

[2011] 3 S.C.R. 769

HARICHARAN & ANR.

v.

STATE OF MADHYA PRADESH & ORS.  
(Criminal Appeal No. 581 of 2003)

MARCH 9 , 2011

[B. SUDERSHAN REDDY AND SURINDER SINGH  
NIJJAR, JJ.]

*Custodial death: Allegation of custodial death against the accused-police officials on the ground that detenu-deceased was kept in illegal custody and subjected to third degree torture for extracting confession that the deceased was guilty of the offence of theft – Conviction u/ ss.304 (Part-II), 330 – On appeal, Held: The fact that deceased was tortured and subjected to electric shock whilst in police custody was well established by medical evidence – Prosecution proved beyond reasonable doubt that deceased was taken to the police station and upon his release, the police personnel terrorized the entire family – This was evident from the fact that widow, son and brother of the deceased all turned hostile – However, evidence on the record clearly showed that death of the deceased was a direct consequence of the inexcusable and inhuman torture by the police – No reason to interfere with the order of conviction – Penal Code, 1860 – ss.304 (Part-II), 330.*

*Appeal: Appeal against acquittal – Acquittal by trial court – Power of appellate court to interfere with the order of acquittal – Held: Appellate court would not interfere with the order of acquittal, unless the conclusion recorded by the lower court is held to be perverse and has resulted in miscarriage of justice – Appellate court should also not interfere with an order of acquittal if two reasonable conclusions are possible.*

*Criminal law: Suspicion, no matter how strong cannot be*

A *the basis of conviction – Even in cases of custodial death, it is for the prosecution to establish beyond reasonable doubt a proper link between the accused and the commission of crime.*

B *Constitution of India, 1950: Articles 21 and 22 (1) – Held: The expression “Life or Personal Liberty” in Article 21 includes right to live with human dignity – Therefore, it includes within itself guarantee against the torture and assault by the States or his functionaries – Custodial death.*

C **The prosecution case was that the victim-deceased was taken into custody and subjected to torture with a view of obtain confession from him for the alleged theft committed by him. After two days, the deceased was released. The condition of the deceased deteriorated and**  
D **he died. The case was registered against the accused-police officers for the offence of custodial death.**

**The trial court acquitted the accused. The High Court convicted the accused under Section 304 Part II IPC and sentenced them to five years R.I. and fine and further**  
E **convicted them under section 330 IPC and sentenced them to three years R.I. The instant appeals were filed challenging the order of the High Court.**

**Dismissing the appeals, the Court**

F **HELD: 1. The appellate court would not interfere with the order of acquittal, unless the conclusion recorded by the lower court is held to be perverse and has resulted in miscarriage of justice. The appellate court should also**  
G **not interfere with an order of acquittal if two reasonable conclusions are possible. [Para 20] [786-E-F]**

**2. Suspicion, no matter how strong cannot form the basis of a conviction. Even in cases of custodial death, it is for the prosecution to establish beyond reasonable**  
H **doubt a proper link between the accused and the**

commission of crime. Custodial death is perhaps one of the worst crimes in a civilized society governed by rule of law. It is aggravated by the fact that crimes in custody are committed by persons, who are charged with the solemn responsibility to protect the fundamental rights of all the citizens. These crimes are committed under the shield of uniform and authority within the four walls of police station or lock up, the victim being totally helpless. The fundamental rights under Articles 21 and 22 (1) of the Constitution are required to be zealously and scrupulously protected. The expression "Life or Personal Liberty" in Article 21 includes right to live with human dignity. Therefore, it also includes within itself, guarantee against the torture and assault by the States or his functionaries. In *\*D.K. Basu case*, the Supreme Court, as the custodian and protector of the fundamental and the basic human rights of the citizens, viewed with deep concern allegation made against the police officials about custodial crimes. Using any form of torture for extracting any kind of information, from a suspect was declared to be "neither right, nor just, nor fair." It was specifically laid down that though a crime suspect must be interrogated - indeed subjected to sustain and scientific interrogation - determined in accordance with the provisions of law, he cannot, however, be tortured or subjected to third degree methods or eliminated with a view to elicit information or extract a confession. Rarely in cases of police torture or custodial death, direct ocular evidence of the complicity of the police personnel would be available. Generally speaking, it would be police officials alone who can explain the circumstances in which a person in their custody had died. 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 instant case is an apt illustration, as to how one after the other police witnesses feigned ignorance about the whole

