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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Date of decision: 21st April, 2014

+ **CRL.L.P. 325/2013**

STATE (GOVT. OF NCT OF DELHI) Petitioner
Through: Ms. Richa Kapoor, APP for the
State

versus

GURJINDER SINGH @ BARJINDER SINGH & ANR.
..... Respondents
Through: Nemo.

CORAM:
HON'BLE MR. JUSTICE SANJIV KHANNA
HON'BLE MR. JUSTICE G.P. MITTAL

J U D G M E N T

SANJIV KHANNA J. (ORAL)

CRL.M.A. 9840/2013 (delay) in CRL.L.P. 325/2013

Delay of 157 days in filing of the leave to appeal is condoned for the reasons stated in the application.

The application stands disposed of.

CRL.L.P. 325/2013

1. The present leave to appeal petition is directed against the judgment dated 27.08.2012 acquitting Gurjinder @ Barjinder Singh and Birju Dass for offences punishable under Section

302/201/34 of the Indian Penal Code (IPC for short) in prosecution arising out of FIR No.156/2009, Police Station Mukherjee Nagar.

2. Gurjinder @ Barjinder Singh is a former police officer in Delhi Police and Birju Dass is a *chhole wala*. The allegation is that they had caused injuries to Harminder Singh, a suspended police officer of Police Station Mukherjee Nagar which had ultimately resulted in his death on 28.05.2009 after being admitted to Hindu Rao Hospital on 22.05.2009.
3. We have heard Ms. Richa Kapoor, learned Additional Public Prosecutor for the State. She has relied upon testimonies of Nasim Khan (PW-8) and ASI Surender Singh (PW-13) to urge that the deceased was last seen in the company of the two respondents. It is contended that their depositions read with depositions of Head Constable Muni Ram (PW-12), Constable Krishan Kumar (PW-18) and Head Constable Dharam Singh (PW-19) prove beyond doubt that the respondents were the perpetrators of the crime. It is claimed that the deceased had informed the said witnesses that the injuries were suffered and caused by respondents No.1 and 2.
4. We have considered the contention raised by the learned Prosecutor but we do not find any merit in the same and agree with

the findings and opinion of the Trial Court.

5. As per the post-mortem report Ex.PW-6/A the deceased Harminder Singh was brought by the police to the casualty of Hindu Rao Hospital and was admitted in the surgery department on 22.05.2009. Pyoperforation with rectal perforation, anal injury and multiple injuries all over the body were diagnosed. Exploratory Laparotomy was undertaken under general anaesthesia for repair of the rectal perforation and transverse loop colostomy was performed. However, on 28.05.2009 Harminder Singh died while in the hospital. As per the post-mortem report the cause of death was opined as possibly due to septicaemic shock consequent to perforation of rectum due to forceful introduction of a hard and blunt object into the rectum through the anus which was sufficient to cause death in the ordinary course of nature. The post-mortem report was proved by Dr. M.K. Panigrahi (PW-6), CMO, Department of Forensic Medicine, Hindu Rao Hospital who deposed about external and internal injuries and internal examination on opening of the abdomen. He has opined that external injury No.3 could be possible due to forceful introduction of a hard and blunt object. The other external injuries nos. 4 to 17

could also be possible due to hard and blunt force, whereas injuries no.1 and 2 were surgically performed as a therapeutic measure. The post-mortem report also indicates that the deceased Harminder Singh was operated for repair of rectum perforation and transverse loop colostomy.

6. The MLC of the deceased marked Ex.PW-9/A does not mention or specifically state about the anal injury or perforation of anal. It was, however, indicated that the patient had pain all over the body and had complained of loose stool mixed with blood. Patient was taken to Hindu Rao Hospital on 22.05.2009 at 09:45 a.m. by driver Head Constable Muni Ram. MLC records that the patient was an employee of Delhi Police. It is mentioned in the MLC that the patient was unfit for statement at 12:45 p.m. and at other occasion on 22.05.2009.
7. The FIR in question being FIR No.156/2009 (Ex.PW-3/A), Police Station Mukherjee Nagar was recorded on 29.05.2009 at 10 minutes past midnight (00:10). The said FIR does mention and refer to DD No.11-A which was recorded at Police Station Mukherjee Nagar to the effect that the deceased Harminder Singh was admitted to Hindu Rao Hospital on 22.05.2009 by Constable

Muni Ram and was declared unfit for statement.

