

CENTRAL BUREAU OF INVESTIGATION

v.

KISHORE SINGH & OTHERS

(Criminal Appeal No. 2047-2049 of 2010)

OCTOBER 25, 2010

[MARKANDEY KATJU AND T.S. THAKUR, JJ.]

*Penal Code, 1860 – ss. 326, 308, 323, 343 and 120B – Grievous injury caused to person in police custody by police officials – Allegation that the victim was kept in police lock-up for 4 days and was subjected to third degree methods – Accused-constable causing the injury while the accused-ASI holding the victim – Conviction by trial court – High Court acquitting the accused ASI and SHO and reducing the sentence of accused-constable – On appeal, plea that the injury was caused on sudden provocation, thus attracting s. 335 IPC and not s. 326 – Held: On facts, no sudden provocation and hence case covered u/s. 326 – Plea of alibi of ASI not reliable in view of the evidence of the victim-injured eye-witness – Accused SHO also guilty as he was aware of the event and was responsible for violating Article 22(2) of Constitution and s. 57 Cr.P.C – Accused are also guilty of flouting the directions given by Supreme Court in ***D.K. Basu's**¹ case – Acquittal of the accused ASI and SHO set aside and conviction of accused-constable affirmed – Sentence of accused-constable enhanced – Fine imposed on the accused – Direction to pay the amount of fine to the victim – Constitution of India, 1950 – Article 22 (2) – Code of Criminal Procedure, 1973 – s. 57 – Sentence/Sentencing.*

Sentence/Sentencing – Imposition of sentence for commission of criminal acts by policemen – Held: Such

1. D.K. Basu vs. State of West Bengal. 1997 (1) SCC 416.

A *policemen deserve harsher punishment because it is their duty to protect and not to break the law themselves.*

B The respondents-accused, who were police officials, alongwith another accused 'B' were prosecuted for having caused grievous injury to one person in police custody.

C The prosecution case was that the victim was employed with accused 'B' and he also used to live in the house of the accused. Accused 'B' suspected illicit relation of the victim with his wife and daughter. Accused-constable was the relative of accused 'B'. There occurred a scuffle between the accused-constable and the victim. Thereafter, the accused-constable took the victim to the police-station, where accused-SHO was present. D Accused-SHO assaulted the victim. Accused 'B' also came to the police-station. The victim was kept in the police lock-up for 4 days. He was beaten up in the lock-up by accused 'B', accused-constable and accused-ASI. E The victim admitted his illicit relation with the wife of accused 'B'. At this accused 'B' and accused-ASI caught hold of the victim and then the accused-constable chopped off the penis of the victim with a barber's knife.

F FIR was registered u/ss. 307/326 IPC. The investigation was transferred to CID which added the offences of ss. 343 and 120B. Thereafter, at the instance of the State, the investigation was transferred to CBI.

G Accused 'B' died during the trial. The trial court convicted the accused-constable u/ss. 326, 308, 323 and 343 IPC. Accused-ASI was convicted u/ss. 326/114, 308/114 and 120B IPC. High Court acquitted accused-ASI and Accused-SHO and reduced the sentence of accused-constable.

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In the instant appeals, the accused-constable contended that assault on his part was as a result of sudden and grave provocation as the victim admitted his illicit relations with the wife of accused 'B' and as such his case would be covered u/s. 335 IPC and not u/s. 326 IPC. Accused-ASI contended that he was not present in the Police Station on the day of occurrence. Accused-SHO contended that he was unaware of the incident and the allegation against him was only that he had slapped the victim when he was brought to the Police Station.

Allowing the appeals, the Court

HELD: 1.1 The judgment of the High Court acquitting accused SHO and ASI and reducing the sentence of accused-constable cannot be sustained as it amounts to gross travesty of justice. [Para 17] [103-G-H]

1.2 It cannot be said that there was a sudden grave provocation so as to attract Section 335 IPC, rather it was a pre-meditated act by accused-ASI and Constable. The penis of the victim was cut off by accused-constable by a razor after accused-ASI held the victim. Accused-constable was carrying a sharp-edged weapon with him at the time when he cut off the victim's penis. Policemen do not normally carry any sharp-edged weapon, like a barber's razor, with them. Thus it is evident that it was a pre-meditated act on the part of accused-constable. Also, accused-ASI cannot say that there was a sudden and grave provocation to him when he held the injured witness. Accused-ASI is not related to the deceased accused or his wife. Hence, neither accused-constable nor accused-ASI could have any sudden and grave provocation. The evidence on record reveals that third-degree methods were applied to the injured witness ever since he was brought to the police station on 2.2.1994. Thus Section 335 IPC will not apply and instead Section