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A matter. [Paras 21, 24, 25 & 26] [784-G; 785-A-E-H; 786-A-B-F-H]

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

- B *State of Uttar Pradesh v. Nandu Vishwakarama and Ors.* (2009) 14 SCC 501; *Chandrappa v. State of Karnataka* (2007) 4 SCC 415; *M.C. Ali & Anr. v. State of Kerala* (2010) 4 SCC 573; *Allarakha K. Mansuri v. State of Gujarat* (2002) 3 SCC 57; *Raghunath v. State of Haryana & Anr.* (2003) 1 SCC 398;
- C *Sadashio Mundaji Bhalerao v. State of Maharashtra* (2007) 15 SCC 421; *State of M.P. v. Shyamsunder Trivedi & Ors.* (1995) 4 SCC 262 *Sahadevan Alias Sagadevan v. State Represented By Inspector of Police, Chennai* (2003) 1 SCC 534; *Munshi Singh Gautam (Dead) & Ors. v. State of Madhya Pradesh* (2005) 9 SCC 631 – Referred to.

3.1. The High Court had correctly concluded that there was sufficient evidence on record to prove that the deceased was taken into an illegal custody. This fact was adverted to by PW6. When this witness appeared in court, he was absolutely terror stricken. Upon being given the assurance by the court, the witness proceeded to state that the deceased was his uncle's son. He stated that appellant no.3, had taken the deceased with him to the police station. He was kept in the police station for about two days. PW1 and PW16 had brought the deceased from the police station. He had talked to the deceased when he came back from the police station. The deceased told him that appellant no.3 had given him severe beatings. This statement clearly showed that the deceased was kept in illegal custody, as claimed by the prosecution. Apart from PW6, the other witnesses were also under constant pressure, not to depose against the police. This was evident from the fact that virtually all the witnesses turned hostile and failed to support the prosecution case. PW3, the brother of the deceased, his widow and his son

did not support the prosecution version. The terror of the police was such that even the family members of the deceased refrained from speaking the truth. PW1, the brother of the deceased, had plucked up enough courage to state that the police had called the deceased to the police station. He, however, stated that the deceased came back in the morning. This witness had also stated that the police had beaten up his brother and he was rendered unconscious. He had been taken to the hospital from the Shivpuri Kotwali. He had also lodged a complaint with the Superintendent of Police, PW28, as the condition of the deceased was serious. [paras 28 to 30] [788-F-H; 789-A-H]

3.2. The fact that the deceased had been tortured and subjected to electric shock whilst in police custody was well established by the medical evidence given by PW23, and PW24. In accepting the evidence of PW6 and the medical evidence of PW23 and PW24, the High Court did not commit any error. The evidence on the record clearly showed that death of the deceased was a direct consequence of the inexcusable and inhuman torture by the police. The prosecution has proved beyond reasonable doubt that the deceased was taken to the police station. Whilst at the police station, he was subjected to third degree torture. He was given electric shocks in the scrotum. Such torture was inflicted on the deceased merely for the purpose of extracting a confession that he was guilty of the offence of theft. Upon his release, the police personnel terrorized the entire family. This was evident from the fact that the widow, the son and the brother of the deceased all turned hostile. However, there was sufficient evidence on the record given by PW6, PW23 and PW24 to prove beyond reasonable doubt that the deceased died due to the inhuman torture inflicted upon him by the appellants. [Paras 31, 32] [790-A-H; 791-A-C]

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**Case Law Reference:**

2009 14 SCC 501 referred to Para 9

2007 4 SCC 415 referred to Para 9

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2010 4 SCC 573 referred to Para 9

2002 3 SCC 57 referred to Para 10

2003 1 SCC 398 referred to Para 10

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2007 15 SCC 421 referred to Para 12

1997 1 SCC 416 referred to Para 19

1995 4 SCC 262 referred to Para 19

2003 1 SCC 534 referred to Para 19

D

2005 9 SCC 631b referred to Para 19

1997 1 SCC 416 referred to Para 23

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal  
No. 581 of 2003.

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From the Judgment & Order dated 1.8.2002 of the High  
Court of Judicature of Madhya Pradesh, Jabalpur Bench at  
Gwalior in Criminal Appeal No. 79 of 1990.

F

WITH

CrI. A.Nos. 582, 583 & 584 of 2003.

