

IN THE HIGH COURT OF JUDICATURE AT PATNA

CRIMINAL APPEAL (DB) No.724 of 2022

Arising Out of PS. Case No.-30 Year-2019 Thana- BIHARSHARIF SC/ST District- Nalanda

=====

Balinder Rai @ Balindra Rai, aged about 55 years, male, Son of Late Ambika Rai, Resident of Village- Shishbaniya, P.S.- Uchkagaon, District- Gopalganj.

... .. Appellant/s

Versus

1. The State of Bihar.
2. Balram Ravidas, aged about 29 years, male, Son of Late Ganesh Ravidas, Resident of Village- Saidpura, P.S.- Nagarnausa, Distt.- Nalanda. At Present Mohalla- Khemnichak, P.S.-Patrakarnagar, Distt.- Patna.

... .. Respondent/s

=====

with

CRIMINAL APPEAL (DB) No. 733 of 2022

Arising Out of PS. Case No.-30 Year-2019 Thana- SC/ST District- Nalanda

=====

Kamlesh Kumar @ Kamlesh Prasad, male, aged about 46 years, S/o Late Shivlochan Prasad @ Sheolochan Bhagat, R/o Village- Maira, P.S.- Dinara, Distt.- Rohtas.

... .. Appellant/s

Versus

1. The State of Bihar.
2. Balram Ravidas, Son of Late Ganesh Ravidas, Resident of Village- Saidpura, P.S.- Nagarnausa, Distt.- Nalanda.

... .. Respondent/s

=====

Appearance :



(In CRIMINAL APPEAL (DB) No. 724 of 2022)

For the Appellant/s : Mr. Ajay Kumar Thakur, Adv.
Ms. Kiran Kumari, Adv.
Md. Imteyaz Ahmad, Adv.
Mr. Ritwik Thakur, Adv.
Ms. Vaishnavi Singh, Adv.
For the Informant : Mr. Umesh Kumar Singh, Adv.
For the State : Mr. Sadanand Paswan, Spl. P.P.
Mr. Abhimanyu Sharma, APP

(In CRIMINAL APPEAL (DB) No. 733 of 2022)

For the Appellant/s : Mr. Ram Adya Singh, Adv.
Mr. Murlidhar, Adv.
Mr. Arjun Prasad, Adv.
Mr. Raj Shekhar, Adv.
For the Informant : Mr. Umesh Kumar Singh, Adv.
For the State : Mr. Binay Krishna, Spl. P.P.

CORAM: HONOURABLE MR. JUSTICE ASHUTOSH KUMAR
and
HONOURABLE MR. JUSTICE JITENDRA KUMAR
ORAL JUDGMENT
(Per: HONOURABLE MR. JUSTICE ASHUTOSH KUMAR)
Date : 15-07-2024

The two appeals have been heard together
and are being disposed off by this common judgment.

2. Both the appellants have been convicted
for the offences under Sections 302/34 of the Indian
Penal Code (*in short the IPC*) and 3(2)(v) of the
Scheduled Castes & Scheduled Tribes (Prevention of
Atrocities) Act, 1989 (*in short the SC/ST Act*) vide



judgment dated 08.08.2022 passed by the learned Special Judge under SC/ST (POA) Act, Nalanda at Bihar Sharif in connection with Special SC/ST Case No. 30 of 2019 (G.R. Case No. 3785 of 2019). By order dated 25.08.2022, they have been sentenced to undergo imprisonment for life, to pay a fine of Rs. 25,000/- each and in default of payment of fine, to further suffer imprisonment for three months for the offences under Sections 302/34 of the IPC and 3(2)(v) of the SC/ST Act respectively.

3. Both the sentences have been ordered to run concurrently.

4. We have heard Mr. Ajay Kumar Thakur, the learned Advocate for the appellant/Balinder Rai @ Balindra Rai in Cr. Appeal (DB) No. 724 of 2022 and Mr. Ram Adya Singh, the learned Advocate for the appellant/Kamlesh Kumar @ Kamlesh Prasad in Cr. Appeal (DB) No. 733 of 2022. We have also heard Mr. Umesh Kumar Singh, the learned Advocate for the



informant in both the appeals.

5. The State, in both the appeals, has been represented by Mr. Sadanand Paswan, the learned Special P.P. assisted by Mr. Abhimanyu Sharma, the learned APP and Mr. Binay Krishna, the learned Special P.P.

