

**THE HIGH COURT OF TRIPURA
AGARTALA**

CRL.A. NO. 17 OF 2013

Sri Nishan Saha,
Son of Sri Nitai Saha,
Resident of Chandrai Cherra,
Ambassa, P.S. Ambassa,
District- Dhalai,

..... Appellant.

- Versus -

1. Shri Paritosh Das,
Sub-Inspector of Police,
presently posted at Kamalpur
Police Station, District- Dhalai,
Tripura.
2. The State of Tripura,
to be represented by learned
Public Prosecutor, High Court of Tripura,
Agartala.

..... Respondents.

**BEFORE
THE HON'BLE MR. JUSTICE S. C. DAS**

For the appellant : Mr.P. Roy Barman,
Ms. N. Guha,
Mr. S. Bhattacharji,
Mr. K. Nath,
Advocates,

For the respondents : Mr.S. Deb,
Senior Advocate,
Mr.B. Debnath,
Mr. S. Datta,
Advocates
Mr.A. Ghosh,
P.P.

Date of hearing : 17.04.2015.

Date of delivery of
Judgment and Order : **28.05.2015.**

Whether fit for reporting : **Yes.**

JUDGEMENT AND ORDER

This appeal against acquittal is directed against judgment and order dated 11.06.20134 passed by learned Judicial Magistrate First Class, Kamalpur in Case No. C.R.2761 of 2009.

2. Respondent No.1, Sri Paritosh Das, a Sub-Inspector of Police was charged for commission of offence punishable under Section 342/323 of IPC and by the impugned judgment and order he has been acquitted and hence, this appeal.

3. Heard learned counsel, Mr. P. Roy Barman for the appellant and learned senior counsel, Mr. S. Deb for the respondent No.1 and learned P.P., Mr. A. Ghosh for the State-respondent.

4. This is a case instituted on a complaint filed by the appellant directly before learned Sub-Divisional Judicial Magistrate, Kamalpur on 05.10.2009.

4.1. In a short compass the allegation made in the complaint is that on 31.08.2009 at about 02-30 pm, the complainant, Nishan Saha along with his two friends, namely, David Hrangkhal and Amit Nath riding a motorbike from Ambassa went to Dulubari and near Dulubari market in front of the Telephone Exchange they parked the motorbike by the roadside and were chatting sitting over it. At that time the accused Paritosh Das, a Sub-Inspector of Ambassa P.S. arrived there and asked them to accompany him to Ambassa P.S, to which they

enquired about the reason, but the accused Paritosh Das did not give any answer and took them along with motorbike to Ambassa P.S. At P.S. after taking signatures in some papers, accused Paritosh Das let off David Hrangkhal and Amit Nath from P.S., but kept the complainant, Nishan Saha, detained at P.S. and put him in the lock-up. After a while accused Paritosh Das entered in the lock-up and mercilessly beaten the complainant, Nishan Saha, in the lock-up by fists, blows and kicks and as a result he sustained grievous injuries in his head, private part, chest, hands and legs.

4.2. Hearing about the incident, his father rushed to the police station and at about 05-00 pm the complainant was released from P.S. after obtaining his signatures in some blank papers. Immediately thereafter he was taken to Kulai Primary Health Centre, where doctor examined him and from Kulai PHC he was taken to G.B. hospital on the night of 31.08.2009 and he was admitted in G.B. Hospital as an indoor patient and underwent treatment till 04.09.2009. C.T. scan was done and necessary treatment was given. On 01.09.2009 his father, Nitai Saha, lodged an FIR to the O/C, Ambassa P.S. and copy of the same was forwarded to the Superior Officers of the Police, but no case was registered on the basis of that FIR. After release from hospital he was still undergoing treatment for bodily pain and on the date of filing the complaint also he was under treatment. He, therefore, prayed for taking cognizance for commission of offence punishable under Section 307/326/447 of IPC and for punishment of the accused.

5. After examination of the complainant and his witnesses under Section 200 of Cr.P.C, in due course, learned Judicial Magistrate First Class initiated process against the accused and in course of trial on 26.06.2010 examined the accused under Section 251 of Cr.P.C. for commission of offence punishable under Sections 342 and 323 of IPC, to which the accused Paritosh Das pleaded not guilty and claimed to be tried.

6. In course of trial, complainant, Nishan Saha, examined himself as P.W.1 and also examined five more witnesses, namely, PW2, Sri David Hrangkhal, a companion and friend of the complainant, PW3, Sri Mritunjoy Saha, maternal uncle of the complainant, PW4, Sri Amit Nath, a friend and companion of the complainant, PW5, Sri Nitai Saha, father of the complainant and PW6, a neighbour of the complainant. In course of his examination, the complainant proved the written complaint filed by him, which is marked as Exbt.-2, and also produced discharge certificate of G.B. hospital dated 04.09.2009, which is marked as Exbt.-1, subject to objection by defence since the Medical Officer has not been examined.

