



* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
 % Reserved on : 19th May, 2023
 Pronounced on: 26th June, 2023

+ **CRL.A.488/2019**

SH.PRADEEP KUMARAppellant
 Represented by: Dr.L.S.Chaudhary, Dr. Ajay
 Chaudhary, Mr.D.S.Chaudhary,
 Mr.Vishesh Kumar and
 Mr.Dinesh Kumar, Advs.

versus

STATE OF U.P. ...Respondent
 Represented by: Mr.Prithu Garg, APP for State.
 Mr.Divyesh Pratap Singh,
 Ms.Pratiksha Tripathi, Advs.
 for complainant.

+ **CRL.A.499/2019**

SH.HARI PAL SINGH & ANR ..Appellants
 Represented by: Mr. G.S. Chaturvedi, Adv.

versus

STATE OF UP ...Respondent
 Represented by: Mr.Prithu Garg, APP for State.
 Mr.Divyesh Pratap Singh,
 Ms.Pratiksha Tripathi, Advs. for
 complainant.

+ **CRL.A.537/2019**

KUNWAR PAL SINGH ...Appellant
 Represented by: Mr. Dalip Kumar Santoshi,
 Mr. Rakesh Kumar, Advs.

Versus



STATE (NCTOFDELHI) ...Respondent
 Represented by: Mr.Prithu Garg, APP for State.
 Mr.Divyesh Pratap Singh,
 Ms.Pratiksha Tripathi, Advs. for
 complainant.

+ **CRL.A.622/2019**

MAHESH MISHRA ...Appellant
 Represented by: Mr.Sidharth Agarwal, Sr.Adv.
 with Mr.Kanwar Udai Bhan
 Singh Sehrawat, Adv.

versus

STATE OF UP ...Respondent
 Represented by: Mr.Prithu Garg, APP for State.
 Mr.Divyesh Pratap Singh,
 Ms.Pratiksha Tripathi, Advs. for
 complainant.

+ **CRL.A.624/2019**

HINDVEER SINGH ...Appellant
 Represented by: Mr.Sidharth Agarwal, Sr.Adv.
 with Mr. Kanwar Udai Bhan
 Singh Sehrawat, Adv.

versus

STATE OF U.P. ...Respondent
 Represented by: Mr.Prithu Garg, APP for State.
 Mr. Divyesh Pratap Singh, Ms.
 Pratiksha Tripathi, Advs. for
 complainant.

+ **CRL.A.1023/2019**

DALBIR SINGH ...Appellant
 Represented by: Mr.Divyesh Pratap Singh,
 Ms.Pratiksha Tripathi, Mr.Ajay
 and Mr.Vikram Pratap Singh,
 Advs.



Versus

STATE & ANR

...Respondents

Represented by: Mr.Prithu Garg, APP for State
Mr.Dalip Kumar Santoshi and
Mr.Rakesh Kumar, Advs. for R-2

+ **CRL.A.1024/2019**

DALBIR SINGH

...Appellant

Represented by: Mr. Divyesh Pratap Singh,
Ms. Pratiksha Tripathi, Mr. Ajay
and Mr.Vikram Pratap
Singh, Advs.

versus

STATE & ORS.

...Respondent

Represented by: Mr.Prithu Garg, APP for State
Mr.Sidharth Agarwal, Sr.Adv.
with Mr.Kanwar Udai Bhan
Singh, Advs. for R-2 & 3.
Dr.L.S.Chaudhary, Dr.Ajay
Chaudhary, Mr.D.S.Chaudhary,
Mr.Vishesh Kumar and Mr.Dinesh
Kumar, Advs. for R-4

+ **CRL.A.1025/2019**

DALBIR SINGH

...Appellant

Represented by: Mr.Divyesh Pratap Singh,
Ms.Pratiksha Tripathi, Mr.Ajay
and Mr.Vikram Pratap Singh,
Advs.

versus

STATE & ANR

...Respondent

Represented by: Mr.Prithu Garg, APP for State.
Mr. Sidharth Agarwal, Sr. Adv.
with Mr. Kanwar Udai Bhan



Singh, Adv.for R-2.

CORAM:
HON'BLE MS. JUSTICE MUKTA GUPTA
HON'BLE MR. JUSTICE ANISH DAYAL

JUDGMENT

ANISH DAYAL, J.

1. These appeals have been filed against the judgment of conviction dated 14th March, 2019 passed by the Ld. ASJ (FTC-04), Shahdara, Karkardooma Courts:

- a) convicting appellant Kunwar Pal Singh (*herein referred to as 'A-1'*) for offence under Sections 365/34 IPC;
- b) convicting the police officers - appellant Hindveer Singh (*herein referred to as 'A-2'*), appellant Mahesh Mishra (*herein referred to as 'A-3'*), appellant Pradeep Kumar (*herein referred to as 'A-5'*) and appellants Pushpender Kumar and Haripal Singh (*herein referred to as 'A-6' and 'A-7' respectively*) for offences punishable under Sections 365/304/220/167/34 IPC;
- c) acquitting the police officer - respondent Vinod Kumar Pandey (*herein referred to as 'A4'*).

Appeals, Convictions and Sentences

2. Accused No. 1, 2, 3, 5 filed appeals against their conviction and sentence being CrI. A. 537/2019, CrI. A. 624/2019, CrI. A. 622/2019, CrI. A.



488/2019 respectively, and Accused No. 6 and 7 filed Crl. A. 499/2019. Complainant Dalbir Singh also filed three appeals : Crl. A. 1023/2019 for conviction of A-1 under Section 302 IPC; Crl. A. 1024/2019 for conversion of conviction of A-2, 3, 5, 6 and 7 from Section 304 IPC to 302 IPC and proportionate enhancement of the sentence, accordingly; and Crl. A. 1025/2019 against the acquittal of A-4. State of NCT of Delhi, the prosecuting entity, placed submissions in support of the appeals filed by the complainant seeking convictions of the convicted police officers under Section 302/34 IPC.

3. By order dated 20th March, 2019 following sentences were awarded:

Accused No.	Accused	Sentence
1.	Kunwar Pal Singh	RI 03Y + Fine Rs. 05K u/s 365/34 IPC (<i>3m SI in default</i>)
2.	SI Hindveer Singh	RI 10Y + Fine Rs. 20K u/s 304/34 IPC (<i>3m SI in default</i>) RI 05Y + Fine Rs. 05K u/s 220 IPC (<i>3m SI in default</i>) RI 03Y + Fine Rs. 05K u/s 365/34 IPC (<i>3m SI in default</i>) RI 03Y + Fine Rs. 05K u/s 167 IPC (<i>3m SI in default</i>) <i>(sentences to run concurrently)</i>
3.	SI Mahesh Mishra	
5.	Ct. Pradeep Kumar	
6.	Ct. Pushpender Kumar	
7.	Ct. Haripal Singh	
4.	SI Vinod Kumar Pandey	Acquitted

Transfer of Case from U.P. to Delhi

4. The Sessions Case No. 89/2008 and Sessions Case No. 85/2008 were transferred from the Court of the Ld. ASJ (FTC-04), Gautam Budh Nagar, U.P. to the Court of Sessions Judge, Delhi by the Hon'ble Supreme Court of



India *vide* order dated 24th January, 2011 in Trf. Pet. (Crl.) No.D25244/2010. The Hon'ble Supreme Court observed that the manner in which the investigation was conducted after registration of the case at the instance of the petitioner showed that free and fair trial of the case would not be possible within the State of U.P, since the accused were members of U.P. Police Force.

The Complaint

5. FIR No.1004/2006 (Crime Case No. 752A/06) was registered under Section 302 IPC at PS Sector-20, Noida, U.P. upon the written complaint made by Dalbir Singh (father of the deceased) on 2nd September, 2006 which was addressed to SSP, Gautam Budh Nagar mentioning that on 1st September, 2006 at 6:00 p.m., the Noida Police in civil dress took away his son Sonu @ Somveer from the village. On 2nd September, 2006 in the morning, he received information from PS Khurja Dehat that Sonu had committed suicide in PS Sector-20, Noida, U.P. When he reached the place of the *post mortem* along with his co-villagers, he saw various injuries on the body of Sonu including a burn mark near his ear. He had a serious apprehension that his son was murdered by the police after being tortured and it had been given a colour of suicide. After investigation by CBCID, charge-sheet No.156A was filed against the accused persons, who were police officials stating that accused No.2 to 7 had taken Sonu @ Somveer, aged 26 years at about 6:30 p.m. on 1st September, 2006 in civil dress in connivance with A-1, without any justifiable reason from his house and brought to Police Chowki Nithari, Sector-31, Noida in their private vehicle UP 81 R 3009 in relation to crime case No.320/2006 registered under



Section 392 IPC at Sector-39, Noida. He was later, on 02nd September, 2006, lodged in the locker of PS Sector-20, Noida at 3:25 a.m. Due to false implication in robbery case and on account of atrocities caused by the police, Sonu due to physical and unbearable mental stress, allegedly committed suicide and was found hanging in the lockup at about 5:30 a.m. Therefore, charge-sheet was filed under sections 342/320/306/167/218/34 IPC. A-1 was found involved with police officials in torturing Sonu due to his interest regarding transaction of commission of property deals. Charge-sheet was, therefore, filed against A-1 under the same provisions. *Vide* order dated 19th December, 2011, charges were framed against all the accused persons under Sections 302/364/120-B/34 IPC and under Sections 167/220/34 IPC against A-2 to A-7.

