CASE NO.:
Appeal (crl.) 919 of 1999

PETITIONER:
Munshi Singh Gautam (D) & Ors.

RESPONDENT:
State of M.P.

DATE OF JUDGMENT: 16/11/2004

BENCH:
ARIJIT PASAYAT & C.K.THAKKER

JUDGMENT:
J U D G M E N T

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 time", said Abraham Lincoln. This Court in Raghubir Singh v. State of Haryana (AIR 1980 SC 1087) and Shakila Abdul Gafar Khan (Smt.) v. Vasant Raghunath Dhoble and Another (2003 (7) SCC 749), took note of these immortal observations while deprecating custodial torture by the police.

Custodial violence, torture and abuse of police power are not peculiar to this country, but it is widespread. It has been the concern of 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 civilized nation shows its concern and makes efforts for its eradication.

If it is assuming alarming proportions, now a days, all around it is merely on account of the devilish devices adopted by those at the helm of affairs who proclaim from roof tops to be the defenders of democracy and protectors of peoples' rights and yet do 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.

Article 21 which is one of the luminary provisions in the Constitution of India, 1950 (in short 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 dehumanizing torture, assault and death in custody which have assumed alarming proportions raise serious questions about the credibility of rule of law and administration of 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 perpetuated by the protectors of law. Justice Brandies's observation which have become classic are in following immortal words:

"Government as the omnipotent and omnipresent teacher teaches the whole people by its example, if the Government becomes a law breaker, it breeds contempt for law, it invites every man to become a law into himself". (in (1928) 277 U.S. 438, quoted in (1961) 367 U.S. 643 at 659).

The diabolic recurrence of police torture resulting in a terrible scare in the minds of common citizens that their lives and liberty are under a new and unwarranted peril because guardians of law destroy the human rights by custodial violence and torture and 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 Raghubir Singh's case (supra) more than two decades back seems to have fallen to leaf 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. (AIR 1990 SC 709), Bhagwan Singh and Anr. v. State of Punjab (1992 (3) SCC 249), Smt. Nilabati Behera @ Lalita Behera v. State of Orissa and Ors. (AIR 1993 SC 1960), Pratul Kumar Sinha v. State of Bihar and Anr. (1994 Supp. (3) SCC 100), Kewal Pati (Smt.) v. State of U.P. and Ors. (1995 (3) SCC 600), Inder Singh v. State of Punjab and Ors. (1995(3) SCC 702), State of M.P. v. Shyamsunder Trivedi and Ors. (1995 (4) SCC 262) and by now celebrated decision in Shri D.K. Basu v. State of West Bengal (JT 1997 (1) SC 1) seems to have caused not even any softening attitude to the inhuman approach in dealing with persons in custody.

Rarely in cases of police torture or custodial death, 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 \026 and the present case is an apt illustration \026 as to how one after the other police witnesses feigned ignorance about the whole matter.

The exaggerated adherence to and insistence upon the establishment of proof beyond every reasonable doubt by the prosecution, at times even when the prosecuting agencies are themselves fixed in the dock, ignoring the ground realities, the fact-situation and the peculiar circumstances of a given case, as in the present case, often results in miscarriage of justice and makes the justice delivery system suspect and vulnerable. In the ultimate analysis 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 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

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 civilized society, governed by the rule of law and poses a serious threat to an orderly civilized society. Torture in custody flouts the basic rights of the citizens recognized by the Indian Constitution and is an affront to human dignity. Police excesses and the mal-treatment of detainees/under-trial prisoners or suspects tarnishes the image of any civilised nation and encourages the men in 'Khaki' to consider themselves to be above the law and sometimes even to become law unto themselves. Unless stern measures are taken to check the malady of the very fence eating the crops, the foundations of the criminal justice delivery system would be shaken and the civilization itself would risk the consequence of heading, towards total decay resulting in anarchy and authoritarianism reminiscent of barbarism. The courts must, therefore, deal with such cases in a realistic manner and with the sensitivity which they deserve, otherwise the common man may tend to gradually lose faith in the efficacy of the system of judiciary itself, which if it happens will be a sad day, for any one to reckon with.

