1 and 3 to 5 were definitely present at the police station and were directly or indirectly involved in the torture of Nathu Banjara and his subsequent death while the police custody as also

H in making attempts to screen the offence to enable the guilty to escape

punishment. The trial court and the High Court, if we may say so with respect, exhibited a total lack of sensitivity and a 'could not careless' attitude in appreciating the evidence on the record and thereby condoning the barbarous third degree methods which are still being used, at some police stations, despite being illegal. The *exaggerated* adherence to and insistence upon the establishment of *proof beyond every reasonable doubt*, by the prosecution, ignoring the ground realities, the fact situations and the peculiar circumstances of a given case, as in the present case, often results in miscarriage of justice and makes the justice delivery system a suspect. In the ultimate analysis the society suffers and a criminal gets encouraged. Tortures in police custody, which of late are on the increase, receive encouragement by this type of an unrealistic approach of the Courts because it reinforces the belief in the mind of the police that no harm would come to them, if an odd prisoner dies in the lock-up, *because there would hardly be any evidence available to the prosecution to directly implicate them with the torture*. The Courts, must not loose sight of the fact that death in police custody is perhaps one of the worst kind of crime in a civilised society, governed by the rule of law and poses a serious threat to an orderly civilised society. Torture in flouts the basic rights of the citizens recognised by the Indian Constitution and is an affront to human dignity. Police excesses and the mal-treatment of detainees/undertrial prisoners or suspects tarnishes the image of any civilised nation and encourages the men in 'Khaki' to consider themselves to be above the law and sometimes even to become law unto themselves. Unless stern measures are taken to check the malady, the foundations of the criminal justice delivery system would be shaken and the civilization itself would risk the consequence of heading towards perishing. The courts must, therefore, deal with such cases in a realistic manner and with the sensitivity which they deserve otherwise the common man may loose faith in the judiciary itself, which will be a sad day.

In its 4th Report of June, 1980, The National Police Commission noticed the prevalence of custodial torture etc. and observed that nothing is so *dehumanising* as the conduct of police in practising torture of any kind on a person in their custody. The commission noticed with regret that the police image in the estimation of the public has badly suffered on account of the prevalence of this practice in varying degrees over the past several years and noted with concern the inclination of even some of the supervisory ranks in the police hierarchy to countenance this practice in a bid to achieve quick results by short-cut methods. Though Sections 330 and

- A 331 of the Indian Penal Code make punishable those persons who cause hurt for the purpose of extorting the confession, by making the offence punishable with sentence upto 10 years of imprisonment, but the convictions, as experience shows us, have been very few *because the atrocities within the precincts of the police station are often left without any ocular or other direct evidence to prove who the offenders are*. Disturbed by this
- B situation, the Law Commission in its 113th Report recommended amendments to the Indian Evidence Act so as to provide that in the prosecution of a police officer for an alleged offence of having caused bodily injuries to a person while in police custody, if there is evidence that the injury was caused during the period when the person was in the police custody, the
- C Court *may presume* that the injury was caused by the police officer having the custody of that person during that period unless, the police officer *proves to the contrary*. The onus to prove the contrary must be discharged by the concerned police official. The recommendation, however, we notice with concern, appears to have gone un-noticed and the crime of custodial
- D torture etc. flourishes unabated. Keeping in view the de-humanising aspect of the crime, the flagrant violation of the fundamental rights of the victim of the crime and the growing rise in the crimes of this type, where only a few come to light and others don't, we hope that the Government and legislature would give serious thought to the recommendation of the Law Commission (*supra*) and bring about appropriate changes in the law not
- E only to curb the custodial crime but also to see that the custodial crime does not go unpunished. The Courts are also required to have a change in their outlook and attitude, particularly in cases involving custodial crimes and they should exhibit more sensitivity and adopt a realistic rather than a narrow technical approach, while dealing with the cases of custodial crime
- F so that as far as possible within their powers, the guilty should not escape so that the victim of the crime has the satisfaction that ultimately the Majesty of Law has prevailed.