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Mahabir Singh, Nagendra Rai, K.T.S. Tulsi, Nikhil Jain,  
Gangandeep Sharma, Ajay Pal, Amita Gupta, Rahat Bansal,  
Vikas Upadhyaya, Niraj Sharma, Atul Sharma, Rekha Palli,  
Ravinder Singh, Maheen Pradhan, Prem Malhotra, Vibha Datta  
Makhija for the appearing parties.

The Judgment of the Court was delivered by

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**SURINDER SINGH NIJJAR, J.** 1. These appeals have been filed against the judgment of the High Court of Judicature of Madhya Pradesh in Criminal Appeal No. 79 of 1990 whereby the High Court accepted the appeal of the State of Madhya Pradesh and convicted the appellants herein for an offence under Section 304 Part II and sentenced them to five years R.I. and fine of Rs.5,000/- each and further convicted the appellants under Section 330 IPC and sentenced them to three years R.I. In so doing, the High Court reversed the judgment of the trial court in Sessions Case No. 8 of 1988 dated 7th March, 1989 whereby the appellants were acquitted of all the offences under Section, 343, 330 and 304 Part II IPC.

2. At that relevant time, all the appellants were police officers and posted at Police Station Indar, District Shivpuri. Anil Kumar Kushwaha, appellant in Criminal Appeal No. 584 of 2003 was posted as the Station House Officer of the aforesaid Police Station. Ram Ujagar, appellant in Criminal Appeal No. 583 of 2003 was posted as Head Constable. Nathuram, appellant in Criminal Appeal No. 582 of 2003 was also posted as Head Constable. Haricharan and Mazid Hussain, appellants in Criminal Appeal No. 581 of 2003 were posted as Constables.

3. Briefly stated the prosecution case, as noticed by the High Court is that Mathura was called to the Police Station through Head Constable Ram Ujagar with regard to the investigation of Crime Case No. 57 of 1983 for offence punishable under Section 457 and 380 IPC. He was interrogated at the Police Station and was confined in the lock up. While he was confined in the lock up, he was subjected to third degree torture. He was given electric shock on his scrotum with the intention to extort the confession for the crime of the alleged theft. As due to the torture and electric shocks, condition of Mathura deteriorated, he was released on 11th October, 1983. According to the prosecution, Mathura was unlawfully detained in the Police Station from 8th October, 1983

A till 11th October, 1983. The police had neither made any entry about his detention in the police records nor about his discharge.

B 4. Mathura was handed over to Takhat Singh, PW1 and Parmal Singh, PW16, who took Mathura to his house. He was looked after by the family members. However, the condition of Mathura worsened on 13th October, 1983. Takhat Singh, PW1 alongwith his brother Amrit Lal sent a private doctor Jagdish Prasad Soni, PW18 for his treatment. On seeing that Mathura was unconscious, Jagdish Prasad Soni advised that he should be immediately taken to hospital at Shivpuri. Takhat Singh, C PW1 brought him to Shivpuri by bus. He also intimated Superintendent of Police about the ill-treatment and torture of Mathura by the police personnel at Police Station Indar. He requested the Superintendent of Police to ensure that proper D medical treatment is given to Mathura. He also made a request for an enquiry against the police officers at the aforesaid police station. Accepting the request made by Takhat Singh, Superintendent of Police, R.K. Tripathi, PW28 directed Town Inspector, Shivpuri to get the injured Mathura medically E examined and to submit his report.

F 5. PW34, R.P. Upadhyay took Mathura to the District Hospital at Shivpuri. He was first examined by Dr. L.D. Vaswani, PW24. Dr. Vaswani found that Mathura was unconscious but his pulse and breathing was normal. He admitted Mathura in hospital and kept him under observation. On 13th October, 1983 at about 6.10 p.m., condition of Mathura further deteriorated. At that stage, Dr. C.M. Tripathi, PW23, who was on casualty duty also examined Mathura and found Mathura was on the verge of death. He had, therefore, given artificial G respiration, oxygen and extra massage to Mathura. In spite of following the aforesaid procedures for about ten minutes, Dr. Tripathi could not revive the heartbeats of Mathura. He was declared dead at 6.20 p.m. in the evening.

