

CASE NO.:
Appeal (crl.) 382 of 2003

PETITIONER:
K.H. Shekarappa & others

RESPONDENT:
State of Karnataka

DATE OF JUDGMENT: 03/12/2009

BENCH:
Harjit Singh Bedi & J.M. Panchal

JUDGMENT:
JUDGMENT

2010 (3) SCR 883

The Judgment of the Court was delivered by

J.M. PANCHAL, J. 1. The appellants, who were original accused Nos. 1 to 7 and 9, were members of police force of the Doddapet Police Station at Shimoga City, Karnataka. The challenge in this appeal by special leave is to judgment dated November 14, 2002, rendered by the Division Bench of High Court of Karnataka, Bangalore, in Criminal Appeal No. 455 of 1995, by which judgment dated July 28, 1995, passed by the learned Additional Sessions Judge, Shimoga, in Sessions Case No. 14 of 1998 convicting them under Sections 143, 148, 326, 201, 218 and 302 read with Section 149 of Indian Penal Code (IPC) and imposing different punishments for commission of those offences, is set aside and instead they are convicted for the offences punishable under Section 304 Part II IPC read with Section 34 IPC for having caused the death of two persons, i.e., Rajakumar and Gurumurthy and under Section 324 read with Section 34 IPC for causing hurt to injured Prakash and each one of them is imposed sentence of R.I. for one year and fine of Rs.5,000/- and in default to undergo R.I. for 2 years for commission of offence punishable under Section 304 Part II read with Section 34 IPC whereas no separate sentence is awarded for conviction under Section 324 read with Section 34 IPC.

2. Though several constitutional and statutory provisions have been enacted to safeguard the personal liberty and life of citizens, incidents of torture and death in the police custody are ever on the rise. In spite of condemnation of such acts by this Court and High Courts, certain police officials conduct themselves in a manner resulting into gruesome torture and death of suspects in the police custody. There is no manner of doubt that these are the most heinous crimes committed by persons, who claim to be the protectors of the citizens. What is distressing to note is that the incidents of torture and death in the police custody take place under the shield of uniform and authority, in the four walls of a police station or in the lock-up, where the victims are totally helpless.

3. This is one such case which brings to light an incident in which two persons lost their lives and others were injured while in police custody. The facts emerging from the record of the case are as under:

On the night of December 31, 1987, a fight broke out between Gurumurthy, Rajakumar, Prakash, Nallakumar and Purushotham on one hand and some engineering students on the other, at a liquor bar, called Shilpa Bar, at Shimoga, where all were merrymaking to welcome the new year of 1988. The students lodged a complaint of assault on them. Therefore, criminal cases were registered against Gurumurthy, Rajakumar, Nallakumar, Prakash and Purushotham at Doddapet Police Station, Shimoga City. In wee hours of January 12, 1988 a reliable information was received at the said Police Station that Gurumurthy, Rajakumar, Nallakumar, Prakash and Purushotham

were taking shelter in a room at Sujatha Building, Tilak Nagar, Shimoga. The appellants Nos. 1 to 7, who were Police Constables, rushed to the place. They apprehended and brought Gurumurthy and others to the Police Station. At the relevant time, the appellant No. 8 was the Head Constable and was present in the Police Station. The appellants gave Gurumurthy, Rajakumar, Nallakumar, Prakash and Purushotham severe beating. Unable to withstand the same Gurumurthy and Rajakumar lost their consciousness and collapsed in the Police Station. The appellants thereafter took both of them to the hospital at different times. But doctor on duty declared them "dead on arrival". Prakash and Nallakumar were also severely beaten and they received serious injuries. Therefore, they were also taken to the hospital. When the news of death of Gurumurthy and Rajakumar at the hands of the police spread, a public disturbance near the hospital took place. On coming to know about this incident, Varadaraj, who was another P.S.I. of the same Police Station, rushed to the hospital and recorded statement of injured Prakash. After recording the same, P.S.I. Varadaraj returned to the Police Station. On the basis of the contents of the statement of injured Prakash, Crime No. 14/88 was registered against the appellants Nos. 1 to 7 for commission of offences punishable under Sections 302, 324 read with Section 34 IPC. On the basis of said FIR, P.S.I. Varadaraj commenced the investigation. He recorded statements of those persons who were found to be conversant with the facts of the case. He prepared a spot mahazar and submitted the FIR to his superior officer Mr. Mahadev Naik, who was then Deputy Superintendent of Police. Mr. Mahadev Naik also took part in the investigation of the case and mobilized the police force for maintaining public peace, as there was an apprehension of disturbance of public order. On the next day, i.e., on January 14, 1988, the Deputy Superintendent of Police visited the hospital and recorded the statement of injured Purushotham, Prakash and Nallakumar. He also made necessary arrangements for sending the dead bodies of the deceased for Post Mortem examination. On the same day, the Deputy Superintendent of Police directed Mr. Patil, who was then P.S.I. of Kote Police Station, to register a case against the appellants. Accordingly Mr. Patil also registered a case as Crime No. 8/88 at Kote Police Station against the appellants Nos. 1 to 7 and arrested them. On January 16, 1988 the Investigating Officer visited the Police Station at Doddapet and conducted search in the presence of independent witnesses. At that time he noticed two cars parked in the compound of the Police Station and found three service lottis kept below the cars. The same were seized under a mahazar. Thereafter the sketch of the Police Station was got prepared through an engineer. Other incriminating articles were also seized. After obtaining necessary reports including the Post Mortem reports, the Forensic Science Laboratory report, etc. charge-sheet was filed initially against appellants Nos. 1 to 7.

