



CRL.A(MD).Nos.222 &223 of 2021

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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Reserved On	19.12.2023
Pronounced On	19.03.2024

CORAM

THE HON'BLE MR.JUSTICE K.K.RAMAKRISHNAN

Crl.A.(MD)Nos.222 and 223 of 2021

S.Thirumalai Muthusamy

.. Appellant/ Accused No.1
(in Crl.A.(MD)No.222 of 2021)

1. B.Ravichandran

2. K.Ponram

.. Appellants/ Accused Nos.2 & 3
(in Crl.A.(MD)No.223 of 2021)

Vs.

The State Rep. by
Inspector of Police,
CBCID Dindigul Unit,
Dindigul.
(Crime No.03/2014)

.. Respondent/ Respondent
(In both Appeals)

COMMOM PRAYER: Appeals filed under Section 374 (2) of the Criminal Procedure Code, to call for the records and set aside the judgment dated 27.04.2021, made in Special S.C.No.173 of 2017 on the file of learned Additional District Judge, Dindigul, and allow the above Criminal Appeals.



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(In both Appeals)

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For Appellant/s : Mr.B.Saravanan,
Senior Counsel for M/s.Veera Associates

For Respondent : Mr.T.Senthil Kumar,
Additional Public Prosecutor

COMMON JUDGMENT

These appeals have been filed to set aside the conviction and sentence passed by the learned Additional and District Judge, Dindigul, in S.C.No.173 of 2017 dated 27.04.2021. The learned trial Judge has passed the impugned order, dated 27.04.2021 and acquitted the appellants/A2 and A3 in CrI.A.(MD).No.223 of 2021, for the alleged offence under Section 167 r/w 34 of IPC and found the appellants guilty and convicted and sentenced them for other offences as detailed below:-

Accused	Convicted under Section	Sentence of Imprisonment/ fine imposed
A1	Section 166 of IPC	Simple Imprisonment of one year and to pay a fine of Rs.1,000/-, in default to undergo Simple Imprisonment for one month.
A1, A2, A3	Section 304(II) r/w 34 of IPC	Rigorous Imprisonment of ten years and to pay a fine of Rs.5,000/-, in default to undergo Simple Imprisonment for six months.
		Run concurrently in respect of A1



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2. Since the appellants in all the appeals are arrayed as Accused Nos.1 to 3 in the same crime number, these appeals are taken up together for hearing and disposed by way of this common judgment. For better appreciation of the fact, the rank mentioned in the S.C.No.173 of 2017 on the file of the learned Additional District Judge, Dindigul is referred in this appeal also. They were convicted for the above offences for their act of police torture on the deceased military personnel and his consequential custodial death on 05.04.2010 and for fabricating the records.

3. The brief facts of the case :-

3.1. The case of the prosecution is that the deceased in an inebriated condition, caused some disturbance in the temple festival conducted in the village Mottanampatti on 04.04.2010 around 10.00 pm. During that time, A2 intervened and condemned the act of the deceased. At that time, the deceased, who was in an inebriated condition, scolded A2. Thereafter, A2 informed the same to the other police officials over telephone. On hearing this, they came and tied his hands and took him in an auto and are said to have assaulted him. The deceased's mother, brother and the relatives followed the said auto in another auto. The police officers took the deceased to the burial ground and thrashed him and the deceased unable to



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bear the assault wailed aloud and subsequently, he was taken to the police station via., the Velayuthampalam railway gate. As a train was passing, Due to the passing of a train, the auto was stopped near the railway gate. At that time also, the police officers assaulted the deceased inside the auto. Thereafter, they took the deceased to Vadamadurai police station. In the said police station, the relatives of the deceased were not allowed inside. He wailed loudly because he was beaten severely and the same was heard by the relatives of the deceased including his parents. The Deputy Superintendent of Police/P.W.54 visited the said police station and informed that the deceased would be released shortly, but, the deceased was remanded at 5.45 pm., by the learned Judicial Magistrate, Vedachandoor. After the remand, the deceased was taken to the Veda sandur Sub-jail. At that time, the deceased complained of chest pain and hence, he was taken to Vedachandoor Government Hospital. Despite treatment, the deceased died before being lodged in the Sub-jail.

3.2. Thereafter, P.W.21 and one Head Constable, namely, Ravichandran gave a complaint, based on which, P.W.45, namely, Arul Amaran, the Inspector of Police, Vedachandoor Police Station, registered a case in Crime No.193 of 2010 for the offence under Section 174 of Cr.P.C.,



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on 05.04.2010. After registration of the FIR, the body of the deceased was sent to the medical experts for postmortem. Thereafter, the doctors/P.W.42 and P.W.56 and their team conducted postmortem. The Revenue Divisional Officer had conducted inquest as per the police standing order. Thereafter, the wife of the deceased filed a petition under Section 176 (1-A) of Cr.P.C., before the learned Chief Judicial Magistrate, Dindigul, and he directed the learned Judicial Magistrate, Oddanchatram to conduct inquiry under Section 176 1(A) of Cr.P.C., and the learned Judicial Magistrate, Oddanchatram filed report. As per the order passed by the Chief Secretary to the Government of Tamil Nadu, dated 08.07.2013, the case was transferred from Vendasur Police Station to the respondent police/CBCID and the same was re-registered in Crime No.3 of 2014 for the offence under Section 174 of Cr.P.C. After completion of investigation, they filed the final report against all the accused persons for the offence under Sections 342, 167, 304(ii), 34 r/w 304(II) of IPC. After receipt of the final report, the learned Judicial Magistrate No.1, Dindigul, took it on file in P.R.C.No.13 of 2015 and the same was committed to the Additional District Judge, Dindigul. The Additional District Judge, Dindigul took it on file in Spl.S.C.No.173 of 2017 and issued summons to the accused and after their appearance, served the copies under Section 207 Cr.P.C. The



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learned Trial Judge framed necessary charges and questioned the accused.

The accused pleaded not guilty and they stood for trial.

3.3. To prove the case, the prosecution examined P.W.1 to P.W.60 and exhibited 62 documents as Ex.P.1 to Ex.P.62 and produced 2 material objects as M.O.1 and M.O.2. The learned trial Judge thereafter questioned the accused under Section 313 Cr.P.C., explaining the incriminating evidence against them and they denied the same as false and thereafter, the case was posted for examination of the witnesses on the side of the accused. On the side of the accused, no witness was examined, but six documents were exhibited as Ex.D1 to Ex.D6.

3.4. The learned trial Judge, on considering the evidence of witnesses, convicted and sentenced the appellants for the offence as stated supra. Aggrieved over the same, the appellants preferred these appeals.

4. Mr.B.Saravanan, learned Senior Counsel appearing on behalf of the appellants made the following submissions:-

4.1. According to the charge framed against the appellants, the appellants were said to have assaulted the deceased in four different places.