Though Sections 330 and 331 of the Indian Penal Code, 1860 (for short the 'IPC') make punishable those persons who cause hurt for the purpose of extorting the 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 Indian Evidence Act, 1872 (in short the 'Evidence Act') so as to provide that in the prosecution of a police officer for an alleged offence of having caused bodily injuries to a person while in police custody, if there is evidence that the injury was caused during the period when the person was in the police custody, the court may presume that the injury was caused by the police officer having the custody of that person during that period unless the police officer proves to the contrary. The onus to prove the contrary must be discharged by the police official concerned. Keeping in view the dehumanizing aspect of the crime, the flagrant violation of the fundamental rights of the victim of the crime and the growing rise in the crimes of this type, where only a few come to light and others don't, the Government and the legislature must give serious thought to the recommendation of the Law Commission and bring about appropriate changes in the law not only to curb the custodial crime but also to see that the custodial crime does not go unpunished. 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 guilty should not escape so that the victim of the crime has the satisfaction that ultimately the majesty of law has prevailed.

But at the same time there seems to be disturbing trend of increase in cases where false accusations of custodial torture are made, trying to take advantage of the serious concern shown and the stern attitude reflected by the courts while dealing with custodial violence. It needs to be carefully examined whether the allegations of custodial violence are genuine or are sham attempts to gain undeserved benefit masquerading as victims of custodial violence. The case in hand is unique case in the sense that complainant filed a complaint alleging custodial torture while the accused alleged false implication because of oblique motives.

It is the duty of the police, when a crime is reported, to collect evidence to be placed during trial to arrive at the truth. That

certainly would not include torturing a person, be he an accused or a witness to extract information. The duty should be done within four corners of law. Law enforcers can not take law into their hands in the name of collecting evidence.

Facts of the present case as unfolded by prosecution during trial are as follows:

On the night intervening 19th and 20th June, 1984 to extort a confession from one Shambhu Tyagi (hereinafter referred to as the 'deceased'), he was brought to the police station where he was beaten as a result of which he died and thereafter to remove the traces of the crime and conceal the acts, the dead body was thrown near a Nala. The accused persons, five in number, who were police officers of Police Station, Shahjahanabad, Bhopal thus committed offences punishable under Sections 330, 302 and 201 IPC. In relation to a scooter theft, Mahesh Sharma and Rajkumar Sharma (PW-12) were brought to Police Station, Shahjahanabad. As name of deceased was disclosed by these persons, around 1.30 A.M. (after mid-night) the accused persons went to the house of deceased from where he was brought to the Police Station. When the deceased was brought Jawahar (PW-14) had seen the accused persons. Thereafter to extort confession the deceased was badly beaten as a result of which he died. These accused-police officers forged the Rojnamacha report to conceal the crime by recording that they received an information that some person was lying in the Nala bed and the said person was intoxicated badly. As the witnesses and public at large raised hues and cries, the then Supdt. of Police, Bhopal wrote a letter to the District Magistrate and also sent a letter to the Inspector General of Police for getting the matter investigated through some independent agency. On basis of said letters, the District Magistrate got the matter enquired through the C.I.D. Police. Statements were recorded; the medical reports were obtained; documents were seized; panchnamas were prepared; and on completion of the investigation, the charge-sheet was filed in the concerned court. Each of the accused persons denied allegations. The trial was conducted by learned II Additional Sessions Judge, Bhopal. The Trial Court after recording the evidence and hearing the parties found each of the accused persons guilty and sentenced them. The trial Court convicted each of the accused persons for offences punishable under Sections 304 Part I, 330 and 201 of the Indian Penal Code, 1860 (in short the 'IPC') sentencing each to undergo RI for 7 years, 3 years and 2 years respectively. All the sentences were directed to run concurrently. Being aggrieved by the said judgment, conviction and sentence, the accused appellants have filed appeal before the High Court.

The appellants filed appeals before the Madhya Pradesh High Court. By the impugned judgment the High Court dismissed the appeals. During pendency of the present appeal before this Court, accused no.1 Munshi Singh Gautam expired and by order dated 2.10.2004 the appeal was held to have abated so far as he is concerned.