Relevant Events

6. To unravel and appreciate more comprehensively, detailed submissions on behalf of State, complainant and convicts, are being segmented and placed under the following heads, as per the sequence of events:

- A. Alleged robbery by the deceased and subsequent arrest
- B. Journey from the place of arrest to the Police Station Noida
- C. Arrival at Police Station and lodging the deceased in the lockup
- D. Custody of the deceased and movement of police personnel
- E. Medical examination of the deceased
- F. Discovery of the body of the deceased and suicide theory
- G. Information about death to the complainant
- H. Nature of injuries on the dead body
- I. Cause of death and MLC and the *post mortem* report
- J. FSL Report
- K. GD Entries



L. Investigation
M. Additional points

A. Alleged robbery by the deceased and subsequent arrest:

A.1 Submissions on behalf of the convicts:

On 2nd August, 2006, FIR No.296/2006 (subsequently known as Crime No.320/2006 – referred as “*robbery FIR*”) was registered at PS Sector-39, Noida for alleged commission of robbery by 03 persons. In the list of robbed items, 02 mobile phones were mentioned. On 30th August, 2006, the IO of the robbery FIR, PW-12 (Insp. Kunwar Pal Singh) met A-4 who was part of the SOG (Special Operations Group). A-4 informed PW-12 that on 13th August, 2006 at 2:27 p.m. one of the stolen mobiles i.e., Nokia-1100 was used with Airtel SIM no.9897487444. A-4 handed over the CDRs to PW-12 and recorded this information in the case diary. On 31st August, 2006, A-2, A3 and A4 were present at PS Sector-39, Noida, where secret information was received that the stolen mobile phone was with Sonu who had committed the robbery in question along with his friends. A-4 informed PW-12 that they were looking for Sonu and would inform him if they got any further information. Details were recorded by PW-12 in case diary of the robbery FIR. On 1st September, 2006, *vide* GD No.41, A-2 and A-7 left for Aligarh to serve process under Section 82 Cr.P.C. in another matter. A-3, A-5 and A-6 left for Khurja in search of Sonu. Testimony of A-6 has been relied where he has stated that he had gone with the team to apprehend Sonu, ‘*as per directions of his superior*’. While returning from Aligarh, A-2 and A-7 met A-3, A-5 and A-6 at



Khurja Bus Stand. All of them reached the house of Sonu at village Hazaratpur under PS Khurja. A-4 was not part of the police party. Sonu was arrested from his home and the arrest has been justified under section 41(1) (b) Cr.P.C. which empowers the police to arrest a person accused of cognizable offence without a warrant. The police party, as per the convicts, were acting on the basis of a reasonable complaint and suspicion. While A-6 had been specifically directed by the SO, PS Sector-39, Noida, it was contended that the SOG officers were generally empowered to arrest even without expressed authorization of the concerned IO. Reliance was placed on deposition of PW-12 in this regard. It was also contended that there was no requirement as per Regulation 174 U.P. Police Regulations to inform the jurisdictional police station since the arrest took place within the same State, and therefore, the arrest of Sonu was lawful. There were contradictions in the witness testimonies since PW-2 Ranbir Singh stated that the accused parked the car near the shop of Mahinder Singh at the turn of *gali*, but he did not note the number of the car. PW-3 Dharamvir Singh stated in his cross examination that the colour of the Santro car, as told to him, was black, but no one told him the number of the car. PW-1 Dalbir Singh stated that he had lodged the complaint which led to the FIR, however, he and his other sons were not witness to the arrest of Sonu.

A.2 Submissions on behalf of the State/Complainant:

Ld. APP and the counsel for the complainant contended that there was an unauthorised investigation by the police officers in FIR



No.320/2006. The investigation had been entrusted to PW-12 who deposed that on 30th August, 2006, A-4 had informed him about Nokia 1100 handset had been put on surveillance and that the phone had been used by a mobile No. 9897487444 and later the said officers came to PS Sector-39, Noida, and informed him that the mobile number was being used by Sonu. He could not verify this information as he was unwell. Testimony of PW-12 remained unrebutted during cross examination and he categorically stated that he found no evidence against the deceased in FIR No.320/2006. Further, he had not filed any application or authorised anyone to arrest the deceased in the said FIR. He was also not called at the time of interrogation of the deceased. Testimony of PW-26 would show that on 01st September, 2006, 05 police officials had come to his house to enquire about A-1 and he made a call to A-1 from his mobile phone but his phone was switched off and, therefore, he showed them the house of A1. PW-1, the father of the deceased; PW-19, the mother of the deceased; and PW-2, the brother of the deceased deposed that on 1st September, 2006 at about 6:00 p.m. A-1 came to their house with 05 persons who were in plain clothes, later identified as convicted officers, informed them that they had come to purchase land. The accused took away the deceased with them on the pretext of showing land for sale. PW-19 was unable to identify the convicted police officials in Court, while PW-1 identified them but mentioned their wrong names and PW-2 was able to correctly identify the convicted police officials. The fact of the deceased being taken away at about 6:00 p.m. was confirmed and corroborated by villagers / neighbours, PW-14, PW-15 and PW-16. Ld. APP stressed



on the fact that PW-12 was already investigating the case and it was not a high-profile case nor a case involving serious offences which necessitated assistance of the SOG. PW-12 was not called at the time of arrest or during the interrogation and the arrest memo was sent to PS Sector-39 at about 3:25 a.m., after 8 hours of arrest, through A-7, and not through A-7 posted at PS Sector-39 despite him being present. Attention was drawn to the questioning by PW-28 Insp. Chander Pal Singh of the CBCID regarding the urgency which was shown to arrest the deceased without assistance from the local police and non-compliance of the lawful procedures. Apparently, the convicted officers did not respond to this line of questioning by the CBCID.

B. Journey from the place of arrest to PS Sector-20:

B.1 Submissions on behalf of the convicts:

In response to the allegation regarding delay of 08 hours in bringing the deceased from his house to the lockup of Sector-20, it was submitted that at the time of arrest, deceased had made a detailed disclosure about his 03 associates who stayed at Nithari and of another person to whom he had given one of the stolen mobiles. Acting on such disclosure, the police party raided various locations which consumed some time. This is evident from the record in GD 8 (exhibit Ex. PW-22/B). All accused police personnel took the stand in their statements recorded under section 313 Cr.P.C. that they made a pit stop at a *dhaba* on the way to have dinner with the deceased. Also, the road taken by them was a single road full of potholes and it was raining heavily that night. This



corroborates, as per the convicts, with the testimony of PW-1 who stated that the deceased had not eaten anything before he left and also the stomach during *post mortem* examination was found to have partially digested food and that Sonu had refused to eat at the time of lodging in the lockup.

B.2 Submissions on behalf of the State/Complainant:

The Ld. APP and the Counsel for the Complainant submitted that the deceased was abducted at 6-6:30 p.m. on 1st September, 2006 and lodged at PS Sector-20 around 3:25 a.m. and A-1 returned around 4 a.m. The Ld. Trial Court had disbelieved the explanation given by the convicts as the distance between the place of arrest and PS Sector-39 is 80-85 kms. The time taken in between was unexplained and, therefore, drew suspicion regarding the role of the police officials. No evidence was presented that it was raining on intervening night of 1st and 2nd September, 2006 or regarding the place where they had dinner with the deceased. Nor were the names or addresses of places where the alleged raids were conducted pursuant to disclosure of Sonu in GD No. 08. All villagers deposed that the accused took the deceased in a car which was found registered in the name of A-2, who later admitted in this statement recorded under section 313 Cr.P.C. that he had left from PS Sector 20 at 1:25 p.m. for carrying out investigation in another case. Therefore, to submit that it took 8 hours to reach PS Sector 20 from Village Hazratpur is unbelievable.

C. Arrival at Police Station and lodging Sonu in the lockup:



C.1 Submissions on behalf of the convicts:

In response to the allegation that the deceased was lodged in lockup of Sector-20 instead of Sector-39 where Crime No.320/2006 had been registered, was not justified nor was usual, it was contended that a sufficient explanation was offered by the police in statements recorded under section 313 Cr.P.C. The lockup of Sector-39 had been burned down as a result of fire which took place in intervening night of 24th and 25th August, 2006, a week prior to the arrest of the deceased. Resultantly, the deceased had to be lodged at Sector-20 on instructions of senior officers, as corroborated by testimony of A-2 and A-6. This was further supported by a detailed report dated 4th November, 2006 given by the SDM, Gautam Budh Nagar regarding the incident of fire caused by self-immolation by an inmate at Sector-39. Further, PW-29 Insp. Deepak Chaturvedi also affirmed about the fire incident at PS Sector-39 and the deceased had to be lodged at Sector 20 on verbal instructions of the seniors. This was also affirmed by PW-21. GD No.08 was admitted by the prosecution to be correct since they have placed reliance on the same.

C.2 Submissions on behalf of the State/Complainant:

Ld. APP however submitted that the incident of fire was discarded by the Ld. Trial Court as there was no evidence in that regard and there was no record in GD No. 08. Further, if such was the case, PS Khurja Dehat was closer to Village Hazratpur and there was no purpose of



getting the deceased to PS Sector 20. PW-12 was posted at PS Sector 39 also did not state anything about fire incident.

D. Custody of the deceased and movement of police personnel:

D.1 Submissions on behalf of the convicts:

It was contended that A-2 and A-3 handed over custody of the deceased at 3:25 a.m. as is evident from GD No.08. GD No. 08's version of events is corroborated by PW-29, SO of PS Sector-20 and PW-21, the GD writer. Once the deceased had been lodged in PS Sector-20, he was no longer in the custody of accused police officers and his custody was handed over to the personnel of PS Sector-20. Moreover, A-2 and A-3, after handing over the custody departed from PS Sector-20 at 3:35 a.m. *vide* GD No. 10. As per the practice in U.P, keys of the lockup remain with the constable clerk on duty, which in present case were PW-21 and PW-10. They were physically responsible for the security of lockup and the *malkhana*. PW-21 deposed that only after lodging Sonu, he had handed over keys of the lockup to PW-10 and left. Even as per Regulation 157 U.P. Police Regulations, duty to look after inmates is that of the officer-in-charge of the police station. Learned counsel relied upon the categorical admission of the acceptance of the custody of deceased by PW-21 since he was the official-in-charge of making the GD entry and having keys to the lockup. Further, A-7 then left at 3:35 a.m. with other police officers, whereas, A-6 was at PS Sector-39 and did not make any departure entry.



D.2 Submissions on behalf of the State/Complainant:

Attention was drawn to GD No. 10 which recorded that at 3:35 a.m. A-2 and A-3 left after making their departure entries but till then the deceased was in their custody. GD No. 10 remained unproved and was scribed by A-2 and A-3 despite the presence of Ct. Head Moharrar. There was not a single witness on record to prove GD No. 10's authenticity. The police officers did not step into the witness box or lead any evidence to prove GD No. 10. While GD No. 8 records the name of all the 05 police officers as having lodged the deceased, the name of A-7 is not mentioned in GD No. 10. PW-9, PW-10, PW-13, PW-21, PW-22, PW-23, PW-24 and PW-29 were police officers who were posted at PS Sector 20 at the relevant time. All these police officers have steered clear of commenting upon the alleged GD 10. All police officers present stated that they had left the PS prior to recording of the said GD entry.

E. Medical examination of the deceased:

E.1 Submissions on behalf of the convicts:

Learned counsel for the police officers stated that the deceased was found in a fit condition at the time of handing over his custody at 3:35 a.m. This was noted in GD No. 8 stating that “(i) *jism jarbattaza se paaksaafhai*, (ii) *mazboot jism*; and (iii) *pet par puraneoperation ka nishan*.” The allegation that there was no medical examination of the deceased is not relevant considering the deceased was in a fit condition as also corroborated from depositions of PW-9 and PW-21. Further



reliance is placed on the statement recorded under section 161Cr.P.C. of the inmate Ajay where he did not describe the presence of any injuries or any torture on the deceased. His statement recorded under section 164 Cr.P.C. had also been recorded but is missing from the record. However, PW-18 had stated that the statements were practically the same. The arresting team duly discharged its obligation and after arrest, Sonu was duly lodged at 3:25 a.m. in fit condition. As per Regulation 153 of the U.P. Police Regulations the duty of medical examination is that of the SHO/IO of the concerned police station. A-5 was neither the IO nor the arresting officer but merely a constable in SOG and that of the arresting team. PW-28 was the IO of the case stated that after arrest, person is brought to the police station and then after making GD entry, he is medically examined at the district hospital.