4. On committal of the case, the learned Sessions Judge framed charges against the appellants Nos. 1 to 7 for commission of offences punishable under Sections 143, 148, 341 read with Section 149 IPC, Section 326 read with Section 149 IPC and Section 302 read with Section 149 IPC. Later on it was revealed that original accused Nos. 8 and 9 had also played role in the incident and, therefore, they were arrayed as accused in the case and were charged along with the appellants Nos. 1 to 7. As all the accused denied the charges and claimed to be tried, they were tried in Sessions Case No. 14 of 1988.

5. In order to establish the guilt of the accused, the prosecution examined in all 45 witnesses and got marked 106 documents as well as produced MOs 1 to 6. The incriminating circumstances appearing against the appellants were explained to them by the learned Judge and their further statements were recorded as required by Section 313 of Code of Criminal Procedure, 1973.

6. In the further statements the appellants denied in general the prosecution case. However in answer to the last question, the appellants Nos. 1 to 7 stated that on January 13, 1988 at about 7.00 A.M. all of them had gone to apprehend the accused in Crime Nos. 2/88 and 3/88 and when an attempt to apprehend the deceased near a park was made, they had tried to

escape and in the process Gurumurthy had fallen in a mori (a small open drainage) while Rajakumar had fallen on a barbed wire and as such both of them had sustained injuries. It was further mentioned by them that as the condition of Gurumurthy was not good, he was taken to the hospital, but had died on the way to the hospital. The original accused No. 9 in his further statement mentioned that while he was S.H.O. the appellants Nos. 1 to 7 produced Gurumurthy and Rajakumar, who were accused in Crime Nos. 2/88 and 3/88 and on inquiry by him he was informed that they had received injuries due to fall and they wanted medical treatment. According to the original accused No. 9, he tried to get medical help in the Police Station but no private doctor was available and, therefore, he could not secure medical help for those injured accused. What was mentioned by him was that thereafter he was not knowing as to what happened in the incident.

On appreciation of evidence as also the defence theory, the trial court found that the appellants were guilty of the offences under Sections 143, 148, 326 read with Section 149 IPC, Section 201 read with Section 149 IPC, Section 218 read with Section 149 IPC and Section 302 read with Section 149 IPC on two counts. Insofar as original accused No. 8 was concerned, he was found guilty of the offences under Section 201 read with Section 511 IPC and Section 218 read with Section 511 IPC, but not guilty of other offences. After hearing the appellants on the question of sentence, the learned Judge imposed sentence of life imprisonment on the appellants for commission of offences under Section 302 read with Section 149 IPC and also other punishments for commission of other offences.

7. Feeling aggrieved, the appellants filed Criminal Appeal No. 455 of 1995 whereas the original accused No. 8 filed Criminal Appeal No. 456 of 1995 before the High Court of Karnataka, Bangalore. The matters were placed for hearing before the Division Bench comprising M.F. Saldanha and S.R. Bannurmath, JJ. Mr. Justice M.F. Saldanha was of the opinion that the prosecution had failed to prove its case against the appellants beyond reasonable doubt and, therefore, they were entitled to acquittal. Mr. Justice Bannurmath expressed the view that conviction of the appellants recorded by the learned Additional Sessions Judge was well founded and, therefore, the appeals deserved to be dismissed. In view of the fact that the learned Judges of Court of Appeal were equally divided in their opinion, the appeals with their opinions were laid before another learned Judge of that Court. The third learned Judge of the High Court of Karnataka, after hearing the parties and considering the record of the case, delivered his opinion mentioning that the guilt of the appellants was proved, but they had not committed offences punishable under Sections 143, 148, 326, 218 and 302 read with Section 149 IPC but had committed offences punishable under Sections 304 Part II and 324 both read with Section 34 IPC for having caused death of two persons Rajakumar and Gurumurthy and causing hurt to injured Prakash respectively. The learned Judge further opined that the appellants should be sentenced to R.I. for one year each and fine of Rs.5,000/- in default R.I. for two years for commission of the offence punishable under Section 304 Part II read with Section 34 IPC. The learned Judge was of further opinion that no separate sentence was needed to be awarded for conviction of the appellants under Section 324 read with Section 34 IPC. The learned Judge was also of the opinion that on realization of the entire amount of fine from the appellants, the same should be paid to the heirs of the two deceased in equal proportion by way of compensation. The opinion rendered by the third learned Judge of the High Court was laid before the Division Bench of the High Court. The judgment delivered by the Division Bench of the High Court has followed the opinion expressed by the learned third Judge, giving rise to the instant appeal.