- G From the evidence available on the record both documentary and oral, we are satisfied that Respondents 1 and 3 to 5 had participated in causing injuries to Nathu Banjara while in police custody, directly or indirectly, and even if it is not possible to say that they intended to cause the death of Nathu, and they can certainly be clothed with the knowledge that the injuries which a were being caused to the deceased at the police station were likely to cause his death though probably without any intention
- H to cause his death or even to cause such bodily injuries to him as were

likely to cause death. Their offence would, thus, squarely fall under Section 304 Part-II/34 IPC. Respondents 3 to 5 are also guilty of the offences under Sections 201 and 342 IPC and holding them so guilty, we convict them for the said offences. A

The question, however, which now arises is about the appropriate sentence that is required to be imposed upon the respondents. B

Since the occurrence took place 14 years ago, the respondents have gone through the ordeal of a protracted trial and the appeals in the High Court and in this Court. The learned counsel for the State-appellant has very fairly submitted that though an adequate and exemplary sentence of imprisonment would have been normally called for the crime committed by them the respondents. may because of the lapse of time be sentenced to some imprisonment but they be also sentenced to pay a substantial amount of fine, which if realised may go to the heirs of the deceased. Learned counsel for the respondents has also urged that sending the respondents to the prison at this distant point of time would cause great hardship to them and might make them hardened criminals. We have given our anxious consideration to the submissions made by learned counsel for the parties on the question of sentence. We are conscious that a precious human life has been lost at the hands of those who are expected to protect the life and liberty of the citizens of this country. We are also conscious of the fact that the crime is a dehumanising one and is an affront to the human dignity. The long lapse of period is indeed a consideration which may weigh in favour of the respondents for not being awarded a long sentence of imprisonment but then the interests of the victim of the crime have also be kept in view. Keeping in view the consideration of the human factor involved and particularly the interests of the heirs of Nathu deceased to whom mere imprisonment of the respondents at this belated stage may not offer much solace, We have to strike a balance between these disparate considerations and keeping in view the fact that the respondent No. 1 has already undergone a sentence of two years rigorous imprisonment consequent upon his conviction for the various offences by the High Court as noticed earlier we pass the following order : C D E F G

Respondent No. 1 Shyamsunder Trivedi is convicted under section 304 Part II/34 IPC and sentenced to suffer rigorous imprisonment for two years and to pay a fine of Rs. 50,000 (Rupees fifty thousand only) and, in H

A default of payment of fine to undergo further rigorous imprisonment for two years. The substantive sentence of 2 years R.I. under Section 304-II/34 IPC is in addition to the sentence which was imposed upon him by the High Court.

B Respondent Nos. 3, 4 and 5 namely, Ram Naresh Shukla, Head constable and Rajaram Mishra, Head Constable and Ganniuddin constables are convicted under sections 304 part II/34, 201 and 342 IPC and sentenced to suffer rigorous imprisonment for one year each and to pay a fine of Rs. 20,000 (twenty thousand only) each, and in default of payment of fine to undergo rigorous imprisonment for one year more for the offence under section 304-II/149 IPC. No separate sentence is, however, passed against them for the other convictions.

C We, further direct that the *entire* amount of fine on realisation from respondents 1, 3 to 5 shall be paid to the heirs of the deceased, Nathu Banjara, by way of compensation. The Trial Court shall ensure, in case the fine is deposited by the accused respondents, that the payment of the same is made to the heirs of deceased, Nathu Banjara, and the Court shall take all such precautions as are necessary to see that the money is not allowed to fall into wrong hands and is utilised for the benefit of the members of the family of the deceased, Nathu Banjara, and if found practical by deposit in a Nationalised Bank or post office on such terms as the Trial Court may in consultation with the heirs of the deceased consider fit and proper.

D The appeal, therefore, succeeds and is allowed in so far as respondents 1, 3, 4 and 5 are concerned. The appeal against the acquittal of respondent No. 2 is, however, dismissed. While the bail bond of respondent No. 2 is discharged, the bail bonds of respondent nos. 1, 3, 4 and 5 are cancelled. They shall be taken into custody to undergo the sentence imposed by us in the preceding paragraphs.

S.M.

Appeal allowed.