E.2 Submissions on behalf of the State:

There was no examination at any hospital by any doctor and the mandate of section 54 Cr.P.C., as also Rule 153 and 157 of the U.P. Police Regulations were not complied with.

F. Discovery of the body of the deceased and suicide theory:

F.1 Submissions on behalf of the State/Complainant:

The Ld. APP and the counsel for the Complainant submitted that the suicide theory i.e., that the deceased had committed suicide in the lockup was propped up by the PW-29 SHO/SO of PS Sector-20, and his colleague PW-13 HC Rajbir Singh who was posted there. This was



introduced in connivance with PW-22 Insp. Sahastra Pal Singh who was also posted at the same police station. PW-29 deposed that he was posted as SO at PS Sector-20 from 12th June, 2006 to 2nd September, 2006. On 1st September, 2006, he left the police station at about 10:00 p.m. along with PW-13 to attend the meeting and returned in the intervening night at 2:30 a.m. After verifying the security of the police station and the lockup, he went to residence to take rest. This was contradicted by the statement of PW-9 who was posted on emergency duty in the night and deposed that the police officers brought the deceased at about 3:30 a.m. and PW-29 was present at that time. Also, PW-21 posted at PS Sector-20 also stated that he left the police station at 3:30 a.m. after taking leave from PW-29. As per PW-29, at 5:45 a.m., PW-13 came to his residence and informed that night officers were absent from the police station and the persons in the lockup were making noise. He reached the police station at about 5:48 a.m. and saw the deceased hanging from iron grill of the *roshandan* (ventilator) with his shirt. The deceased was taken down from the *roshandan* with the help of the other inmates. He opened the knot of the shirt from the ventilator and the deceased slipped onto the wall of the washroom, they put him down and opened the knot with the blade. The Ld. APP drew attention to the fact that PW-29 had introduced this falling down for the various injuries present on the deceased's body and that the blade was never recovered. PW-29 further testified that the deceased was unconscious and his body was warm and, therefore, he registered a case under section 309 IPC at 5:50 a.m. which was surprisingly, as per the Ld. APP, within 2 minutes of his arrival. Further, as per PW-29 after



registration of case, the deceased was taken to Kailash Hospital in Mahindra Puri jeep but the doctor declared him dead and the body was sent for *post mortem*. The Ld. APP submits that there was no MLC or any other documentary proof of the alleged visit to Kailash Hospital. The Ld. APP further contended that the story that the deceased had removed his pants before hanging himself, seems fabricated and, moreover, the pants was never recovered. As regards the shirt, which PW-29 stated was used by the deceased to hang himself, it had no knot and the left side sleeve was cut from the middle and the shirt was otherwise complete. PW-1 and PW-2 had failed to identify the shirt and had stated that on the day of his abduction, he was wearing T-shirt and pants and not a shirt. Moreover, there were results from the FSL report regarding the shirt (which are adverted to later).

G. Information about death to the complainant:

As per the case of the prosecution on 2nd September, 2006 at about 9:00 a.m., constable from PS Khurja Dehat went to the house of PW-1 to inform that Sonu had expired in PS Sector-20. On getting this information, PW-1, PW-3, PW-14, PW-15, PW-16 and PW-19 and other persons from the village reached PS Khurja Dehat whereafter, they went to mortuary at District Hospital, Noida and saw the dead body of the deceased having grievous injuries. The body been brought to the District Hospital, Noida since there was no mortuary at the hospital.

H. Nature of injuries on the dead body:



H.1 Submissions on behalf of the State:

As per the convicted police officials, that the deceased was medically fit at the time of lodging in the police station is highly suspect. Further, aspects of torture to the deceased were corroborated by PW-1, PW-2, PW-4, PW-15 and PW-16. The testimony of PW-8 Ct. Kale Singh was declared hostile, had stated that the deceased was beaten up by accused persons. PW-8 did not support his statement recorded under section 161 Cr.P.C. where allegations of torture and presence of injuries on the body of the deceased were made. Further, it was contended that allegation of torture prior to bringing him to PS Sector 20, was not logical since the police personnel including PW-21 would not readily accept the deceased in their custody and note that he was in a fit condition, since that would lead to a liability on their part. This would go against inherent instincts of self-preservation. His statement u/s 161 Cr.P.C. was duly confirmed by PW-28 & can be taken into consideration u/s 162 (1) Cr.P.C. Further reference was made to the inquest report Ex.PW-4/A and photographs and the FSL report to corroborate the aspect of torture inflicted on the deceased. PW-1 deposed that when he saw the body it appeared that his son was tortured to death and there were serious injury marks all over the body; his right arm was broken, he had bled from the head, there was bluish-black burn mark near his ear, swelling and injury marks at the back of the body. These were corroborated by the persons who had accompanied PW-1 to the mortuary, namely PW-2, PW-4, PW-15 and PW-16. These witnesses also deposed that the deceased's body had



only the vest (*baniyan*), underwear and a black thread on it at that time; his T-shirt and pants were missing. As per the inquest report, the death of the victim was caused due to grievous injuries and electric shock for which *post mortem* was deemed necessary. Further, as per the photographs there were injuries on the back and buttocks of the deceased and blood on the back of his head. It is contended that as per the learned counsel for the police officials, besides the statement of inmate Ajay and testimonies of PW-9 and PW-21, the deceased was lodged in fit condition, the testimony of PW-8 Ct. Kale Singh and PW-10 Ct. Vijender Sharma was in conflict with the same as both did not support the case of the prosecution. It is suggested that the conduct of the officials at PS Sector 20 was in fact suspicious since PW-9 left abruptly without making GD entry and PW-21, the GD writer proceeded on 3 days' leave at 3:30 a.m. *vide* GD 9 but was stated to be present at PS Sector 20 at 6:00 a.m. by PW-23.

I. Cause of death, MLC and the *post mortem* report:

I.1 Submissions on behalf of the State/Complainant:

PM report of the deceased opined that the cause of death was asphyxia as the result of hanging, the injuries stated in the report were however, inconsistent with hanging but may be consistent with strangulation. The PM report was prepared by PW-5 Dr. Dinesh Mohan Saxena and one Dr. Rakesh Kumar. PW-5's examination in chief was recorded on 9th August, 2012 where he reiterated the above injuries as his opinion. However, in his chief recorded on 5th October 2012, when asked a



specific question as to the basis for giving opinion of hanging, he stated that the ligature mark was '*obliquely placed in upper part of the neck*'. Ld. APP submitted that there was a difference between a ligature mark that was around the neck as was in the PM report and one that is obliquely placed, as per PW-5 who improved upon his testimony. The injuries would show that ligature mark was not oblique but was present around the neck at a considerable distance from the ears and chin. The ligature mark being a few centimetres below the ears and the chin indicated that it was situated below the thyroid cartilage. The relevant texts were shown from "Ch-20 Modi: A Textbook on Medical Jurisprudence and Toxicology" noting that ligature mark for hanging is usually above thyroid cartilage between larynx and the chin and directed upwards obliquely. Further, other signs of hanging namely stretched and elongated condition of the neck, the condition of the tongue, and dribbling of saliva from the mouth down on the chin and chest, were not found in the present case. PW-5 during cross-examination admitted that the above characteristic features were not found in the present case. He further admitted that in case of death by hanging, the right side of the heart, the pulmonary artery and the *venae cavae* are full of dark fluid blood while the left side is empty, and this fact was not mentioned in the *postmortem* report. Reliance was placed on the definition of '*ligature strangulation*' which as per the textbook by Modi, is well-defined and slightly depressed mark corresponding to the breadth of the ligature, usually situated low down in the neck below the thyroid cartilage and encircling the neck horizontally and completely. Therefore, as per the Ld. APP a perusal of cross



examination of PW-5 would show that his opinion that the deceased died due to hanging is not reliable. Further, PW-5 stated that the ligature material i.e., the shirt was never sent to him for examination/opinion, even though the same was recovered by PW-22 from the mortuary. Further, there were serious contradictions in the report on the injuries in the inquest report and the PM report. PW-11, the *Tehsildar* stated that the death was due to grievous injuries and electric shock however, the PM report does not mention the injuries though both proceedings were conducted simultaneously on 2nd September, 2006. While PM report found no blood oozing from the injuries, the FSL report showed blood stains detected on underclothes of the deceased as also testimony of PW-1 and other family members, who stated that he was bleeding from the back of his head. PW-5 admitted injury no.3 which was a contusion on the middle of back of abdomen which was possible by beating with hard and blunt object indicating that the deceased was battered. Further the presence of burn marks indicated electrocution but not found in PM report. MLC from Kailash Hospital was not placed on record by PW-29.

I.2 Submissions by the convicts:

PM report was categorical and clear that the death was due to asphyxia as a result of hanging, the ligature mark was present around the neck and the burn marks were also due to hanging. The contusion at the back was superficial and could be due to fall on blunt object such as corner of the wall or during transportation in the vehicle. This would be corroborated by the testimonies of PW-13 and PW-29 who



stated that while bringing the deceased down his head was struck from the washroom wall, and since there was no carpet in the jeep's floor, he might have received the injuries while he was being taken to the hospital. The *post mortem* was conducted by a board of doctors and not by PW-5 alone. There was a consensus of opinion. Moreover, reliance was placed on the literature as per the textbook of Modi as to whether the hanging was suicidal, homicidal or accidental and the response in the textbook is that hanging is "*usually suicidal*". Reliance was also placed on the literature relating to partial hanging i.e., hanging from a low point of suspension where death is inevitable from slow asphyxia.

J. FSL Report:

J.1 Submissions on behalf of the State/Complainant

Reliance was placed on the FSL report, provided by PW-32, the Scientific Officer, that the shirt could not have borne the weight of about 60 to 80 kgs as appearing from the physical condition of the deceased who was an average built and must have been about 60-70 kgs, and tension was created from arm to arm of the said shirt. As per PW-29, who stated that he opened the knot with aid of a blade, that blade was not recovered. The seizure memo records the shirt's collar was torn in the middle. The Learned Trial Court observed there was no cut on the collar.

J.2 Submissions on behalf of the convicts:



It was contended that the strength of the shirt fibre cannot be determined by merely examining its physical appearance and no machine tests had been conducted. On being asked, PW-32 admitted that only in few cases he undertook examination on physical appearance of the object thus implying that machine tests were usually resorted to for reaching a conclusion.