8. This Court has heard the learned counsel for the parties at length and in great detail. This Court has also considered the record summoned from the Trial Court.

9. The fact that the deceased Rajakumar died a homicidal death is not

disputed before this Court. Dr. O.A. Mahipal (PW-1) has stated that on January 13, 1988 at about 4.40 P.M., he had received a requisition from the concerned Police Station to conduct the Post Mortem examination on the dead body of the deceased Rajakumar. According to him he had performed autopsy on the dead body of the deceased on January 14, 1988 between 8.20 and 10.00 A.M. and found following injuries: -

- "1. A circular brownish contusion of 1 cm. diameter present over the right side of forehead.
2. 2 minute brownish contusions over the middle of the forehead.
3. Forehead is diffusely swollen.
4. A contusion of reddish brown colour 1" in diameter present over the right maxillary region, + " below the right eye.
5. Multiple brownish black abrasions of various sizes and shapes present in different directions over the right mandible, right side of the chin, right angle of the jaw and right side of the anterior portion of neck and behind the right ear.
6. Fullness over both clavicular area present.
7. Fourth brownish black abrasion circular and linear present over the clavicular areas.
8. Multiple transverse blackish contusions with their margins half C.M. wide, centre being clear present over the front of chest and abdomen.
9. Multiple brownish contusions, some circular some other are transversely linear of various sizes and shapes eight in number present over left scapular area and middle of the left lumbar area.
10. An area of 5" x 2" blackish burnt area over the left buttock present. Surrounding this injury a smokey area of 3" diameter present.
11. An oblique brownish black contusion of 3+ " x 3/4th of an inch over the left iliac crest present.
12. Multiple transverse brownish abrasions of 2+ " x 1" size present over the right buttock.
13. Four transverse blackish linear burnt out marks 3" x 1/8th of an inch each present over the right buttock.
14. Multiple brownish contusions, 10 in numbers present over the right lumbar area.
15. The whole of the right upper limb is diffusely swollen.
16. A reddish brown contusion of 9" x 3" size over the medial aspect of lower half of right arm extending upto upper third of the right fore arm.
17. A blackish brown burnt area of 2+ " diameter, 1" below the right elbow joint present over the right fore arm.
18. 3 blackish oblique burnt out areas 2+ " x 1+", 3" x 1" and 1" diameter respectively present over the posterior aspect of right arm, elbow and forearm.
19. Three distinct punched out blackish burnt marks of +", , of an inch and _" diameter present over dorsum of right hand.

20. Tips of all the fingers are smokey.
21. A contusion (brownish) contusion of 3" x 1" size present over the lateral aspect of upper third of left arm.
22. Left elbow and shoulder joints are swollen.
23. Multiple deep abrasion and burnt out areas obliquely placed six in number measuring 1+", 1+", 2+", 2", 3", 3+" along and each being +" wide present over the posterior aspect of left arm and left elbow.
24. A transversely placed 'U' shape burnt out mark over the back of left forearm present.
25. A brownish contusion of 3" x 1" size over the lateral aspect of left elbow joint present.
26. Multiple distinct brownish black contusion over the dorsum of left hand and wrist.
27. Multiple brownish black obliquely placed contusion 5" x 2" present over the posterior aspect of left thigh.
28. A transversely placed II Degree burnt out area of 3" x 2" present over the left knee joint.
29. Two burnt out areas, one transversely placed 2" x _" and another longitudinally placed 2" x +" both present over the middle of the anterior aspect of left thigh.
30. A punctured wound of + cm. diameter and , cm deep over the middle of front of left leg seen.
31. Multiple blackish burnt out marks of varying sizes from 1 cm to 7 cms long and each 1 cm. wide, distributed in various directions of various shapes, present over the whole of the anterior aspect of left leg."