H 6. The Town Inspector was given intimation of the death

vide Ex.P7 and a request was made for a postmortem of the dead body. The dead body of Mathura was examined in the presence of PW1, Takhat Singh and PW37, Laxminarayan Kulshreshtha, Sub-Divisional Magistrate. Panchnama of the dead body (Ex.P3) was duly prepared. Thereafter, a direction was issued for performing the postmortem. On 14th October, 1983 at about 11.50 a.m., the postmortem was performed by Dr. L.D. Vaswani. He found one oval shaped charring wound on each side of the anterior of the scrotum. A black charring wound oval in shape 2.5 cm x 3 cm on the right side and a black charring oval in shape 2 cm x 1.5 cm on the left side. According to this postmortem, no other external injuries were found. On internal examination, it was found that arachnoid membrane of the brain was congested. He also found sub arachnoid Hemorrhage at the base of the near circle of Willis. The vessels of the circle were dilated and ruptured. Haematoma in the substance of the brain at the middle portion of the brain near base. According to the report Haematoma was 4 cm. in diameter. Dr. Vaswani found that the cause of death was coma caused by intracranial Hemorrhage, which might be due to hyper tension.

7. After the death of Mathura, FIR was duly registered against all the appellants. Upon completion of the investigation, the appellants were put on trial. The trial court vide its judgment dated 7th March, 1989 acquitted all the appellants of all the charges. Feeling aggrieved against the judgment of the trial court, the State of Madhya Pradesh challenged the same by way of an appeal. The High Court by its judgment dated 1st August, 2002 allowed the appeal and reversed the findings of acquittal recorded by the trial court. All the appellants were convicted and sentenced as noticed above. Aggrieved by the aforesaid judgment, the appellants have filed the present four appeals.

8. We have heard the learned counsel for the parties.

9. Mr. K.T.S. Tulsi, learned senior counsel, appearing in

- A Criminal Appeal No. 582 of 2003 on behalf of Head Constable, Nathuram submitted that the High Court committed a grave error in reversing the well reasoned judgment of the trial court. He relied on a judgment of this Court in the case of *State of Uttar Pradesh Vs. Nandu Vishwakarama and Ors.*,<sup>1</sup> to point out that
- B in reversing the judgment of the trial court, the High Court has disregarded the principles within which the High Court was to exercise its appellate powers. In the aforesaid judgment, this Court notices and reiterates the principles laid down in the case of *Chandrappa Vs. State of Karnataka*<sup>2</sup>, which are as follows:-
- C “42. From the above decisions, in our considered view, the following general principles regarding powers of the appellate court while dealing with an appeal against an order of acquittal emerge:
- D (1) An appellate court has full power to review, reappraise and reconsider the evidence upon which the order of acquittal is founded.
- E (2) The Code of Criminal Procedure, 1973 puts no limitation, restriction or condition on exercise of such power and an appellate court on the evidence before it may reach its own conclusion, both on questions of fact and of law.
- F (3) Various expressions, such as, “substantial and compelling reasons”, “good and sufficient grounds”, “very strong circumstances”, “distorted conclusions”, “glaring mistakes”, etc. are not intended to curtail extensive powers of an appellate court in an appeal against acquittal. Such phraseologies are more in the nature of “flourishes of language” to emphasise
- G the reluctance of an appellate court to interfere with acquittal than to curtail the power of the court to

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1. (2009) 14 SCC 501.

H 2. (2007) 4 SCC 415.

review the evidence and to come to its own conclusion. A

(4) An appellate court, however, must bear in mind that in case of acquittal, there is double presumption in favour of the accused. Firstly, the presumption of innocence is available to him under the fundamental principle of criminal jurisprudence that every person shall be presumed to be innocent unless he is proved guilty by a competent court of law. Secondly, the accused having secured his acquittal, the presumption of his innocence is further reinforced, reaffirmed and strengthened by the trial court. B C

(5) If two reasonable conclusions are possible on the basis of the evidence on record, the appellate court should not disturb the finding of acquittal recorded by the trial court." D

The same principles were laid down in the case of *M.C. Ali & Anr. Vs. State of Kerala*<sup>3</sup>. E

10. Mr. Tulsi submitted that the High Court would have been justified in interfering with the order of acquittal only in case, the High Court had recorded a conclusion that the findings recorded by the trial court were perverse and resulted in miscarriage of justice. It was not in the domain of the High Court to interfere with the findings of the facts recorded by the trial court, upon due appreciation of evidence and recording plausible conclusions. He further submitted that if two views are possible on the evidence adduced in the case, one pointing to the guilt of the accused and other to his innocence, the view which is favorable to the accused should be adopted. In support of the submissions, learned counsel relied on *Allarakha K. Mansuri Vs. State of Gujarat*<sup>4</sup>, and *Raghunath Vs. State of* F G

3. (2010) 4 SCC.