8. The MLC mentioned history of assault seven days back with complain of pain all over the body and loose stool mixed with blood. In view of the MLC, FIR under Section 304 IPC was registered.
9. As per the MLC Ex.PW-9/A the deceased had the following injuries:-
 - (i) Old morasions over both upper and lower limbs, back of neck, both shoulders.
 - (ii) Swelling present over head, over occipital region.
 - (iii) Pus discharging sinus present over back of the both ears.
 - (iv) Patches present over front of chest and abdomen.
 - (v) Bluish discolouration of skin present over both iliac fosa and lower back.
 - (vi) Abrasion present over lower lip.
 - (vii) Pustule present over left side of nose.
10. It is pertinent to record here that DD No.18-B Ex.PW-25/A was recorded on 22.05.2009 on admission of deceased Harminder Singh to the hospital by Head Constable Muni Ram (PW-12) and recording of the MLC in question. The said information was

received by ASI Madan Lal (PW-24) via telephone.

11. The following inferences are clear from the MLC and the FIR, i.e.,
 - (1) It does not name the two respondents as the perpetrators who have given injuries. (2) Head Constable Muni Ram had taken the deceased Harminder Singh to the hospital and MLC was recorded on 22.05.2009 but he had not disclosed names of the perpetrators or the fact that he was aware of injury in rectum and the cause for the injury. (3) No investigation or inquiries were made from 22.05.2009 till 29.05.2009. The MLC was subsequently recorded on 30.05.2009 that there was alleged history of assault.
12. In spite of the fact that the MLC does not specifically mention about rectal perforation or allegation that the deceased was subjected to forceful introduction of hard and blunt object into his anus, these findings were recorded in the death summary report Ex.PW-11/A. Police did not ascertain and collect the papers relating to medical treatment and injuries caused to the deceased Harminder Singh from Hindu Rao Hospital.
13. As per the death summary report Ex.PW-11/A, proved by Dr. Naseem Akhtar (PW-11), the deceased had the following injuries:-
 - (i) There were multiple abrasions present in both upper and

lower limbs and shoulders and back of chest and abdomen.

- (ii) Laceration with pus discharge present behind both ears.
- (iii) Boggy swelling present over occiput.
- (iv) Abrasion 2x2 cm present over lower lip.
- (v) Guarding present over all over abdomen, bowel sound sluggish, bluish discolouration present over both iliac fossa, anteriorly and posteriorly and lower back left side posteriorly.
- (vi) On per rectal examination, laceration of about 2.5x0.5x0.5 cm present at 2 o'clock position at anal verge going inside and oriented along axis of anal canal.

14. As noticed above, the MLC Ex.PW-9/A does not mention the injury or perforation of the rectum. Thus, it is clear that an attempt was made to conceal by not pointing out or stating the said injury. We have also noted that the contents of DD entry No.18-B marked Ex.PW-25/A and DD entry No.11-A marked Ex.PW-24/A wherein the said injury is not indicated or mentioned.

15. As per the charge sheet the deceased had suffered the injuries between 13/15.05.2009. Thereafter, as per prosecution version, the deceased under suspension had remained and resided in an injured

condition in the police barrack in District Line North from 15.05.2009 till 22.05.2009.