6. Both the appellants are police officers, who are said to have killed the deceased while he was in police custody. Along with the appellants, seven other persons were also tried, including the two *Chawkidars*, namely, co-accused/Jitendra Kumar and Sanjay Paswan, but they have also been acquitted of all the charges. One co-accused/T.N. Rai died before the Trial commenced.

7. The resume of the case, foul in its face, reflects a sordid state of affairs. One of the worst crimes in a civilized society under the rule of law is, perhaps, death in custody. It is a breach of Constitution's inherent rights which are outlined under



Articles 21 and 22(1) of the Constitution of India.

8. Torture in police custody is a tool used by police for extracting information/confessions from accused persons. Realizing this, several safeguards have been provided in the Code of Criminal Procedure, 1973 (*in short the Cr.P.C.*) and in the Indian Evidence Act, 1872 (*in short the Evidence Act*) as also under the IPC.

9. Sections 330 of the IPC provides for punishment for the offence of voluntarily causing hurt to extort confession, or to compel restoration of property. Section 331 IPC, likewise, punishes voluntarily causing grievous hurt to extort confession, or to compel restoration of property.

10. Section 54 of the Cr.P.C. provides the safeguard by asking for examination of arrested persons by Medical Officer. It is compulsory that if any person is arrested, he shall be examined by a Medical Officer or by a registered Medical Practitioner soon after the arrest is made.



11. In the Evidence Act, Sections 24, 25 and 26 have been provided for, which prohibits taking of confession into account if it is caused by inducement, threat or promise. In such situation, it becomes irrelevant in any criminal proceeding. A confession made before a police officer is not to be proved against an accused of any offence. No confession made by any person while he is in custody of a police officer, unless it be made in the immediate presence of a Magistrate, could be proved against such person.

12. Likewise, Section 162 of the Cr.P.C. provides that the statements of the accused can be used for no other purpose except for contradicting him and under Section 164 Cr.P.C., a Magistrate, before whom such statement/confession is made, is under an obligation to ensure voluntariness.

13. These are some of the provisions of the IPC, Cr.P.C and the Evidence Act, which ensure that an accused is not tortured in police custody. While enacting



these provisions, it was in the mind of the framers that if defenders of law would violate human rights, the lives and liberty of people would fall in peril. It would otherwise be insulting to the spirit of Constitution.

14. It cannot be gainsaid that torture is a necked violation of human dignity; a calculated assault on the persona of a human being. Whenever and wherever it happens, the citizenry take a backward step.

15. After having said that, it is also very important to note that in a case of custodial death, the evidence has to be navigated through with a clear lens so that any general impression that policemen torture the accused persons in custody does not take a driving seat, blurring the vision of justice as in such a situation, an innocent person may be sacrificed at the alter of justicing. It would be extremely necessary in cases of custodial death to first find out whether it is a case of custodial death or whether the offence has been attempted to be hushed up.



16. The impressionistic observations of the Supreme Court in various cases, like ***Nandini Satpathy vs. P.L. Dani & Anr. : (1978) 2 SCC 424; Sunil Batra (II) vs. Delhi Administration : (1980) 3 SCC 488; Raghbir Singh vs. State of Haryana : (1980) 3 SCC 70; Khatri & Ors. (II) vs. State of Bihar & Ors. : (1981) 1 SCC 627 and D.K. Basu vs. State of W.B. : (1997) 1 SCC 416***, drive the point regarding the necessity of probity of investigation and the veracity of the Doctor giving his opinion about the cause of death. Not all are expected to fall foul of their constitutional and moral obligations. There is always a hope in human integrity, without which the human dignity would be the first casualty. Transparency of action and accountability are no doubt the too biggest safeguards against the abuse of police powers. All this, but will not do away with the basic principles of law, viz., that an innocent person should not be punished. The concept of vicarious liability is unknown in the criminal jurisprudence.