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The first assault place is the village of the deceased, that is during festival time of Mottanampatti Mariyamman Temple. The second assault place is the burial ground and in that place, he was assaulted by the police officers. The third place is near the railway gate and then in the police station. But, no evidence was adduced by the prosecution to prove the above assault in the above said places and there is evidence to prove that the deceased was in an inebriated condition. According to the learned Senior counsel, the prosecution never proved the injury caused by the appellants and other Police officials either in the auto or in the temple festival, or at the railway gate, or in the Police station.

4.2. According to the learned Senior Counsel, the evidence of P.Ws. 16, 17, 21, 23 and 15 are to be believed and the evidence of the other witnesses are to be disbelieved. There is a total contradiction in the evidence of the witnesses relating to the assault committed by the appellants and other Police Officials. All the witnesses are relatives and the same requires scrutiny. Hence, the evidence of the witnesses are to be dealt with cautiously. In this case, the witnesses specifically deposed that there was a scuffle between the brother of the deceased and other persons and also the villagers. Therefore, the case of the prosecution witnesses



itself contain two versions relating to the injuries found on the body of the deceased. In the said circumstances, benefit of doubt is to be given to the appellants/police officers.

4.3.The learned Senior Counsel further submitted that the postmortem was initially conducted by a team, consisting of two doctors/P.W.42 and P.W.56 and the same was videographed. The said doctors gave a definite report that the death was due to Myocardial Infarction. After CBCID investigation, the said report was sent for getting further opinion from another doctor/P.W.52. P.W.52/Vallinayagam, gave an opinion that the deceased suffered Myocardial Infarction, due to the assault and injury and stress sustained by the deceased in the custody of the Police. Therefore, there are two sets of opinion in giving divergent versions. In the said circumstances, the evidence of the doctors/P.W.42 and P.W.56, which is in favour of the accused, is to be considered.

4.4. The learned Senior Counsel further submitted that the learned trial Judge, totally ignored the inquest report of by the learned Judicial Magistrate, under Section 176(1)(a) of Cr.P.C. He relied upon the judgment of this Court in the case of ***R.Kasthuri Vs. The District Collector*** in ***Crl.O.P.No.20008 of 2013*** and also the Judgment of the Supreme Court of India in the case of ***P.Pugalethi Vs. State*** reported in



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2014 SCC Online Mad 12704. On the basis of the above judgments, he stated that the findings given by the learned judicial Magistrate under Section 176(1)(a) of Cr.P.C., is a reliable material document. In the said report, it is stated that there was no police assault. Hence, he seeks for acquittal.

4.5.The learned Senior Counsel further submitted that the investigating officer specifically deposed that there is a contradiction relating to the examination of the witnesses. On the basis of the contradiction, this Hon'ble Court can infer that the witnesses deposed before the Court below with improvements and embellishments. Therefore, the prosecution miserably failed to prove the case beyond reasonable doubt. The appellants are the police officers and they discharged only their duty.

4.6.The learned Senior Counsel further submitted that suspicion, however strong, is not a sufficient ground to convict the appellants for the grave charges. The learned senior counsel further submitted that the learned trial judge, without considering the above infirmities in the evidence of prosecution witnesses, erroneously convicted the appellant. Hence, he seeks an acquittal.



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5.The Submissions of Mr.T.Senthil Kumar, the learned

Additional Public Prosecutor is as follows:-

5.1. Per contra, the learned Additional Public Prosecutor appearing for the respondent/CBCID submitted that all the witnesses without any infirmity, narrated the events about the assault made by the police officials in the places of temple premises, auto, railway gate and Police Station. The Railway Gate Keeper also stated that he heard the cry of the deceased in the auto.

5.2.The learned Additional Public Prosecutor further submitted that P.W.42 and P.W.56 conducted postmortem and they deposed that the death was caused due to Myocardial Infarction. Subsequently, during the CBCID investigation, the respondent Police, in order to ascertain the nexus between the injury on the body of the deceased and Myocardial Infarction, got the opinion from P.W.52. P.W.52, after going through the postmortem process and also the report of the medical team, gave a finding that the death has occurred due to the injuries sustained by the deceased and also stated that due to sudden shock and bleeding, the deceased suffered Myocardial Infarction. He further submitted that only on the basis of the



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report of both the doctors/P.W.42 and P.W.56, the prosecution filed the final report under Section 173(2) of Cr.P.C. The investigation agency independently conducted “fair investigation” and filed the final report after obtaining the proper medical opinion from P.W.52. Further, number of witnesses clearly deposed about the injury caused by the police officers. He further submitted that there is some discrepancy between the evidence of the two doctors/P.W.42 and P.W.56 and the evidence of P.W.52.

5.3.The learned Additional Public Prosecutor specifically submitted that in the evidence of the Police officials, it is stated that the deceased was in the custody of the Police Officers and stated in the remand report that the deceased fell down and sustained injury. The above said evidence of the police officials itself shows that they projected a different story through the evidence of P.Ws.17, 21, 23, etc., But, in this case, during questioning under Section 313 Cr.P.C., on the side of the appellants, there was no explanation relating to the custodial death of the deceased. He further submitted that the prosecution witnesses had clearly spoken that the death had happened while the deceased was in their custody. In the above said circumstances, the learned trial judge correctly convicted the appellants for the above said offences.



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6.This Court considered the rival submissions made by the learned counsel appearing on either side and the impugned order and also the precedents relied upon by the learned counsel appearing for the appellants.

6.1. The only point arising for determination in this case is whether the judgment of the learned trial judge in convicting the appellants under Section 166 of I.P.C., and 304 (2) of I.P.C. r/w. 34 of I.P.C. and imposing the sentence of imprisonment as stated above is in accordance with law?

7.Discussion on facts:

The deceased was a military personnel. He came to his village to attend the village temple festival, which was conducted on 04.04.2010. In the said festival, A2 was deputed to attend on special duty. The deceased was allegedly entered into the temple's sanctum, and caused some ruckus. Hence, the brother of the deceased questioned him along with villagers. During the said scuffle, A2 had intervened. At that time, the deceased was said to have scolded A2. A2 informed the same to the police station and A1 and A3 came there around 11.00 p..m on 04.04.2010 and they had tied his



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hands and bundled him into an auto and continuously assaulted him by taking him to various places and finally reached the police station. In the police station also they assaulted him indiscriminately. They also, obtained a false complaint from P.W.9 as if the deceased had committed offence under Sections 387 and 506(ii) of IPC and registered false case in Crime No.155 of 2010 and also forged the signature of the deceased in the arrest card and produced him before the learned Judicial Magistrate NO.I, Dindigul, for remand. After the remand at 5.45 a.m., on 05.04.2010 on the way to the jail, deceased complained of chest pain and he was admitted in vedasandur Government Hospital at 06.00 a.m, and treatment was given, but he was declared dead at 06.45 pm and hence, a case under Section 174 of Cr.P.C., was registered in crime No.193 of 2010 by the Inspector of Police, Vedasandur Police Station. The local Police Officers, conducted the investigation in both the crime numbers. P.W.6 conducted investigation in Crime No.155 of 2010, which was registered against the deceased and closed the same as 'Further Action Dropped'. P.W.45 continued the investigation in the Crime No.193 of 2010 registered Under Section 174 Cr.P.C., for the death of the deceased. Thereafter, the case in Crime No.155 of 2010 was transferred to the CBCID vide proceeding dated 14.09.2013, and the same was registered in Crime No.01 of 2013. Further, the case in



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Crime No.193 of 2010 was also transferred to the CBCID vide proceeding dated 05.12.2014, and the same was also registered in Crime No.03 of 2014. They conducted investigation and filed final report against the appellants for the offences under Sections 342, 167, 304(II), 34r/w 304(II) of IPC.