7. Complainant and his witnesses were cross-examined on behalf of the accused and after closure of the prosecution evidence the accused was examined under Section 313 of Cr.P.C. and in his turn the accused declined to adduce any defence evidence. At the time of his examination under Section 313 of Cr.P.C., the accused stated that on 31.08.2009 at about 03-00 pm

he along with some other police personnel of Ambassa P.S. had been performing vehicle checking duty at Dulubari near DFO Office. At that time one numberless motorbike driven by Nishan Saha being accompanied by two others as pillion riders was proceeding towards Dulubari from Ambassa side. Having seen this he signaled them to stop the motorbike, but instead of stopping the motorbike the rider of the motorbike, i.e. Nishan Saha, accelerated the speed of the motorbike and was about to run over them. Thereafter he along with some other officers on duty chased the motorbike with their official vehicle and managed to stop them near the BSNL Office at Dulubari. Thereafter he asked Nishan to show the relevant documents of the motorbike, but instead of showing him the same, he(Nishan) started quarrelling with him and also put his hand on his collar and grabbed it. Thereafter he took Nishan to Ambassa P.S. along with the motorbike and lodged a *suo moto* complaint against him with the O/C of Ambassa P.S. To save him(Nishan) from the case filed by him, Nishan had lodged the instant case against him. He further stated that he was innocent.

8. It is an admitted position that on 31.08.2009 itself the accused, S.I. Paritosh Das of Ambassa P.S. lodged an FIR against the complainant, Nishan Saha, for commission of offence punishable under Sections 279/353/506 of IPC and that was registered as Ambassa P.S. Case No. 66/2009 and in that case the complainant, Nishan Saha was charge sheeted and it was ultimately registered as G.R. No. 230 of 2009.

9. This complaint case filed by Nishan Saha was treated as a counter case of G.R. Case No. 230 of 2009 initiated by S.I. Paritosh Das and as it appears both the cases were tried simultaneously by the learned Judicial Magistrate First Class, Kamalpur and judgments in both cases were delivered on 11.06.2013. In the police report case, i.e. G.R. No. 230 of 2009, the complainant was acquitted from the charge and in the complaint case instituted by Nishan Saha, i.e. C.R. No. 2761 of 2009 also accused S.I. Paritosh Das was acquitted by the learned Judicial Magistrate and hence, having felt aggrieved the present appeal is filed by the complainant, Nishan Saha.

10. In an appeal against acquittal filed under Section 378 of Cr.P.C. the High Court has full power to review at large the evidence on which the order of acquittal was founded and to reach on its own conclusion considering the evidence on record. While considering the appeal against acquittal, the appellate court should always give proper weight and consideration to the views of the trial Court as to the credibility of witnesses, the presumption of innocence in favour of the accused, the right of the accused to the benefit of doubt and the slowness of the appellate Court in disturbing the finding of fact arrived by a Judge, who had the advantage of recording evidence and seeing the witnesses as well as the manner and conduct of the accused and witnesses during trial.

11. It is a settled proposition of law that if there are two views on evidence, which are reasonably possible, the Court should not interfere in the decision of the trial Court merely because it feels that it would as a trial court have taken a different view. No doubt in an appeal before the High Court against acquittal recorded by the trial Court, the High Court can re-appreciate the evidence to find out mis-appreciation or non-appreciation of evidence by the trial Court, if any. But where there were proper appreciation of evidence by the trial Court, re-appreciation by the High Court is generally not warranted. If the order of the trial Court is clearly unreasonable on the facts and circumstances as well as the evidence on record, it shall be treated as a compelling reason to interfere in the judgment passed by the trial Court. It is also a settled proposition of law that an appellate Court must bear in mind that in case of acquittal the presumption of innocence multiplies. Firstly, the presumption of innocence is available to an accused which is a 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 acquittal in the trial Court, the presumption of his innocence further reinforced and re-affirmed and strengthened by the trial Court and if two reasonable conclusions are possible on the basis of the record, the appellate Court should not disturb the finding of acquittal recorded by the trial Court.

12. Let us first travel through the evidence on record. PW1, the complainant in his deposition stated that on 31.08.2009

at about 2-30 pm he along with his two friends, namely, David Hrangkhal(PW2) and Amit Nath(PW4) were chatting with each other near Circuit House at Dulubari. At that time the accused S.I. Paritosh Das of Ambassa P.S. arrived there and before asking for papers of the motorbike told that the motorbike was stolen one and thereafter he asked for the relevant papers of the motorbike and accordingly, Amit Nath, the owner of the motorbike, produced the relevant papers and the accused perused the same and thereafter returned them to Amit. Thereafter the accused forcibly took all of them to Ambassa P.S. and forced them to put signatures in blank papers. Then S.I. Paritosh Das forcibly took him into lock-up and released his friends, David Hrangkhal and Amit Nath. After sometime the accused S.I. Paritosh Das entered into the lock-up and thrashed him and as a result of which his nose started bleeding profusely and he became senseless. When he regained sense he found himself lying on a bed at G.B. hospital. It is only after he regained sense at G.B. hospital he came to know from his father that he was first taken to Kulai PHC and thereafter he was brought to G.B. hospital. He undertook treatment at G.B. hospital for four days and was discharged on 04.09.2009. He stated that he submitted one discharge certificate of G.B. hospital in the Court and he identified it, which was marked as Exbt.-1, subject to objection by defence. He also proved the written complaint submitted by him and also identified his signatures, marked as Exbt.2 series.