17. In the present case, one Ganesh Ravidas (deceased) was picked up from his house on 10.07.2019 at about 4 O'clock in the evening by the appellants and *Chawkidars*/Jitendra Kumar and Sanjay Paswan, who have since been acquitted. His family members including his son, who is the informant of this case (P.W. 10), went to the police station in search of his father, when they were abused by the appellants by taking their caste names. However, they were informed that the deceased had been taken by the Investigator to recover a girl who had been abducted and for which a case had been lodged. They were asked to come to the police station on the next day. On 11.07.2019 at about 8:25 P.M. in the evening, co-accused/*Chowkidar*/Jitendra Kumar came to the house of the deceased and informed the family members that the deceased had died in the police station. On this information, the family members including Balram Ravidas, the son of the deceased, who has been examined as P.W. 10, went to the police



station, but did not find the dead-body of his father. On enquiry, it was learnt that the dead-body has been sent to the Sadar Hospital, Bihar Sharif for the *post-mortem* examination. All the family members rushed to the hospital where they found the dead-body lying on the ground. They noticed signs of physical injury and violence on the dead-body. The clothes were torn and the deceased was bleeding. The belly-button of the deceased was found to be swollen. Balram Ravidas (P.W. 10) averred that the appellants and other co-accused persons, at whose instance the case of abduction of a female was lodged, were responsible for the death of the deceased. In the written report by P.W. 10, addressed to the Officer-in-Charge of SC/ST Police Station, it was also divulged by him that there was a suspicion on one Dharmendra Kumar of the same village of having abducted the daughter of Naresh Sao, a co-accused, who has since been acquitted. For the investigation of that case, the deceased had been picked



up from his home.

18. On the basis of the afore-noted written report by P.W. 10, referred to above, SC/ST (Hilsa) P.S. Case No. 30 of 2019, dated 12.07.2019, was registered for investigation for the offences under Sections 302 and 120(B)/34 of the IPC read with Sections 3(1)(r)(s), 3(2)(v)(a)(va) of the SC/ST Act.

19. The police, after investigation, submitted *charge-sheet* against ten of the accused persons including one T.N. Rai, who had been investigating the case of abduction of a female referred to above, but only nine were put up on Trial including the appellants as T.N. Rai, the Investigator, had left the world of living by then.

20. The Trial Court, after having examined twenty three witnesses on behalf of the prosecution, convicted the appellants as aforesaid, but acquitted the other accused persons including the two *Chawkidars*, namely, Jitendra Kumar and Sanjay Paswan of all the



charges.

21. We are completely flummoxed at the fact that the informant, who is the son of deceased (P.W. 10), turned hostile and did not support the prosecution case. So is the case with P.Ws. 2, 3, 4, 5, 6, 7, 8, 9 and 12. Some of these witnesses are the sons and daughter of the deceased.

22. The Trial Court was only left with the evidence of one of the sister-in-laws of the deceased, who supported the prosecution case, and the police personnel, who were examined as P.Ws. 20 to 23.

23. The three Doctors who comprised the medical team which had supervised and had undertaken the *post-mortem* examination were examined as P.Ws. 16, 17 and 18.

24. An expert from the FSL was also examined as P.W. 19. He had visited the place of occurrence, namely, toilet of the *hazat* of the concerned police station.



25. Rest others, namely, P.Ws. 11, 13 and 15 are only hearsay witnesses.

26. There was no dispute before the Trial Court that the deceased had died in the police station. This definitely raises a suspicion that the defenders of law have only violated the human rights. The concept of liberty of a person which is the quintessence of civil existence has been abandoned. This left the Trial Court and us with the stupendous task of finding out as to whether it was a custodial death or that the deceased had died a natural death and that it was only fortuitous that the death took place when the deceased was in the police custody.

27. For this, we have examined the evidence in detail to find out as to who had brought the deceased to the police station. There is no arrest memo on record; there is no reference or details of the case of abduction in connection with which the deceased was picked up from his house and there is nothing on record



to indicate any purpose of deceased having been taken to the police station.

28. The difficulty in assessing these aspects of the matter has arisen because the informant and other family members as witnesses had gone hostile at the Trial. Nonetheless, going back to the narrative in the written report, appellant/Kamlesh Kumar, who at the relevant time was Officer-in-Charge of the Police Station, and appellant/Balinder Rai, as A.S.I., along with Jitendra Kumar and Sanjay Paswan (*Chowkidars*) were named by P.W. 10. The appellants are also alleged to have abused the family members of the deceased when they had come to the police station to look for him. They were only informed that the deceased had gone with the Investigator of the case for finding out the abducted girl. Later, an information arrived through *Chawkidar*/Jitendra Kumar that the deceased had died in the hospital.