7.1.To prove the case, P.W.1 to P.W.60 witnesses are examined. Among 60 witnesses, P.W.1, P.W.2, P.W.3, P.W.4, P.W.5, P.W.6, P.W.7, P.W.8, P.W.45, P.W.46, P.W.51, P.W.54, P.W.57, P.W.58, P.W.59 are the police officers.

7.2. P.W.9, P.W.10, P.W.11, P.W.14 were examined to speak about case registered against the deceased in Crime No.155 of 2010 under Section 387, 506(ii) of IPC.

7.3. P.W.12, P.W.13, P.W.16, P.W.17, P.W.18, P.W.22, P.W.25, P.W.32, P.W.33, P.W.34 and P.W.35 speak about the fact that the deceased was picked by the appellants in the auto on the night of the 04.04.2010.

7.4. P.W.9, P.W.20 and P.W.26 speak about the fact that the deceased was beaten by the appellant near a graveyard on the way to the police station.



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7.5. P.W.23 speaks about the fact that the deceased was beaten by the appellants on the way to the police station.

7.6. P.W.28 speaks about the fact that the deceased was beaten by the police near the Vadamadurai Railway gate. P.W.19 Railway gatekeeper speaks about hearing the screaming of the deceased and seeing the deceased and police in an auto near the railway crossing at the time of the locking of the railway gate for passing the Ananthapurai Express train.

7.7. P.W.36 and P.W.39, who had lived near the Vadamadurai Police Station, stated that they heard the scream of the deceased on the date of the occurrence.

7.8. P.W.41, the staff nurse at Government Hospital, Veda sandur gave the first aid to the deceased on 05.04.2010 around 06.00 a.m.

7.9. P.W.42 and other doctors conducted the postmortem and their postmortem report has been marked as Ex.P.11 along with their opinion Ex.P.12. P.W.52 gave the second opinion under Ex.P.28 to Ex.P.30. P.W.55 gave the final opinion under Ex.P.36.



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7.10. P.W.49, the learned Judicial Magistrate, Veda sandur deposed about the remand of the deceased in Crime No.155 of 2010 at 05.45 a.m., of 05.04.2010 and his watchman P.W.30 was also examined to corroborate the above remand and his 164 Cr.P.C., statement has been marked as Ex.P7.

7.11. P.W.53 the learned Judicial Magistrate, Oddanchatram was examined to speak about the inquiry conducted by him under Section 176(1)(A) of Cr.P.C., and his report has been marked Ex.P32.

7.12. P.W.44, RDO, Palani conducted inquiry under Section 176 and his inquiry report has been marked under Ex.P15.

7.13. P.W.50. The Deputy Director of RFSL, Madurai has been examined to speak about the signature of the deceased and his report has been marked as Ex.P25 and Ex.P26.

7.14. P.W.57, P.W.58 higher police officers gave the sanction to prosecute A1 to A3 under Ex.P.40 to Ex.P42.



7.15. P.W.59, Inspector of Police CBCID registered the case and collected the materials by altering the FIR in Crime No.193 of 2010 under Section 174 Cr.P.C., into 342, 167, 304(ii), 34 r/w 304(ii) of IPC and continued the investigation and thereafter he was transferred and P.W.60/Inspector of Police CBCID continued the investigation and filed the final report.

8.Discussion on the registration of the false case against the deceased:-

The occurrence place namely, Mottanampatti Temple comes under the jurisdiction of Vadamadurai Police Station. On 05.04.2010 at about 01.00 am, P.W.6 gave a complaint stating that the deceased assaulted him and exhorted money for him. Therefore, FIR was registered at 03.30 am., on 05.04.2010. P.W.6/ Sub-Inspector of Police of the Vadamadurai Police Station conducted the investigation and closed the case as 'FAD' (Further Action Dropped). The CBCID Officer conducted the investigation and gave a finding that false complaint was obtained from the deceased's rival party and the allegation was false, in order to show the arrest of the deceased in the said crime number. The said report has been marked as Ex.P.50. The appellants have not furnished any explanation during their



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313 Cr.P.C., proceedings. The same was also not challenged in the manner known to law. Therefore, the appellants registered the false case against the deceased.

9. Discussion on deceased taken by the appellants in the auto from the temple premises:

Even the complainant (P.W.6) in the case in Crime No.155 of 2010 registered against the deceased deposed that the deceased was taken by the appellants in the auto of one deceased Kannan prior to the registration of the case at 03.30 a.m., on 05.04.2010. P.W.12, P.W.13, P.W.16, P.W.17, P.W.18, P.W.22, P.W.25, P.W.32, P.W.33, P.W.34, P.W.35 all have cogently deposed that the deceased was picked up by the appellants in the auto on the night of the 04.04.2010. Even, P.W.2 attached with the police station of the appellants deposed that they took the deceased to the police station in the auto and the relevant portion of his evidence reads as follows:

“ஒரு ஆட்டோவை வரச்செய்து அதில் செந்தில்குமாரை நடுவில் உட்கார வைத்து கருப்பையாவும் ரவிச்சந்திரனும் இருபறம் அமர்ந்துகொண்டு நான் ஆட்டோவின் முன்னால் டிரைவருடன் அமர்ந்து கொண்டு நிலையத்திற்கு இரவு சுமார் 2 அல்லது 3 மணிக்கு கொண்டுவந்தோம்.”



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P.W.3, another police officer also corroborated the same. Therefore, the prosecution proved that the deceased was taken by the appellants on 04.04.2010, in an auto by tying his hands in the mid-night prior to the registration of the case on 05.04.2010, at 03.30 am.

10. Discussion on the assault on the deceased:

P.W.16, P.W.17, P.W.21, P.W.23 and P.W.24 cogently deposed that the appellants had beaten the deceased in the auto on the way to the police station. P.W.9, P.W.20, P.W.26 deposed that the deceased was beaten by the appellants near the graveyard on the way to the police station. P.W.23 deposed that the deceased was beaten by the appellants on the way to the police station. P.W.28 deposed that the deceased was beaten by the police near the Vadamadurai Railway gate. P.W.19 Railway gate keeper also deposed about hearing of screaming of deceased and seeing the deceased and police in an auto in the railway crossing at the time of locking the railway gate for passing the Ananthapuri Express Train. P.W.36, P.W.39 who lived near the Vadamadurai Police Station heard screams on the date of the occurrence. The corresponding injuries were also found in the body of the deceased and the same was noted during the postmortem and also find a place in the various report marked before the learned trial Judge.



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Therefore, the prosecution clearly proved the police torture and assault on the deceased in their custody.