In support of the appeal, Mr. Uday U. Lalit, learned senior counsel submitted that the prosecution version as unfolded is not supported by any cogent and credible evidence. The prosecution version mainly rests on the evidence of Rajkumar (PW-12) and Jawahar (PW-14). While the latter's version has been relied upon by the prosecution to contend that he had witnessed the deceased being taken away by the police officers, PW-12 on the other hand claimed to have witnessed beatings given by the accused persons to the deceased. It is pointed out that the medical evidence tendered by Dr. D.K. Satpathy (PW-16) clearly rules out time of beatings as claimed to have been witnessed by Raj Kumar (PW-12). His evidence is clearly to the effect that the deceased was suffering from T.B. and one lung was totally damaged. Taking into account the quantity of liquor found in his stomach, the time of death was fixed about 4 hours before post-mortem which started

around 1.00 p.m. on 20.6.1984. His evidence is also to the effect that all the injuries were not of the same time; some were about 4 hours old and the others were 12 hours old and some were one or two days old. Raj Kumar (PW-12) is a liar as is evident from his testimony. He has given different version as to when he was arrested. Though he claimed that he was also beaten along with one Mahesh who was not examined, he did not make any grievance before the Magistrate when he was produced after his arrest. He gave varying dates so far his date of arrest is concerned. At one place it was stated to be 20.6.1984 whereas on another place it was stated to be 23.6.1984. Though he claimed that he was aware of the names of the accused persons, he did not mention it in his statement given during investigation. No explanation has been offered for it. He was not acquainted with the accused persons. Similarly, Jawahar (PW-14) claimed to have seen the accused persons. He identified them for the first time in Court. In his cross-examination he had accepted that he did not give the physical description of the accused persons. He clearly admitted that he could not have given the description because he had not seen them on the date of alleged date of occurrence. Therefore, the Courts below in the absence of any test identification parade should not have placed reliance on their evidence. In any event, when Jawahar (PW-14) accepted that he had not seen the accused persons the test identification parade would not have also improved the situation. He had categorically stated that the deceased was wearing a janghia when he was taken by the police. Doctor (PW-16) who conducted the post-mortem found that the deceased was fully dressed with pant and shirt. Therefore, it was submitted that the conviction as recorded by the Trial Court and affirmed by the High Court is unsustainable.

In response, Mr. R.P. Gupta, learned counsel appearing for the respondent-State submitted that as is well-known, in case of custodial death, it is very difficult to have flawless evidence. The evidence of Rajkumar (PW-12) is cogent and credible as found by the Courts below. Even though there are some minor flaws here and there, they do not affect credibility of the prosecution version. Evidence of Jawahar (PW-14) has been corroborated by the evidence of other witnesses. The medical evidence which is hypothetical in nature should not be given undue importance by-passing eye-witness's version. Merely because Mahesh has not been examined that does not render the prosecution version vulnerable as claimed by the accused-appellants. It is pointed out that in order to hide actual state of affairs a thoroughly misconceived plea that police received information about somebody lying injured near Nala was made out. This plea is also falsified when the evidence of doctor is noted. Dr. K.N. Agarwalla (PW-11) has categorically stated that the body of the deceased was brought to the hospital around 8.15 a.m. by one police constable Shiv Prasad No.238 of Shahjahanabad Police Station and accused Gulab Singh Chaudhary. They told him that the deceased had come to the police station in a very bad stage and with much difficulty he had told his name and thereafter fallen down unconscious. It was further stated that they took him to the emergency ward, where he was declared dead. In the examination under Section 313 of the Code the accused-appellant Gulab Singh Chaudhary has taken the similar stand. This is clearly falsified by the defence version and evidence that police officers had gone to the spot on hearing that somebody was lying injured there. Therefore, it was submitted that the Trial Court and the High Court were justified in finding the accused-appellants guilty.

The evidence of Rajkumar (PW-12) and Jawahar (PW-14) relate to separate facets of the incident. The latter speaks about the accused-appellants having taken the deceased along with them after mid-night of 19th June, 1984. Rajkumar (PW-12) spoke of the assaults made inside the police station. Admittedly there was no test identification parade.

As was observed by this Court in Matru v. State of U.P. (1971 (2) SCC 75) identification tests do not constitute substantive evidence.