29. In complete contrast to what was narrated by P.W. 10 in the written report, one Ranjan



Paswan (P.W. 11), a wireless operator at Nagarnausa Police Station, has stated before the Trial Court that he was a regular visitor to the police station to oversee the wireless work. On 10.07.2019, while he was at the police station, he had seen T.N. Rai (since dead) investigating the deceased in connection with the kidnapping case. Thereafter, he left the police station as his duty hours were over. On 11.07.2019, he again went to the police station and carried on with his work for the whole day and then went back home. On 12.07.2019, at about 9 O'clock in the morning, when he reached the police station, he was informed by his colleagues that the deceased had gone to the toilet and when he did not come out for a long time, the door of the toilet was broken open and it was found that the deceased had hanged himself from the window.

30. The evidence of P.W. 11, it has been argued, is the testimony to the fact that the investigation in the case of abduction was being carried



out by T.N. Rai and by no other police officer. He had seen T.N. Rai interrogating the deceased, but had not seen anything happening in the police station with the deceased till the next day, *i.e.*, till 11.07.2019. If he is to be believed, then, perhaps, the deceased had died sometimes after he had left the police station. He was informed only on the next day about the death.

31. Ramnandan Prasad (P.W. 13) was posted as a Home-guard in the Nagarnausa Police Station. He admits of having gone along with the senior officers for finding the whereabouts of the abducted victim. The two of the officers with whom he had gone in raid were appellant/Kamlesh Kumar and T.N. Rai. They had gone to *Saidpura* village where they found that one person was held captive by three co-villagers. The person in captivity was brought to the police vehicle and then taken to the police station. At the police station, T.N. Rai started interrogating that person. Thereafter, appellant/Kamlesh Kumar left the police station and P.W.



13 also went back to his barracks.

32. In his cross-examination, P.W. 13 has stated that since there was some inkling/evidence about the deceased being involved in the kidnapping, therefore he was brought to the police station and interrogated by afore-noted T.N. Rai. He has also asserted that he never saw the Officer-in-Charge of the police station, viz., appellant/Kamlesh Kumar making any inquiries from the deceased.

33. Arjun Prasad Singh, one of the Inspectors posted in the same police station at the same time, has been examined as P.W. 14. In his examination-in-chief, he has told the Court that the deceased died of self-hanging. He identified the appellants in the dock. On the day of the occurrence, i.e., 10.07.2019, five Inspectors were posted in the police station, which included him, one Arun Kumar Singh, Jawahar Prasad Singh (P.W. 15), appellant/Kamlesh Kumar and T.N. Rai (since dead). Three ASIs. were also present in the



police station at that time. The police station had approximately two dozen armed police force. However, during the cross-examination, he has stated that at the time of the occurrence, appellant/Kamlesh Kumar was not present in the police station. He arrived at the police station only after the deceased had died. In Nagagnausa Police Station, there are about seven to eight *Chawkidars*.

34. Jawahar Prasad Singh (P.W. 15) confirmed before the Trial Court that the deceased had died in the *hazat*. He claims to have heard later that the deceased was taken out of the toilet after breaking open the door. In his cross-examination, he has stated that on the day of the occurrence, 15 to 20 police officers were present along with two dozens sepoy. He was present in the police station from 1 O'clock to 4:30 P.M. and was writing the diary in connection with some other case. For all this while, appellant/Kamlesh Kumar was not present as he had gone out in connection with the



investigation of some other case. He has also certified that the deceased was brought to the police station by T.N. Rai, as T.N. Rai only was investigating the case of the abduction of the girl, in which connection the deceased was picked up from his house. He had not seen both the appellants ever interrogating the deceased. He had seen the deceased in the *hazat* in a good physical condition.

35. If these two witnesses are to be believed, it has been argued by the learned Advocates for the appellants, then, along with the appellants and T.N. Rai, others police officers were also present. However, surprisingly, only the appellants have been made accused in this case, whereas P.Ws. 14 and 15 have been brought to the witness-stand to depose as prosecution witnesses. It was also pointed out that none of these witnesses were trying to hush up the fact that the deceased died in police *hazat* and that he was brought to the police station in connection with an



abduction case and was being interrogated by T.N. Rai. So far for the presence of the appellants in the police station on the day of the occurrence. No doubt, the appellants have been named with others by P.W. 10/the informant in the written report, but as has already been noted, P.W. 10 has been declared hostile.