11. Discussion on the cause of death:

P.W.41 was working as a staff nurse on 05.04.2010 at 06.00 am.

They asked to see the deceased in the car. She went to the car to see the deceased and she found the following:-

“நான் சென்று வாகனத்தில் பார்த்தேன். நான் பார்த்த போது அவருக்கு உடல் முழுவதும் வேர்த்திருந்தது. நாடித்துடிப்பு குறைவாக இருந்தது. மூச்சு விட சிரமப்பட்டுக்கொண்டிருந்தார். நான் மருத்துவரிடம் போனில் விவரத்தைச் சொன்னேன். நான் மருத்துவமனையில் இருந்த உதவியாளர் பெண்ணை அழைத்து வந்து படுக்க வைத்து விட்டார்கள் நான் மருத்துவரின் அறிவுரைப்படி நோயாளிக்கு ஊசி போட்டு விட்டு டிரிப் ஏற்றுவதற்கு Venflon Line போட்டு, Oxygen கொடுத்து வைத்திருந்தபோது மருத்துவர் அங்கு வந்துவிட்டார். மருத்துவர் வந்து பரிசோதித்தபோது Blood Pressure, Pulse சமநிலைக்கு வரவில்லை. அவர் கூறிய மருந்துகளை நோயாளிக்கு செலுத்தினேன். நான் ECG எடுக்கச்சொன்னார். அதற்குள் நோயாளி இறந்துவிட்டார்.”

The postmortem doctors P.W.42 and P.W.56 opined that death was due to “Myocardial Infarction”. The CBCID got the clarification from P.W.52 and P.W.52 opined that “Myocardial Infarction” was due to the effect of the injuries on the body of the deceased”. The learned Judicial



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Magistrate noted the presence of the injuries during the inquest and P.W.42 and P.W.56 also noted the presence of the injuries. Therefore, the prosecution clearly proved that the deceased died due to Myocardial Infarction, that was caused. Only due to the effect of the injuries on the body of the deceased.

12. Discussion on the applicability of Section 106 of the Indian

Evidence Act:

The accused took the deceased at midnight and assaulted him and after remand, the deceased was produced before the Government Hospital, Vendasandur next day morning at 06.00 am., and at that time his pulse rate substantially reduced and he was unable to breathe. In spite of giving life saving drugs, his pulse rate did not improve and he was pronounced dead. There is no dispute that the appellants had picked up the deceased from the occurrence place at mid night on 04.04.2010 and admitted him in the hospital on 05.04.2010 at 06.00 a.m., and later, he was declared as dead. Number of the witnesses cogently deposed that the appellants had continuously assaulted him in the auto and at the police station. From the sequence of events, the appellants after tying the hands of the deceased, instead of taking the deceased to the police station directly, they had taken



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the deceased to various places including the burial ground and assaulted him and finally reached the police station and there also assaulted him. All clearly show their brutish and inhuman behaviour towards the public and merciless deadly assault upon the deceased and in result, he died in the custody of the police. The Hon'ble Supreme Court has reiterated the principle that in the case of the police torture or custodial death, the Court may presume that the injury was caused by the police officer having the custody of the person, and the police officer has to prove the contrary. The onus to prove the contrary must be discharged by the police officer to the satisfaction of the Court and not by preponderance of probabilities as in ordinary cases.

12.1. The reason behind this principle has been discussed in detail by the Hon'ble Supreme Court in the following cases:

Munshi Singh Gautam v. State of M.P., (2005) 9 SCC 631

6. Rarely in cases of police torture or custodial death, direct ocular evidence is available of the complicity of the police personnel, who alone 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 police personnel prefer to remain silent and more often



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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.

7.The exaggerated adherence to and insistence upon the establishment of proof beyond every reasonable doubt by the prosecution, at times even when the prosecuting agencies are themselves fixed in the dock, ignoring the ground realities, the fact situation and the peculiar circumstances of a given case, as in the present case, often results in miscarriage of justice and makes the justice-delivery system suspect and vulnerable. In the ultimate analysis society suffers and a criminal gets encouraged. Tortures in police custody, which of late are on the increase, receive encouragement by this type of an unrealistic approach at times of the courts as well, because it reinforces the belief in the mind of the police that no harm would come to them if one prisoner dies in the lock-up because there would hardly be any evidence available to the prosecution to directly implicate them in the torture. The courts must not lose sight of the fact that death in police custody is perhaps one of the worst kinds of crime 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



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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 a law unto themselves. Unless stern measures are taken to check the malady of the very fence eating the crop, the foundations of the criminal justice-delivery system would be shaken and civilisation itself would risk the consequence of heading towards total decay resulting in anarchy and authoritarianism reminiscent of barbarism. The courts must, therefore, deal with such cases in a realistic manner and with the sensitivity which they deserve, otherwise the common man may tend to gradually lose faith in the efficacy of the system of the judiciary itself, which if it happens, will be a sad day, for anyone to reckon with.

8.Though Sections 330 and 331 of the Penal Code, 1860 (for short “IPC”) make punishable those persons who cause hurt for the purpose of extorting a confession by making the offence punishable with sentence up to 10 years of imprisonment, but the convictions, as experience shows from track record have been very few compared to the considerable increase of such onslaught because the atrocities within the precincts of the police station are often left without much traces or any ocular or other direct evidence to prove as to who the offenders are. Disturbed by this situation the Law Commission in its 113th Report recommended amendments to the Evidence Act, 1872 (in short “the Evidence Act”) so as to



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provide that in the prosecution of a police officer for an alleged offence of having caused bodily injuries to a person while in police custody, if there is evidence that the injury was caused during the period when the person was in the police custody, the court may presume that the injury was caused by the police officer having the custody of that person during that period unless the police officer proves to the contrary. The onus to prove the contrary must be discharged by the police official concerned. Keeping in view the dehumanising aspect of the crime, the flagrant violation of the fundamental rights of the victim of the crime and the growing rise in crimes of this type, where only a few come to light and others do not, the Government and the legislature must give serious thought to the recommendation of the Law Commission and bring about appropriate changes in the law not only to curb the custodial crime but also to see that the custodial crime does not go unpunished. The courts are also required to have a change in their outlook, approach, appreciation and attitude, particularly in cases involving custodial crimes and they should exhibit more sensitivity and adopt a realistic rather than a narrow technical approach, while dealing with the cases of custodial crime so that as far as possible within their powers, the truth is found and the guilty should not escape so that the victim of the crime has the satisfaction, and that ultimately the majesty of law has prevailed.”

12.2. *State v. Sanvlo Naik, (2017) 16 SCC 54*



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12. Having regard to the circumstances and the absence of any cogent explanation on the part of the respondent-accused and taking into account the fact that the deceased was in police custody and death had occurred in such custody, we are of the view that it is the respondent-accused (Accused 2 and 5) who, to the exclusion of any other persons, were responsible for the injuries that caused the death of the deceased Abdul Gaffar Khan. We, therefore, take the view that the acquittal of the respondent-accused of the offence under Section 304 Part II read with Section 34 IPC cannot be legally sustained.”