16. We would now refer to the ocular evidence on the question of so-called dying declarations made by the deceased on 22.05.2009 to the police officers, Head Constable Muni Ram (PW-12), ASI Surender Singh (PW-13), Ct. Krishan Kumar (PW-18) and Head Constable Dharam Singh (PW-19). These dying declarations form the core of the prosecution case/charge sheet. As per the said witnesses at different points of time deceased Harminder Singh had informed them that he was beaten by Gurjinder Singh and Birju Dass, *chholewala* on 13.05.2009 in the police quarters at Model Town. Statement of Head Constable Muni Ram (PW-12) who, as noted above, had taken the deceased to the hospital and got him admitted there on 22.05.2009 was recorded under Section 161 of the Code of Criminal Procedure, 1973 (for short Cr.P.C.) on 26.08.2009, i.e. more than three months after the death of Harminder Singh on 28.05.2009. It is submitted before us that PW-12 had gone on vacation and therefore his statement could not be recorded by the IO. The contention *per se* does not merit acceptance and deserves rejection. The submission/contention has

not been admitted to and brought on record. There were ways and means by which the investigating officer could have got in touch with Head Constable Muni Ram (PW-12). DD No.18-A Ex.PW-24/A records that PW-12 had taken the deceased Harminder Singh and admitted him in the hospital. PW-12 in his cross-examination accepted that he had visited the hospital on various occasions to see Harminder Singh between 22.05.2009 to 28.05.2009. However, during this time PW-12 did not indicate or state to the police or authorities as to who had inflicted the injuries on Harminder Singh. PW-12 accepted as correct that he on his own had not given any statement between 22.05.2009 to 25.08.2009 though, police officers from Police Station Mukherjee Nagar met him during this period. The Trial Court has therefore, rightly rejected the so-called version given by PW-12 in his testimony that on 22.05.2009, Harminder Singh had informed him that the respondents on 13.05.2009 had inflicted beatings and inserted *Mathani* in his anus.

17. We shall refer to the testimony of ASI Surender Singh (PW-13) subsequently but at this stage we would like to deal with the testimony of Constable Krishan Kumar (PW-18), wherein he stated that he was on duty in Hindu Rao Hospital on 22.05.2009 and on

that day Harminder Singh was admitted as a patient. PW-18 claims that he had questioned the deceased about the incident and was told that the deceased told him that the respondents had given beatings at the quarter of Gurjinder Singh in New Police Line, Kingsway Camp. He accepts that he had informed Police Station Mukherjee Nagar about admission of Harminder Singh and the information was reduced into DD No.18-B. It is noticeable that MLC Ex.PW-9/A specifically records and states that the patient was unfit for statement at different times on 22.05.2009, the date on which PW-18 claims the deceased had confided and told him that the two respondents were the culprits.

18. It is interesting to note that statement of Constable Krishan Kumar (PW-18) under Section 161 Cr.P.C., as per the police version was recorded on 30.05.2009 and not earlier between 22.05.2009 and 29.05.2009. There is no explanation or reason for the said delay in recording his statement. PW-18 in his cross-examination has stated that he did not narrate or give names of the assailants to ASI Madan Lal. As noticed above, the FIR in question was registered at ten minutes passed mid night on 29.05.2009 and the FIR does not mention the name of the two respondents as the culprits. FIR

was registered primarily on the basis of DD entry No.18-B recorded at the instance of Constable Krishan Kumar (PW-18). It does not mention or refer to the so-called dying declaration made by the deceased to Constable Krishan Kumar (PW-18).

19. Head Constable Dharam Singh (PW-19) claims that on 15.05.2009 he had seen Harminder Singh with multiple injuries and on 22.05.2009 his condition became worse. Muni Ram (PW-12) had then taken him to the hospital and on the way Harminder Singh had told them that he was beaten by a belt by the respondents at the New Police Line quarters and they had also inserted a *Mathani* in his anus. The dispute was regarding money. He accepts that on 28.05.2009, Harminder Singh expired and thereafter, his statement was recorded. In the cross-examination he accepted that he came to know about demise of Harminder Singh on 28.05.2009 but he did not narrate the facts to anybody on 29.05.2009 and for the first time he disclosed the fact on 06.06.2009 to SI Pradeep Kumar. He, however, on seeing his statement recorded under Section 161 Cr.P.C. stated that his statement under Section 161 Cr.P.C. was recorded on 02.06.2009. He submitted that he had not made any complaint from 28.05.2009 to 02.06.2009.