36. Thus, the only evidence of the presence of the appellants in the police station is of P.Ws. 11, 13, 14 and 15. All these witnesses have spoken about T.N. Rai having brought the victim/deceased to the police station in connection with the abduction case and his being interrogated by T.N. Rai only and by no other police officers.

37. One of the other Inspectors present in the police station, *viz.*, Arun Kumar Singh, who has been examined as P.W. 22 has also confirmed that T.N. Rai was making the inquiries and that he had learnt through *Chawkidar*/Sanjay Kumar that the deceased had hanged himself in the toilet. He has specifically stated that at



the time of occurrence, appellant/Balinder Rai was not present in the police station.

38. This takes us to the cause of the death of the deceased.

39. The inquest proceedings were held by a probationary I.A.S. Officer, viz., Vaibhav Chaudhary, who has not been examined. He had spotted a ligature mark on the neck and two injuries, one on forehead and the other on elbow. It did not appear to him to be a case of hanging. However, in the column for the cause of Death, he has stated that it appeared on a final analysis that the deceased died because of hanging. This inquest proceeding was done on 11.07.2019 at about 10:35 P.M.

40. The *post-mortem* examination was conducted on the next day, i.e., on 12.07.2019. The *post-mortem* was held at 07:40 A.M. by a team of three Doctors, viz., P.Ws. 16, 17 and 18. On external examination, *rigor mortis* was found present in all the



four limbs. The eyes and mouth were found to be closed. There was bluish discoloration of nails of all the fingers of both the hands. The lips had also turn blue. There was an abrasion wound in the middle of the forehead of the dimension of 1.5 cm. x 0.5 cm. There were two other abrasions on the right hand and on the lower portion of the right arm of almost the same dimension. There were abrasion wounds on legs also. Ligature mark was seen which extended from below the chin obliquely downwards towards back of the left side of neck, which ran continuously towards the back of neck and up to below the mandibular angle of the right side of neck. The size of ligature was 30 cms. in length and 1 cm. wide. Semen was coming out from the penis. However, the cranial bones were found to be intact. So was the case with brain and its meninges. There was no fracture of thyroid cartilage or hyoid bone.

41. No blood clot was present beneath the ligature mark. However, blood clots were seen beneath



the other abrasion wounds. There was no fracture of cervical vertebrae. The thorax and abdomen were absolutely normal with no injuries or hemorrhage seen in the cavity.

42. In the opinion of the team of Doctors, the cause of death was asphyxia. This opinion was based on the findings at the *post-mortem* examination. However, the cause of asphyxia could not be ascertained; perhaps, because of no blood clots beneath the ligature mark and no injury in the inside of the neck. Precisely for this reason, it appears that *viscera* was preserved and sent to the FSL for histopathological and biochemical studies. The time elapsed since death was fixed at 08 to 12 hours from the time of *post-mortem* examination.

43. The *post-mortem* report to us appears to be too vague to count on the opinion of the Doctors with respect to death. There were suggestive indicators of strangulation, but because of absence of any injury in



the neck or any blood clot under the ligature mark, it could not be ascertained whether the deceased was strangled or he hung himself or that he died because of the other wounds. Rest other wounds appeared to be absolutely simple in nature over non-vital parts of his body.

44. The FSL report regarding the visceral organs, blood, hair and nails of the deceased reflected no metallic alkaloidal, glycosidal, pesticidal or volatile poison or its impact. The clothes of the deceased, which were also sent for forensic examination, were found to contain grey stains, which were neither stiff to feel nor did they produce any characteristic bluish white florescence in U.V. light. The shirt of the deceased but bore reddish-brown stains at places. It also had grey stains, which were also neither stiff nor produced any florescent light in U.V. light examination. Semen was not detected in any one of the exhibits sent to the FSL. In the stains on the clothes, the blood of Group-B was



found.

45. This again takes us nowhere so far as the cause of death is concerned.

46. True it is that there were abrasions on many parts of the body of the deceased, but that could not have caused the death. Death in this circumstance, could have been caused only by strangulation, either by others using a soft-cloth or in the event of the deceased himself having taken the extreme step of harming himself.

47. The question is as to why would he do that?

48. By that time, there was no evidence available which would have implicated him in a case of abduction. Perhaps, it was a case of a love affair.