12.3. K.H. Shekarappa v. State of Karnataka, (2009) 17 SCC 1

“When the deceased, who were brought to the police station, were alive and were produced dead before the medical officer, it is for the appellants to explain as to in which circumstances they had died. The deceased were in the custody of the appellants, who were police officials. During the time when they were in police custody they had expired. Therefore, it was within the special knowledge of the appellants as to how they had expired. In view of the salutary provisions of Section 106 of the Evidence Act, 1872, it was for the appellants to offer explanation regarding the death of the two deceased.

12.4 Bhagwan Singh v. State of Punjab, (1992) 3 SCC 249 :



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6. *If a person is in police custody then what has happened to him is peculiarly within the knowledge of the police officials who have taken him into custody. When the other evidence is convincing enough to establish that the deceased died because of the injuries inflicted by the accused the circumstances would only lead to an irresistible inference that the police personnel who caused his death must also have caused the disappearance of body.*

8. *It is a pity that some of the police officers, as it has happened in this case, have not shed such methods even in the modern age. They must adopt some scientific methods than resorting to physical torture. If the custodians of law themselves indulge in committing crimes then no member of the society is safe and secure. If police officers who have to provide security and protection to the citizens indulge in such methods they are creating a sense of insecurity in the minds of the citizens. It is more heinous than a game-keeper becoming a poacher."*

12.5. I) ***State of M.P. v. Shyamsunder Trivedi***, reported in ***(1995) 4 SCC 262***

"16. ... The High Court erroneously overlooked the ground reality that rarely in cases of police torture or custodial death, direct ocular evidence of the complicity of 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



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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



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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)

12.6. ii) **State of U.P. v. Ram Sagar Yadav**, reported in **(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.”

(emphasis added)

12.7. iii) **Shakila Abdul Gafar Khan v. Vasant Raghunath Dhoble**, reported in **(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)

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

*“79. ... 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*



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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)

12.9. In this case, the appellants never gave any explanation during the questioning under Section 313 Cr.P.C., relating to the above occurrence and the injuries on the deceased in their custody. In these type of cases, it is the duty of the police officers to give proper answer to the incriminating circumstances available against them. This court finds no explanation on the side of the appellants during their questioning under Section 313 Cr.P.C., also. In view of the above discussion this court finds no merit in the submission of the learned senior counsel that the prosecution has not proved the case beyond reasonable doubt. The learned trial judge has considered the demeanor of the witnesses and their trustworthiness and has come to the correct conclusion that the prosecution proved the case beyond reasonable doubt.



13.Discussion on the submissions of the appellant:

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13.1. According to the learned senior counsel, two contradictory versions are available in evidence relating to the injuries on the deceased. Therefore, the benefit of doubt is to be given to the appellants. Before considering the said submission of contradiction, it is duty bound to recapitulate the following observation of the ***Hon'ble Thiru.my Lord Chief Justice Y.V.Chandra Chud*** in the case of ***State of Uttar Pradesh Vs.. Ram Sagar Yadav and others*** reported in ***1985 (1) SCC 552*** :

“It is not an unusual experience that the wood is missed for the trees when a Judge is confronted with a jumbled up mass of date, relevant and irrelevant. It is necessary in such cases to find out the central point of the case and to concentrate upon evidence which bears upon that point. Petty details which befog the real issue and minor contradictions in the evidence which are inevitable when a story is narrated under the stress of a grave crime; ought not be permitted to tilt the scales of justice. The more a Judge gets bogged down in superfluous details, the greater is the likelihood of his straying away from evidence which can clinch the issue. In the instant case, the High Court missed or mistook the salient features of the case and, in the result, embarked upon a hair-splitting exercise while appreciating the evidence. ”



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WEB COPY 13.2.This court perused the evidence of all prosecution witnesses.

PW16, PW17, PW21, PW23 and PW25 all have cogently narrated the events without any suppression of true facts right from beginning the deceased entered into the temple sanctum and his brother's intervention and the resultant scuffle and further intervention of A2 during the course of the scuffle and the deceased scolded A2 and arrival of the remaining appellants and taking the deceased in the auto by tying his hands and continuous assault without any material contradiction. Upon the above evidence let by prosecution, this court finds only one conclusion that the respondent illegally took the deceased and inflicted injuries upon the deceased while he was in their custody, thereby, caused his death. There is no contra version available on record. Therefore, this court is unable to accept the argument of the learned senior counsel that there are two versions in the prosecution case relating to the assault.

13.3. It is settled principle as per the law laid in various decisions of Hon'ble Supreme Court reported in ***(1997) 1 SCC 283 (1997) 3 SCC 747, 2003 (2) SCC 661, (2015) 12 SCC 373 , (2016) 2 SCC 389, (2015) 1 SCC 323*** that *Minor contradictions and omissions in the evidence of a witness*



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are to be ignored if there is a ring of truth in the testimony of a witness and Minor discrepancies on trivial matters not touching the core of the case, hypertechnical approach by taking sentences torn out of context here or there from the evidence, attaching importance to some technical error committed by the investigating officer not going to the root of the matter would not ordinarily permit rejection of the evidence as a whole and only on account of detecting some falsehood in the statement of a witness who is otherwise consistent and reliable, his entire testimony should not be discarded.

13.4.The Hon'ble supreme Court in the case of ***Gangadhar Behera v. State of Orissa***, reported in ***(2002) 8 SCC 381*** has reiterated the principle that the quality of evidence is to be considered and not quantity, and even if minimum evidence is available, which is reliable to convict the accused, it is the duty of the Court to consider the same and use it to convict the accused. The said principle was reiterated by the Hon'ble Supreme Court of India in a number of subsequent cases.

13.5.This Court pursues the evidence of the witnesses PW16, PW17, PW21, PW23 and PW25. They have clearly deposed that the accused tied



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the deceased's hands, assaulted him and carried him in the auto, assaulted him in the auto by taking him to various places and the same was followed by the number of persons and he was also assaulted in the police station. The said evidence also corroborates with the medical evidence. Hence, the submission of the learned Senior counsel that there are two views on the factum of the injuries sustained by the deceased cannot be sustained. This court is also unable to accept the learned Senior Counsel's submission that the deceased already suffered injuries in the scuffle made in the temple and that caused the death.

13.6.The postmortem was conducted by PW.42 and PW.56 and the same was video-graphed. They gave the definite opinion that the death was the result of Myocardial infarction. From the evidence of P.Ws.56, 42 & 41, this Court finds no material to presume that the deceased was under the influence of alcohol. After the CBCID investigation, PW52's opinion was obtained with the finding that the said Myocardial Infarction was the result of the injury and stress sustained by the deceased. According to the learned senior counsel, the above amounts to two different opinions relating to the death of the deceased. Therefore, the benefit of doubt is to be given to the accused. To consider the same, this court played the video and perused the photos and videos, which were marked as M.O.1 and M.O.