In cross-examination he stated that S.I. Paritosh Das instituted a case against him in the Court, which was also pending for adjudication. He denied the suggestion that there were two shops in the opposite side of the Circuit House at Dulubari or that those shops belonged to Nani Gopal Das and Amal Debnath. He stated that he became senseless inside the lock-up and regained sense at G.B. hospital on 01.09.2009. On 01.09.2009 in the morning he met with his father and narrated the incident to his father. On 31.08.2009 before he became senseless, S.I. Paritosh Das made him to call his mother and he was also made to call his father, but he could not say the exact time when he was made to call. He further stated that the written complaint filed by him before the Court against S.I. Paritosh Das was written down as per his dictation. He stated that he has not submitted any document in connection with his treatment at Kulai PHC and further stated that in his written complaint he stated that his father getting information of the fact that S.I. Paritosh Das had taken him into the lock-up rushed to Ambassa P.S. and at the time of his release from Ambassa P.S. at 05-00 pm. He denied the suggestion that on 31.08.2009 S.I. Paritosh Das was performing vehicle checking duty and that S.I. Paritosh Das signaled them to stop the motorbike and he did not stop it, rather he accelerated the speed of the motorbike and tried to run over the police personnel. He voluntarily stated that he was driving the motorbike on 31.08.2009, but he found no signal point on Dulubari road. S.I. Paritosh Das came near Circuit House when they were

chatting. He also denied the suggestion that accused brought him to P.S. and registered a case for preventing public servant from discharging lawful duties. He also denied the suggestion that he sustained injuries on his nose by fall. He further denied the suggestion that he tried to obstruct the accused in performing his duties and at that time Nani Gopal Das and Amal Debnath tried to resist him. He also denied the suggestion that on 01.09.2009 his father did not lodge any FIR against S.I. Paritosh Das at Ambassa P.S.

13. PW2, David Hrangkhal, in his deposition stated that on 31.08.2009 at about 02-30 pm he along with his friends Amit Nath and Nishan Saha went near the Circuit House at Dulubari on Assam Agartala Road riding a motorbike and near the Circuit House they were chatting and at that time the accused S.I. Paritosh Das came there and enquired about the ownership of the motorbike, to which Nishan Saha told that the motorbike belonged to Amit and thereafter accused asked to show the relevant documents and accordingly, Amit showed him the relevant documents of the motorbike. In spite of the fact that the documents were valid, the accused asked them to go to Ambassa P.S. alleging that the motorbike was stolen one. Thereafter the accused took all of them to Ambassa P.S. with the motorbike and on reaching P.S. the accused had gone through the relevant papers and asked all of them to put their signatures in some piece of papers and accordingly they signed the papers and thereafter the accused released him and his friend, Amit Nath and motorbike

was also released on bail, but Nishan Saha was detained. On that day at 06-00 pm he got a telephone call from his nephew that Nishan Saha was admitted in Kulai hospital and on that information he rushed to Kulai hospital and found Nishan Saha lying on a bed in injured condition crying with pain and after a short while fainted. Thereafter Nishan Saha was referred to G.B. hospital at Agartala. After 3/4 days he went to the house of his friend Nishan and on being asked by him, Nishan Saha told him that on 31.08.2009 soon after they left Ambassa P.S., the accused S.I. Paritosh Das took him inside the lock-up and thrashed him, as a result he lost sense and sustained injuries on his person.

In cross-examination he stated that in his previous statement before the Court, he did not tell that on 04.09.2009 he went to the house of his friend, Nishan Saha and on being asked by him Nishan told him about the assault by accused S.I. Paritosh Das in the lock-up of the P.S. and as a result he sustained injury. He denied the suggestion that on 31.08.2009 they drove the motorbike rashly defying the traffic signal and also denied the suggestion that Nishan Saha put his hands on the collar of S.I. Paritosh Das and Nishan obstructed public servant in the discharge of official duty and for that reason a case was instituted against Nishan Saha.

14. PW3, Sri Mritunjoy Saha, the maternal uncle of the complainant, in his deposition stated that on 31.08.2009 at about 02-30 pm he came to know from his nearby shop keepers that