K. GD Entries:

K.1 Submissions on behalf of the State/Complainant:

Ld. APP submitted that GD entries in question starting from the incomplete GD No. 59 recorded on 01st September, 2006 and till at least GD No. 12 recorded on 2nd September, 2006 were false, fabricated, manipulated and concocted and did not reflect the actual state of affairs at the police station. The original GD register of PS Sector 20 was weeded out and a report to this effect was produced during trial. PW-22 stated during cross examination that neither the original GD register nor any attested copy was available on judicial file. PW-9, who was on Night Emergency Duty on the intervening night, and PW-10, the GD writer both deposed that they had left the police station as they were not well. PW-9 stated that he made no entry in *rojnamcha* before leaving and PW-10 deposed that when he left at 10:00 p.m., he left GD No. 59 incomplete and the remaining GD No. 59 till GD No. 9 of 2nd September, 2006 till 3:30 a.m., was written by PW-21. This has been confirmed by PW-21 as well. As per the Ld. APP, the manipulation started when PW-21 Ct. Manoj Kumar started



writing incomplete GD No. 59. Thereafter, new entries GD Nos. 60 to 63 were made for 1st September, 2006 and GD entry no. 1 onwards for 2nd September, 2006. GD Nos. 4 to 7 are missing from the record also deposited by PW-21. GD No. 08 alleged to be recorded at 03:25 a.m., noted the arrival of the convicted police officers along with the deceased. It also records the presence of one Nokia 6030 handset, which was never produced during trial. However, soon thereafter, GD No. 09 *qua* the departure of PW-21 Ct. Manoj Kumar from the PS is allegedly recorded at 3:30 a.m. and then GD No. 10 is recorded at 3:35 a.m. The short time gap between these three entries clearly shows that they are manipulated as it could not have been possible for all the activities to have taken place within this span of 10 minutes between GD No. 08 and 10. As per PW-21, he recorded his departure from the PS taking leave from the SO *vide* GD No. 9 at 3:30 a.m., and handed over the keys of lockup to PW-10. This testimony contradicts PW-10 statement that he left PS at 10:00 p.m. after leaving GD No. 59 incomplete, whereas, PW-21 states that he handed over keys of the lockup to PW-10 at 3:30 a.m. PW-22 deposed that as per GD entries, the *santri pehra* duty on 02nd September, 2006 was assigned to PW-23 from 12:00 a.m. to 3:00 a.m. and Ct. Ram Kumar from 3:00 a.m. to 6:00 a.m. and PW-13 took over the *santri pehra* at 5:45 a.m. till 6:00 a.m. PW-23 deposed that he was on *santri* duty from 9:00 p.m. to 12:00 a.m. but his name is shown for duty from 12:00 a.m. to 3:00 a.m. PW-22 deposed that as per *naksha naukri* forming part of GD documents for 02.09.2006, PW-23 Rambhul was not deputed for *santri pehra* duty on



2nd September, 2006. Ld. APP has relied upon these contradictions to contend that these GD entries were manipulated.

K.2 Submissions on behalf of the convicts:

It is however contended that custody of the GD register was not with any of the accused police personnel and they were not responsible for maintaining it. Further, GD No. 8 could not have been *ante* timed to benefit the accused officers since it would be contrary to the interests of the maker of the entry. The GD entries were brought on record through PW-21 however original GD entries were not placed on record. The prosecution did not suggest as regards PW-21's testimony that GD 1, 8, 9 in his handwriting were false and fabricated. PW-22 admitted that the accused along with others had left the PS at 3:35 a.m. Further, A-5 was posted in the SOG and none of the officials PW-21, PW-22 were subordinate to A-5 and there was no obligation to obey and execute his orders, if so suggested.

L. Investigation:

L.1 Submissions on behalf of the convicts:

It is submitted that direct evidence was not deliberately collected and it was withheld in order to falsely implicate the police officials. The shoddy investigation and failure of the learned Trial Court to seek clarifications vitiates the trial. Cell tower locations and CDRs of the accused were not obtained which could have proved that they were not present in the premises of PS Sector-20. Cell tower locations of various witnesses were not obtained to prove their presence at the spot when



the alleged abduction took place. Statements of 02 inmates were recorded under section 164 Cr.P.C. but were not made part of the charge-sheet. Testimonies of other witnesses have admitted to the presence of inmates, *albeit* number of inmates vary – PW-13 states 08 to 10 inmates, PW-18 states 10 inmates, PW-22 states 09 inmates, PW-23 states 02 to 03 inmates and PW-23 states 03 inmates. MLC of the deceased when he was taken to Kailash Hospital, is not taken on record; GD entries of PS Sector 20 or PS Sector 39 were not preserved. Further, departmental inquiry was conducted on A-5 was exonerated from charges and A-6 & A-7 were not suspended and no departmental inquiry had been initiated.

L.2 Submissions on behalf of the State/Complainant:

Ld. APP submitted that the investigation was done by the local police and CBCID and they had manipulated the case and the evidence. The charge-sheet filed by the investigating agency was merely an opinion of the IO and the Court was expected to apply its independent mind. The presence of the inmates was planted since it was in the hands of police and it was unthinkable of 09 inmates in a tiny cell in a humid month only to be woken up by deceased's shriek whereas PW-5 opines that a person who hangs himself would not be able to make any noise or sound using his vocal amenities. No suggestion was put to PW-18 to prove the site maps or any other witness for adjusting the inmates in the lockups. PW-23 testified that when he reached PS Sector 20 in the morning of 2nd September, 2006 at about 6:00 a.m. no one was found lodged in the lockup. It was contended further that as per settled case law direct



ocular evidence where the police itself had perpetrated a crime would be lacking and therefore the burden of proof had to be relaxed.

M. Additional Points:

M.1 Submissions on behalf of the convicts:

- (i) It was contended that A-4 was acquitted in the absence of any evidence; no submissions had been advanced by the prosecutor or the complainant refuting the findings of the Ld. Trial Court; his name is not mentioned in any of the documentation including GD No. 41, Arrest Memo, GD No.08 and GD No. 09; A-4 was not mentioned as being present in the statements of the convicts recorded under section 313 Cr.P.C. Further, PW-8 admitted in cross examination that A-4 was not the *chowki-in-charge* of Police Post Nithari at the relevant time. It was contended that there is no evidence on record pointing towards conspiracy between the accused police personnel and A-1 to commit murder of the deceased, no information was provided regarding the property – whether residential, commercial, industrial or agricultural which was alleged to be the reason behind the murder. It is unthinkable that A-1 would engage 06 police personnels to settle his scores; the death could not be attributed to any pre-meditated act since they would be at risk to be exposed by themselves by bringing him to police lockup and preparing documentation for that purpose.

M.2 Submissions on behalf of the State/Complainant:

There is no information in GD No. 8 of the deceased wearing apparels, whereas PW-1, PW-2 and PW-15 stated that he was wearing a t-shirt



and pant. Parentage of the suspects with Sonu not provided. Return of A-1 at 4:00 a.m. considering that the deceased was lodged around 3:25 a.m. was unnatural and cannot be explained. Submissions had been made relating to compensation under Section 357 (3) Cr.P.C. that Rs.17 lakh awarded should be increased to Rs. 01 Crore.

Case law relied upon by the parties

7. Learned counsels for the convicts in support of their contentions relied upon the following judgments:

On the proposition that police officials are entitled to same protection as available to other accused - *Sunil Mahadeo Jadhav v. State of Maharashtra*, (2013) 15 SCC 177, *SadashioMundajiBhalerao v. State of Maharashtra*, (2007) 15 SCC 421 and *V.K. Mishra v. State of Uttarakhand*, (2015) 9 SCC 588; medical report/ post mortem report of the doctor should prevail over inquest report - *Javed Abdul Rajjaq Shaikh v. State of Maharashtra*, (2019) 10 SCC 778 and *Tehseen Poonawalla v. Union of India*, (2018) 6 SCC 72; in a case of circumstantial evidence, motive for committing the crime assumes greater importance - *Tarseem Kumar v. Delhi Admn.*, 1994 Supp (3) SCC 367; if the investigation is unfair and tainted then it is the duty of the Trial Court to get the clarification - *PulenPhukan v. State of Assam*, 2023 SCC OnLine SC 350; prosecution is required to produce the best available evidence irrespective of the onus of proof - *Tomaso Bruno v. State of U.P.*, (2015) 7 SCC 178, *Mussauddin Ahmed v. State of Assam*, (2009) 14 SCC 541, *Parminder Kaur v. State of Punjab*, (2020) 8 SCC 811 and *State of Rajasthan v. Sheo Singh*, (2003) 9



SCC 55; FIR be only used to corroborate or contradict the maker of it - **Ram Kumar Pandey v. State of M.P.**, (1975) 3 SCC 815 and **Siddanki Ram Reddy v. State of A.P.**, (2010) 7 SCC 697; suspicion cannot take the place of proof - **Sujit Biswas v. State of Assam**, (2013) 12 SCC 406; appellants were mere constables acting under the directions of their superiors - **Jaspal Singh Gosain v. CBI**, 2018 SCC OnLine Del 6988;

8. Learned APP for the State has relied upon the following judgments to support his contentions:

On the proposition that it would be police officials alone who can explain the circumstances in which a person in their custody had died and that police officials are bound by ties of a kind of brotherhood, they often prefer to remain silent in such situations and when they choose to speak, they put their own gloss upon facts and pervert the truth, he relied upon- **State of U.P. v. Ram Sagar Yadav**, (1985) 1 SCC 552, **State of M.P. v. Shyamsunder Trivedi**, (1995) 4 SCC 262 and **State of M.P. v. Shyamsunder Trivedi**, (1995) 4 SCC 262; rarely, in cases of police torture or custodial death is there ocular evidence of the complicity of the police personnel alone who can only explain the circumstances in which a person in their custody died- **Shakila Abdul Gafar Khan v. Vasant Raghunath Dhoble**, (2003) 7 SCC 749; if there is sufficient evidence to show that the accused fabricated some evidence to screen/absolve himself from the offence, such circumstance may point towards his guilt- **Prithipal Singh v. State of Punjab**, (2012) 1 SCC 10; lapses, if avoided, may have helped to effectively prosecute the accused, they do not necessarily benefit the accused- **Zulfikar Nasir v. State of U.P.**, 2018 SCC OnLine Del 12153.