They are primarily meant for the purpose of helping the investigating agency with an assurance that their progress with the investigation into the offence is proceeding on the right lines. The identification can only be used as corroborative of the statement in court. (See Santokh Singh v. Izhar Hussain (1973 (2) SCC 406). The necessity for holding an identification parade can arise only when the accused are not previously known to the witnesses. The whole idea of a test identification parade is that witnesses who claim to have seen the culprits at the time of occurrence are to identify them from the midst of other persons without any aid or any other source. The test is done to check upon their veracity. In other words, the main object of holding an identification parade, during the investigation stage, is to test the memory of the witnesses based upon first impression and also to enable the prosecution to decide whether all or any of them could be cited as eyewitnesses of the crime. The identification proceedings are in the nature of tests and significantly, therefore, there is no provision for it in the Code and the Evidence Act. It is desirable that a test identification parade should be conducted as soon as after the arrest of the accused. This becomes necessary to eliminate the possibility of the accused being shown to the witnesses prior to the test identification parade. This is a very common plea of the accused and, therefore, the prosecution has to be cautious to ensure that there is no scope for making such allegation. If, however, circumstances are beyond control and there is some delay, it cannot be said to be fatal to the prosecution.

It is trite to say that the substantive evidence is the evidence of identification in Court. Apart from the clear provisions of Section 9 of the Evidence Act, the position in law is well settled by a catena of decisions of this Court. The facts, which establish the identity of the accused persons, are relevant under Section 9 of the Evidence Act. As a general rule, the substantive evidence of a witness is the statement made in Court. The evidence of mere identification of the accused person at the trial for the first time is from its very nature inherently of a weak character. The purpose of a prior test identification, therefore, is to test and strengthen the trustworthiness of that evidence. It is accordingly considered a safe rule of prudence to generally look for corroboration of the sworn testimony of witnesses in Court as to the identity of the accused who are strangers to them, in the form of earlier identification proceedings. This rule of prudence, however, is subject to exceptions, when, for example, the Court is impressed by a particular witness on whose testimony it can safely rely, without such or other corroboration. The identification parades belong to the stage of investigation, and there is no provision in the Code which obliges the investigating agency to hold or confers a right upon the accused to claim, a test identification parade. They do not constitute substantive evidence and these parades are essentially governed by Section 162 of the Code. Failure to hold a test identification parade would not make inadmissible the evidence of identification in Court. The weight to be attached to such identification should be a matter for the Courts of fact. In appropriate cases it may accept the evidence of identification even without insisting on corroboration. (See Kanta Prashad v. Delhi Administration (AIR 1958 SC 350), Vaikuntam Chandrappa and others v. State of Andhra Pradesh (AIR 1960 SC 1340), Budhsen and another v. State of U.P. (AIR 1970 SC 1321) and Rameshwar Singh v. State of Jammu and Kashmir (AIR 1972 SC 102).

In Jadunath Singh and another v. The State of Uttar Pradesh (1970) 3 SCC 518), the submission that absence of test identification parade in all cases is fatal, was repelled by this Court after exhaustive considerations of the authorities on the subject. That was a case where the witnesses had seen the accused over a period of time. The High Court had found that the witnesses were independent witnesses having no affinity with deceased and entertained no animosity towards the appellant. They had claimed to have known the appellants for the last 6-7 years as they had been frequently visiting the town of Bewar.

This Court noticed the observations in an earlier unreported decision of this Court in Parkash Chand Sogani v. The State of Rajasthan (Criminal Appeal No. 92 of 1956 decided on January 15, 1957), wherein it was observed :-

"It is also the defence case that Shiv Lal did not know the appellant. But on a reading of the evidence of P.W. 7 it seems to us clear that Shiv Lal knew the appellant by sight. Though he made a mistake about his name by referring to him as Kailash Chandra, it was within the knowledge of Shiv Lal that the appellant was a brother of Manak Chand and he identified him as such. These circumstances are quite enough to show that the absence of the identification parade would not vitiate the evidence. A person who is well-known by sight as the brother of Manak Chand, even before the commission of the occurrence, need not be put before an identification parade in order to be marked out. We do not think that there is any justification for the contention that the absence of the identification parade or a mistake made as to his name, would be necessarily fatal to the prosecution case in the circumstances."

The Court concluded:

"It seems to us that it has been clearly laid down by this Court, in Parkash Chand Sogani v. The State of Rajasthan (supra) (AIR Cri LJ), that the absence of test identification in all cases is not fatal and if the accused person is well-known by sight it would be waste of time to put him up for identification. Of course if the prosecution fails to hold an identification on the plea that the witnesses already knew the accused well and it transpires in the course of the trial that the witnesses did not know the accused previously, the prosecution would run the risk of losing its case."