20. For the reasons stated above and while dealing with testimony of Head Constable Muni Ram (PW-12) we reject the contention of the prosecution that the deceased had made statement or given dying declaration to Head Constable Dharam Singh (PW-19).
21. This brings us to the testimony of ASI Surender Singh (PW-13) which has to be read along with testimony of Nasim Khan (PW-8).
22. ASI Surender Singh (PW-13) has stated that deceased Harminder Singh was a Constable under suspension and was living in the barrack at second floor, Police Station Civil Lines. Respondents used to visit him in the barrack. On 13.05.2009, the respondents had taken Harminder Singh with them somewhere. On 15.05.2009 Harminder Singh came back and he was having multiple injuries and his physical condition became worse. He (PW-13) claims that he had asked Harminder Singh as to how he received the injuries and was told that the respondents had given beatings with belt and also inserted *Mathani* in his anus. PW-13 claims that he had suggested and asked the deceased to make a complaint against the respondents but the deceased was frightened and did not make any complaint as he feared that he would be killed. He accepted as correct that on 28.05.2009 Harminder Singh expired in the

hospital. In his cross-examination, ASI Surender Singh (PW-13) has stated that on 13.05.2009 when he had seen the two respondents with the deceased, they were drunk. In the cross-examination by the Additional Public Prosecutor for the State, PW-13 accepted the suggestion that he had informed the investigating officer that in spite of his warning, the deceased he did not pay any heed and went with the two respondents. He had also accepted as correct that on 15.05.2009, Harminder Singh had told him that the two respondents had taken him to C-22, New Police Line and both of them had given beatings to him and inserted *Mathani* in his anus. PW-13 in his cross-examination accepted as correct that once or twice he had visited Harminder Singh in the hospital but he did not meet any police officer during these visits. He accepted as correct that he did not make any statement to the police between 15.05.2009 to 01.06.2009 on his own on disclosing the aforesaid facts even after he came to know about death of Harminder Singh on 28.05.2009. He accepted as correct that his statement under Section 161 Cr.P.C. was recorded only on 02.06.2009. Further, the respondents accused were not known to him prior to the incident and he had never met them or known them through any third

person. As per the version given by PW-13 he came to know about involvement of the two respondents on 15.05.2009. What has not been explained and shakes the confidence of the Court on the version given by PW-13 is his failure to depose about the facts till 02.06.2009 in spite of the fact that he was a police officer. It is not understandable why he waited for about more than 17 days and even after 28.05.2009, when he came to know that Harminder Singh had expired. PW-13 accepts that he had visited the hospital. He had seen the deceased in the hospital and certainly knew the serious and precarious condition of the deceased. Being an officer of ASI rank, he would have also known and aware that no investigation had been conducted and the real culprits who had caused such injuries had not been enquired or questioned.

23. Nasim Khan (PW-8) on the issue of last seen has contradicted ASI Surender Singh (PW-13). As per PW-13, the deceased and the two respondents had left the police quarters together on 13.05.2009, whereas, Nasim Khan (PW-8), a barber by profession operating in front of Police Station, Civil Lines, claims that he knew the deceased Harminder Singh, who was under suspension, as he used to visit him and take food from a stall in front of the place where he

was operating. PW-8 claims that on 13.05.2009 at about 1:00/1:30 p.m., he was going to bring pulses (*dal*) from a hotel and at that time Harminder Singh was with him. On the way Harminder Singh was called out by someone and he (Hardminder Singh) went towards the said person stating that he would come back between 15-20 minutes. He did not return. After about three days Harminder Singh came back but had suffered multiple injuries. Thereafter he was admitted to Hindu Rao Hospital. He visited Harminder Singh in the hospital and was informed that altercation had taken place with someone and he had sustained injuries. After about seven days Harminder Singh died. Nasim Khan (PW-8) deposed that Harminder Singh did not disclose the names of the assailants to him. On cross-examination by Additional Public Prosecutor, he accepted as correct that on 13.05.2009 the two respondents had called Harminder Singh while he was accompanying PW-8 to the hotel. Harminder also told him (PW-8) that the two respondents took him to government police quarters and had given beatings to him there. He accepted as correct that on 15.05.2009 when Harminder Singh came back, he was not in a position to move properly and was going to toilet again and again.