49. The question that we are confronted with is whether the deceased was beaten to death and whether the appellants or for that matter, the police officers posted in the police station, had attempted to



create/forge evidence to put up a case of self-hanging by the deceased in the police *hazat*.

50. If the prosecution would have been able to prove that the death of the deceased was because of strangulation or because of his having been beaten black and blue, the Trial Court could have used the tool of Section 106 of the Evidence Act to seek the explanation of the appellants as to the circumstance under which the death was caused.

51. In our efforts to see whether the prosecution had been able to prove that the deceased died because of assault or strangulation, we have looked at the deposition of the three Doctors, under whose supervision the *post-mortem* examination was held.

52. Be it also noted here that it could not have been a case of poisoning as nothing was found in the visceral remains of the deceased in the forensic examination as we have already referred to above.

53. Dr. Awadh Kishore Prasad Singh (P.W.



16) had nothing specific to offer to the Trial Court nor was he cross-examined with respect to the injuries found on the body of the deceased.

54. Dr. Deonandan Prasad (P.W. 17) throws more light on what actually had happened in the *post-mortem* room. He, on being questioned, told the Court that hanging could be of two types, *viz.*, complete and partial hanging. In partial hanging, body rests on the ground. It occurs while sitting, reclining or in any other posture. In partial hanging, even a low point of hanging could be used. On being specifically questioned whether in such partial hanging, death would, for sure, ensue, he had no clue as he had not read any medical explanation regarding such slow death in cases of partial hanging.

55. With utmost civility at our command, we say that the Doctors conducting the *post-mortem* examination did not evince good medical knowledge of the human anatomy.

56. Were they following dictates of some one



else?

57. As already noted, one of the important safeguards against the death on account of torture in custody is the opinion of a Doctor and normally, without any reason, his opinion ought not to be doubted.

58. After having said that, we are absolutely unhappy to note that P.W. 17 said with impunity before the Trial Court that the final opinion about the cause of death was not mentioned in the *post-mortem* report. Another damaging statement made by him was that on the demand of the District Magistrate of Nalanda, he had submitted the report. The report was written and typed in the office of the District Magistrate.

59. Why was the District Magistrate calling the shots?

60. We do reckon that a District Magistrate is overall in-charge of criminal prosecution, but then, fair investigation is the basis for enforcing the rule of law.

61. Were the Doctors asked by the District



Magistrate to prepare a special report evincing death in police custody because of strangulation? It eludes us as to the justification of the Doctors going up to the office of the District Magistrate and writing the *post-mortem* report giving cause of death and then typing it out there. The veracity; the sanctity and the genuineness of the report, therefore, has been smeared with doubt. No wonder, we have found that the specific questions of the cross-examiner were evaded and, somehow or the other, it was opined by the medical team that the death was because of asphyxia. They could not even have said this with certainty as there were no red herrings and indications of strangulation or self-hanging. The hyoid bone and the cartilage in the neck were absolutely undamaged. There were no injuries in the subcutaneous levels. There was only a faint ligature mark, which also was not continuous.

62. We have thus great reservation in accepting the medical opinion regarding the death of the



deceased by asphyxia. The Trial Court, perhaps, did not notice this aspect of the matter, *viz.*, the writing and typing out of the *post-mortem* report in the office of the District Magistrate. It appears that there was a great rush and hurry for concluding the investigation and there, perhaps, could be an attempt to make it an open and shut case of death in custody.

63. No matter how grave the offence of torture and death in custody is, but equally dangerous would be to create an evidence, so as to implicate somebody and rest the case.

64. This has given us serious doubts whether the appellants, who were also posted as police officers/Inspectors in the police station at that time, were made the scapegoats. T. N. Rai had died by the time the Trial began.

65. Is the allegation against the appellants, therefore, false?

66. While discussing this case, we are all the



time conscious of the fact that direct ocular evidence in a custodial death matter is rarely available. It is not unknown that the colleagues in the police station prefer to remain silent, even to pervert the truth or to feign ignorance of the matter.

67. This case but appears to be slightly different.

68. The police officers as witnesses have not denied that the deceased was brought to the police station and interrogated but by T.N. Rai and nobody else. There is one lurking doubt in our mind that perhaps these police witnesses were very forthcoming regarding the complicity of T.N. Rai as by the time the case had gone to the Trial Court, T.N. Rai had died. But then, such statements were made during the investigation also when T.N. Rai had been posted in the same police station. Had it not been the case, those witnesses would have been confronted with their earlier statements made under Section 161 of the Cr.P.C.