9. Further, the learned counsel for the complainant has relied upon the following judgments:

On the proposition that testimony of related witnesses if found to be natural and truthful cannot be discarded merely on being an interested witness, he relied upon- **Dayal Singh v. State of Uttaranchal**, (2012) 8 SCC 263 and **Banti v. State of M.P.**, (2004) 1 SCC 414; ocular evidence prevails over medical evidence and minor variations to be ignored- **Gajoo v. State of Uttarakhand**, (2012) 9 SCC 532; in custodial death cases it is difficult to collect evidence against the police officials responsible since they are in charge and can easily manipulate the evidence- **Gauri Shanker Sharma v. State of U.P.**, 1990 Supp SCC 656 and **State v. Sanvlo Naik**, (2017) 16 SCC 54; delay in examination of a particular witness does not make it unreliable and omission on part of IO should not be taken in favour of the accused- **V.K. Mishra v. State of Uttarakhand** (*supra*); even if investigation is suspicious, the rest of the evidence must be scrutinized independently- **State of Karnataka v. K. Yarappa Reddy**, (1999) 8 SCC 715; question not put to witness in cross-examination, cannot be taken benefit of- **Mahavir Singh v. State of Haryana**, (2014) 6 SCC 716; necessary on part of accused to obtain vital information during cross-examination- **Ajmer Singh v. State of Punjab**, 1993 Supp (3) SCC 738; prosecution is required to prove its case beyond reasonable doubt- **Karan Singh v. State of U.P.**, (2022) 6 SCC 52; entire statement of hostile witness need not be discarded- **Sat Paul v. Delhi Admn.**, (1976) 1 SCC 727161; statement under section 161 CrPC can be relied upon- **Bhagwan Dass v. State (NCT of Delhi)**, (2011) 6 SCC 396; conviction can also be based on circumstantial evidence- **Brijlala Pd. Sinha**



v. State of Bihar, (1998) 5 SCC 699 and *GaganKanojia v. State of Punjab*, (2006) 13 SCC 516; if there is defect or omission in framing of charge, accused may still be convicted for the offence actually committed and proved on the basis of evidence on record- *K. Prema S. Rao v. Yadla Srinivasa Rao*, (2003) 1 SCC 217 and *Kamil v. State of U.P.*, (2019) 12 SCC 600.

The Evidence

10. The evidence relevant and necessary for assessment of the contentions of the parties, is *inter alia* as under:

10.1 **PW-1 Dalbir Singh, the deceased's father** testified that on 1st September, 2006 at about 6:30 p.m., A-1 of Village Sikri, Khurja Dehat used to work as property dealer with his son Sonu (the deceased). On that day he came to their house with 05 persons and sat on chairs. PW-1 stated he can identify the 05 persons and identified 03 of them, although he was confused about their names. He stated that due to old age and poor eyesight, he was not able to identify the accused by their names. A-1 had told him that the 5 persons had come to purchase land and asked the deceased to show the land to them. On that pretext they took the deceased after 15 minutes in the same car and the deceased did not return till about 9:00 p.m. He then sent his elder son PW-2 to the house of A-1 to enquire about Sonu, which was about 13-14 km from their house. PW-2 returned at about 9:30 p.m. without any information and not having been able to locate A-1. PW-2 then called his brother PW-4, who came to their house from Faridabad at about 2:00 a.m. At about 4:00 a.m., PW-1 sent PW-2 and PW-4 to the house of A-1 to



enquire and A-1 met them in *gali* outside his house. At 6:00 a.m., PW-2 and PW-4 returned and informed that A-1 mentioned that the said persons were police officials and gave them a slip bearing mobile number of Ct. Pradeep Kumar i.e., 9868615588. His sons then contacted the said number and person introduced himself as Ct. Pradeep Kumar and asked them to reach PS Sector-20 at about 10:00 a.m. However, on 2nd September, 2006 at 9:00 a.m. constable from PS Khurja Dehat came to their house and informed them about Sonu's death at PS Sector 20, Noida. Upon getting the information, PW-1 left along with his wife and other persons from the village to PS Khurja Dehat and informed PW-2 and PW-4 who had already left for PS Sector-20, Noida about the death of Sonu. PW-1 stated that when he saw the body of his son at mortuary, he noticed contusions all over his body. He was wearing *baniyan* and underwear, his elbow of arm was broken, was bleeding from the back of his head, there were burn marks near his ear. Some press photographers took the photographs. He showed the condition of the body to the SSP but the SSP quietly left the spot. Since, the *post mortem* was not conducted properly he prepared an application through an unknown person in the name of senior official for taking action (Ex. PW-1/A). The police registered FIR under section 306 IPC and after the *post mortem* the body was handed over to them for last rites. PW-1 filed a writ petition before the Hon'ble Supreme Court and the Hon'ble Supreme Court directed the investigation to be entrusted to CBCID.

In his cross examination, he mentioned that he had given the slip handed by A-1, (Ex. PW-1/B) and also the photographs taken by the press photographers to CBCID. He deposed that the deceased was wearing pants



and a T-shirt at the time of his abduction. He confirmed that the name of A-1 was not mentioned in his FIR, but stated that his elder son and his wife were present when A-1 had come to their house.

10.2 PW-2 Ranbir Singh, brother of the deceased deposed the same facts and circumstances as narrated by PW-1 regarding the arrival of A-1 with 05 persons, taking away of Sonu, contacting A-1 on receiving no information regarding the deceased, the paper slip and being called by Ct. Pradeep at Noida (though he mentioned that they were called to PS Sector 31) before 10 a.m., and thereafter receiving the information regarding death of Sonu. He stated that he had gone to PS Khurja Dehat and then to mortuary and saw the body which had serious injury marks over it, the right arm being broken, was bleeding from the head, bluish black burn mark near the ear and swelling and injury marks on the back of the body. He identified all the accused persons.

10.3 PW-3 Dharamvir Singh, brother of the deceased, deposed that he runs a grocery shop in Khurja where the deceased used to assist him and came in contact with A-1 to do the work of property dealing. He stated that a quarrel had taken place between the deceased and A-1 on the issue of commission and this fact had been told to him by the deceased. He came to know about the facts and circumstances of the deceased from his family. He accompanied the family to mortuary and testified that there were a number of injuries on the body of the deceased including burn marks near the ear, head injuries and fracture in his hand. He further stated that 10-15 days after the incident, when he was on duty at his office in Sector 58, Noida, the guard of the company informed that 5-6 persons were asking for him. These



persons met him and pressurized him to tell his family not to pursue the case of Sonu otherwise “*tera bhi wahi haal kardenge jo Sonu ka kiya hai*”. He mentioned this fact to his brothers and due to fear got himself transferred to Faridabad. He identified the 05 accused, namely A-3, A-4, A-5, A-6 and A-7 present in the Court, as the ones who had come to threaten him.

10.4 **PW-4 Balbir Singh, brother of the deceased** deposed that he had been called from Faridabad and had accompanied PW-2 to the house of A-1 in search of their brother. He also deposed on the same lines as that of PW-2.

10.5 **PW-5 Dr. Dinesh Mohan Saxena, Medical Officer, District Hospital, Noida** deposed that he had conducted the *post mortem* on the body of the deceased at about 4:50 p.m. on 2nd September, 2006. The *post mortem* was conducted by a team of doctors comprising of himself and Dr. Rakesh Kumar. He found *rigor mortis* on the body and the time since death was half a day. The following *ante mortem* injuries were recorded:

- a. *Ligature Mark of 22 cm x 1 cm present around the neck to the gap of 10 cm present posterior part around neck.*
- b. *Ligature mark was 5 cm below right ear, 7 cm below left ear and 5cm from chin.*
- c. *Nails and finger of the dead body were cyanosed.*
- d. *Contusion 19 cm x 1.5 cm present over the middle of back of abdomen 3 cm above the left iliac crest.*
- e. *Abrasion 2 cm x 1 cm present over anterior aspect of left knee.*
- f. *Contusion 5 cm x 4 cm present over right elbow posteriorly.*
- g. *Abrasion 1 cm x 0.5 cm present over top of right shoulder.*
- h. *Contusion 5 cm x 3 cm present over left forearm 8 cm below left*



elbow.

On internal examination, the brain was found congested, trachea and larynx were congested and there was 50 ml semi-digested food in the stomach. In his opinion, the deceased had died of asphyxia as a result of “hanging” and there were three clothes on the body-*baniyan* and underwear and *kala dhaga* (black thread).

In his cross examination, he stated that he had not received the ligature material for examination and had no opportunity to examine it. When asked if any of the symptoms were suggestive of the ligature marks being *ante mortem*, he answered in the affirmative. He further stated that there were no symptoms of tongue being caught between the teeth or being bitten or swollen or blood froth seen at the mouth of the nostrils. He stated that the neck was not found stretched or elongated. He confirmed that there were injuries on the hands and left knee and the contusion in the middle of the back was possible by beating with hard and blunt object. When asked if video was made of the *post mortem*, he stated ‘Yes, but I am not sure’. As regards the black colour injury behind the right ear, he stated there was a ligature mark below the ears and below the chin.

10.6 PW-8 Ct. Kale Singh, who was posted at Police post Nithari on 1st September, 2006 on the intervening night, stated that he did not know if any incident took place in the *chowki* in the night. The IO of CBCID did not meet him and he made no statement to the police. He denied his statement to the CBCID where it was recorded that the accused had brought Sonu and they had interrogated him at Police post Nithari along with A-4. He stated



that A-4 was not the *chowki in charge* of Police post Nithari. He denied having made statement that while interrogating Sonu, accused were beating and torturing him and Sonu was crying and he asked the accused persons not to torture but he was told to keep quiet. He also denied his statement that Sonu was crying under pain and was unable to walk properly and was limping. He stated that he had given an application to the senior police officials stating that his statement was recorded without his knowledge.

10.7 PW-9 HCP Dharmesh Kumar Sharma deposed that on 1st September, 2006 he was posted at PS Sector 20, Noida and on the intervening night, A-2 to A-7 brought Sonu in a case under Section 392 IPC. His condition was alright. He stated that he left the police station after telling the SO and Head Moharrar Rajbir Singh and joined duty after 2-3 days since he was on medical rest. In his cross examination, he stated that he made no entry in the *roznamcha* before leaving the police station. He denied the presence of A-4 along with other 05 accused accompanying Sonu.

10.8 PW-10 Ct. Vijender Sharma deposed he left GD No. 59 incomplete and left in the intervening night and the persons on duty at that time were PW-13 HC Rajbir Singh and PW-21 Ct. Manoj Kumar. He denied his statement to CBCID where he had admitted the knowledge of Sonu being injured and asked by PW-9 to be sent to PS Sector-39 to get him treated. However, the SO had rebuked him that they did not need to bother when senior officers were already there.