In Harbhajan Singh v. State of Jammu and Kashmir (1975) 4 SCC 480), though a test identification parade was not held, this Court upheld the conviction on the basis of the identification in Court corroborated by other circumstantial evidence. In that case it was found that the appellant and one Gurmukh Singh were absent at the time of roll call and when they were arrested on the night of 16th December, 1971 their rifles smelt of fresh gunpowder and that the empty cartridge case which was found at the scene of offence bore distinctive markings showing that the bullet which killed the deceased was fired from the rifle of the appellant. Noticing these circumstances this Court held:-

"In view of this corroborative evidence we find no substance in the argument urged on behalf of the appellant that the Investigating Officer ought to have held an identification parade and that the failure of Munshi Ram to mention the names of the two accused to the neighbours who came to the scene immediately after the occurrence shows that his story cannot be true. As observed by this Court in Jadunath Singh v. State of U.P. (AIR 1971 SC 363) absence of test identification is not necessarily fatal. The fact that Munshi Ram did not disclose the names of the two accused to the villages only shows that the accused were not previously known to him and the story that the accused referred to each other by their respective names during the course of the incident contains an element of exaggeration. The case does not rest on the evidence of Munshi Ram

alone and the corroborative circumstances to which we have referred to above lend enough assurance to the implication of the appellant."

It is no doubt true that much evidentiary value cannot be attached to the identification of the accused in Court where identifying witness is a total stranger who had just a fleeting glimpse of the person identified or who had no particular reason to remember the person concerned, if the identification is made for the first time in Court.

In Ram Nath Mahto v. State of Bihar (1996) 8 SCC 630) this Court upheld the conviction of the appellant even when the witness while deposing in Court did not identify the accused out of fear, though he had identified him in the test identification parade. This Court noticed the observations of the trial Judge who had recorded his remarks about the demeanour that the witness perhaps was afraid of the accused as he was trembling at the stare of Ram Nath -accused. This Court also relied upon the evidence of the Magistrate, PW-7 who had conducted the test identification parade in which the witness had identified the appellant. This Court found, that in the circumstances if the Courts below had convicted the appellant, there was no reason to interfere.

In Suresh Chandra Bahri v. State of Bihar (1995 Supp (1) SCC 80), this Court held that it is well settled that substantive evidence of the witness is his evidence in the Court but when the accused person is not previously known to the witness concerned then identification of the accused by the witness soon after his arrest is of great importance because it furnishes an assurance that the investigation is proceeding on right lines in addition to furnishing corroboration of the evidence to be given by the witness later in Court at the trial. From this point of view it is a matter of great importance, both for the investigating agency and for the accused and a fortiori for the proper administration of justice that such identification is held without avoidable and unreasonable delay after the arrest of the accused. It is in adopting this course alone that justice and fair play can be assured both to the accused as well as to the prosecution. Thereafter this Court observed:-

"But the position may be different when the accused or a culprit who stands trial had been seen not once but for quite a number of times at different point of time and places which fact may do away with the necessity of a TI parade."

In State of Uttar Pradesh v. Boota Singh and others (1979 (1) SCC 31), this Court observed that the evidence of identification becomes stronger if the witness has an opportunity of seeing the accused not for a few minutes but for some length of time, in broad daylight, when he would be able to note the features of the accused more carefully than on seeing the accused in a dark night for a few minutes.

In Ramanbhai Naranbhai Patel and others v. State of Gujarat (2000 (1) SCC 358) after considering the earlier decisions this Court observed:-

"It becomes at once clear that the aforesaid observations were made in the light of the peculiar facts and circumstances wherein the police is said to have given the names of the accused to the witnesses. Under these circumstances, identification of such a named accused only in the Court when the accused was not known earlier to the witness had to be treated as valueless. The said decision, in turn, relied upon an earlier decision of this Court in the case of State (Delhi Admn.) v. V. C. Shukla (AIR 1980 SC 1382) wherein also Fazal Ali, J. speaking for a three-Judge Bench made similar observations in this regard. In that case the evidence of the witness in the Court and his identifying the accused