The doctor further mentioned in his testimony that on dissection of the dead body, he had found the following internal injuries: -

- "a. Left knee joint contains clotted blood about 300 cc blood, no fracture or dislocation found.
- b. Right knee joint contains clotted about 100 cc of blood no fracture of dislocation found out.
- c. Left ankle joint shows presence of sub cutaneous blood clots about 100 cc.
- d. Left elbow joint shows no fracture of dislocation.
- e. Right elbow joint contains blood clots about 100 cc. of blood, no fracture of dislocation observed."

According to the Medical Officer, the cause of death of the deceased was shock as a result of the multiple injuries sustained by him. The Medical Officer is completely corroborated by the contents of Post Mortem report produced on the record of the case as Exh. P-9. The doctor further opined that clotting of blood found in the joints as per (a) to (e) would be due to the assault by the sticks like MOs 1 to 3 whereas the burn injuries that were found on the dead body could be caused by any heated substance like metal or rubber tyre. The Medical Officer further explained that a single fall would not cause such injuries that were sustained by the deceased. It was explained by him that individually the injuries were simple, but collectively they could cause the death of an individual. In cross-

examination also the Medical Officer maintained that the cause of death was shock as a result of multiple injuries. What is important to be noticed is that it was further stated by him in cross-examination that the said injuries could not have been caused simultaneously. After mentioning that the age of the injuries sustained by the deceased Rajakumar were ranging from 24 hours to four days, the Medical Officer stated that the age of injuries were mentioned by him on the basis of colour of the injuries. The doctor further stated that the death of the deceased might have been caused about 24 hours prior to the commencement of the Post Mortem examination. According to the doctor, it was a case of rapid death due to injuries sustained by the deceased Rajakumar. On reappraisal of the evidence of the Medical Officer this Court finds that the Sessions Court and the High Court were justified in concluding that the deceased Rajakumar had died a homicidal death.

10. Similarly, the testimony of Dr. Dodda Gowda (PW-2) shows that on January 13, 1988 he had received a requisition from the Sub-Divisional Magistrate, Shimoga to conduct the Post Mortem on the dead body of deceased Gurumurthy and that on the same day he himself with Dr. Srinivasa had conducted Post Mortem on the said dead body between 4.15 P.M. and 5.45 P.M. According to the doctor the Post Mortem examination had revealed following injuries: -

- "1. Dark brown contusion 1" below the right angle of the mouth measuring _" x +".
2. Dark brown contusion on right to the traches 1" above the supra tranol notch irregular in shape.
3. Dark brown contusion in front of right shoulder +" x 1".
4. Multiple irregular contusions four in number outer aspect of right arm.
5. Irregular contusion front of right elbow (Cubital Fossa).
6. Diffuse dark brown contusion outer part of right lower half of forearm.
7. Dark brown contusion back of right forearm 1+" x 1+".
8. Diffuse dark brown contusion front of right thigh and right knee outer aspect.
9. Contusion front and middle of right leg +" x ,".
10. Dark brown contusion outer and middle part of left arm.
11. Diffuse contusion front of left elbow and left forearm.
12. Diffuse contusion back of left elbow.
13. Contusion at the outer part of left thigh upper half 3" x 1" and another measuring 4" x 1" two inches apart from each other.
14. Dark brown contusion front of left knee and lower third of left thigh.
15. Lacerated wound appear third of left leg in front measuring +" x ,," with dark blood clots.
16. Dark brown contusion over the medial part of right thigh and knee.
17. Dark brown contusion back of left shoulder, and trepious region.

18. Dark brown irregular contusion at the left scapular region, outer part of left chest and outer part of left lumbar region.
19. Multiple irregular dark brown contusion at the right shoulder and scapular region.
20. Diffuse dark brown contusion lower part of right chest right lumbar region, at the outer and lower aspect.
21. Diffuse multiple dark brown contusion irregular right gluteal region, upper part of the thigh.
22. Diffuse irregular dark brown contusion on back of right knee.
23. Diffuse dark brown contusion with an abrasion measuring + " x " at the left gluteal region.
24. Irregular dark brown contusion back of left wrist."

His evidence further shows that on dissection following internal injuries were noticed by him: -

"Skull and Vertebra and Membranes were intact.

Brain: Pale, Spinal Cord: not opened.

Chest Wall : Intact Pluscaae: intact;

Larynx: Healthy, Right and left lungs: Pale,

Pericordium : Intact.