police of Ambassa P.S. took his nephew Nishan Saha at Ambassa P.S. On that information he rushed to Ambassa P.S. and reaching there he asked the police personnel why his nephew Nishan Saha was brought at P.S, to which he came to know that his nephew Nishan was riding a motorbike without helmet and for that reason he was brought at P.S. Thereafter he turned to the accused S.I. Paritosh Das, who was inside the P.S. and requested him to release Nishan, but S.I. Paritosh Das refused. He then found two friends of Nishan, namely, David Hrangkhal and Amit Nath apart from his nephew Nishan Saha. Thereafter he went away and after about half an hour along with two other local inhabitants he again went to the P.S., but did not found David and Amit, the friends of Nishan, and he again requested S.I. Paritosh Das to release his nephew, Nishan, to which S.I. Paritosh Das told him that before arrival of O/C of the P.S. Nishan cannot be released. On his query S.I. Paritosh Das told him that O/C will come to P.S. at about 04-00/05-00 pm. Thereafter he returned to his house and when he was taking his lunch his sister, i.e., mother of Nishan, informed him over telephone that Nishan was beaten up in the lock-up and he then rushed to the Ambassa P.S. along with those two local inhabitants, who accompanied him earlier, and turned up to S.I. Paritosh Das and requested the accused S.I. Paritosh Das to release Nishan to which the accused S.I. Paritosh Das released Nishan Saha on bail and he stood surety for Nishan Saha. When Nishan was brought from the lock-up he found Nishan in an injured condition and blood was oozing out from his nose. He

along with those two local inhabitants took Nishan to Kulai PHC for treatment. After having preliminary treatment, Nishan was referred to G.B. hospital on that day itself. On 03.09.2009 he went to G.B. hospital and on his query Nishan told him that on 31.08.2009 the accused S.I. Paritosh Das took him and his friends, David and Amit, to the P.S. and subsequently released his friends, but detained him in the lock-up and thrashed him there causing injuries.

In cross-examination his attention was drawn to the previous statement made before the Court to which it was found that he did not state that when Nishan was brought from lock-up, he found Nishan with injuries and blood was oozing out from his nose. 2/3 local inhabitants, who accompanied him to P.S., were Mana Saha, Uttam Das and another Uttam and all of them were alive. He further stated that he does not know whether or not on 31.08.2009 Nishan along with his two friends rode motorbike defying traffic rules or that S.I. Paritosh Das detained them near Dulubari Circuit House. He also stated that he does not know whether Nishan at that time prevented public servant in the discharge of his official duty or that Nishan put his hand on the collar of the accused Paritosh Das. He denied the suggestion that Nishan Saha obstructed the accused Paritosh Das in the discharge of his official duty and for that reason he was taken to Ambassa P.S. and was detained there. He also stated that on 31.08.2009 he did not lodge any FIR at Ambassa P.S. or that he did not find

any injury on the person of Nishan Saha at the time of his release on bail.

15. PW4, Sri Amit Nath, in his deposition stated that on 31.08.2009 at about 02-30 pm he along with the complainant and David were standing by the side of Assam Agartala Road near Dulubari bazar adjacent to Telephone Exchange and at that time S.I. Paritosh Das came there and asked to show the relevant papers of the motorbike, to which he showed him all the relevant documents of the motorbike. Thereafter the accused asked all of them to go to Ambassa P.S. along with him, which they complied. When they reached at Ambassa P.S, the accused gave some papers and asked them to put their signatures and they complied. Thereafter the accused released him and his friend, David, but did not release Nishan. After that he along with David left the P.S. and subsequently on 17.09.2009 he met Nishan and at that time he learnt from Nishan that on 31.08.2009 S.I. Paritosh Das thrashed him in the P.S. lock-up and as a result he sustained injuries on his person, for which he was taken to Kulai PHC and subsequently referred to G.B. hospital at Agartala and he underwent treatment at G.B. hospital.

16. PW5, Sri Nitai Saha, father of the complainant, in his deposition stated that on 31.08.2009 while he was returning from Agartala to his house by train at about 04-30 pm he received a call from Nishan on his mobile phone that he was inside Ambassa P.S. and was beaten up mercilessly by accused S.I. Paritosh Das.

Thereafter he contacted with his wife and told her about the information he received and after a while his brother-in-law rang him up and he told his brother-in-law about the matter. When he reached at home, he learnt that his son was lying at Kulai PHC and he rushed to Kulai PHC and found his son lying on a bed with marks of injuries all over the body and his son was not in a position to speak properly. At Kulai PHC he found one Uttam Adhikari, who was a reporter and working as a human rights activist. After preliminary treatment his son was referred to G.B. hospital and on 31.08.2009 he took his son Nishan to G.B. hospital on that night itself. At Kulai PHC on 31.08.2009 on his request Uttam Adhikari wrote an FIR addressed to O/C, Ambassa P.S. and his wife submitted the FIR to O/C, Ambassa P.S. A copy of the FIR was addressed to S.P., Dhalai also.

In cross-examination he stated that on 01.09.2009 in the morning he had conversation with his son Nishan about the occurrence and his son told him that the accused had beaten him up all over the body, specially in his head and penis. On 31.08.2009 Uttam Adhikari wrote the FIR at Kulai PHC, but on that day the FIR could not be filed. On 01.09.2009 some police personnel, one of whom was from Ambassa P.S., went at the G.B. hospital and examined his injured son and recorded his statement. After his son was discharged from G.B. hospital he came back to his house, but none of the police personnel of Ambassa P.S. came to his house. On 31.08.2009 he reached Kulai PHC at about 6/6-30 pm and at about 9/9-30 pm doctor of Kulai PHC referred his

son to G.B. hospital. He stated that he cannot remember as to whether in his previous deposition before the Court he deposed to the effect that the accused S.I. Paritosh Das compelled his son, Nishan, after thrashing him inside Ambassa P.S, to convey him over phone about the fact that the accused beaten him up.