4. (2002) 3 SCC 57. H

A *Haryana & Anr.*<sup>5</sup>.

B 11. Mr. Tulsi further submitted that there were discrepancies between the charges as laid by the prosecution and medical evidence. According to the postmortem, injury had been caused within two days. This, according to Mr. Tulsi, would clearly rule out the case of torture. Even according to the prosecution, Mathura had been taken into the custody on 8th October, 1983 and had been released on 11th October, 1983. The postmortem was conducted on 14th October, 1983 at around 11.50 a.m.

C 12. Mr. Tulsi then submitted that the discrepancies between the oral evidence of the prosecution witnesses and the medical evidence would clearly show that the prosecution has failed to prove the case beyond reasonable doubt. The appellants have been convicted by the High Court merely on the basis of assumption and presumptions based on suspicion. He relied on the observations made by this Court in Paragraph 31 of the judgment in the case of *Sadashio Mundaji Bhalerao Vs. State of Maharashtra*<sup>6</sup>, which are as follows:-

E “We are conscious that there is a rise in incidents of custodial deaths but we cannot completely dehor the evidence and its admissibility according to law convict the accused. We cannot act on presumption merely on a strong suspicion or assumption and presumption. We can only draw presumption which is permissible under the law and we cannot rush to the conclusion just because the deceased has died in the police custody without there being any proper link with the commission of the crime.”

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G 13. Mr. Mahabir Singh, learned senior counsel appearing for appellants in Criminal Appeal No. 581 of 2003, submitted that the appellant Majid Hussain was a mere constable and he had no role to play in the illegal custody of Mathura. He has not

5. (2003) 1 SCC 398.

H 6. (2007) 15 SCC 421.

been named in the FIR. No specific role has been attributed to him. He has only been implicated because he was posted in the police station at that relevant time. He further submitted that appellant Haricharan similarly had only been involved in the entire episode because he was posted as a guard outside the police station. He submits that no role is attributed to this appellant inside the police station. The High Court failed to notice any of the circumstances, which would clearly show that these two appellants were innocent victims of the fortuitous circumstance of having been posted at the police station at the relevant time.

14. Mr. Nagendra Rai, learned senior counsel appearing for the appellant in Criminal appeal No. 584 of 2003 submitted that even though the appellant was posted as the Station House Officer at the relevant time, he has been convicted without any direct evidence of his involvement in the illegal custody or alleged torture of Mathura. He submits that no specific role has been attributed to him. In fact, PW6, Kamal Singh, who had stated that "Mathura told him that Nathuram has caused him severe beatings. At that time, the condition of Mathura was very serious but he was speaking. I did not see any injury on his person and even he also did not show him any injury." In spite of such statement of PW6, the High Court without any justification reversed the findings recorded by the trial court. Learned counsel then submits that the trial court on examination of the evidence of PW6, Kamal Singh discarded the same, concluding that he was a manufactured witness and could not be relied upon.

15. According to Mr. Nagendra Rai, the High court ignored the settled principle of law that the findings of fact recorded by the trial court can not be ignored unless the conclusions have led to a miscarriage of justice. Learned senior counsel further submitted that there is no evidence on record to show that Mathura was kept in custody from 8th October, 1983 to 11th October, 1983. In fact, PW6 clearly stated that "then Mathura

A was kept in the police station for about two days". According to Mr. Nagendra Rai, learned senior counsel that the custody of Mathura being doubtful, the appellant can not be connected with the crime of alleged torture. He then pointed out to a communication addressed by Dr. K.L. Singh, Chief Medical and Health Officer, District Shivpuri, Madhya Pradesh to the concerned Inspector dated 29th October, 1983. This communication was in the context of a query regarding the postmortem report of deceased Mathura, which had been addressed by the concerned Inspector on 20th October, 1983. It was stated in this communication that on passing electric current on scrotum, intracranial hemorrhage is not possible. The postmortem report dated 14th October, 1983 clearly stated that "the cause of death in the case is due to coma caused by intracranial Hemorrhage, which might be due to hyper tension". It is submitted by Mr. Nagendra Rai that the two aforesaid facts would clearly raise the doubt as to whether the injuries were sustained by Mathura on account of electric shock. Learned senior counsel pointed out that there is evidence on the record to show that Mathura was a habitual drunkard. He was also suffering from some dangerous disease. He was being treated by Dr. Jagdish Prasad Soni, PW18 for a number of years.