A 326 IPC applies in this case. There is no reason to disbelieve the deposition of the injured witness . [Paras 19 and 20] [104-D-H]

B 1.3 Presence of any witness other than the victim (injured eye-witness) and the policemen was not possible in the police station. A police station is not a public road or public place where people can see what is going on. [Para 21] [105-A-B]

C 1.4 It is not correct to say that the accused-ASI was not present at the police station when the incident occurred. The victim (injured eye-witness) clearly stated in his deposition before the court (and earlier in his FIR) that accused-ASI had caught his neck and put his hand on the victim's mouth and accused-constable chopped off his penis with a sharp-edged weapon. The victim had no enmity with accused-ASI and hence there was no reason for him to make a false statement against accused-ASI. Moreover, it is difficult to believe that one person unaided can chop off the penis of an adult. The version of the witnesses who are CBI officials and who deposed that accused-ASI was not present at the police station at the time of the incident, cannot be believed. At any rate their version is based on inferences drawn from the case diary maintained by the accused police officers. D E F On the other hand, there is no reason for disbelieving the victim. He is an injured witness, and normally the court gives more weight to the evidence of an injured witness. [Paras 22 and 23] [105-B-F]

G 1.5 It cannot be said that the accused-SHO was unaware of the events. When a person is brought to the police station and locked up there, obviously, he is under arrest. Article 22(2) of the Constitution requires that within 24 hours of the arrest, the arrested person must be produced before a Magistrate, and the same is the H

requirement in Section 57 Cr.P.C. It is admitted by the accused that the victim was never produced before the Magistrate within 24 hours, rather he was kept in the police station from 8 p.m. on 2.2.1994 upto 8 a.m. on 5.2.1994 when he was tortured in the police station leading to the incident after which he was shifted to the hospital. The accused being the S.H.O. is squarely to blame for this deliberate lapse. It has come in the evidence of the victim that when he was brought to the police station on 2.2.1994 accused-SHO was present there and he slapped the victim. There is no reason to disbelieve this statement. Hence the accused-SHO cannot be absolved of the charge against him u/s. 342 IPC. [Paras 25 and 26] [106-A-E]

1.6 All the accused are guilty of totally flouting and throwing to the winds the directives of this Court in **D.K. Basu's* case. That decision outlaws third degree methods in police stations, but it is well known that third degree methods are still widely used in many of the police stations, as this case reveals. [Para 26] [106-D-E]

**D.K. Basu vs. State of West Bengal 1997 (1) SCC 416* – relied on.

1.7 On the facts of the case, there is no reason to disbelieve the prosecution case, and the High Court should not have acquitted the accused-SHO and accused-ASI and reduced the sentence of accused-constable. It was a barbaric act on the part of the accused, who deserve no leniency. [Para 30] [107-C]

2.1 The policemen who commit criminal acts deserve harsher punishment than other persons who commit such acts, because it is the duty of the policemen to protect the people, and not break the law themselves. If the protector becomes the predator, civilized society will cease to exist. [Para 31] [107-D-E]

- A 2.2 On the facts of the case, the sentence of accused-constable is enhanced to 5 years' rigorous imprisonment u/s. 326 IPC with a fine of Rs.50,000/- . He is also found guilty u/s. 342 IPC and sentenced to six months rigorous imprisonment. The acquittal of accused-ASI is set aside
- B and he is found guilty of the offence u/s. 326 r/w s.120B IPC and is sentenced to 3 years rigorous imprisonment and to pay a fine of Rs. 50,000/-. He is also found guilty of the offence u/s. 342 IPC and is sentenced to six months rigorous imprisonment. The sentences of both
- C the accused shall run concurrently. The acquittal of accused-SHO is set aside and he is held guilty u/s. 342 IPC and sentenced to six months simple imprisonment with a fine of Rs. 10,000/-. The amounts of fine shall be paid to the victim as compensation. [Paras 32, 33 and 34]
- D [107-F-H; 108-A-C]

Case Law Reference:

1997 (1) SCC 416 Relied on. Para 26

- E CRIMINAL APPELLATE JURISDICTION : Criminal Appeal
Nos. 2047-2049 of 2010.

- F From the Judgment & Order dated 19.11.2008 of the High Court of Judicature for Rajasthan at Jodhpur in Division Bench Criminal Appeal No. 235 of 2006 and Single Bench Criminal Appeal No. 31 & 70 of 2006.

J.S. Atri, Krishna Kumar, Arvind Kumar Sharma for the Appellant.