17. PW6, Sri Uttam Adhikari, in his deposition stated that on 31.08.2009 at about 5-30 pm he got the information over his mobile phone that Nishan Saha was beaten up at Ambassa P.S. and on that information he rushed to Kulai PHC to see injured Nishan Saha, who was lying admitted there. He reached Kulai PHC at about 6-30 pm. When he reached the hospital, he found Nishan was lying on a bed and was fainted. Father of Nishan, namely, Sri Nitai Saha, pulled the wearing apparels of Nishan and showed him the marks of injuries on various parts of his body. After that father of the complainant requested him to write down the FIR and accordingly, he wrote the FIR as per the statement of Nitai Saha. In cross-examination he denied the suggestion that father of Nishan did not show him any injury and that on the request of the complainant and his father he deposed falsely.

18. Learned counsel, Mr. Roy Barman has submitted that the trial Court failed to appreciate the facts and circumstances and the evidence on record and arrived at a wrong finding only referring to insignificant contradictions and inconsistencies here and there in the evidence on record. He has also submitted that simply because PWs 2 and 4 are friends and companion of the

complainant and PWs 3 and 5, maternal uncle and father of the complainant and PW6, a neighbor of the complainant, it was not proper for the Court to term them as interested witnesses and to discard their evidence. According to Mr. Roy Barman, while it is an admitted position that the complainant was taken to P.S. and when he was released on bail he was having with injuries for which he was treated at Kulai PHC and G.B. hospital, it should be presumed that the accused has assaulted him causing the injuries and trial Court would punish the accused accordingly. On this context, learned counsel has referred the decisions of the Apex Court in the case of **State of U.P. Vs. M.K. Anthony**, reported in **(1985) 1 SCC 505** and in the case of **State of Rajasthan Vs. Smt. Kalki & anr.**, reported in **(1981) 2 SCC 752**.

19. Learned senior counsel, Mr. S. Deb, on the other hand, has submitted that the accused has lodged an FIR on 31.08.2009 itself against the complainant for commission of offence punishable under Sections 279/353/506 of IPC and it is an admitted position that complainant was arrested and he was released on bail and PW3 took him on bail. No allegation was made at that time that the accused was having with injuries. The FIR alleged to have lodged on 01.09.2009 has not been proved. The evidence of PW1 do not inspire any confidence. Other witnesses are all interested witnesses since they all were inspired by the statement of the complainant and were eager to punish the accused S.I. Paritosh Das. The trial Court meticulously examined the evidence on record and found none of the witnesses reliable

and discarded the evidence. There is nothing wrong in the judgment and so, it does not deserve any interference.

20. In the case of **M.K.Anthony(supra)** the Supreme Court has categorically made certain observation about appreciation of evidence in criminal cases. In para 10 of the Judgment, the Apex Court has observed :-

"10. While appreciating the evidence of a witness, the approach must be whether the evidence of the witness read as a whole appears to have a ring of truth. Once that impression is formed, it is undoubtedly necessary for the court to scrutinise the evidence more particularly keeping in view the deficiencies, draw-backs and infirmities pointed out in the evidence as a whole and evaluate them to find out whether it is against the general tenor of the evidence given by the witness and whether the earlier evaluation of the evidence is shaken as to render it unworthy of belief. Minor discrepancies on trivial matters not touching the core of the case, hyper-technical approach by taking sentences torn out of context here or there from the evidence, attaching importance to some technical error committed by the investigating officer not going to the root of the matter would not ordinarily permit rejection of the evidence as a whole. If the court before whom the witness gives evidence had the opportunity to form the opinion about the general tenor of evidence given by the witness, the appellate court which did not have this benefit will have to attach due weight to the appreciation of evidence by the trial court and unless there are reasons weighty and formidable it would not be proper to reject the evidence on the ground of minor variations or infirmities in the matter of trivial details. Even honest and truthful witnesses may differ in some details unrelated to the main incident because power of observation, retention and reproduction differ with individuals. Cross-examination is an unequal duel between a rustic and refined lawyer. Having examined the evidence of this witness, a friend and well-wisher of the family carefully giving due weight to the comments made by the learned counsel for the respondent and the reasons assigned to by the High Court for rejecting his evidence simultaneously keeping in view the appreciation of the evidence of this witness by the trial court, we have no hesitation in holding that the High Court was in error in rejecting the testimony of witness Nair whose evidence appears to us trustworthy and credible."

21. In the case of **Smt. Kalki & anr.(supra)** the Supreme Court has held that 'related' is not equivalent to 'interested'. A witness may be called 'interested' only when he or she deserves some benefit from the result of a litigation; in the decree in a civil case, or in seeing an accused person punished. A witness who is a natural one and is the only possible eyewitness in the circumstances of a case cannot be said to be 'interested'. The Court also has observed that there are always normal discrepancies however honest and truthful a witness may be. Those discrepancies are due to normal errors of observation, normal errors of memory due to lapse of time, due to mental disposition such as shock and horror at the time of occurrence, and the like. Material discrepancies are those which are not normal, and not expected of a normal person.