16. Learned senior counsel further submitted that the cumulative affect of all the evidence raises a reasonable doubt about the events as projected by the prosecution. Learned senior counsel submitted that the reasoning adopted by the trial court in Paragraph 20 of the judgment can not be said to be either perverse or based on no evidence. The conclusions drawn by the trial court being plausible conclusions could not have been reversed by the Appellate Court. Learned senior counsel also reiterated the observations made by this Court in the case of *Sadashio Mundaji Bhalerao* (supra) that suspicion, however, strong can not take the place of legal proof, even in cases of custodial death.

17. On the other hand, Ms. Vibha Datta Makhija, learned

counsel submits that the judgment of the High Court does not call for any interference. It is well within the findings of the appellate jurisdiction of the High Court. On merits, she submits that in this case, the prosecution has presented systematic evidence, in four stages to connect the accused appellants with the crime. She submits that there is evidence that :-

- (i) Mathura was taken to the Police Station.
- (ii) That he was given electric shocks and he was taken to the hospital.
- (iii) The postmortem report clearly shows that the injuries suffered by Mathura had been caused as he had been subjected to electric shock.
- (iv) That the death was the direct result of the torture inflicted on Mathura.

18. According to the learned counsel, in this case, the medical evidence is the crucial link. She has made detailed reference to the evidence given by PW23, Dr. C.M. Tripathi and PW24, Dr. L.D. Vaswani. Learned counsel submits that the evidence of these witnesses have been carefully scrutinized by the High Court. The High Court has also demonstrated the implausibility of the conclusions recorded at the trial court. Learned counsel emphasized that there is clear evidence that Mathura was called to the police station. He was kept there for two days. Injuries were caused during that period. Injuries were torturous in nature. All these facts are adverted to by PW6. The trial court wrongly discarded the evidence of this witness. Learned counsel then submitted that the High Court rightly relied on the evidence of DW1, Suresh Singh Sikarwar, who had clearly stated that Mathura had been called to the police station and that he had been illegally confined.

19. Learned counsel further submitted that the trial court has not given sufficient attention to the evidence of the brother

A PW1, Takhat Singh. It can not be said that he did not support the prosecution, merely because he stated that he had no knowledge about the torture. This witness had not stated that Mathura was not taken to the police station. Once it was established that Mathura had been taken to the police station, it was for the police to explain the injuries suffered by Mathura. Finally, learned counsel submitted that in case of custodial death, normal rules with regard to appreciation of evidence can not always be made applicable. In support of her statement, the learned counsel relied on judgment of this Court in the case of *D.K. Basu Vs. State of West Bengal*<sup>7</sup>. According to the learned counsel, the guidelines laid down in this judgment have been flouted by the police totally. She relied on the judgments of this Court, i.e., *State of M.P. Vs. Shyamsunder Trivedi & Ors.*<sup>8</sup> and *Sahadevan Alias Sagadevan Vs. State Represented by Inspector of Police, Chennai*,<sup>9</sup> in support of the submission with regard to the manner in which the evidence has to be appreciated in cases relating to custodial death. Learned counsel also relied on *Munshi Singh Gautam (Dead) & Ors. Vs. State of Madhya Pradesh*<sup>10</sup>.

E 20. We have considered the submissions made by learned counsel for the parties. In principle, as a pure statement of law, Mr. Tulsi is entirely correct in the submission that the Appellate Court would not interfere with the order of acquittal, unless the conclusion recorded by the lower court is held to be perverse and has resulted in miscarriage of justice. The Appellate Court would also not interfere with an order of acquittal if two reasonable conclusions are possible.

G 21. We also find much substance in the submissions of Mr. Tulsi, again as a pure statement of law, that suspicion, no matter how strong cannot form the basis of a conviction. Even

7. (1997) 1 SCC 416.

8. (1995) 4 SCC 262.

9. (2003) 1 SCC 534.