69. With all the sensitivity in dealing with such custodial death where an odd prisoner dies, we say that the process of Magisterial inquiry and inquest were not followed in accordance with the N.H.R.C. guidelines. The I.A.S. probationer who conducted the inquest proceedings has made contradictory statements with regard to his observation. Though in the *post-mortem* the timing of death has been fixed at 7 to 8 hours from the time of *post-mortem* examination, it is not known as to when the deceased had died. The FSL expert was called in only on 12.07.2019, *i.e.*, on the day when the *post-mortem* was held.

70. Das Ashok Kumar (P.W. 19) was informed by the Superintendent of Police, CID on 12.07.2019 to go to the Nagarnausa Police Station. He proceeded to the Nagarnausa police station with a four-member team. The toilet of the police station was found to be situated at the ground floor. By that time, the dead-body was not there at the police station. The



position of the dead-body and the other incriminating materials, which could have been seen and analyzed by the FSL expert, was not there.

71. However, we have found that in his cross-examination, he had stated that the latch on the door of the toilet was of aluminum and which appeared to be twisted. The crevices in the walls were not found to have been dusted, giving an impression that nothing was changed except the dead-body having been removed from the place where the death had taken place. Even the grill on which rope was tied was dusty. The rope had been cut in two pieces. The knot in the rope was lying at a distance of about 5.4 ft. On the basis of the photographs, which have not been exhibited before the Trial Court but which was shown to P.W. 19, he had found the ligature mark to be behind the neck only. The feet of the deceased was found rested on the floor. The mouth was open and the eyes were half open. The left hand of the deceased was found placed



on the grill. The deceased was about 5.4 ft. in height. All these observations were from the photographs shown to P.W. 19. On the basis of those photographs and what he found in the physical inspection of the toilet, P.W. 19 concluded that it could not have been a case of hanging. This opinion also has not advanced the case of the prosecution either. The services of P.W. 19 was pitched in much later, though it should have been done earlier when the dead-body had not been removed from the toilet.

72. The guidelines of N.H.R.C., viz., Magisterial inquiry at the earliest without any delay; visit of Magistrate at the P.O. immediately on the report of the occurrence; evidence with respect to circumstances of death and the manner and sequence of incidents leading to death as also the cause of death and the person responsible for death or suspicion of foul play, have not been followed at all.

73. The FSL personnel (P.W. 19) did not



analyze the *post-mortem* report or the inquest report and, therefore, his analysis does not help us with respect to the cause of death. There does not appear to be any attempt on the part of P.W. 19 to take fingerprint on the rope or on the grill, which appeared to have been untouched and at other places including the knot which was found at some distance.

74. Had the police officers tried to create an evidence to show that the deceased had hung himself, which could have helped them absolve themselves from the offence? If this is so, then this is also a circumstance which points towards the guilt of the suspected person.

75. Precisely for this reason, in cases of custodial deaths, the Supreme Court has cautioned that the exaggerated adherence to and insistence upon the establishment of proof beyond every reasonable doubt by the prosecution and ignoring the ground realities; the fact situations and the peculiar circumstances of a given



case, might result in miscarriage of justice and make the justice delivery system severely suspect. It was further observed that if this is done, then, in the ultimate analysis, only the society would suffer and the justice delivery system would be subjected to ridicule.

76. The Courts are also conscious of the fact that in cases of custodial deaths and custodial torture, any insensitive and unrealistic approach of the Court would only encourage the wrongdoers as it would reinforce the belief in the mind of the police that no harm would come to them if any prisoner dies in the lockup because there would hardly be any other evidence available.

77. The policemen are known to be bound with the ties of brotherhood. [refer to ***State of M.P. vs. Shyamsunder Trivedi & Ors. : (1995) 4 SCC 262*** and ***Shakila Abdul Gafar Khan (Smt.) vs. Vasant Raghunath Dhoble and Anr. : (2003) 7 SCC 749***].

78. For these reasons, we have seen the



evidence with the lens which should be used in cases of custodial torture and consequent death for ocular evidence and that also direct evidence would not be available. But for the informant (P.W. 10), who has turned hostile, there is no other statement on record of any private person or of the members of the family of the deceased that the appellants had gone to the village of the deceased and had picked him up from there.