22. It is proved with overwhelming evidence that complainant, Nishan Saha and his two friends, David Hrangkhal(PW2) and Amit Nath(PW4) were taken to Ambassa P.S. It is alleged by the complainant and PWs 2 and 4 that their signatures were obtained in some papers and thereafter David and Amit were let off from P.S. and Nishan was detained in the P.S. It is the case of the complainant that after David and Amit left the P.S. he was taken to lock-up and was severely beaten by accused S.I. Paritosh Das causing injuries on different parts of his body. Naturally except the complainant there was no other witness about the alleged assault. No witness was examined from P.S. since it is natural that the inmates of the P.S., i.e., the other

colleagues of the accused, may not come up to depose against the accused because of the bond of brotherhood. Therefore, the evidence of PW1, the complainant, is of immense importance and has to be considered and scrutinized very meticulously.

23. In his deposition, both in examination in chief and in cross-examination, the complainant (PW1) made categorical statement that the accused Paritosh Das threshed him in the lock-up and as a result his nose was started bleeding profusely and he became senseless. When he regained his consciousness he found himself lying in a bed at G.B. hospital. It was only after he regained consciousness at G.B. hospital he came to know from his father that he was taken to Kulai PHC and thereafter he was brought at G.B. hospital. So, if we believe PW1, what happened to PW1 at P.S. he could not say to anybody till the morning of 01.09.2009 when he regained his sense at G.B. hospital. Therefore, no other witness could say as to what actually had happened to the complainant at P.S. for which he was shifted to hospital.

24. PW2 in his deposition stated that he rushed to Kulai PHC and found the complainant in an injured condition crying with pain and after a short while he was fainted, which means, when PW2 reached hospital the complainant was crying with pain and he was not senseless and after a while he got senseless. PW3, the maternal uncle of the complainant, stated that on the third occasion when he reached P.S. with two local inhabitants the

accused Paritosh Das released his nephew, Nishan Saha, on bail and he stood surety of Nishan Saha. He found Nishan with injuries and blood was oozing out from his nose, but he did not utter a single word that Nishan was senseless at that time. Had Nishan was senseless at P.S. lock-up he would have been shifted by carrying in person or otherwise, but there is no such story.

25. PW5, the father of Nishan, stated that reaching the Kulai PHC he found his son lying injured and his son was not in a position to speak properly, but he did not tell anything that his son was senseless. PW6 stated that when he reached hospital he found Nishan lying on the bed and fainted.

26. The above statement of the complainant and the other witnesses make it abundantly clear that they exaggerated and added facts and it is very difficult to discern the truth from such fractured evidence.

27. The complaint filed by PW1 has been proved as Exbt.-2 with his signatures. In para 3 of the complaint, the complainant stated that hearing about the occurrence from David Hrangkhal and Amit Nath, father of the complainant rushed to Ambassa P.S. and released him from P.S. at about 5-00 pm, whereas PW5, Nitai Saha, the father of the complainant stated nothing that he ever visited P.S. when his son was detained there. Rather PW5 stated that from Agartala he reached home at about 5-00/5-30 pm and thereafter he rushed to Kulai PHC and found his son lying at PHC in injured condition. The complainant did not

state anything that PW3, Mritunjoy Saha released him from P.S. on bail, whereas Mritunjoy told that he visited the P.S. three times and at third time he released the complainant on bail from P.S. This is a material discrepancy and contradiction in the case of the complainant, which is bound to shade doubt on the veracity of the case of the complainant. PW3 stated that when for the first time he went to the P.S. he found Nishan, David and Amit all were present in the P.S. and he requested S.I. Paritosh Das to release Nishan, but that was refused. PWs 2 and 4, i.e. David and Amit nowhere stated that in their presence at any time PW3, Mritunjoy visited the P.S. and found them at P.S. Though PW3 stated that he arranged the release of Nishan on bail, but neither in the complaint nor in the deposition the complainant uttered a single word that his uncle Mritunjoy(PW3) visited the P.S. as many as three occasions and he arranged the release of the complainant from P.S.

28. Another serious infirmity is that PW1, the complainant, neither in the complaint nor in the deposition uttered a single word that the complainant called his father over mobile phone and reported his father about the occurrence, whereas PW5, the father of the complainant in his deposition stated that when he was in the train on way to Ambassa from Agartala he was first informed by his son over mobile phone that his son Nishan was detained and seriously assaulted at Ambassa P.S. and accordingly, he reported it to his wife, i.e. mother of Nishan and also PW3, Sri Mritunjoy Saha. The mother of Nishan has not been examined

and Mritunjoy also did not say anything that he was reported by PW5, Nitai Saha, about any occurrence of assault on Nishan.