Heart: Pale and empty, large vessels: intact,

Abdomen walls: intact; Peritoneum: intact,

Mouth and Pharynx and Esophagus: Healthy,

Stomach and its contents: Pale and empty,

Small intestine and its contents: Pale and contains semi digested food;

Large Intestine: Pale distended with gas and fecal matter; Liver: Pale;

Spleen: Pale. Kidney: Pale, Bladder: contains 4 ounce of clear urine,

Organs of Generation: Healthy."

According to the Medical officer the death was due to shock as a result of multiple injuries and all the injuries were ante mortem. The Medical Officer further gave opinion that the injuries might have been caused by sticks like MOs 1 to 3 and death might have occurred 24 hours prior to the commencement of the Post Mortem examination. According to the doctor, the age of the injuries varied from 1 to 3 days. During cross-examination the witness explained that except injury No. 15, all other injuries were contusions and the injuries might have been caused about 48 hours prior to the commencement of Post Mortem examination. The defence wanted to know from this witness as to whether the injuries found on the dead body of the deceased could have been caused simultaneously or at different intervals but the Medical officer replied that he was not in a position to say whether all the injuries were caused simultaneously. During his cross, the witness further stated that some of the external injuries were on the vital parts but had not damaged the vital parts. According to the doctor, the deceased had died because of irreversible shock. A fair reading of the testimony of this witness makes it evident that the deceased Gurumurthy had

also died a homicidal death.

The testimony of the Medical Officer Dr. O.A. Mahipal, examined as PW-1, further shows that at 4.45 P.M. on January 13, 1988 he had examined one Nallakumar, who was referred to him for treatment. According to the Medical Officer the injured had mentioned history of assault by the police with rubber, rod and lottis on December 31, 1987 at 1.00 P.M. at Gopi Circle, Shimoga and that he had recorded the same on the medical papers. The doctor has further mentioned that on examination he had found following injuries on the body of Nallakumar: -

- "1. A linear crusted laceration over the middle of the forehead 2" x , " size.
2. Multiple oblique brownish abrasions over the right forearm and right elbow present.
3. Vague tenderness all over the body present.
4. A transverse crusted laceration of 1" x +" present over the front of the right leg."

The Medical Officer has further stated that the injured was advised X-ray but the X-ray revealed no fracture. The witness mentioned that injured Nallakumar was treated as an indoor patient till January 21, 1988. It was further mentioned by the doctor that injuries Nos. 1 to 4 were simple in nature caused due to external violence with hard and blunt objects and that the injuries might have been caused by the sticks like MOs 1 to 3. The doctor explained that the age of injuries Nos. 1 and 4 was about one week whereas injury No. 2 was two days old and injury No. 3 might have been caused within 24 hours.

The testimony of this witness further shows that on the same day at 5.00 P.M., he had examined injured Prakash. According to the Medical Officer injured Prakash had narrated history of assault by eight police officials at Doddapet Police Station at 7.00 A.M. on January 13, 1988 and that he had recorded the same in the medical papers of the injured. The Medical Officer has further stated that on examination of the injured Prakash he had found following injuries on his person: -

- "1. Multiple crusted abrasions of varying sizes and shapes present over the extremities.
2. Diffuse tender swelling of both upper extremities and both knee joints present."

The doctor has further mentioned that the injured was advised to go for X-ray examination and the report of the said examination did not reveal any fracture, but another X-ray was taken on January 16, 1988, report of which showed incomplete fracture of the head of left fibula. The Medical Officer explained that injury No. 1 was simple in nature whereas injury No. 2 was grievous. According to the doctor, the fracture found in injury No. 2 was separately marked as injury No. 3 in wound certificate and it was grievous.

The doctor further mentioned in his testimony that at 5.15 P.M. on the same day, he had examined injured Purushotham. According to the doctor the injured had narrated history as assault by ten police officials at Doddapet Police Station, Shimoga at 12.00 midnight on January 12, 1988 extending upto early hours of January 13, 1988 and that he had recorded the same in the medical papers of the injured.

What is to be noted is that this Medical Officer was not cross-examined by the defence on the question of injuries sustained by Nallakumar, Prakash and Purushotham or history of assault recorded by him on the medical papers of the injured. Thus there is no manner of doubt that the High Court was

justified in concluding that Nallakumar, Prakash and Purushotham were injured at Doddapet Police Station during the midnight of January 12, 1988 extending upto early hours of January 13, 1988.

11. This brings the Court to consider the question whether the prosecution has been successful in proving that the death of the two deceased and injuries on the injured were caused by the appellants.