He however, denied as incorrect that he did not make any statement and that he was scared of the two respondents.

24. Statement of PW-8 under Section 161 Cr.P.C., as stated by the counsel for the State was recorded on 04.06.2009. Further, in his cross-examination Nasim Khan (PW-8) has stated that he had visited and seen Harminder Singh in the hospital on various dates. His family members were not present, but police officers were present. He accepted as correct that he did not inform the police officials that Birju Dass had inflicted injuries. He also accepted as correct that he came to know about death of Harminder Singh on the day he died but he did not go to the Police Station on that day or for the next 2/3 days and make any complaint against the respondents. He claims that he came to know about registration of the case only when his statement was recorded.
25. For the reasons stated earlier, we are not inclined to accept the testimony of Nasim Khan (PW-8) but as noticed above, the testimony of PW8 on the question of last seen varies with the testimony of ASI Surender Singh (PW-13).
26. The last witness relied upon by the prosecution is Ashok Kumar (PW-7) who claims that he used to have a *juice rehri* near Civil

Line Police Station. Ashok Kumar (PW-7) has stated that on 15.05.2009 when he went to the barrack, he found Harminder Singh lying on the cot with multiple injuries. Harminder Singh had stated that one person who was resident of a neighbouring village and belonged to the same department had caused the injuries. His statement was recorded by the police on 02.06.2009. He was cross-examined by the learned Additional Public Prosecutor but denied the suggestion that the deceased had told him that the two respondents had given beatings to him and inserted *Mathani* in his anus. In his cross-examination, he accepted that he had not met with any police officer in connection with the investigation of the case till 02.06.2009.

27. Again for the reasons stated above, while dealing with the testimony of other witnesses, we hold that Ashok Kumar (PW-7) is not a reliable witness and his testimony on the question of dying declaration cannot be accepted and is not credible. In any case, he has not stated that the deceased had named the two respondents as the perpetrators.
28. Learned counsel for the petitioner (State) has drawn our attention to paragraph 59 of the impugned judgment which reads as under:-

“59. Before concluding, it would be relevant to observe that the present case has apparently been investigated in absolutely shoddy and lackadaisical manner, which reflects an image of police officials as abettors of criminals rather than protectors of citizens from criminals and crime. All the three investigating officers namely PW-24 ASI Madan Lal, PW-21 SI Pradeep Kumar and PW-26 Insp. Krishan Lal, who were assigned investigation on 22.05.2009, 29.05.2009 and 22.06.2009 respectively, appear to have deliberately overlooked their own records i.e. DD No.18-B Ex.PW-18/A, and DD No.11-A, Ex.PW-4/A, and did not examine material witness PW-12 HE Muni Ram in the first instance. Either, PW-12 HC Muni Ram, PW-13 ASI Surender Singh, PW-18 Ct. Krishan Kumar and PW-19 HC Dharam Singh, all of whom are police officials, deliberately withheld the material information about the crime and offenders, in connivance of the accused persons or the three Investigating Officers deliberately and malafidely investigated the matter in such a manner, as would provide the accused persons ready defence for their case and thus the role of the police officials especially investigating officers ought to be examined by the senior officers. These aspects of investigations constitute dereliction of duty and helping the accused persons and the same require departmental action. The Commissioner of Police is directed to initiate departmental inquiry against the erring police officials and to take strict departmental action against them under intimation to this court.”

29. It is submitted that in the present case there may have been lapses but there were no *mala fides* or dishonourable intention. The three investigating officers mentioned in paragraph 59 were diligent but were helpless as none of the witnesses had come forward or had disclosed facts. In alternative, it is submitted that may be the first

investigating officer ASI Madan Lal (PW-24) was at fault for inaction between 22.05.2009 to 29.05.2009, but the subsequent investigating officers had conducted thorough investigation and had acted with promptitude. Giving benefit of doubt, the respondents have been acquitted by the Trial Court. It is also submitted that before passing strictures, the concerned officers should have been heard and given an opportunity.