10.9 PW-11 Sh. J P Gupta, Dy. Collector, Muzaffarnagar U.P., testified that he was posted as *Tehsildar*, Gautam Budh Nagar and on instructions of



the

District Magistrate, went to the mortuary at Sector 94, Noida to conduct inquest proceedings on the dead body. He proved the report of the inquest proceedings as PW-4/A that was in his handwriting. He denied the suggestion that he was under any pressure from the family of the deceased. The report observed the following injuries:

- i. Sign of injuries and contusion on the back.*
- ii. Contusion on knee.*
- iii. Long deep sign of abrasion (ragad) on right side of neck, which became black.*
- iv. Injury mark on the back of right ear, which became black.*
- v. Swelling and contusion on the right elbow.*
- vi. Swelling and contusion on elbow and middle of arm.*
- vii. Swelling and contusion between left wrist and elbow.*
- viii. Contusion mark on the lateral aspect calf of left leg and knee.*

10.10 **PW-12 Insp. Kunwar Pal Singh** testified that he was posted at PS Sector 39, Noida and was IO of FIR No.320/2006 under section 392 IPC PS Sector-39. On 30th August, 2006, A-4 from the SOG had informed him that Nokia 1100 was robbed as part of the case and was put on surveillance and was found to have been used with a particular number. The next day, A-2, A-3 and A-4 had come to PS Sector-39 informing him that the aforesaid mobile phone was being used by Sonu at Khurja and they were trying to search him. On 2nd September, 2006, he received GD No. 8 regarding arrest of Sonu at PS Sector-39 and when he went to PS Sector-20, PW-13 informed him that Sonu had attempted to commit suicide and has expired. Further, he stated that he found no evidence against Sonu in FIR No.320/2006 and had not authorized anyone to arrest Sonu nor was present



at the time of his arrest and had never met him prior to his death. He was not called at the time of interrogation of Sonu. He confirmed that the police official, who is not an IO, cannot arrest a person without authorization even if he is wanted in a criminal case. However, he did state that the SOG works under the Superintendent of Police and they can arrest any criminal at any place without authority of the IO.

10.11 **PW-13 Rajbir Singh** was posted as Head Moharrar at PS Sector-20. He stated that he had recorded FIR No.1004/2006 under Section 302 IPC upon the complaint of PW-1 on 2nd September, 2006. He had also registered FIR No.752/2006 under Section 309 IPC at 5:50 a.m. He testified that with the help of SO, Deepak Chaturvedi and 08-10 accused persons brought down Sonu who was hanging from the ventilator.

10.12 **PW-14, PW-15 and PW-16 were residents of Village Hazratpur** and stated that they had seen A-1 along with 05 persons alighting from the car and later they saw them with Sonu coming out from his house and sitting in the car and leave. While walking towards the car, they were talking about showing some land by Sonu to other companions of A-1 and later they came to know about the death of Sonu. PW-15 and PW-16 had accompanied the family to mortuary and also corroborated that there were blue marks and blood on the back of the head, the right hand was fractured, there were burn marks behind the ears and he was wearing a *baniyan* and an underwear.

10.13 **PW-17 Anil Kumar Sone, Deputy Director**, FSL Agra testified that one shirt was taken out from the sealed parcel which was stated to be of the deceased and the other parcel had a *baniyan* and an underwear and one black thread. As per his report, blood stains were detected on the



underclothes and no saliva stains were detected on the shirt.

10.14 **PW-18 Subeg Singh Sidhu, Retd. Dy. S.P.** was posted as SHO, Dadri, Gautam Budh Nagar and was given the investigation of the present FIR. He inspected the place of incident and prepared two site plans. On 2nd September, 2006, 10 inmates were lodged in the lockup including the deceased and he recorded the statements of the inmates namely Ajay, Vijay, Azaj, Mohsin and Krishna, who all were in the lockup. He recorded statements of Ajay and Vijay under section 164 Cr.P.C.

10.15 **PW-19 Smt. Kamla Devi**, mother of the deceased, deposed on the same lines as PW-1 regarding the taking away of Sonu.

10.16 **PW-21 Ct. Manoj Kumar** deposed that on the intervening night he was on duty and the night officer was PW-9 and Ct. Ram Kumar was on guard while PW-10 was entrusted to make entries in GD. He testified that *vide* Rapat No. 08, A-2 to A-7 had come with the deceased to PS Sector 20 at 3:25 a.m. with one mobile Nokia 6030 black colour. The SO SI Deepak Chaturvedi was there and, on his directions, the deceased was lodged in the lockup. Thereafter, PW-21 sought leave request from the SO and left the police station at 3:30 a.m. *vide* GD No. 09, after handing over keys to PW-10. He confirmed that he wrote GD No. 59 which was partly written by PW-10. He further deposed that the original GD register of 1st September, 2006 and 2nd September, 2006 had been weeded out and he could not produce the same in court.

10.17 **PW-22 Insp. Shahastra Pal Singh** deposed that he got a call on 2nd September, 2006 at about 5:45 a.m. informing that an accused had



committed suicide in lockup. He reached at about 6:00 a.m. and recorded statements of 09 accused persons who were detained in lockup and seized the shirt *vide* seizure memo Ex. PW-22/A.

10.18 **PW-23 HC Rambhul Singh** deposed that he was on *santri* duty on the night of 1st September, 2006 from 9:00 p.m. to 12:00 midnight and since there was no reliever, he left at 12:30 midnight and came in the morning from 6:00 a.m. to 9:00 a.m. for the duty. He stated that during his duty hours, 02-03 persons lying lodged in the lockup.

10.19 **PW-25 Vijay Pal** who was running a shop in Khurja, stated that he had gone with the family to the mortuary and there were many signs of injuries on the dead body. He further deposed that after the incident, some unknown persons used to visit the house and asked him to get the case settled.

10.20 **PW-26 Piyush Singhal** who was doing property dealing work in Khurja, knew A-1 who had shown him one Nokia 1100 phone and had put his SIM to check but did not give it to him telling PW-26 to get a better set. He confirmed that on 1st September, 2006, 05 police officials had come to his house, enquired about A-1 and he made a call to A-1 from his mobile phone and then showed house of A-1 to the police team.

10.21 **PW-28 SI Chander Pal Singh** was the Inspector posted in CBCID Meerut and was given investigation of Case Crime No.752/2006 under Section 309 IPC and No. 752A/2006 under Section 302 IPC. Besides stating that he had recorded statements of the police officials, he also clarified that they did not give any answers to various questions posed by



him including: *Why Nokia 1100 was not recovered and the said Manoj Gupta was not arrested?; Whether they were carrying any arrest warrant for Sonu?; Why assistance was not taken from local police of PS Khurja Dehat for arresting the deceased?; Why Sonu was not taken to local police station?; Why IO of PS Sector 39 was not called?; Why no medical examination of Sonu was conducted?; How so many injuries occurred on the body of Sonu and the details of clothes worn by Sonu were not mentioned in the GD?* He deposed that there was no departure or arrival entry made by the accused with regard to arrest of Sonu and they illegally confined him and tortured and harassed him and made false entries in the GD.

10.22 PW-29 Insp. Deepak Chaturvedi deposed that on 1st September, 2006 he left the PS at about 10:00 p.m. along with PW-13 and came back at 2:30 a.m. and after verifying the security of the lockup and the police station, he went to his residence to take rest. At that time 09 persons were lodged in the lockup. At 5:45 a.m., PW-13 came to his residence and informed that the accused were making noise in the lockup on which he rushed to the police station. He went inside lockup at about 5:48 a.m. and saw the deceased hanging with his shirt from the iron grill on the ventilator. He was taken down and they opened the knot of the shirt from the ventilator, he slipped on the wall of the washroom and they put him down and opened the knot with the help of a blade. He was then taken to Kailash Hospital.

10.23 PW-32 Sudhir Kumar Jha, Scientific Officer, FSL Lucknow stated that he had received a shirt with a query whether there were signs of tension and tear. He was working as a Scientific Officer for 27 years and had seen



thousands of cases. He stated that in case the weight of about 60-80 kg was put on the shirt in the year 2007, it should have been completely torn and would not have borne the weight. However, if weight of about 30-40 kg was put, then it would be in the same condition as appearing in the exhibit.

Analysis

11. Pursuant to an examination of evidence on record and post appreciation of submissions of the parties, in the considered opinion of this Court the following aspects are relevant, apposite and evident:

Alleged robbery by the deceased and subsequent arrest

11.1 The IO of Case Crime No.320/2006, registered under section 392 IPC PS Sector 39, stated that he was informed by A-2, A-3 and A-4 on 31st August, 2006 that the mobile phone which was stolen in Nithari robbery, had shown a trace pursuant to surveillance. The said mobile of Nokia 1100 model had been used on a particular number which had been traced in the area of Khurja. This fact was corroborated by testimony of PW-26 who stated that A-1 had shown him one Nokia 1100 phone to him and put a SIM to check the same but did not provide the said phone to him, asking him to get another phone instrument. Per the alleged disclosure of Sonu, pursuant to his being apprehended, he stated that he had handed over that phone to one Manoj Gupta, resident of Khurja city. However, it is notable that neither the phone Nokia 1100 phone was recovered nor produced during trial nor said Manoj Gupta was traced or apprehended. The investigation relating to stolen phone Nokia 1100 phone and its trail ran cold.

11.2 Despite the lack of recovery of Nokia 1100 phone, it is surprising that a police team of 5 persons including 3 persons from SOG had converged at



Khurja for this purpose. First, through PW-26 they located the residence of A-1 and thereafter, A-1 led them to the residence of the deceased. None of the 5 personnel were in uniform and were in plain clothes and none of them disclosed to the family of the deceased that they were police officials. This is evident from testimonies of PW-1, PW-2 and PW-19 (the father, the brother and the mother of the deceased). This is further corroborated by testimonies of PW-14, PW-15 and PW-16 who were residents of the village and had seen A-1 along with these 5 persons. It is also clear from the testimonies of PW-14, PW-15 and PW-16, as well as of PW-1 and PW-2, that they came in a private car which they parked near the shop down the lane, and came asking for Sonu along with A-1, stating that they had come to purchase land and asked Sonu to show them the land and then took him in that car. Needless to state that in the event the police were indeed arresting Sonu in the robbery FIR, there was no reason for such deception to be employed particularly with a large team of 5 personnel being present, that too from the SOG and without the IO of the robbery FIR (PW-12). In this context it may also be noted that Ld. Trial Court's observation regarding the guidelines of the Hon'ble Supreme Court in *D.K. Basu v. State of West Bengal*, (1997) 1 SCC 416, are also apposite and relevant.

11.3 PW-1 states that Sonu was taken away at about 6:30 p.m. which fact is corroborated by PW-2 and PW-19 (who said it was evening time and her son was doing agricultural work in the farm). As per the statements of the accused recorded under section 313 Cr.P.C., they arrested Sonu at about 8:00 p.m. which is a clear and apparent discrepancy. Further, the record in GD No.08 (Ex. PW-21/X1) (the authenticity of which is in question) it is



also noted that the arrest was about 8:00 p.m., the mobile seized from him was Nokia 6030 (and not Nokia 1100) and that the information of arrest was given to his mother who was present at the spot and who had refused to sign the arrest memo. The narrative by the accused is therefore completely contradictory to the testimonies of PW-1, PW-2 and PW-19, as also not in consonance with other circumstances. It would be unlikely that the arrest was at 8:00 p.m. since Sonu was said to be working in the farm at that point of time. Also the contention that they had formally arrested Sonu at that time is completely belied by the evidence of the family and the villagers. If they had formally arrested Sonu there would have been no need for the subsequent desperate attempts of the family to locate Sonu. Had they known about his arrest, then the question of locating A-1 in the middle of the night by two brothers, PW-2 and PW-4 of Sonu and mention of slip of paper (Ex. PW-1/B) and the call to Ct. Pradeep, would not have arisen. PW-1 and PW-2 were present at home when the accused persons took him. Arrest memo does not record their presence. The circumstances, therefore, in which Sonu was arrested and taken by the police is unambiguously suspicious and mired in serious doubt. The car in which they took away Sonu belonged to A2. This mystery around the apprehension and the inconsistency in various stands taken by the accused also continued thereafter. The call made by PW-4 on 02nd September, 2006, on the mobile number provided by A-1 and the recipient identifying himself as Ct. Pradeep and told him to reach PS Sector-31 before 10 a.m. to meet Sonu, and then switched off his phone. When PW-4 along with PW-2 reached sector 31, neither Sonu nor A-5 were there. Around 09:00 a.m., constable from PS KhurjaDehat reached PW-1's house and informed him about Sonu's demise. All these events create grave



suspicion and doubt regarding the convicts defence in appeal.