H 10. (2005) 9 SCC 631.

in cases of custodial death, it is for the prosecution to establish beyond reasonable doubt a proper link between the accused and the commission of crime. A

22. Similarly, the submissions made by senior advocates, i.e., Mr. Nagendra Rai, and Mr. Mahabir Singh cannot be said to be without merit as legal propositions. B

23. We are, however, unable to agree that any of the appellants could take advantage of any of the legal submissions made by the learned counsel in the facts and circumstances of this case. It has become necessary to remind ourselves of the principles laid down by this Court in the case of *D.K. Basu Vs. State of West Bengal*<sup>11</sup>. In the aforesaid landmark judgment, this Court declared that custodial violence, including rape, torture and death in the lock up, strikes a blow to the rule of law. C D

24. It was emphasised that custodial death is perhaps one of the worst crimes in a civilized society governed by rule of law. It is aggravated by the fact that crimes in custody are committed by persons, who are charged with the solemn responsibility to protect the fundamental rights of all the citizens. These crimes are committed under the shield of uniform and authority within the four walls of police station or lock up, the victim being totally helpless. The Judgment further declared that the fundamental rights under Articles 21 and 22 (1) of the Constitution required to be jealously and scrupulously protected. It reiterated the principle that the expression "Life or Personal Liberty in Article 21 includes right to live with human dignity. Therefore, it also includes within itself guarantee against the torture and assault by the States or his functionaries." E F G

25. The Supreme Court, as the custodian and protector of the fundamental and the basic human rights of the citizens, would view with deep concern any allegation made against the police officials about custodial crimes. In the present case, we

11. (1997) 1 SCC 416.

A are dealing with the torture of detainee, resulting in death. Using  
any form of torture for extracting any kind of information, from  
a suspect was declared to be "neither right, nor just, nor fair." It  
was specifically laid down that though a crime suspect must be  
interrogated — indeed subjected to sustain and scientific  
B interrogation — determined in accordance with the provisions  
of law, he cannot, however, be tortured or subjected to third  
degree methods or eliminated with a view to elicit information  
or extract a confession. The aforesaid observations of this  
Court, in our opinion, have been totally disregarded in the  
C present case.

26. Mr. Nagendra Rai had submitted that there is no direct  
evidence of the involvement of Anil Kumar Singh Kushwaha in  
the legal custody and alleged torture of Mathura. He also  
submitted that no specific role had been attributed to him. In  
D our opinion, both the submissions are without any merit. This  
submission of Mr. Nagendra Rai is completely answered by the  
observations made by this Court in the case of State of M.P.  
Vs. Shyamsunder Trivedi & Ors. (supra). We may notice here  
the observations made in Paragraph 16 and 17 of the  
E aforesaid judgment:-

16.....The High Court erroneously overlooked the  
ground reality that rarely in cases of police torture or  
custodial death, direct ocular evidence of the complicity of  
F 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.  
G 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  
H ignorance about the whole matter.

17. 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 in the police custody as also 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 care less" 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 lose sight of the fact that death in police custody is perhaps one of the worst kind of crimes in a civilised society, governed by the rule of law and poses a serious threat to an orderly civilised society. Torture in custody flouts the basic rights of the citizens recognised by the Indian Constitution and is an affront to human dignity. Police excesses and the maltreatment 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

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A 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 lose faith in the judiciary itself, which will be a sad day.

27. Keeping in view the aforesaid salutary observations, we may now examine the question as to whether the High Court committed an error in reversing the judgment of acquittal as recorded by the trial Court. It was the case of the prosecution that Mathura was suspected of having committed theft. He was, therefore, picked up for interrogation on 8th October, 1983, with regard to a case registered under Sections 457 and 380 IPC, i.e. lurking house trespass and theft respectively. He was kept in custody till 11th October, 1983 at the police station. The objective of keeping him in custody was to get a confession from him of having committed the offence of house trespass and theft. At the relevant time, Anil Kumar Singh Kushwaha, appellant in Criminal Appeal No. 584 of 2003 was Station House Officer of the Police Station Indar. Ram Ujaagar, appellant in Criminal Appeal No. 583 of 2003 and Nathu Ram, appellant in Criminal Appeal No. 582 of 2003 were both working as Head Constables.

28. In our opinion, the High Court has correctly concluded that there is sufficient evidence on record to prove that Mathura had been taken into an illegal custody. This fact has been adverted to by PW6, Kamal Singh. When this witness appeared in Court, he was absolutely terror stricken. He categorically stated as follows:-

"I will give statement in favour of the accused persons because if I speak against them then I will be beaten up in the police station. I am a poor person. That is why I am so frightened that if I give the statement against the

accused persons then they will cause loss to me in the police station. None of the accused persons came to me asking for giving such a statement. I feared because my nephew Lalji has been murdered and we have not been heard anywhere. (The witness was told that he would get full protection as per his requirement. Hence tell all this truth to the Court).”