- G K.T.S. Tulsi, Rakesh Dwivedi, Gp. Cap. Karan Singh Bhati, Aishwarya Bhati, Kuber Bodh, Priyanka Agarwal, Nikhil Sharma, Rasheed Khan, Yash Wardhan Tiwari for the Respondents.

The Judgment of the Court was delivered by

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MARKANDEY KATJU, J. 1. Leave granted.

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2. What should be done to policemen who 'bobbitt' a person in a police station and think that they can get away with it? That is the question to be decided in this case.

3. These appeals by special leave have been filed against the impugned judgment and order dated 19.11.2008 passed in D.B. Criminal Appeal No. 235/2006, SB Criminal Appeal No. 31/2006 & SB Criminal Appeal No. 70/2006 of Rajasthan High Court at Jodhpur.

B

4. This case reveals how some policemen in our country have not got over their old colonial mentality and are still persisting in barbaric acts in a free country which claims to be run by a democratic Constitution and the rule of law. It also reveals a grisly state of affairs prevailing in our police set up even today.

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5. Heard Mr. J.S. Atri, learned senior counsel appearing for the appellant, CBI, Mr. KTS Tulsi, learned senior counsel for respondent constable Kishore Singh, Mr. Rakesh Dwivedi, learned senior counsel for respondent Assistant Sub-Inspector Sumer Dan and Ms. Aishwarya Bhati, learned counsel appearing for respondent S.H.O. Sohan Singh.

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6. The prosecution case is that one Jugta Ram, the injured witness in this case, was an employee of one Bheru Singh and was working in his liquor shop. Jugta Ram also lived in the house of Bheru Singh in one room of the upper floor, while the family of Bheru Singh was living in the ground floor. Bheru Singh had two sons and three daughters. Jugta Ram is said to have had an affair with Bheru Singh's wife and eldest daughter. This was suspected by Bheru Singh, whose relative was accused constable Kishore Singh.

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7. On 2.2.1994, at about 8 P.M. Jugta Ram was carrying a bottle of liquor when accused constable Kishore Singh met

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A him and snatched the liquor bottle and in the course of the
 scuffle the bottle fell down and got broken. Kishore Singh then
 took Jugta Ram to the Sadar police station where the accused
 SHO Sohan Singh and some policemen were also present.
 Sohan Singh allegedly assaulted Jugta Ram and at that time
 B Bheru Singh also came to the police station. Accused Kishore
 Singh, constable, is the son of Bheru Singh's brother-in-law
 (sala).

8. Jugta Ram was taken to the police station on 2.2.1994
 and kept locked up there till 5.2.1994. He was beaten up in the
 C police lockup by Bheru Singh, constable Kishore Singh and
 A.S.I. Sumer Dan. On 4.2.1994 at about 2 or 3 P.M., Jugta
 Ram's brother Kheraj Ram came to the police station and he
 stated that the policemen demanded Rs. 40-50 thousand
 otherwise Jugta Ram will not be released.

D 9. On 5.2.1994, Jugta Ram was again assaulted by Bheru
 Singh, Sumer Dan and Kishore Singh who kept asking about
 his illicit relationship and then he stated that he had illicit
 relationship with Gaj Kanwar, wife of Bheru Singh. At this, Bheru
 E Singh and Sumer Dan caught hold of Jugta Ram. Accused
 A.S.I. Sumer Dan held Jugta Ram by the neck and put his hand
 on his mouth and then accused constable Kishore Singh
 chopped off Jugta Ram's penis with a sharp edged weapon
 ('ustra' or barber's razor). At this, Jugta Ram became
 F unconscious and when he gained consciousness he found that
 he was admitted in Barmer hospital.

10. Jugta Ram related the story to the doctors in the
 hospital and also his brother Kheraj Ram who came there with
 some persons.

G 11. The police registered the F.I.R. of Jugta Ram on
 5.2.1994 under sub-Section 307/326. Initially the investigation
 was handed over to the Additional S.P., Barmer, but thereafter
 it was transferred to the C.I.D., Crime Branch which added the
 H offences of Sections 343 and 120B I.P.C. Thereafter, at the

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instance of the State Government the investigation was transferred to the C.B.I., which investigated the case and submitted a charge sheet.

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12. The accused denied the prosecution case, but the trial court found all the three accused guilty vide its judgment dated 21.12.2005. The fourth accused Bheru Singh died during the trial.