only in the Court without previous identification parade was found to be a valueless exercise. The observations made therein were confined to the nature of the evidence deposed to by the said eye-witnesses. It, therefore, cannot be held, as tried to be submitted by learned Counsel for the appellants, that in the absence of a test identification parade, the evidence of an eye-witness identifying the accused would become inadmissible or totally useless; whether the evidence deserves any credence or not would always depend on the facts and circumstances of each case. It is, of course, true as submitted by learned Counsel for the appellants that the later decisions of this Court in the case of Rajesh Govind Jagesha v. State of Maharashtra (AIR 2000 SC 160) and State of H.P. v. Lekh Raj (AIR 1999 SC 3916), had not considered the aforesaid three-Judge Bench decisions of this Court. However, in our view, the ratio of the aforesaid later decisions of this Court cannot be said to be running counter to what is decided by the earlier three-Judge Bench judgments on the facts and circumstances examined by the Court while rendering these decisions. But even assuming as submitted by learned Counsel for the appellants that the evidence of, these two injured witnesses i.e. Bhogilal Ranchhodbhai and Karsanbhai Vallabhbhai identifying the accused in the Court may be treated to be of no assistance to the prosecution, the fact remains that these eye-witnesses were seriously injured and they could have easily seen the faces of the persons assaulting them and their appearance and identity would well within imprinted in their minds especially when they were assaulted in broad daylight. They could not be said to be interested in roping in innocent persons by shielding the real accused who had assaulted them."

These aspects were recently highlighted in Malkhansingh and Others v. State of M.P. (2003 (5) SCC 746).

Test identification parade would be of no consequence in view of Jawahar's (PW-14) evidence that he did not know physical description of the accused-appellants as he had not seen them on the date of occurrence. What remains is the evidence of Rajkumar (PW-12).

It was contended that the police officers had assaulted the witness (PW-12) for a pretty long time and physical appearance and special features had been imprinted in the mind of the witness and merely because no test identification parade was held that is of no consequence. This plea has to be examined in the light of evidence of Rajkumar (PW-12). His evidence is full of unexplained contradictions. At one place he says he was arrested on 20th June, 1984, at another place he says he was arrested on 23rd June, 1984. He claimed that from 20th June till 22nd June, 1984 he was in police custody. In cross-examination it was accepted that it was not so because he was taken to U.P. on 21st and 22nd June, 1984. In another vital improvement in his statement, he claimed that he knew the names of all the accused persons by 20th June, 1984 itself. Significantly, the names of accused persons are not stated by him when he was examined by the police. No explanation has been offered as to why he did not tell the names. This witness claimed that he had suffered severed injuries. He admitted that he had not made any grievance to the Magistrate before whom he was produced after his arrest. He also accepted that the alleged injuries were not bleeding. But his statement was that the blood on the floor

was cleaned by the accused persons. It is further stated that the police took his signatures when his statement was recorded for the first time. Ext. D-3 was recorded on 26.6.1984 by which time he claimed to have known the names of all the accused persons. Ext. D-3 did not contain any signature. Therefore, the evidence of PW-12 and PW-14 are not sufficient to fasten guilt on the accused persons. But one significant aspect can not be lost sight of. That is the role of accused B.S. Chaudhury. His definite plea was that the deceased was lying injured near the Nala and information to that effect was received at the police station. But his statement before Dr. K.N. Agarwal (PW-1) was entirely different. The effect of a false stand being taken in case of custodial death was considered by this Court in Sahadevan alias Sagadevan v. State rep. by Inspector of Police, Chennai (AIR 2003 SC 215).

The plea that the deceased had come to the police station in a severe condition and after telling his name has collapsed gets falsified by the categorical statement made by the accused in his statement under Section 313 of the Code to the effect that on receiving information where the deceased was lying unconscious in injured state. In this view of the matter, the case being one of custodial torture, accusations have been established so far as accused-appellant Gulab Singh alias Gulab Singh Chaudhury is concerned.

The residual question is what is the offence committed by him. The evidence of Dr. D.K. Satpathy (PW-16) is very relevant to decide the question. He found that the injuries were confined to the skin and upper level of the body. Grievous injuries were not found on vital parts of the body like head, liver, spleen, heart, lungs etc. The duration of the injuries were widely variant. The right lung of the deceased was TB affected. The combined effect of alcohol and the injuries shortened the period of death and resulted in a quicker death. That being so, the conviction in terms of Section 304 Part II IPC cannot be faulted. His appeal fails and is dismissed. He shall surrender to custody to serve remainder of his sentence. So far as other accused-appellants Bahadur Singh, Pooran Singh and Dhanraj Dubey are concerned, the prosecution has not been able to bring home the accusations. Therefore, their appeals deserve to be allowed which we direct. Their bail-bonds are discharged.

The appeal is accordingly disposed of.