2. This Court finds multiple injuries on the body of the deceased. The same was also found in the postmortem certificate. The post-mortem was conducted by P.W.42 and P.W.56, who did not speak about the impact of the said injuries resulting in Myocardial Infarction. Hence, another doctor/P.W.52 clarified that Myocardial Infarction was due to the effect of the injuries on the body of the deceased. According to the doctor, PW.52, eleven abrasions and fourteen contusion were found over the body of the deceased. Even there was a contusion over the left side of his chest and also stomach. He specifically stated that Myocardial Infarction would have been the result of the impact of the said injuries. Myocardial Infarction in the other words is known as '*Heart Attack*'. This usually occurs when blood flow decreases and stops in an area of the coronary arteries of the heart, and it is a medical emergency where one's heart muscle begins to die because it is not getting enough blood flow. PW.55 and PW.52, the Doctors have affirmed that Myocardial Infarction to the deceased would have happened because of the pain and mental stress due to the infliction of the said injuries. The deceased's hands were tied up, he was taken in an auto and cooped up in the auto in a stressful condition and taken to various places continuously by beating him within the cabin of the auto and he was illegally confined in the police station and beaten up. All these



circumstances had caused trauma resulting in shooting up of blood pressure etc., Therefore, it is proved that the death of the deceased has occurred in the police custody with ante-mortem injuries.

13.7.The acts of the appellants accelerated the death. There is cause and effect between the assault and his death due to Myocardial Infarction. The violent injuries caused stress to the heart of the deceased. It is relevant to note the definition of “*Violence*” as per Blacks dictionary, “*Unjust or unwarranted use of force usually accompanied by fury, vehemence or outrage, physical force unlawfully exercised with intent to harm*”. Therefore, the illegal confinement of the deceased from mid-night from 11.00 p.m of the 04.04.2010 to 05.04.2010 till his death, and assaulting him and causing injuries would have caused emotional stress and therefore, the acts of the appellants are the proximate cause of death even though the deceased had a scar earlier in the heart. The Hon'ble Supreme Court in ***D.K.Bose case*** held as follows:

“In all custodial crimes, the real concern is not infliction of body pain. But the mental agony which a person undergoes within the four weeks of police station or lock-up.”



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The deceased was mercilessly beaten by the appellants both in the auto and the police station. Hence, he collapsed, in these circumstances final report was filed U/s.304 (ii) IPC.

13.8. Therefore, this court is unable to accept the said submission of the learned senior counsel that no offence has been made out to convict the appellants under Section 304(ii) of IPC.

13.9. As discussed above, the deceased was subjected to the police assault and he was declared dead due to the Myocardial Infarction. The CBCID got the opinion only to find out as to what triggered Myocardial Infarction and the same is clarificatory in nature. Therefore, there are no two different versions.

13.10. The learned Judicial Magistrate conducted inquest under section 176 (1) (a) of Cr.P.C. On the basis of the finding in the said report, the learned senior counsel seeks acquittal. The learned Judicial Magistrate observed as follows:-

“இறந்துபோன செந்தில்குமாருக்கு இறப்பு அவரது இருதயத்தில் இரத்த அடைப்பின் காரணமாக ஏற்பட்ட மாரடைப்பு தான் என்று இந்த விசாரணை நீதிமன்றம் முடிவு செய்கின்றது”.



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The CBCID got the clarification from PW.52 and PW.52 opinioned that Myocardial Infarction was due to the effect of the injuries on the body of the deceased. The learned Judicial Magistrate noted the presence of the injuries during the inquest and PW.42 and P.W.56 also noted the presence of the injuries. It is the settled principle of law that the inquest report is neither conclusive one nor determining factor to decide the death of the deceased. Therefore, this court is unable to accept the argument of the learned Senior counsel for the appellant that the prosecution has not proved the ingredients of Section 304(ii) of IPC.

13.11. PW.49 was the learned Jurisdictional Judicial Magistrate who remanded the deceased. He has not followed the guidelines issued by the Hon'ble Supreme Court in **D.K.Basu case**. He stated that he did not find any external injury and also he stated that there is no legal requirement to get the medical memo before remand. He deposed as follows:

ஒரு நபரை நீதித்துறை நடுவரிடம்
ஆஜர்படுத்துவதற்கு முன்பு கைது செய்யப்பட்டவரை
மருத்துவமனைக்க்கு அழைத்து சென்று பரிசோதனை
செய்ய வேண்டிய அவசியம் பொதுவாக இல்லை என்றால்
சரிதான்.



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13.12.The Hon'ble Supreme Court in ***D.K.Basu case***, specifically directed the Judicial Magistrate to verify the injuries on the body of the accused and also to obtain the medical memo before accepting the remand and also to inform the arrest to the relative and friends of the accused. It is the specific case of the relative of the deceased that the learned Judicial Magistrate had acted against the guidelines in favour of the appellants without even recording the statement of the deceased. The defence marked Ex.D.3. In Ex.D.3, the learned Judicial Magistrate submitted his consent to conduct the inquest by the other learned Judicial Magistrate. In the said report also he revealed the above fact. The said remand was made in the early morning at around 5.45 am., At the time, the watchman PW.30 was present. His statement under Section 164 Cr.P.C. is marked as Ex.P.7. He also affirmed the content of the said document. The accused also did not raise any objection and also did not dispute the contents during the cross examination. The said Ex.P.7, disclosed that the deceased reported his body pain to the learned Judicial Magistrate namely, PW.49. The learned Judicial magistrate replied that the police officer could have taken him to hospital. The conduct of the Judicial Magistrate without verify the external injury, without obtaining the Medical Memo and without considering the grievance of the deceased/accused, remanded the accused at 5.45 am.



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Thereafter, the deceased died within 45 minutes. Therefore, the conduct of the learned Judicial Magistrate is shocking the Judicial conscious of this Court. The subsequent Judicial Magistrate namely, PW.53 conducted the inquest and he specifically found that there was external injuries and the signature of the deceased in the remand report appeared to be forged.

13.13. The learned Judicial Magistrate while conducting the inquest gave the following finding:

There were external injuries in the body of the deceased and the police officers forged the time of the arrest and also the remand report contained the forged signature of the deceased. The CBCID also conducted the investigation in that aspect and found that the signature in the remand report was not the signature of the deceased. Their reasoning has not been supported with the handwriting expert opinion. The CBCID also conducted the investigation in the Crime No.155 of 2010, registered against the deceased and found that a false case was registered against the deceased and the report was marked with specific finding that a false complaint was obtained from the deceased's rival party and the allegation was false and in order to show the arrest, they obtained such a complaint and made a remand without obtaining signature and forging the signature



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of the deceased in the Arrest Memo. Even though, the said Closure Report was objected to be marked as Ex.P.50, for the reason that the same not served under Section 207 Cr.P.C., but they have not stated that the said report is a false one. The accused have not disclosed anything about the said report during the 313 questioning.