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29. Upon being given the assurance by the Court, as noticed above, the witness proceeded to state that Mathura was his uncle's son. He stated that Nathuram, appellant No.3, had taken Mathura with him to the police station. He was kept in the police station for about two days. Takhat Singh, PW1 and Parmal Singh, PW16 had brought Mathura from the police station. He had talked to Mathura when he came back from the police station. Mathura told him that Nathuram had given him severe beatings. This statement clearly shows that Mathura was kept in illegal custody, as claimed by the prosecution.

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30. Apart from Kamal Singh (PW6), it appears that the other witnesses were also under constant pressure, not to depose against the police. This is evident from the fact that virtually all the witnesses turned hostile and failed to support the prosecution case. It is noteworthy that Shrikrishna, PW3, Mathura's brother, his widow and his son did not support the prosecution version. The terror of the police was such that even the family members of the deceased refrained from speaking the truth. Takhat Singh, PW1, the brother of the deceased Mathura, had plucked up enough courage to state that the police had called Mathura to the police station. He, however, stated that Mathura came back in the morning. This witness had also stated that the police had beaten up his brother and he was rendered unconscious. He had been taken to the hospital from the Shivpuri Kotwali. He had also lodged a complaint with the Superintendent of Police, R.K. Tripathi, PW28, as the condition of Mathura was serious.

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A 31. The fact that Mathura had been tortured and subjected  
to electric shock whilst in police custody is well established by  
the medical evidence given by PW23, Dr. C.M. Tripathi and  
PW24, Dr. L.D. Vaswani. Dr. Tripathi had clearly stated that he  
had found two burn injuries on the scrotum. The injury on the  
B right side was 2.5 cm x 3 cm. There was oval shape charring  
of the skin, which had become irony. Similar wound was found  
on the left side of the scrotum, which was also oval shape and  
2 cm x 1.5 cm in dimensions. It was the positive opinion of Dr.  
Tripathi that the wounds had been caused by electric shock.  
C This witness further stated that as the result of the electric  
shock, the brain was found to be congested in aragonite  
membrane. He stated that Mathura had died of Hemorrhage  
of the vessels of the brain. This witness, in cross-examination,  
totally ruled out the possibility that the injuries could have been  
D caused with hot metal. He has clearly stated that- "It can be  
ascertained as to how the burn injuries could have been  
caused. When the body is burnt with a hot object blisters are  
caused and if the blisters are absent then the skin at that place  
squeezes and below the skin on the raptor and on the muscles  
E becomes red. Whereas the marks formed by electric current  
are black and hard. (The meaning of word orne is hard). The  
skin also becomes hard due to post mortem burns." During the  
cross examination, he further clarified that " when low voltage  
shocks are given to anyone, as a result of it Brenticoolar  
Fredania is caused due to which the heart beats are increased  
F very much and the speed of the heart increases. It is wrong to  
suggest that Intracranial hemorrhage is not possible due to  
electric shocks". This witness also clarified that due to the  
impact of electric shocks the blood pressure of Mathura was  
increased. In view of the aforesaid, we are unable to accept  
G any of the submissions made by the learned counsel for the  
parties that Mathura was not subjected to electric shock.

H 32. We are of the considered opinion that in accepting the  
evidence of PW6 and the medical evidence of PW23 and  
PW24, the High Court has not committed any error. The

evidence on the record clearly shows that death of Mathura was a direct consequence of the inexcusable and inhuman torture by the police. The prosecution has proved beyond reasonable doubt that Mathura was taken to the police station. Whilst at the police station, he was subjected to third degree torture. He was given electric shocks in the scrotum. Such torture was inflicted on Mathura merely for the purpose of extracting a confession that he was guilty of the offence of theft. Upon his release, the police personnel terrorized the entire family. This is evident from the fact that the widow, the son and the brother of the deceased Mathura, all turned hostile. However, there is sufficient evidence on the record given by PW6, PW23 and PW24 to prove beyond reasonable doubt that Mathura died due to the inhuman torture inflicted upon him by the appellants.

33. We see no reason to differ with the findings recorded by the High Court. The appeals are dismissed.

D.G. Appeals dismissed.