30. We have considered the said contention and are inclined to partly modify the directions given in paragraph 59 of the impugned judgment. The direction for holding of disciplinary inquiry is set aside. As elucidated above and in the impugned judgment, question of proper investigation, delay etc. require indepth and detailed scrutiny. The strictures regarding the investigation are justified and proper. It will be appropriate to refer to Rule 13 of the Delhi Police (Punishment and Appeal) Rules, 1980, which reads:-

*“13. **Strictures by Court.**- 1. In cases in which strictures are made on the conduct of a police officer by a Sessions Court or by a Metropolitan Magistrate’s court but no specific recommendation is made by the court making such strictures that an enquiry should be made, the Deputy Commissioner of Police will decide whether an investigation into the matter is necessary. If he decides that investigation shall be made, the procedure for investigation shall be as laid down in Rule 16 below.*

2. When strictures on the conduct of a police officer

are made by the High Court and are communicated to the Delhi Administration, the appointing authority shall proceed to take action in accordance with the instructions of the Delhi Administration.

3. In cases where serious charges arise from strictures made by criminal courts, the concerned Deputy Commissioner of Police shall initiate necessary disciplinary action against the police officer against whom strictures have been made. In case such proceedings are initiated against an Inspector of Police, information shall be sent to the Additional Commissioner of Police concerned.”

31. As per the said Rule, when strictures are passed by a Sessions Court or Metropolitan Magistrate's Court but no specific recommendation is made, the Deputy Commissioner of Police is required to decide whether an investigation into the matter is necessary. If he decides that investigation shall be made, the procedure laid down in Rule 16 follows. Under sub-rule (2) when strictures on the conduct of a police officer are made by the High Court and are communicated to Delhi Administration, the appointing authority is required to proceed to take action in accordance with the instructions of the Delhi Administration. Sub-rule (3) provides that where serious charges arise from strictures made by criminal courts, the concerned Deputy Commissioner of Police shall initiate necessary disciplinary action against the police officer against whom strictures have been made and in case such

proceedings are initiated against an Inspector of Police, information shall be sent to the Additional Commissioner of Police concerned.

32. Rule 15 and 16 of the aforesaid Rules read as under:-

*“15. **Preliminary enquiries.** - (1) A preliminary enquiry is a fact finding enquiry. Its purpose is (i) to establish the nature of default and identity of defaulter(s), (ii) to collect prosecution evidence, (iii) to judge quantum of default and (iv) to bring relevant documents on record to facilitate a regular departmental enquiry. In cases where specific information covering the above-mentioned points exists a Preliminary Enquiry need not be held and Departmental enquiry may be ordered by the disciplinary authority straightaway. In all other cases a preliminary enquiry shall normally precede a departmental enquiry.*

*16. **Procedure in departmental enquiries-** The following procedure shall be observed in all departmental enquiries against police officers of subordinate rank where prima facie the misconduct is such that, if proved, it is likely to result in a major punishment being awarded to the accused officer:-*

(i) A police officer accused of misconduct shall be required to appear before the disciplinary authority, or such Enquiry Officer as may be appointed by the disciplinary authority. The Enquiry officer shall prepare a statement summarising the misconduct alleged against the accused officer in such a manner as to give full notice to him of the circumstances in regard to which evidence is to be regarded. Lists of prosecution witnesses together with brief details of the evidence to be led by them and the documents to be relied upon or prosecution shall be attached to the summary of misconduct. A copy of the summary of misconduct and the lists of prosecution witnesses together with brief details of the evidence to be

led by them and the documents to be relied upon for prosecution will be given to the defaulter free of charge. The contents of the summary and other documents shall be explained to him. He shall be required to submit to the enquiry officer a written report within 7 days indicating whether he admits the allegations and if not, whether he wants to produce defence evidence to refute the allegations against him.

(ii) If the accused police officer after receiving the summary or allegations, admits the misconduct alleged against him, the enquiry officer may proceed forthwith to frame charge, record the accused officer's pleas and any statement he may wish to make and then pass a final order after observing the procedure laid down in Rule 15 (xii) below if it is within his power to do so. Alternatively the finding in duplicate shall be forwarded to the officer empowered to decide the case.