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13. The trial court sentenced accused Kishore Singh to rigorous imprisonment for life and a fine of Rs. 5000/- under Section 326 IPC and 7 years rigorous imprisonment and a fine of Rs. 1000/- under Section 308 IPC. It also sentenced him under Sections 323 and 343 IPC. The trial court sentenced accused Sohan Singh to 6 months rigorous imprisonment under Section 323 IPC and 1 years' rigorous imprisonment under Section 343 IPC.

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14. The trial court also sentenced accused Sumer Dan to 10 years rigorous imprisonment and a fine of Rs. 2000/- under Sections 326/114 IPC and also 7 years' rigorous imprisonment and a fine of Rs. 2000/- under Sections 308/114 IPC and further 5 years' rigorous imprisonment under Section 120B IPC read with some other provisions of the IPC.

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15. In appeal the High Court acquitted Sohan Singh and Sumer Dan and reduced the sentence of Kishore Singh to the sentence already undergone for the conviction under Section 326 IPC and a fine of Rs. 1 lakh, and 1 years' rigorous imprisonment for the offence under Section 343 IPC which was altered to Section 342 IPC.

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16. Now this appeal has come up before us against the judgment of the High Court.

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17. We are of the opinion that the judgment of the High Court acquitting accused Sohan Singh and Sumer Dan and reducing the sentence of accused Kishore Singh cannot be sustained as it amounts to gross travesty of justice.

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A 18. Mr. KTS Tulsi, learned senior counsel appearing for
accused Kishore Singh, submitted that in this case Section
335 of the IPC applies and hence Section 326 is not
applicable. He argued that there was a sudden and grave
provocation to accused Kishore Singh by the injured witness
B Jugta Ram whose penis was chopped off. Learned counsel
submitted that before 5.2.1994 there was only a suspicion that
Jugta Ram was having an affair with the wife of Bheru Singh,
but on 5.2.1994 when he admitted this fact there was a sudden
and grave provocation since Kishore Singh is a relative of
C Bheru Singh. With respect, we do not agree.

19. It may be mentioned that Jugta Ram had been kept in
police lockup from 2.2.1994 to 5.2.1994 without even producing
him before a magistrate as is required by Article 22 of the
Constitution and Section 57 Cr.P.C.. Jugta Ram's penis was
D cut off by accused Kishore Singh by a razor after accused
Sumer Dan held Jugta Ram. In our opinion, it cannot be said
there was a sudden grave provocation so as to attract Section
335 IPC, rather it was a pre-meditated act by Sumer Dan and
Kishore Singh. Kishore Singh was carrying a sharp edged
E weapon with him at the time when he cut off Jugta Ram's penis.
Policemen do not normally carry any sharp edged weapon, like
a barber's razor, with them. Thus it evident that it was a pre-
meditated act on the part of Kishore Singh. Also, Sumer Dan
cannot say that there was a sudden and grave provocation to
F him when he held Jugta Ram. Sumer Dan is not related to
Bheru Singh or his wife. Hence, neither Kishore Singh nor
Sumer Dan could have any sudden and grave provocation. The
evidence on record reveals that third-degree methods were
G applied to Jugta Ram ever since he was brought to the police
station on 2.2.1994. Thus Section 335 will not apply and
instead Section 326 IPC applies in this case.

20. We have carefully perused the evidence on record and
we see no reason to disbelieve the deposition of the injured
witness Jugta Ram.
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21. As regards the argument that there were no witnesses other than Jugta Ram, in our opinion in a police station it is hardly possible for there to be any witness there except the policemen and the victim. A police station is not a public road or public place where people can see what is going on.

22. Mr. Rakesh Dwivedi, learned senior counsel for Sumer Dan submitted that Sumer Dan was not present at the police station when the incident occurred. We do not agree. Jugta Ram clearly stated in his deposition before the court (and earlier in his FIR) that Sumer Dan had caught his neck and put his hand on Jugta Ram's mouth and Kishore Singh chopped off his penis with a sharp edged weapon. Jugta Ram had no enmity with Sumer Dan and hence there was no reason for him to make a false statement against Sumer Dan. Moreover, we find it difficult to believe that one person unaided can chop off the penis of an adult.

23. Mr. Rakesh Dwivedi, learned counsel then submitted that some of the witnesses who are CBI officials had deposed that Sumer Dan was not present at the police station at the time of the incident. We are not inclined to believe those witnesses. At any rate their version is based on inferences drawn from the case diary maintained by the accused police officers. On the other hand, there is no reason for disbelieving Jugta Ram, for the reasons already stated above. He is an injured witness, and normally the Court gives more weight to the evidence of an injured witness.