11.4 As per PW-12, he had found no evidence against Sonu in FIR No.320/2006 and had not authorized anyone to arrest Sonu nor was he present at the time of his arrest and had never met him prior to his death. He was not called at the time of interrogation of Sonu. Even though the SOG may have the authority to arrest any suspect, it was evident that the arrest of Sonu was without informing the IO PW-12 and without any diary entry in the said robbery FIR. PW-12 only gets to know of the arrest much later and by that time he is informed that Sonu had allegedly committed suicide. These sequence of events form the basis of a strong foundational circumstance against the accused, buttressing the case of the prosecution.

Journey from the place of arrest to the Police Station Noida

11.5 The next singular biggest discrepancy and inconsistency arises relating to the travel time by the police party from Khurja to Noida police station. A distance of even 80 km along with a stopover for a meal (as alleged by the accused) cannot possibly by any stretch of imagination take 8 hours, even on a rainy night (though no evidence was produced to prove that it was). The explanation sought to be given by the accused, that pursuant to disclosure of Sonu, they had gone to raid various accomplices of Sonu regarding the robbery is belied by absolutely no evidence on record that this was indeed carried out or any information in that regard being recorded. Even GD No.08 (though not authenticated) does not bear out that this process of an extensive raid was carried out at various points pursuant to arrest of Sonu. Deceased was taken away around 6:30 p.m. on 01st September, 2006 & was lodged at PS Sector-20 around 3:25 a.m. & A-1 was



returning to his house around 04:00 a.m.

11.6 Therefore, the explanation offered by the accused of the delay in lodging Sonu in the police station is not acceptable and cannot serve to support the case of the defence. The long time taken from the arrest to the lodging in sector 20 creates a plausible circumstance against the accused, and supports the case of the prosecution.

Arrival at Police Station and lodging the deceased in the lockup

11.7 There is also serious inconsistency and doubt relating to fact whether Sonu was taken to Police Chowki Nithari, before being taken to PS Sector-20. PW-8 Ct. Kale Singh who was posted at Nithari, had stated before the CBCID that the team had brought Sonu at Police Chowki Nithari and had inflicted injuries on him and tortured him, however, during his testimony in court, he retracted from his statement fully and completely. Notwithstanding that his statement before the CBCID will not be admissible, the circumstance of his retraction of statement being a police officer, creates a serious doubt as to the series of events (as contended by the accused) which occurred that night.

11.8 The reason given behind lodging the deceased at PS Sector-20 is the fire caused by self-immolation. There is no record of fire incident in GD No. 08 and PW-12 Inspector Kunwar Pal Singh who was posted at PS Sec-39 also didn't mention anything about the fire incident. Even if there was a fire incident then the nearest police station to deceased's house was PS Khurja Dehat.



11.9 All these discrepancies regarding the lodging of Sonu in PS Section 20, do not serve to help the case of defence and in fact strengthens the case of the prosecution and the chain of circumstantial evidence against the accused.

Custody of the deceased and movement of police personnel

11.10 The circumstances relating to lodging of Sonu in PS Sector-20 at 3:25 a.m. (reportedly as per GD No. 8) are highly suspect. It is extremely odd that all relevant police personnel, who ought to be available at the PS at that time, refused to acknowledge their presence in that time period. PW-9 who was the Night Emergency Officer, stated that the moment Sonu was sent to lockup, he left the PS after telling the SO and PW-13. PW-10, Ct. Clerk/ GD Writer, stated that he had left GD No. 59 incomplete earlier before midnight and left the PS leaving it to PW-13 and PW-21. PW-13 only stated about recording of the FIR pursuant to death of Sonu. PW-21 states that once GD No. 8 was lodged by him (at 3:25 a.m.) he sought leave request from the SO and proceeded on leave at about 2:30 a.m. on 2nd September, 2006 and left office at 3:30 a.m. *vide* GD No. 9 handing keys to PW-10. This directly contradicts the testimony of PW-10 who states that he had left much earlier leaving GD No. 59 incomplete. PW-21 contradicts himself by stating that GD No. 59 was partly recorded by PW-10 from whom he had taken over.

11.11 Even more surprising is the statement of PW-29 the SO of PS Sector 20 who testified that he went to his residence at about 2:30 a.m. that night, after checking the lockup and verifying the security, and was called by PW-13 at 5:45 a.m. However, PW-21 categorically states that at 03:25 a.m. took



leave request from the SO and then left at 3:30 a.m. PW-9 also stated that at about 3:00 a.m. SO was present at the police station and he left the police station after telling the SO and PW-13.

11.12 There is also a serious discrepancy also in the recordal of number of inmates which were in that lockup at that time along with Sonu. Varying numbers have been presented by various witnesses and the variation is so *ex facie* glaring that it speaks for itself. While PW-9 states there were 9 people in the lockup that night, PW-13 stated there were 8-10 persons who brought down Sonu from the ventilator. PW-21 stated there were 8-9 accused in the said lockup and so does PW-22, however PW-23 stated there were 2 or 3 persons in the lockup. PW-23 further in response to a court question answered that in the morning at 6:00 a.m. none was found lodged in the lockup. These statements are irreconcilable with those of PW-9, PW-10, PW-21 who reportedly had left the police station

11.13 These discrepancies are glaring and can only underscore the case of the prosecution that all police personnel present at that night belonging to PS Sector-20 were somehow stretching themselves hard to disclaim their presence at the time post lodging of Sonu by the accused police team. It is, therefore, completely clear that conduct of all these police officials refusing to acknowledge their presence after the lodging of Sonu or around that time, leads to a conclusion that the situation in the PS at that time was not fine.

Medical examination of the deceased

11.14 The fact that as per GD No. 8 the deceased was not examined medically before being lodged at night and arrested without a warrant, flies



in the face of the case set up by defence. The justification that GD No. 08 records that he was in a hale and hearty condition cannot come to rescue of defence that they were not obliged or at least should have taken steps to get him medically examined having been under their custody since the previous evening. Reference to Rule 153 and 157 of the U.P. Police Regulations cannot relieve the accused police personnel of their bounden duty to ensure that these procedures ought to have been complied with.

Discovery of the body of the deceased and suicide theory

11.15 Discovering the body of the deceased in the morning, as per the statement of PW-29, also has serious inconsistencies. PW-29 stated that he was told by PW-13 at 5:45 a.m. at his residence that there was noise in the lockup. He stated that he reached there at 5:48 a.m. and saw Sonu hanging with the shirt. He registered a case at 5:50 a.m. after taking down the body, which as per him was warm. They allegedly left the police station for Kailash Hospital at 5:55 a.m. It is difficult to believe and digest and absorb that between 5:45 a.m. and 5:55 a.m. all these events took place including waking up of PW-29 at his residence, going to the police station, discovering the purported hanged body of the deceased, bringing it down, cutting its knots (as per PW-29), checking whether he was alive, registering a case and then leaving for the hospital.

11.16 This sequence of events as given by PW-29 makes it impossible to believe that this could have happened in the order that PW-29 professes. Also, if the deceased was indeed alive at that point of time, the natural conduct would be to rush to him to the hospital and save his life, rather than registering a case against him.



Information about death to the complainant

11.17 The manner in which information was given to the family members of the deceased by a constable from PS Khurja and not from PS Sector-20 where the incident took place and also telling brothers (PW-2 and PW-4) to reach the police station other than the place of incident forms yet another strong linkage in the chain of circumstantial evidence against the accused. Even if we assume deceased died around 5:45 a.m., there was no reason for delay of approximately 3 hours in informing the family members about his death.

Nature of injuries on the dead body

11.18 Even if we assume as per GD No. 08, that Sonu was in fit condition and there were no injury marks on his body except the operation mark, still there is no explanation for the black/blue marks and burn marks on deceased's body which were witnessed by various people present at the mortuary including deceased's family. PW-5 himself stated that contusion could be possible by battering and heavy beatings, with a hard and blunt object. It is hard to accept that deceased committed suicide and then sustained such injuries during the process of being saved by trained police personnel.

Cause of death and MLC and the *post mortem* report

11.19 There is serious discrepancy between injuries recorded in the inquest report (corroborated by the photographs of the dead body as also the testimony of various witness who had seen the body at the mortuary PW-1, PW-2, PW-3, PW-4, PW-15, PW-16 and PW-25) and the *post mortem* report. While PW-12, the officer who prepared the inquest report, stood by his report, the doctor PW-5, who prepared the PM report while noting



injuries which were *ante mortem* in nature, confirmed that they were possible by beating with a hard and blunt object. However, what was termed as electrocution / burn mark injuries near the ears by the inquest report, the PM doctor classified such injuries as a ligature mark. The injuries, as per the inquest report and the *post mortem* report, are consistent regards injuries on the neck, behind the ear, right arm elbow and the wrist and behind the leg of calf and the knee. It is difficult to accept that these injuries present all over the body can be possibly caused by lowering of hanging body from the ventilator and injuries being suffered due to collision with wall (as per testimony of PW-29). Such injuries are more consistent with battering and beatings than collision with a wall.

11.20 The report of the *post mortem* doctor regarding the ligature mark that would suggest death by hanging, also came in for close scrutiny in his cross examination. Not only did he not examine the ligature material which was not received by him, which throws serious doubt on his opinion and estimation, he also confirmed that symptoms which are typical in hanging like the tongue being bitten, swollen or froth at mouth of nostrils or pulmonary artery and the *venae cavae* full of dark fluid, being not present. Further, he has not confirmed whether a video of the *post mortem* was made or not. Regards this, he first answered in the affirmative and then expressed his doubt. It is also notable that no MLC was prepared at Kailash Hospital where the so-called 'still alive' body of Sonu was taken by the police.