(iii) If the accused police officer does not admit the misconduct, the Enquiry Officer shall proceed to record evidence in support of the accusation, as it available and necessary to support the charge. As far as possible the witnesses shall be examined direct and in the presence of the accused, who shall be given opportunity to take notes of their statements and cross-examine them. The Enquiry Officer is empowered, however, to bring on record the earlier statement of any witness whose presence cannot, in the opinion of such officer, be procured without undue delay, inconvenience or expense if he considers such statement necessary provided that it has been recorded and attested by a police officer superior in rank to the accused officer, or by a Magistrate and is either signed by the person making it or has been recorded by such officer during an investigation or a judicial enquiry or trial. The statements and documents so brought on record in the departmental proceedings shall also be read out to the accused officer and he shall be given an opportunity to take notes. Unsigned statements shall be brought on record only through recording the statements of the officer or Magistrate who had recorded the

statement of the witness concerned. The accused shall be bound to answer any questions which the enquiry officer may deem fit to put to him with a view to elucidating the facts referred to in the statements of documents thus brought on record.”

33. What is apparent from the aforesaid discussion is that (i) the deceased was a Police officer under suspension residing in the police barrack, Police Station Civil Line. (ii) He was seriously injured and had suffered injuries on or about 13.05.2009 and had remained in the barrack from 15.05.2009 till 22.05.2009, when he was shifted to the hospital. (iii) The physical condition of the deceased on 22.05.2009 was very serious and he was taken to the hospital by HC Muni Ram (PW-12). (iv) There was an attempt made to conceal and not state the rectal injury of the deceased Harminder Singh as is apparent from the MLC Ex.PW-9/A and in the DD entry No.18-B, Ex.PW-25/A. (v) As per the testimonies of Head Constable Muni Ram (PW-12), ASI Surender Singh (PW-13), Constable Krishan Kumar (PW-18) and Head Constable Dharam Singh (PW-19) all police officers, they knew and were aware that the deceased suffered injuries but they did not inform the authorities. Even after Harminder Singh was admitted in the hospital on 22.05.2009 till 30.05.2009/02.06.2009/25.08.2009, they

remained quite. Later on they implicated the respondents. Between the periods from 22.05.2009 till 28.05.2009 the aforesaid witnesses, it is claimed, did not inform anyone that they were aware and knew or were told by the deceased that the injuries were given by the two respondents. (vi) There was also delay after 28.05.2009, in recording the statements of PW-12, PW-13, PW-19 and PW-7 as their statements under Section 161 Cr.P.C. were recorded on or after 02.06.2009. (vii) As per the police file, statement of Constable Krishan Kumar (PW-18) under Section 161 Cr.P.C. was recorded on 30.05.2009 but no reason or ground is forthcoming or stated why his statement was not recorded on 28.05.2009 and 29.05.2009. The deceased had died at 06:56 a.m. on 28.05.2009. (viii) As per the police diary, no investigation or statement of witnesses were recorded on 31.05.2009 and 01.06.2009 and there is no forthcoming explanation or reason.

34. In these circumstances we think it appropriate and proper for the police authorities to conduct necessary preliminary inquiry under Rule 15 of the aforesaid Rules and then in terms of the inquiry initiated, if required and necessary proceedings under Rule 16 can be initiated. We clarify that no specific directions against any

particular officer have been issued or made but it is necessary and appropriate for the police authorities to conduct a preliminary inquiry and in case any officer is found to be guilty of dereliction of duty or attempt to conceal or cover up the facts is ascertained, suitable action should be taken. There are various loop holes and gaps in the story of the prosecution version and this aspect has also to be kept in mind.