24. As regards SHO Sohan Singh, Ms. Aishwarya Bhati, learned counsel for this accused, submitted that the only evidence against him is that he was present at the police station when Jugta Ram was brought there and he slapped Jugta Ram. However, being the SHO of the police station we find it difficult to believe that he was unaware of what was going on at the police station, and we see no reason to disbelieve Jugta Ram.

25. When a person is brought to the police station and

A locked up there, obviously he is under arrest. Article 22(2) of the Constitution requires that within 24 hours of the arrest the arrested person must be produced before a magistrate, and the same is the requirement in Section 57 Cr.P.C. It is admitted by the accused that Jugta Ram was never produced before the
B magistrate within 24 hours, rather he was kept in the police station from 8 p.m. on 2.2.1994 upto 8 a.m. on 5.2.1994 when he was tortured in the police station leading to the incident after which he was shifted to the hospital. Sohan Singh being the S.H.O. is squarely to blame for this deliberate lapse. It has
C come in the evidence of Jugta Ram that when he was brought to the police station on 2.2.1994 Sohan Singh was present there and he slapped Jugta Ram. We see no reason to disbelieve this statement. Hence it cannot be said that Sohan Singh was unaware of the events.

D 26. Also all the accused are guilty of totally flouting and throwing to the winds the directives of this Court in *D.K. Basu vs. State of West Bengal* 1997 (1) SCC 416 (vide paragraph 35). That decision outlaws third degree methods in police stations, but it is well known that third degree methods are still
E widely used in many of our police stations, as this case reveals. Hence accused Sohan Singh cannot be absolved of the charge against him under Section 342 IPC.

F 27. The doctor (Madan Mohan Purohit) who examined Jugta Ram deposed that on 5.2.1994 he inspected Jugta Ram at Govt. hospital Barmer and he found an injury about 8 x 8 cm, deep up to the muscle. There was no penis and blood was seeping from the injury. The injury was up to the basis of the penis and towards the scrotum. The injury was serious in nature and was made by a sharp edged weapon about 4 hours earlier.
G Jugta Ram was brought to the hospital by two constables one of whom was Moolaram. Obviously after cutting off Jugta Ram's penis the accused must have got scared that Jugta Ram may die of bleeding, and hence they sent him to the hospital.

H 28. Jugta Ram was also examined by Dr. M.L. Motiyani

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in the hospital and he found that Jugta Ram's penis had been cut off. We have also seen the deposition of Dr. H. K. Singhal, Medical Officer in the Barmer hospital who deposed to the same effect. A

29. We have also seen the evidence of Jugta Ram's brother Kheraj Ram, and the other witnesses. B

30. On the facts of the case we see no reason to disbelieve the prosecution case and we are surprised how the High Court has acquitted Sohan Singh and Sumer Dan and reduced the sentence of accused Kishore Singh. It was a barbaric act on the part of the accused, who deserve no leniency. C

31. In our opinion, policemen who commit criminal acts deserve harsher punishment than other persons who commit such acts, because it is the duty of the policemen to protect the people, and not break the law themselves. If the protector becomes the predator civilized society will cease to exist. As the Bible says "If the salt has lost its flavour, wherewith shall it be salted? (Matthew 5, Mark 9.50 and Luke 14.34-35)", or as the ancient Romans used to say "Who will guard the praetorian guards?" D E

32. On the facts of the case we enhance the sentence of accused Kishore Singh to 5 years' rigorous imprisonment under Section 326 IPC and a fine of Rs.50,000/- failing which he shall further undergo rigorous imprisonment for six months. Kishore Singh is also found guilty under Section 342 IPC and sentenced to six months rigorous imprisonment. The two sentences shall run concurrently. In case the fine is deposited the same shall be paid to the victim as compensation. F

33. As regards accused Sumer Dan, his acquittal is set aside and he is found guilty of the offence under Sections 326 read with Section 120B IPC and is sentenced to 3 years rigorous imprisonment and a fine of Rs. 50,000/- failing which he shall further suffer 1 years' rigorous imprisonment. He is also G H

A found guilty of the offence under Section 342 IPC and is sentenced to six months rigorous imprisonment. The two sentences shall run concurrently. The amount of fine if deposited shall be paid as compensation to the victim.

B 34. As regards accused Sohan Singh, we set aside his acquittal and hold him guilty under Section 342 IPC and sentence him to six months simple imprisonment and a fine of Rs. 10,000/- failing which he shall further suffer one month's simple imprisonment. The amount if deposited shall be paid to the victim as compensation.

C 35. The appeals filed by the CBI are allowed, and the High Court judgment is set aside.

K.K.T.

Appeals allowed.