FSL Report

11.21 The presence of the shirt as stated by PW-29, purportedly used by deceased to hang himself, seems introduced by the defence. As per the



testimony of PW-1 and other villagers who saw Sonu, he was wearing pants and a t-shirt at the time when accused persons took him away. His body was found without pants (which was never discovered nor produced) and with the shirt (instead of the t-shirt that he was reportedly wearing). Moreover, the shirt was examined by the FSL officers but was never sent to the *post mortem* doctors for examination, though it was shown to have been seized.

11.22 PW-32, the FSL officer who was highly experienced person, stated categorically that the shirt could not have borne the weight of 60-80 kgs as appearing from its physical condition. Even though there were no tests conducted on the fibre, the witness withstood the cross examination and testified purely on the basis of his elaborate experience. Further, the left half sleeve of the shirt that was cut and the blade with which he had allegedly opened the knots, were never recovered.

11.23 The *post mortem* report does not mention the blood oozing from injuries on deceased's body. The fact that there was bleeding was corroborated by various witnesses. The FSL Report also mentions that there were blood stains on deceased's baniyan and underwear.

GD Entries

11.24 The issue of fabrication of the GDs finds support in the circumstances relating to testimonies relating to the said GDs. PW-10 when requested to get the *roznamcha*, stated in the testimony that the same had been weeded out and confirmed the report of the Record Keeper, SSP Office, Noida regarding the said weeding out. No originals being available, photocopies were read into and sought to be proved on the basis of secondary evidence. Considering that PW-10 left GD No.59 incomplete and, thereafter,



testimony of PW-21 is contradictory, as noted above, the authenticity of recordal in GD entries cannot be accepted. Moreover, GD No. 10 was recorded showing departure of A-2, A-3, A-5 and A-6 while A-7 is shown as having departed in GD No. 8 with the information to PS Sector 39.

11.25 PW-21 stated in his testimony that GD Nos. 04-07 were not available even as photocopies. This gap in the availability of GD entries is conspicuous in its omission. Further, it is highly suspicious that after a detailed GD No.08 being recorded at 3:25 a.m., GD No.09 is recorded at 3:30 a.m. showing departure of PW-21 and GD No. 10 immediately thereafter at 3:35 a.m. All these activities took place between GD No. 8 and GD No. 10 within a span of just 10 minutes. In fact, after recording GD No.08, PW-21 says that he left the police station. Therefore, it would transpire that upon lodging of Sonu, neither PW-9, PW-10 nor PW-21 were in the police station. As per PW-22, PW-13 took over the *santri pehra* at 5:45 a.m. and PW-23 deposed that he was on *santri* duty only from 9:00 p.m. to 12:00 a.m. Notably, GDNo. 10 has been signed by A-2 and A-3. There was no witness who was ready to prove the authorship of GD No.10. All the officers, as stated above, have steered clear of commenting upon the alleged GD No. 10 and stated that they had left prior to that entry. No independent evidence was led to prove GD 10.

11.26 Therefore, this supports the case of the prosecution that there were serious manipulations and also that there was no one to corroborate the actual departure of the accused police team from the police station after the purported lodging of Sonu at 3:25 a.m.

11.27 Considering that the departure of the police personnel could not be



proven by them from the police station, they had to discharge the burden placed on them under Section 106 of the Indian Evidence Act which was not done. It has been opined by various Courts that in cases of custodial death by police torture, direct ocular evidence of the complicity of the police personnel is rarely available, it is expected that the colleagues would prefer to remain silent and even pervert truth or feign ignorance in the matter. It was also observed thus by the Hon'ble Supreme Court in *State of M.P. v. Shyamsunder Trivedi*, (1995) 4 SCC 262; *State of U.P. v. Ram Sagar Yadav*, (1985) 1 SCC 552 and *Shakila Abdul Gafar Khan v. Vasant Raghunath Dhoble*, (2003) 7 SCC 749 that if there is evidence to show that the accused has fabricated evidence to absolve himself from the offence, that circumstance will also point towards his guilt. What had happened to the victim after his arrest / abduction by the accused persons was within the special knowledge of the accused persons and having not provided believable explanation, the court was right in drawing the presumption that the police was responsible for his abduction, illegal detention and death. Reference is made to *Prithipal Singh v. State of Punjab*, (2012) 1 SCC 10.

11.28 Some relevant extracts from these decisions, for convenient reference, are as under:

i) State of M.P. v. Shyamsunder Trivedi, (1995) 4 SCC 262

“16. Indeed, there is no evidence to show that after Ganniuddin, Respondent 5, who along with Rajaram, Respondent 4, had brought the deceased to the police station for interrogation, had at any time left the police station on the fateful night. In the face of the unimpeachable evidence of PW 4 and PW 8, we fail to understand how the learned Judges of the High Court could opine that there was no definite evidence to show the complicity of Ram Naresh Shukla, Respondent 3, Rajaram and Ganniuddin, Respondents 4 and 5 respectively in the crime along with SI Trivedi,



Respondent 1. The observations of the High Court that the presence and participation of these respondents in the crime is doubtful are not borne out from the evidence on the record and appear to be an unrealistic over simplification of the tell-tale circumstances established by the prosecution. The following pieces of circumstantial evidence apart from the other evidence on record, viz., (i) that the deceased had been brought alive to the police station and was last seen alive there on 13-10-1981; (ii) that the dead body of the deceased was taken out of the police station on 14-10-1981 at about 2 p.m. for being removed to the hospital; (iii) that the deceased had died as a result of the receipt of extensive injuries while he was at the police station; (iv) that SI Trivedi, Respondent 1, Ram Naresh Shukla, Respondent 3, Rajaram, Respondent 4 and Ganniuddin, Respondent 5 were present at the police station and had all joined hands to dispose of the dead body of Nathu Banjara; (v) that SI Trivedi, Respondent 1 created false evidence and fabricated false clues in the shape of documentary evidence with a view to screen the offence and for that matter, the offender; (vi) SI Trivedi — respondent in connivance with some of his subordinates, respondents herein had taken steps to cremate the dead body in hot haste describing the deceased as a 'lavaris'; (vii) Rajaram and Ganniuddin — respondents, had brought the deceased to the police station from his village, and (viii) that police record did not show that either Rajaram or Ganniuddin had left the police station, till the dead body was removed to the hospital in the jeep, unerringly point towards the guilt of the accused and the established circumstances coupled with the direct evidence of PWs 1, 3, 4, 8 and 18 are consistent only with the hypothesis of the guilt of the respondents and are inconsistent with their innocence. So far as Respondent 2, Ram Partap Mishra is concerned, however, no clinching or satisfactory evidence is available on the record to establish his presence at the police station when Nathu deceased was being subjected to extensive beating or of his participation in the commission of the crime. 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 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. Bound as they are by the ties of brotherhood, it is not unknown that the police personnel prefer to remain silent and more often than not even pervert the truth to save their



colleagues, and the present case is an apt illustration, as to how one after the other police witnesses feigned ignorance about the whole matter.

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 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.”

(emphasis added)

ii) State of U.P. v. Ram Sagar Yadav, (1985) 1 SCC 552



“20. Before we close, we would like to impress upon the Government the need to amend the law appropriately so that policemen who commit atrocities on persons who are in their custody are not allowed to escape by reason of paucity or absence of evidence. Police officers alone, and none else, can give evidence as regards the circumstances in which a person in their custody comes to receive injuries while in their custody. Bound by ties of a kind of brotherhood, they often prefer to remain silent in such situations and when they choose to speak, they put their own gloss upon facts and pervert the truth. The result is that persons, on whom atrocities are perpetrated by the police in the sanctum sanctorum of the police station, are left without any evidence to prove who the offenders are. The law as to the burden of proof in such cases may be re-examined by the Legislature so that handmaids of law and order do not use their authority and opportunities for oppressing the innocent citizens who look to them for protection. It is ironical that, in the instant case, a person who complained against a policeman for bribery, was done to death by that policeman, his two companions and his superior officer, the Station House Officer. The vigilant Magistrate, Shri R.C. Nigam, deserves a word of praise for dutifully recording the dying declaration of the victim, which has come to constitute the sheet-anchor of the case of the prosecution.”

(emphasis added)

iii) ***Shakila Abdul Gafar Khan v. Vasant Raghunath Dhoble***, (2003) 7 SCC 749

“6. Rarely, in cases of police torture or custodial death is there direct ocular evidence of the complicity of the police personnel 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 — and the present case is an apt illustration — as to how one after the other police witnesses feigned ignorance about the whole matter.”

(emphasis added)

iv) ***Prithipal Singh v. State of Punjab***, (2012) 1 SCC 10

“79. Both the courts below have found that the appellant-accused had abducted Shri Jaswant Singh Khalra. In such a situation, only the accused



person could explain as to what happened to Shri Khalra, and if he had died, in what manner and under what circumstances he had died and why his corpus delicti could not be recovered. All the appellant-accused failed to explain any inculcating circumstance even in their respective statements under Section 313 CrPC. Such a conduct also provides for an additional link in the chain of circumstances. The fact as to what had happened to the victim after his abduction by the accused persons, has been within the special knowledge of the accused persons, therefore, they could have given some explanation. In such a fact situation, the courts below have rightly drawn the presumption that the appellants were responsible for his abduction, illegal detention and murder.

(emphasis added)

Conclusion

12. In view of the above analysis, it is the considered opinion of the Court that:

- a) The Ld. Trial Court has rightly convicted the said accused for the offences and the appeals by the accused viz. CRL.A. 488/2019, CRL.A. 499/2019, CRL.A. 537/2019, CRL.A. 622/2019 and CRL.A. 624/2019 are, therefore, dismissed and the conviction and sentence awarded by the learned trial court are upheld;
- b) Considering that there was no evidence relating to presence of A-4, Vinod Kumar Pandey at the site of abduction and at PS Sector-20, the Ld. Trial Court is correct in having acquitted him for lack of evidence. The appeal of the complainant Crl A. 1025/2019 is, therefore, dismissed.
- c) Considering that there is no evidence on record to prove that the accused police officers caused injuries to Sonu with an intention that in all likelihood death will ensure, thereby causing the murder of the deceased, it would be difficult to reach a conclusion that the accused



police officers would be guilty of offence punishable under Section 302 IPC. The said sequence of events and evidence on record suggest that the deceased was subjected to custodial torture with the knowledge that it was likely to cause death of the deceased but without any intention to cause the death. Therefore, the act of causing bodily injury, as is likely to cause death, would make the accused guilty of offence punishable under Section 304 IPC Part I and liable for a sentence for RI 10 years. Thus, the appeals filed by the complainant for converting the convictions for offence punishable under Section 304 IPC to Section 302 IPC cannot be sustained and therefore CrI.A. 1023/2019 and CrI.A.1024/2019 are dismissed.

13. Copy of this order be uploaded on the website and be also sent to Superintendent, Tihar Jail, Delhi for updation of records and intimation to the appellants.

(MUKTA GUPTA)
JUDGE

(ANISH DAYAL)
JUDGE

JUNE 26, 2023
‘SM’