12. It is to be noted that the appellants were charged for causing custodial death of the two deceased and injuring the three injured. The evidence in this case can be divided into two parts - (1) direct evidence relating to the incident and (2) circumstantial evidence. To begin with, this Court proposes to consider the evidence relating to topography of the premises where Doddapet Police Station is located. In this regard the prosecution had examined D. Dharmappa Shetty (PW-3). His evidence discloses that on January 16, 1988 Assistant Executive Engineer had issued instructions to him to prepare a sketch of the place of occurrence, i.e., the verandah in front of the lock-up room of Doddapet Police Station. According to him on January 2, 1988 he had visited the spot shown to him by P.S.I. Varadaraj and prepared the sketch, which was produced by him at Exh. P-17. The witness explained that the sketch was prepared as a rough sketch showing the existing pillars, the verandah, etc. The witness mentioned that there was a verandah in the Police Station and it had a door which opened into a space situated in front of the two toilets. The witness mentioned that the stone pillars were supporting the room and the pillars on the south of the verandah were high and separated from each other by 3.20 meters. According to him he had seen the pillars from within the lock-up room of the Police Station and it was possible for one to see only one central pillar from the lock-up room, but from the eastern door of the Sub Inspector's room all the four pillars were visible. In the cross-examination he admitted that on one extreme side of the verandah there was a room of the Sub Inspector and to the north of the entire premises there was a Taluk office. According to him the width of the verandah was 1.20 meters and from the door, the central pillar was almost at a distance of about 2 meters or 6 feet. In cross-examination the witness clearly mentioned that from the lock-up room one pillar was visible. From the testimony of this witness it becomes at once evident that the door was fixed on the dividing wall of the verandah and the lock-up room and therefore, there could have been difficulty for a person to see the stone pillar between the central pillar and the pillar next to it supporting the room on the eastern side.

13. The injured witness Purushotham (PW-5) did not support the prosecution and was contradicted by the prosecution with reference to his earlier statement recorded under Section 161 of the Code of Criminal Procedure. In the cross-examination by the prosecution, the witness admitted that on January 13, 1988 at about 4.30 or 5.00 P.M. he was examined by the doctor in Mc. Gann Hospital, Shimoga as he had received injuries due to police assault in Doddapet Police Station. He also admitted that in Doddapet Police Station policemen assaulted him in the early morning of January 13, 1988 and he sustained injuries. It was further stated by him that he was taken to Mc. Gann Hospital but hastened to add by making a voluntary statement that he was taken from Mahatma Gandhi Park to the Police Station and thereafter he was assaulted. The suggestion by the prosecution that on January 13, 1988 at about 1.00 P.M. he was picked up with another pickpocket and taken from Doddapet Police Station to Kote Police Station and that he was beaten in Kote Police Station from 3.30 or 4.00 P.M. in that Police Station and then taken to D.A.R. Unit, was denied by him. Normally, the rule of appreciation of evidence of a hostile witness is that the same should not be considered in support of the prosecution case. However, it is a well settled principle that evidence of a hostile witness can be taken into consideration for the purpose of determining whether prosecution case is proved or not, if the same is corroborated by reliable independent witness. Here in this case the Court finds that the admissions made by this witness in cross-examination by the prosecution are fully

supported by medical evidence on record. Before the doctor, who had examined him, this witness had narrated history of assault on him, which was noted down by the doctor on his medical papers. The assertion made by the witness in his cross-examination that he was assaulted in Doddapet Police Station gets ample corroboration from the medical evidence and, therefore, it would be safe to conclude that this witness received injuries while in police custody.

14. At this stage it would be advantageous to reproduce what was stated by the witness in his cross-examination: -

"There were about 30 Policemen when I was assaulted and some out of them assaulted me. I was not tied down. I was taken to the Lock-up and assaulted. Nallakumar, Prakash and Gurumurthy, Raja Kumar and myself were put in lock up and were assaulted. None of us was tied. It is false to say that I was taken by the Police on the night of 31.12.1987 itself from my house. The C.O.D. Inspector has recorded my statement. I have not stated before him as per Ex. P-19 now read over to me. It is false to say that since the night of 31.12.1987 I was in the Police lock-up Doddapet upto 13.01.1988. It is not true to say that 3-4 days after my arrest Nallakumar was brought and put in Doddapet Police Station lock-up. When Gurumurthy was in the lock-up, he was asking for water. Many Police people were there at that time. I cannot say whether the accused were also there. He was given water."