13.14. As per the prosecution evidence PWs 1 to 6, have been examined to speak about the investigation relating to the case in Crime No. 155 of 2010 and about the occurrence place and the date of the occurrence, one fact is clearly revealed from the evidence that the deceased was taken to the police station earlier to the registration of the case in Crime No.155 of 2010. Even PW.2 deposed that they brought the deceased around 02.00 am to 03.00 am., in the auto of one Mr.Kannan and the said Kannan was not examined on the account of his death, during the course of trial. As discussed earlier, PW.16 to P.W.20, P.W.22 & P.W.23, all have cogently deposed that the appellants took the deceased in the auto. PW.21 and P.W. 23 specifically deposed and corroborated the version of PW.16 to P.W.19 that the appellants assaulted the deceased in the auto itself. Further, PW. 29, railway gate keeper also deposed that the deceased was in the auto at 12.30 a.m on 05.04.2010 when he locked the railway gate for the train to



pass. He specifically deposed about the screams of the deceased in the auto. The PW.36 and P.W.37 who live near by the residence of the police station also heard the screams on the night of the occurrence from the police station. From all the above circumstances it is clear that the appellants took the deceased without any cause from the temple place only on the ground that he had scolded them in the occurrence place.

13.15. The learned senior counsel submitted that the witnesses are close relatives and their evidence are to be eschewed. In this case, the relatives of the deceased deposed the events right from taking of the deceased in the auto and confining him in the police station, cogently without any infirmities and their evidence are trustworthy. They have no motive to implicate the appellants in this case. Their evidence of assault on the deceased is corroborated with the evidence of the doctors. Neither the circumstances are elicited in the course of the cross examination of the prosecution witnesses nor any defence witness produced to presume the false implication. The Hon'ble Three Judges Bench of the Supreme Court has laid down the principle in the case of Dalip Singh Vs. state of Punjab reported in AIR 1953 SC 364 that the testimony of the relatives can not be rejected only on the ground of relationship unless foundation has been



laid to accept the plea of false implication. The said principle was reiterated in number of judgments by the Hon'ble Supreme Court including the judgment of the Hon'ble Supreme Court in the case of ***Rizan v. State of Chhattisgarh*** reported in ***(2003) 2 SCC 661 at page 667***. Hence, this Court is unable to accept the said submission of the learned Senior counsel to eschew the evidence of the relative of the deceased.

13.16.The learned senior counsel would place reliance on the number of contradictions which do not materially impair the credibility and trustworthiness of the witnesses. As per the Honourable Supreme Court Judgment, the contradiction is to be elicited only through marking of the relevant portion of the statement recorded under Section 161 of Cr.P.C. Without following the procedure, the contradiction could not be looked into. In this aspect, it is relevant to note the following judgments of the Hon'ble Supreme Court:

13.16.1. V.K. Mishra v. State of Uttarakhand reported in (2015) 9 SCC 588,

“19.Under Section 145 of the Evidence Act when it is intended to contradict the witness by his previous statement



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reduced into writing, the attention of such witness must be called to those parts of it which are to be used for the purpose of contradicting him, before the writing can be used. While recording the deposition of a witness, it becomes the duty of the trial court to ensure that the part of the police statement with which it is intended to contradict the witness is brought to the notice of the witness in his cross-examination. The attention of witness is drawn to that part and this must reflect in his cross-examination by reproducing it. If the witness admits the part intended to contradict him, it stands proved and there is no need to further proof of contradiction and it will be read while appreciating the evidence. If he denies having made that part of the statement, his attention must be drawn to that statement and must be mentioned in the deposition. By this process the contradiction is merely brought on record, but it is yet to be proved. Thereafter when investigating officer is examined in the court, his attention should be drawn to the passage marked for the purpose of contradiction, it will then be proved in the deposition of the investigating officer who again by referring to the police statement will depose about the witness having made that statement. The process again involves referring to the police statement and culling out that part with which the maker of the statement was intended to be contradicted. If the witness was not confronted with that part of the statement with which the



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defence wanted to contradict him, then the court cannot suo motu make use of statements to police not proved in compliance with Section 145 of the Evidence Act that is, by drawing attention to the parts intended for contradiction.”

13.16.2. **Binay Kumar Singh v. State of Bihar**, reported in (1997) 1

SCC 283

“12.The credit of a witness can be impeached by proof of any statement which is inconsistent with any part of his evidence in court. This principle is delineated in Section 155(3) of the Evidence Act and it must be borne in mind when reading Section 145 which consists of two limbs. It is provided in the first limb of Section 145 that a witness may be cross-examined as to the previous statement made by him without such writing being shown to him. But the second limb provides that “if it is intended to contradict him by the writing his attention must, before the writing can be proved, be called to those parts of it which are to be used for the purpose for contradicting him”. There is thus a distinction between the two vivid limbs, though subtle it may be. The first limb does not envisage impeaching the credit of a witness, but it merely enables the opposite party to cross-examine the witness with reference to the previous statements made by him. He may at that stage succeed in eliciting materials to his benefit through such cross-examination even without resorting to the



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procedure laid down in the second limb. But if the witness disowns having made any statement which is inconsistent with his present stand, his testimony in court on that score would not be vitiated until the cross-examiner proceeds to comply with the procedure prescribed in the second limb of Section 145.

13.16.3. Therefore, this court holds that the contradiction relied by the learned counsel for the appellants had not been elicited in substantial compliance with the section 145 of evidence act and hence, the same can not be taken into consideration.

13.17.The Hon'ble Supreme Court in the case of State of U.P. vs. Dan Singh reported in 1997 3 SCC 747, in the case of Ram Laxman vs State of Rajasthan reported in 2016 2 SCC 389, in the case of State of Karnataka Vs. Suvarnamma and another reported in 2015 1 SCC 323 and in the case of Daya Ram vs State of Haryana reported in 2015 12 SCC 373 reiterated the principle that the evidence of witnesses can not be thrown out merely on the premise of immaterial contradictions. It always occurs due to the delay in examining the witnesses. Therefore, this Court is unable to accept the said contention of the learned Senior counsel to disbelieve



their evidence on the account of the immaterial contradiction and omission.

14. Egocentric attitude of the appellants

14.1. It is the duty of the officers like appellants to shed their ego. The police officers, who are interacting with the public have to be polite, kind and humane while dealing with the ordinary citizen. They should not nurture ego while dealing with ordinary people. They can not follow the same yardstick when they deal with the notorious accused and ordinary citizen. At this point, it is relevant to note the following words of ***father of the nation M.K.GANDHI*** :

“When the ego dies, the soul awakes”

14.2. It is relevant to extract the following portion of the Hon'ble Supreme Court in the case of ***Munshi Singh Gautam v. State of M.P.***, **(2005) 9 SCC 631**

“DR ARIJIT PASAYAT, J.— “If you once forfeit the confidence of our fellow citizens you can never regain their respect and esteem. It is true that you can fool all the people some of the time, and some of the people all the time, but you cannot fool all the people all the



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time”, said Abraham Lincoln. This Court in Raghbir Singh v. State of Haryana [(1980) 3 SCC 70 : 1980 SCC (Cri) 526 : AIR 1980 SC 1087] and Shakila Abdul Gafar Khan v. Vasant Raghunath Dhoble [(2003) 7 SCC 749 : 2003 SCC (Cri) 1918] took note of these immortal observations while deprecating custodial torture by the police.