29. According to PWs 5 and 6, on 31.08.2009 at Kulai PHC PW6 wrote an FIR as per the statement of PW5 narrating the occurrence and that was alleged to have filed before O/C, Ambassa P.S. on 01.09.2009 by the wife of PW5 and it was received at P.S. and no action was taken. A copy of that alleged FIR has been placed on the record but that has not been proved according to law. Anyway, since complainant is the sole witness of the occurrence and since he stated that he got senseless in the P.S. itself and regained sense on the following day at G.B. hospital, there was no occasion for him to narrate the occurrence to facilitate PW6 inscribing an FIR as per the statement of PW5, since PW1 neither in the complaint nor in his deposition stated anything that he reported the incident of assault to anybody before he regained sense at G.B. hospital on the following day of the date of occurrence. This is another serious infirmity in the prosecution case for which a doubt creates about the authenticity of the prosecution case.

30. It is a fact that PWs 2 and 4 are the friends and associates of the complainant at the time of occurrence and PWs 3 and 5 are the uncle and father of the complainant and PW6 is a neighbour. Naturally they being so close to the complainant may come up to say against the accused since the accused has lodged an FIR against the complainant alleging offence of obstructing

public servant from performing duties as well as for rash and negligent riding. PW3 in his deposition stated that he was accompanied with two local persons when he went to P.S. to get release of Nishan but those two witnesses have not been examined by the complainant. The evidence of witnesses, who are examined, since are very close to the complainant and relatives of the complainants, in the facts and circumstances of the present case should deserve careful scrutiny since they might have the intention to get the complainant acquitted from the case instituted by the accused.

31. Mr. Roy Barman, learned counsel for the complainant has submitted that appreciation of evidence in a case of police torture in police custody should not be made like other normal cases. If there is a ring of truth in the allegation made by the complainant and if it is proved that the complainant suffered injuries, the accused has to show that he is innocent. The evidence in such cases should be considered with greater sensitivity and should not be discarded picking pits and holes here and there. He relied on the decisions of the Apex Court in the cases of **State of M.P. V. Shyamsunder Trivedi & ors.**, reported in **(1995) 4 SCC 262**, **Munshi Singh Gautam & ors. V. State of M.P.**, reported in **(2005) 9 SCC 631** and **Central Bureau of Investigation V. Kishore Singh & ors.**, reported in **(2011) 6 SCC 369**.

32. Learned senior counsel, Mr. Deb, relying on the decisions referred by learned counsel, Mr. Roy Barman has argued that Supreme Court also ruled that there is trend of increasing cases of false accusation of custodial torture and thereby trying to take advantage of unlawful gain and, therefore, it needs to be carefully examined whether the allegation of custodial violence are genuine or sham attempt to gain undeserved benefit.

33. In the case of **Shyamsunder Tribedi(supra)**, the Supreme Court has observed that ***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 only 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***

The Court has also observed that ***"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 suspect. In the ultimate analysis the society suffers and a criminal gets encouraged. Tortures in police custody, which of late are on the increase, receive encouragement by this type of an unrealistic approach of the Courts because it reinforces the belief in the mind of the police that no harm would come to***

them, if an odd prisoner dies in the lock-up, because there would hardly be any evidence available to the prosecution to directly implicate them with the torture. The Courts, must not loose sight of the fact that death in police custody is perhaps one of the worst kind of crime in a civilised society, governed by the rule of law and poses a serious threat to an orderly civilised society. Torture in flouts the basic rights of the citizens recognised by the Indian Constitution and is an affront to human dignity. Police excesses and the mal-treatment of detainees/under trial prisoners or suspects tarnishes the image of any civilised nation and encourages the men in 'Khaki' to consider themselves to be above the law and sometimes even to become law unto themselves. Unless stern measures are taken to check the malady, the foundations of the criminal justice delivery system would be shaken and the civilization itself would risk the consequence of heading towards perishing. The courts must, therefore, deal with such cases in a realistic manner and with the sensitivity which they deserve, otherwise the common man may loose faith in the judiciary itself, which will be a sad day."

It was a case of custodial death of one Nathu Banjara, who was picked up at P.S. and was tortured in the police custody for extorting confession. The fact of the present case is quite different to that of the fact of that reported case in the sense that in this case the prosecution has led no expert evidence to prove the fact of injuries on the person of the complainant.

34. In the case of **Munshi Singh Gautam(supra)** the fact was that one Shambhu Singh was brought at P.S. to extort

confession and thereafter his dead body was thrown in a Nala to conceal the act of police atrocities, which was proved with overwhelming evidence. In that reported case the Supreme Court has observed in Paras 6 and 7 of the judgment :-