The evidence of this witness indicates that though initially he was hesitant in admitting the assault upon the deceased Gurumurthy and Rajakumar and injured Nallakumar and Prakash in his presence, he, in terms, admitted in his cross-examination that he was taken into lock-up and assaulted and Gurumurthy, Rajakumar, Nallakumar and Prakash were with him in the same lock-up. His evidence further shows that the police had not arrested and brought Prakash, Rajakumar and Gurumurthy on January 13, 1988 at about 4.20 A.M. along with three students to the Doddapet Police Station, Shimoga. Though this witness denied the suggestion of the prosecution that Prakash, Gurumurthy and Rajakumar were tied to the three pillars of the verandah whereas the three students were made to sit in the room of S.I. to watch, the witness made following statement: -

"The Police assaulted myself and four others, i.e., Prakash, Rajakumar, Gurumurthy and Nallakumar. They assaulted us with the sticks. They caused injuries on all over our body. The Banian on the person of Prakash, Gurumurthy and Rajakumara were torn. They sustained bleeding injury. Nallakumar wiped out the blood on the person of Prakash, Rajakumar and Gurumurthy. Gurumurthy was completely exhausted and tired and fell down. He was not given water after he fell down. It is not true to say that his feet were burnt. He was taken alone to the hospital. It is not true to say that Prakash, Nallakumar and Rajakumar were also taken out of the lock-up in Police-van, and that I was in Kote Police Lock-up and that the Police brought the dead body of Rajakumara, and Nallakumara and Prakash to the Kote P.S. As I was in the Hospital, I do not know whether there was galata in the City on the day when Gurumurthy and Rajakumar died."

From the above quoted extract, it becomes evident that this witness and four other persons, namely, Prakash, Rajakumar, Gurumurthy and Nallakumar were assaulted with sticks resulting into injuries on all over their person. The statement also makes clear that the banians of Prakash, Gurumurthy and Rajakumar were torn. His evidence further proves that Nallakumar wiped out the blood on the body of Prakash, Rajakumar and Gurumurthy and that Gurumurthy was not given even water after he had fallen down.

15. Similarly, the prosecution had examined injured Purushotham to prove its case against the appellants. However, this witness did not support the prosecution case.

16. After discussing the evidence of witnesses (1) Renukeshwara (PW-6), (2) Shivaraja (PW-7), (3) Krishna Murthy (PW-9), (4) Shantha Veeranaika (PW-16), (5) Panchaksharai (PW-27), (6) Harish (PW-28) and (7) Chinamma (PW-11) the High Court has come to the conclusion that deceased Rajakumar was not in the police custody prior to January 12, 1988 and he was apprehended only in the night of January 12, 1988 or early morning of January 13, 1988.

Nallakumar (PW-20) is one of the persons, who, according to the prosecution, was apprehended by police officials of Jayanagar Police Station on the night of December 31, 1987 from near Gopi Circle in relation to the incident, which had taken place at Shilpa Bar on the same night in the wee hours of the new year of 1988. A close scrutiny of his evidence establishes that he was first apprehended by the policemen, i.e., by Lokesh, Ameer Jain, Basavaraja and Mahadevappa of Jayanagar Police Station and was kept in illegal custody. His evidence proves that he was subjected to merciless beating by the above mentioned policemen at the instigation of Basavaraju and Deffedar Muddappa. It is further proved by his testimony that from that place he was shifted to Doddapet Police Station. His evidence would further show that though he was illegally detained in Jayanagar Police Station, Sub-Inspector of Police Gangadharappa, i.e., original accused No. 8, who was discharging duties at the Doddapet Police Station, was visiting Jayanagar Police Station and beating him enquiring about Gurumurthy and Rajakumar, who were absconding. His evidence further shows that he was detained till January 13, 1988 and that at Doddapet Police Station also the appellants had subjected him to merciless beating. The scrutiny of the evidence of this witness would show that he had closed down his business and gone to Gopi Circle to bring milk at Prithvi Sagar Milk Booth and while he was bringing milk, policemen from Jayanagar Police Station had approached him and after questioning about whereabouts of Gurumurthy, Rajakumar and Prakash he was taken to Jayanagar Police Station where Sub-Inspector of Police, i.e., accused No. 8 was standing. This witness has mentioned in his testimony that he was kept in the lock-up of Doddapet Police Station roughly for six days and that one day when he had waken up early in the morning around 4.00 A.M. or 4.30 A.M., he had seen from the lock-up that Gurumurthy, Prakash and Rajakumar were brought to the Police Station and Rajakumar and Prakash were separately tied to the stone pillars supporting verandah in front of the lock-up room. He further stated that he had seen Prakash being tied to one pillar with his hands tied backward and Gurumurthy was also tied to another pillar with his hands stretched behind around the pillar. According to him Gurumurthy was handcuffed whereas Rajakumar was tied to third pillar in the similar way. What is stated by the witness is that the appellants were beating Prakash, Rajakumar and Gurumurthy with lotties and tyre pieces and that the injured were bleeding. The witness further stated that the injured were wearing only banian and knickers and he had continued to watch what was happening. In order to appreciate as to what was seen by this witness, it would be relevant to reproduce his testimony, which reads as under: -