2. Custodial violence, torture and abuse of police power are not peculiar to this country, but it is widespread. It has been the concern of the international community because the problem is universal and the challenge is almost global. The Universal Declaration of Human Rights in 1948 which marked the emergence of a worldwide trend of protection and guarantee of certain basic human rights stipulates in Article 5 that “No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment.” Despite this pious declaration, the crime continues unabated, though every civilised nation shows its concern and makes efforts for its eradication.

3. If it is assuming alarming proportions, nowadays, all around it is merely on account of the devilish devices adopted by those at the helm of affairs who proclaim from rooftops to be the defenders of democracy and protectors of people's rights and yet do



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not hesitate to condescend behind the screen to let loose their men in uniform to settle personal scores, feigning ignorance of what happens and pretending to be peace-loving puritans and saviours of citizens' rights.

4. Article 21 which is one of the luminary provisions in the Constitution and is a part of the scheme for fundamental rights occupies a place of pride in the Constitution. The article mandates that no person shall be deprived of his life and personal liberty except according to the procedure established by law. This sacred and cherished right i.e. personal liberty has an important role to play in the life of every citizen. Life or personal liberty includes a right to live with human dignity. There is an inbuilt guarantee against torture or assault by the State or its functionaries. Chapter V of the Code of Criminal Procedure, 1973 (for short “the Code”) deals with the powers of arrest of persons and the safeguards required to be followed by the police to protect the interest of the arrested person. Articles 20(3) and 22 of the Constitution further manifest the constitutional protection extended to every citizen and the guarantees held out for making life meaningful and not a mere animal existence. It is, therefore, difficult to comprehend how torture and custodial violence can be permitted to defy the rights flowing from the Constitution. The dehumanising torture, assault and



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death in custody which have assumed alarming proportions raise serious questions about the credibility of the rule of law and administration of the criminal justice system. The community rightly gets disturbed. The cry for justice becomes louder and warrants immediate remedial measures. This Court has in a large number of cases expressed concern at the atrocities perpetrated by the protectors of law. Justice Brandeis's observation which has become classic is in the following immortal words:

Government as the omnipotent and omnipresent teacher teaches the whole people by its example, if the Government becomes a lawbreaker, it breeds contempt for law, it invites every man to become a law unto himself. (In US p. 485, quoted in at p. 659.)

5.The diabolic recurrence of police torture results in a terrible scare in the minds of common citizens that their lives and liberty are under a new and unwarranted peril because the guardians of the law destroy the human rights by custodial violence and torture invariably resulting in death. The vulnerability of human rights assumes a traumatic torture when functionaries of the State, whose paramount duty is to protect the citizens and not to commit gruesome offences against them, in reality perpetrate them. The concern which was shown in Raghbir Singh



case [(1980) 3 SCC 70 : 1980 SCC (Cri) 526 : AIR 1980 SC 1087] more than two decades back seems to have fallen on deaf ears and the situation does not seem to be showing any noticeable change. The anguish expressed in Gauri Shanker Sharma v. State of U.P. [1990 Supp SCC 656 : 1991 SCC (Cri) 67 : AIR 1990 SC 709] , Bhagwan Singh v. State of Punjab [(1992) 3 SCC 249 : 1992 SCC (Cri) 629] , Nilabati Behera v. State of Orissa [(1993) 2 SCC 746 : 1993 SCC (Cri) 527 : AIR 1993 SC 1960] , Pratul Kumar Sinha v. State of Bihar [1994 Supp (3) SCC 100 : 1994 SCC (Cri) 1666] , Kewal Pati v. State of U.P. [(1995) 3 SCC 600 : 1995 SCC (Cri) 556] , Inder Singh v. State of Punjab [(1995) 3 SCC 702 : 1995 SCC (Cri) 586 : 1995 SCC (L&S) 857 : (1995) 30 ATC 122] , State of M.P. v. Shyamsunder Trivedi [(1995) 4 SCC 262 : 1995 SCC (Cri) 715] and by now celebrated decision in D.K. Basu v. State of W.B. [(1997) 1 SCC 416 : 1997 SCC (Cri) 92 : JT (1997) 1 SC 1] seems not even to have caused any softening of attitude in the inhuman approach in dealing with persons in custody.”

14.3.The deceased was a military personnel and he has no bad antecedents and merely because, he picked up a quarrel accidentally with A2, the appellants had no right to cause murderous assault. The said



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sequence of events, from taking the deceased by tying his hands in the auto, assaulting the deceased in the auto by taking him to various place without taking him to police station, which was situated 1 ½ of Km from the occurrence place and assaulting him in the police station, and created a record as if he committed offence and produced him before the learned Magistrate at about 05.30 am., and before reaching the jail, the appellant died at 06.15 pm., prove 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.

15. Conclusion:-

It may be a circumstance that the deceased accidentally scolded A2 during the scuffle between his brother and villagers. The said act should not have been taken seriously so as to attack him brutally and cause his death. This is a unfortunate case. Due to the egocentric attitude of the police officials, the deceased was brutally attacked by them and ultimately he died. Therefore, the act of causing bodily injury, as is likely to cause death, would make the accused guilty of the offence punishable under Section 304(1) of IPC and liable for sentence of Rigorous imprisonment for a period of 10 years. Hence, this Court concurs with the finding of the learned trial Judge.



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<i>Summary of Discussion</i>	<i>Paragraph Nos</i>
Brief facts of the case	3 to 3.4
Submission of the learned Senior counsel for the appellant	4 to 4.6
Submission of the learned Additional Public Prosecutor	5 to 5.3
Point for consideration	6.1
Discussion on facts	7
Discussion on the registration of the false case against the deceased	8
Discussion on the deceased taken by the appellants in the auto from the Temple premises	9
Discussion on the assault on the deceased	10
Discussion on the cause of death	11
Discussion on the applicability of Section 106 of the Indian Evidence Act	12 to 12.9
Discussion on the submission of the appellants	13 to 13.16
Egocentric attitude of the appellants	14
Conclusion	15



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16. Accordingly the appeals are dismissed and the conviction and sentence passed against the appellants in Special S.C.No.173 of 2017, dated 27.04.2021, by the file of learned Additional and District Judge, Dindigul, is hereby confirmed. The bail bond executed by the appellants is cancelled and the learned trial judge is directed to secure the accused and confine them in prison to undergo the remaining period of sentence.

17.This Court would like to complement the CBCID Police Officers for doing a fair investigation, where police officers are involved and place encomium as they have done the investigation dispassionately knowing that the involved accused are the police officers.

19.03.2024

Index :Yes/No
Internet :Yes/No
NCC :Yes/No
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Note : Issue order copy on 19.12.2024



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To

1. The Additional and District Judge,
Dindigul.
2. The Inspector of Police,
CBCID Dindigul Unit, Dindigul.
3. The Additional Public Prosecutor,
Madurai Bench of Madras High Court, Madurai.
4. The Section Officer,
Criminal Section(Records),
Madurai Bench of Madras High Court, Madurai.



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