"Direct ocular evidence of the complicity of the police personnel is rarely available in cases of police torture or custodial death. They alone 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 present case is an apt illustration - as to how one after the other police witnesses feigned ignorance of the whole matter. The exaggerated adherence to and insistence upon the establishment of proof beyond every reasonable doubt by the prosecution, at times even when the prosecuting agencies are themselves fixed in the dock, ignoring the ground realities, the fact-situation 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 suspect and vulnerable. In the ultimate analysis 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 one prisoner dies in the lock-up because there would hardly be any evidence available to the prosecution to directly implicate them in 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 civilized society governed by the rule of law and poses a serious threat to an orderly civilized society. Torture in custody flouts the basic rights of the citizens recognized by the Indian Constitution and is an affront to human dignity. Police excesses and the mal-treatment of detainees/under-trial prisoners or suspects tarnishes the image of any civilised nation and encourages the men in 'Khaki' to consider themselves to be above the law and sometimes even to become law unto themselves. Unless stern measures are taken to check the malady of the very fence eating the crops, the foundations of the criminal justice delivery system would be shaken and the civilization itself would risk the consequence of heading, towards total decay resulting in anarchy and authoritarianism reminiscent of barbarism. The courts must, therefore, deal with such cases in a realistic manner and with the sensitivity which they deserve, otherwise the common man may tend to gradually lose faith in the efficacy of the system of judiciary itself, which if it happens will be a sad day, for any one to reckon with."

The Court has further observed in para 8 of the Judgment :-

"Therefore, the Law Commission in its 113th Report recommended amendments to the Evidence Act, 1872 so as to provide that in the prosecution of a police officer for an alleged offence of having caused bodily injuries to a person while in police custody, if there is evidence that the injury was caused during the period when the person was in the police custody, the court may presume that the injury was caused by the police officer having the custody of that person during that period unless the police officer proves to the contrary. The onus to prove the contrary must be discharged by the police official concerned. Keeping in view the dehumanizing aspect of the crime, the flagrant violation of the fundamental rights of the victim of the crime and the growing rise in the crimes of this type, where only a few come to light and others don't, the Government and the legislature must give serious thought to the recommendation of the Law Commission and bring about appropriate changes in the law not only to curb the custodial crime but also to see that the custodial crime does not go unpunished"

35. In the case of **Kishore Singh & ors.(supra)** the fact was that one Jugta Ram was picked up at P.S. and the police officers in association with the employer of Jugta Ram assaulted him severely at P.S. and his penis was chopped off at P.S. The Apex Court while appreciating facts and circumstances and the evidence on record put implicit reliance on the evidence of Jugta Ram and in para 24 of the Judgment the Court has observed :-

"24. 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?"

36. What emerges from the above decisions of the Apex Court is that in cases of custodial torture the evidence should be

considered having greater sensitivity and taking into account the facts and circumstances of each case and there should not be an easy approach to discard the evidence picking out some inconsistencies here and there since in such cases there is rare possibility of any eyewitness as the police officials are in a bond of the brotherhood and they are unlikely to open their mouth against the colleagues. So, in such cases, other circumstance has to be proved, specially the injury alleged to have sustained by the victim. Here the complainant stated that he sustained bleeding injury in his nose. He did not say about any other injury in any other parts of the body. PWs 2, 3, 5 and 6 stated about other injuries which the complainant himself did not say. Whether the complainant had any injury or not, the best witness to state was the medical officer, who treated him. One medical officer of Kulai PHC was examined under Section 200 of Cr.P.C., but he was not produced at the time of trial. The statement under Section 200 of Cr.P.C. is not an evidence. Practically no medical evidence was adduced to support the case of the complainant that he suffered injuries. However, it is stated by all the witnesses that he was taken to Kulai PHC and wherefrom he was referred to G.B. hospital. A discharge certificate of G.B. hospital produced on record, which is marked as Exbt.-1, subject to objection by the defence, but the same cannot be considered since the medical officer, who issued the discharge certificate, has not been examined. Moreover, for what the complainant was admitted at

G.B. hospital cannot be understood from a necked eye reading of the discharge certificate.

37. Burden lies on the complainant to prove that he suffered injuries because of the alleged assault by the accused police officer in the police lock-up. PW3 has stated that he was accompanied with 2/3 other local persons when he visited P.S. and he released his cousin, Nishan Saha, on bail from P.S., but those independent witnesses of the locality have not been examined. While the medical evidence has not been adduced, it may happen that for any other reason the complainant was taken to hospital and undergone treatment and this benefit of doubt definitely shall go to favour the accused to which the accused is entitled.

38. No doubt the evidence in such case shall be appreciated with greater sensitivity and caution, but primary fact has to be proved by the complainant, which must be believable. While the complainant himself, who is the star witness, is found to be not believable and his evidence is full of infirmities, no inference can be drawn based on such fractured evidence that the complainant was subjected to physical torture in the police lock-up.

39. The incident as alleged occurred on 31.08.2009. The complainant as alleged was in hospital up to 04.09.2009. The complaint was filed on 05.10.2009. Such long delay in filing the complaint has not been explained at all. The unexplained long

delay naturally supports the defence allegation that to get rid of the charges of the police case the complaint was filed making false allegation of custodial torture.

40. The Trial Court, as I find, meticulously scrutinized the evidence on record and arrived at a finding based on evidence and, therefore, I find no reason at all to interfere with the finding of acquittal of the trial Court. Accordingly, the appeal stands dismissed.

41. Send back the lower court record along with a copy of this judgment and order.

JUDGE