"One day early morning, at about 4 a.m. or 4.30 a.m. I saw near stone pillar in front of the lock up door, they brought Gurumurthy and he was tied to the said stone pillar with his hands stretched at the back and tied. He was handcuffed. To the next stone pillar, I saw they had tied Rajakumara also in the same way. On the next pillar I saw they had tied Prakash in the same way. I also saw that all the accused persons except Sub Inspector Gangadharappa, were beating Prakash, Rajakumara, Gurumurthy. They were beating those three persons with latties and tyre pieces. I also saw that from the injuries sustained by those three persons, blood was coming out. Those three persons were wearing only Banian, (west and kacha panties). I saw that after some time when the accused were beating, Gurumurthy slumped with his hand, handcuff behind to the floor. At that time I saw Sub Inspector of Police Gangadharappa came to that spot. He told the accused as follows: -

'He could catch hold of these bastards, bring those latties'.

So saying he took latti from Mohan Singh (A-4) and then once again bet Gurumurthy, Prakash and Rajakumar."

Though this witness claimed that he had seen actual act the deceased and the injured being beaten by the accused involved in the case, it was stated by him that Sub Inspector of Police, i.e., the appellant No. 8 was not at that place and had come to the spot later on. The evidence of this witness further shows that the appellants had asked him to wipe blood oozing out from the injuries of Prakash, Rajakumar and Gurumurthy and he had accordingly wiped blood trickling out from the wounds of Prakash, Rajakumar and Gurumurthy. According to him when he had gone to wipe blood seeping out from the wounds of Gurumurthy, he had felt that Gurumurthy was not breathing. According to him he had tried to hold the head of Gurumurthy but the head was slumping on either side. The witness has further stated that thereupon he had asked the accused No. 8 to see as to what had happened to Gurumurthy and accused No. 8 had told him that Gurumurthy was pretending and then took latti from other accused persons and started beating on the leg of Gurumurthy, but Gurumurthy did not show any sign of pain or movement. According to this witness thereafter accused No. 8 had checked as to whether Gurumurthy was dead and asked the appellants to remove his handcuff and untie from the stone pillar. The witness has mentioned that the appellants had put the dead body of Gurumurthy along side that place and untied Prakash and Rajakumar also. According to him, after untying Rajakumar and Prakash from the stone pillars, they were pushed into the lock-up room. According to him, the appellant No. 1 had pushed Rajakumar in the lock-up room but Rajakumar had fallen with face down and was bleeding from the injuries on his body. The witness further stated that the appellants had brought fire and tried to burn the armpit, legs and other parts of the body of Gurumurthy but Gurumurthy had not responded at all. The witness asserted that thereafter the appellants had collected themselves and lifted the body of Gurumurthy and taken him to Charandi. A fair reading of the testimony of this witness makes it abundantly clear that the appellants had subjected the two deceased to severe beating because of which they had died in the police station. Thus by ocular version the prosecution has proved its case against the appellants beyond reasonable doubt.

17. The fact that the deceased and injured were arrested and brought to the Police Station is not in dispute. It is not in dispute that the deceased and the injured were brought to the Police Station on their two feet. The testimony of the Medical Officers, who had performed autopsy on the dead bodies of the two deceased, would indicate that both the deceased were brought dead to the hospital. 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. As noticed earlier, the appellants in their further statements stated that both the deceased had sustained injuries when they had made attempt to flee when their arrest was attempted to be effected. On preponderance of probabilities, it is difficult to agree with the defence pleaded by the appellants. It is highly improbable that the deceased Rajakumar would receive as many as 40 injuries while attempting to avoid arrest. So also it is not probable at all that the deceased Gurumurthy would receive as many as 24 injuries while trying to avoid his arrest. Further it could not be explained by the appellants at all as to how deceased Gurumurthy had received burn injuries, when the deceased, according to the appellants, had fallen into drainage and sustained injuries. Thus the appellants pleaded a false defence which

reinforces the circumstances showing the deceased had died due to cruel thrashing given by the appellants and they had injured three witnesses.

18. On the facts and in the circumstances of the case this Court is of the opinion that the appellants have not been even remotely able to probablise their defence and, therefore, the well recorded conviction of the appellants as well as sentences imposed upon them for commission of those offences will have to be upheld.

19. For the foregoing reasons the appeal fails and is dismissed.

JUDIS