35. Recently, the Supreme Court in *State of Gujrat v. Kishanbhai, 2014 (1) SCALE 177* has held as under:-

“19. The situation referred to above needs to be remedied. For the said purpose, adherence to a simple procedure could serve the objective. We accordingly direct, that on the completion of the investigation in a criminal case, the prosecuting agency should apply its independent mind, and require all shortcomings to be rectified, if necessary by requiring further investigation. It should also be ensured, that the evidence gathered during investigation is truly and faithfully utilized, by confirming that all relevant witnesses and materials for proving the charges are conscientiously presented during the trial of a case. This would achieve two purposes. Only persons against whom there is sufficient evidence, will have to suffer the rigors of criminal prosecution. By following the above procedure, in most criminal prosecutions, the concerned agencies will be able to successfully establish the guilt of the accused.

20. Every acquittal should be understood as a failure of the justice delivery system, in serving the cause of justice. Likewise, every acquittal should ordinarily lead to the

inference, that an innocent person was wrongfully prosecuted. It is therefore, essential that every State should put in place a procedural mechanism, which would ensure that the cause of justice is served, which would simultaneously ensure the safeguard of interest of those who are innocent. In furtherance of the above purpose, it is considered essential to direct the Home Department of every State, to examine all orders of acquittal and to record reasons for the failure of each prosecution case. A standing committee of senior officers of the police and prosecution departments, should be vested with aforesaid responsibility. The consideration at the hands of the above committee, should be utilized for crystalizing mistakes committed during investigation, and/or prosecution, or both. The Home Department of every State Government will incorporate in its existing training programmes for junior investigation/prosecution officials course-content drawn from the above consideration. The same should also constitute course-content of refresher training programmes, for senior investigating/prosecuting officials. The above responsibility for preparing training programmes for officials, should be vested in the same committee of senior officers referred to above. Judgments like the one in hand (depicting more than 10 glaring lapses in the investigation/prosecution of the case), and similar other judgments, may also be added to the training programmes. The course content will be reviewed by the above committee annually, on the basis of fresh inputs, including emerging scientific tools of investigation, judgments of Courts, and on the basis of experiences gained by the standing committee while examining failures, in unsuccessful prosecution of cases. We further direct, that the above training programme be put in place within 6 months. This would ensure that those persons who handle sensitive matters concerning investigation/prosecution are fully trained to handle the same. Thereupon, if any lapses are committed by them, they would not be able to feign innocence, when they are

made liable to suffer departmental action, for their lapses.

21. On the culmination of a criminal case in acquittal, the concerned investigating/prosecuting official(s) responsible for such acquittal must necessarily be identified. A finding needs to be recorded in each case, whether the lapse was innocent or blameworthy. Each erring officer must suffer the consequences of his lapse, by appropriate departmental action, whenever called for. Taking into consideration the seriousness of the matter, the concerned official may be withdrawn from investigative responsibilities, permanently or temporarily, depending purely on his culpability. We also feel compelled to require the adoption of some indispensable measures, which may reduce the malady suffered by parties on both sides of criminal litigation. Accordingly we direct, the Home Department of every State Government, to formulate a procedure for taking action against all erring investigating/prosecuting officials/officers. All such erring officials/officers identified, as responsible for failure of a prosecution case, on account of sheer negligence or because of culpable lapses, must suffer departmental action. The above mechanism formulated would infuse seriousness in the performance of investigating and prosecuting duties, and would ensure that investigation and prosecution are purposeful and decisive. The instant direction shall also be given effect to within 6 months.”

36. The report of the preliminary inquiry under Rule 15 once completed will be submitted to Delhi High Court before the Roster Bench. Preliminary inquiry should be completed expeditiously within shortest possible time. In case the preliminary inquiry is not conducted and the inquiry report is not received within four

months, the Division Bench will be informed about the reasons and causes for the same. If it is found that there is any wilful default or negligence on the part of any police officer/officers, appropriate departmental action shall be initiated against him/them without waiting for any direction in this regard. If it is found that there is no such default or negligence, the matter shall be examined by the concerned Joint Commissioner of Police before submitting report to this Court.

37. The matter will be listed before the Roster Bench for the said purpose on 15.09.2014 and required/suitable order or direction can be passed thereupon.
38. The leave to appeal is dismissed with the aforesaid direction.

(SANJIV KHANNA)
JUDGE

(G.P. MITTAL)
JUDGE

APRIL 21, 2014
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