79. That the deceased was picked up from his house and brought to police station is admitted. We have referred to the deposition of the police officers, who have said that the deceased was brought by T.N. Rai and was interrogated by him all-through before he died. The police witnesses have also said that these appellants were not there in the police station.

80. Had those witnesses been helping the appellants, they would not have stated like that against another police officer, viz., T.N. Rai, who could not face the Trial. The police witnesses, therefore, were not



beholden to their ties of brotherhood.

81. Who then brought the deceased to the police station and for what purpose?

82. There could be no doubts except for suspicion against the deceased of either having harbored the victim girl in the abduction case; or of being an accomplice in the offence. He could also have been brought the police station for eliciting the truth or for seeking the recovery of the abducted girl.

83. In this context, the evidence of one of the witnesses assumes importance, *viz.*, that when the police party went in raid, they found three persons having held the deceased in full nelson, when he was rescued and taken out of the captivity of those private persons and brought to police station. The evidence with respect to the interrogation of the deceased is consistent, *viz.*, that T.N. Rai was exclusively handling the case of abduction and had been interrogating the deceased. That the appellants were also members of



the police party and were posted as an Inspector and an ASI in the police station would not lead to the only inescapable conclusion that they were also responsible for the death of the deceased. If that be so and the vicarious liability were to be taken into account, the entire police personnel posted on that day in the police station would have to be held to the overall responsible for death of the deceased in the custody. Two of the *Chawkidars* have been acquitted and three of the Inspectors have been cited as prosecution witnesses.

84. Why were the appellants then singled out?

85. We go back to the cause of death. On an overall analysis of the evidence of the Doctors and of the FSL expert, the deceased did not hang himself. The evidence is too bleak to suggest that mode of death. The deceased was not manually strangled to death, which becomes clear from the *post-mortem* report. The Doctors were absolutely clueless about the cause of



asphyxia. The other injuries on the person of the deceased was superficial.

86. How did the deceased then die, if not by asphyxia and by mechanical wounds?

87. Did he die of trauma or cafe-coronary?

88. Did the anticipation of an imminent prosecution accelerate his death?

89. We do not know.

90. That the deceased was not treated well in the police station is for sure, but he was definitely not beaten up brutally. There were no other marks of physical violence over his body except for the minor bruises referred to in the *post-mortem* examination. On top of it, the Doctors examining the cause of death appear to have succumbed to what the District Magistrate had to direct, rendering their opinion completely suspect.

91. Thus, with this evidence, no matter how unfortunate and degrading the custodial death be to the



constitutional principles and individual liberty, the appellants could not be convicted and sentenced, especially, when there is no evidence with respect to their being part of the investigation or being present in the police station when such an occurrence took place.

92. It needs no repetition that there is no concept of vicarious liability in criminal cases. If that were so, we repeat, all police officers at the police station were required to be held responsible for the death.

93. Thus, we conclude that it was a custodial death, but the accusation against the appellants could not be proved at all.

94. For the reasons discussed above, we give benefit of doubt to the appellants and acquit them of all the charges levelled against them.

95. The judgment and order of conviction and sentence, referred to above, in both the appeals, are set aside.



96. Both the appeals stand allowed and disposed off accordingly.

97. Since the two appellants in both the appeals, viz., appellant/Balinder Rai @ Balindra Rai [*Cr. Appeal (DB) No. 724 of 2022*] and appellant/Kamlesh Kumar @ Kamlesh Prasad [*Cr. Appeal (DB) No. 733 of 2022*] are in jail, they are directed to be released forthwith, if they are not detained or wanted in any other case.

98. Since the deceased died in police custody, we had also contemplated directing the State Legal Services Authority to pay compensation to the next kith and kin of the deceased. However, finding that all the relatives of the deceased who were examined at the Trial went hostile, we do not find it appropriate to direct for payment of compensation for the death.

99. Let a copy of this judgment be dispatched to the Superintendent of the concerned Jail forthwith for compliance and record.



100. The records of these cases be returned
to the Trial Court forthwith.

101. Interlocutory application/s, if any, in
both the appeals, also stand disposed off accordingly.

(Ashutosh Kumar, J)

(Jitendra Kumar, J)

Praveen-II/Manoj

AFR/NAFR	AFR
CAV DATE	N/A
Uploading Date	18.07.2024
Transmission Date	18.07.2024

