

PETITIONER:
GAURI SHANKER SHARMA ETC.

Vs.

RESPONDENT:
STATE OF U.P. ETC.

DATE OF JUDGMENT 12/01/1990

BENCH:
AHMADI, A.M. (J)
BENCH:
AHMADI, A.M. (J)
FATHIMA BEEVI, M. (J)

CITATION:
1990 AIR 709 1990 SCR (1) 29
1990 SCC Supl. 656 JT 1990 (1) 6
1990 SCALE (1)9

ACT:
Indian Penal Code: Sections 201, 218, 304 and 330--
Death in police custody--To be seriously viewed by the
Court.

HEADNOTE:

Three police personnel were charged with offences arising out of the death of one Ram Dhiraj Tiwari in police custody. Rafiuddin Khan (accused No. 1) was the Sub Inspector of Police Station Kure Bhar, Shamsher Ali (accused No. 2) was a Beat Constable, and Gauri Shankar Sharma (accused No. 3) was the Head Moharrir.

The prosecution version was that A1 directed A2 and two police chowkidars, to apprehend Ram Dhiraj, deceased, who was a suspect in a dacoity case. Pursuant thereto, Ram Dhiraj was arrested from his residence on 19.10.1971 at about 11.00 a.m. and brought to the police station. The prosecution case against A1 was that he was responsible for having beaten the suspect Ram Dhiraj in the presence of two other constables, whose identity was not established, which resulted in as many as 28 injuries to which he ultimately succumbed. It was also alleged that A1 had demanded a bribe of Rs.2000 to desist from meeting out third degree punishment to the suspect. The case against A3 was that he deliberately and wilfully posted false entries in the General Diary to help A1.

The defence version on the other hand was that the deceased was arrested on 20.10.1971 by A2 and his companions from near a culvert in the village and he was beaten up by them as he resisted arrest.

The Trial Court accepted the prosecution version and convicted A1 under section 304 (Part II) section 330, sections 201 and 218/34 and 161, IPC, and under section 5(1)(d) read with section 5(2) of the Prevention of Corruption Act, 1947. Accused No. 2 was acquitted of all charges. Accused No. 3 was convicted under sections 201 and 218, IPC.

The High Court, however, accepted the defence version that A1 was not at the police station on 19.10.1971 till 7.30 p.m. The High Court found that the three prosecution witnesses were not eye witnesses

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to the incident and hence their story about beating in the police station and the demand of bribe could not be accepted. The High Court accepted the evidence of DW 1, Jaswant Singh, Station Officer, Machilishahr Police Station, who claimed to have come to Kure Bhar Police Station on 19.10.1971 for investigation of another offence. According to DW 1, AI was not at the police station till about 7.30 p.m.

While dismissing the appeal filed by accused No. 3, and allowing the State appeal against the acquittal of accused No. 1, and restoring his conviction recorded by the trial court by setting aside his acquittal by the High Court, this Court,

HELD: (1) Both the courts have recorded a concurrent finding of fact that the deceased was arrested on 19.10.1971 at about 11.00 a.m. from his village Khajapur. That means that the entry in the general diary that the deceased was arrested on 20.10.1971 and was brought to the police station later can be brushed aside as false. The need to make a false entry speaks for itself. [36E-F]

(2) It is true that PW 5 and PW 8 were the brother-in-law of the deceased and PW 10 his neighbour, but that by itself, without anything more, was not sufficient to doubt their testimony which receives corroboration from medical evidence. Unless there are sound grounds to reject their evidence it would not be proper to brush aside their evidence on the specious plea that they are interested witnesses. [37F-G]

(3) It is difficult to understand how the learned Judge could persuade himself to accept the evidence of DW 1 on the specious plea that if he did not tell the truth he ran the risk of losing his job. The High Court should have realised that cases are not unknown where police officers have given inaccurate accounts to secure a conviction or to help out a colleague from a tight situation of his creation. [41B]

(4) The High Court should have realised that it is generally difficult in cases of deaths in police custody to secure evidence against the policemen responsible for resorting to third degree methods since they are in charge of police station records which they do not find difficult to manipulate as in this case. It is only in a few cases, such as the present one, that some direct evidence is available. [41F-G]

(5) After carefully considering the reasons given by the High Court for setting aside the conviction of AI, this Court is satisfied beyond any manner of doubt that the High Court had completely misdi-

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rected itself and hence interference by this Court under Article 136 of the Constitution, was justified. [42A-B]

(6) The offence is of a serious nature aggravated by the fact that it was committed by a person who is supposed to protect the citizens and not misuse his uniform and authority to brutally assault persons in his custody. Death in police custody must be seriously viewed for otherwise we will help take a stride in the direction of police raj. It must be curbed with a heavy hand. The punishment should be such as would deter others from indulging in such behaviour. There can be no room for leniency. This Court does not think it would be justified in reducing the punishment imposed by the trial court. [42D-E]

JUDGMENT:

CRIMINAL APPELLATE JURISDICTION: Criminal Appeal No. 111 and 477 of 1979.

From the Judgment and Order dated 19.4.1978 of the Allahabad High Court in Criminal Appeal No. 661 of 1975.

N.P. Midha and B.D. Sharma for the Appellant in Crl. A. No. 111 of 1979.

Prithvi Raj, Prashant Choudhary and D. Bhandari for the Respondent in Crl. A. No. 111 of 1979 and Appellant in Crl. A. No. 477 of 1979.

M. Qamaruddin and Mrs. M. Qamaruddin for the Respondent in Crl. A. No. 477 of 1979.

The Judgment of the Court was delivered by

AHMADI, J. In Criminal Case No. 3 of 1975, three persons were put up for trial before the learned Special Judge, Sultanpur (U.P.). The case arose out of the death of one Ram Dhiraj Tiwari in police custody. Accused No. 1 Rafiuddin Khan (Respondent in Criminal Appeal No. 477 of 1979) was the Sub-Inspector of Police Station Kure Bhar in District Sultanpur at all material times during the commission of the crime. Accused No. 2 Shamsher Ali (since acquitted) was posted at the said police station as Beat Constable No. 3. His companion Accused No. 3 (Appellant in Criminal Appeal No. 111 of 1979) was the Head Moharrir of the said police station. Crime No. 71 of 1971 under Section 395, IPC was registered at the said police station on 25.5. 1971 concerning a dacoity committed at Village Khara within

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the jurisdiction of the said police station. In that connection one Jagdamba was arrested on 20.9.1971. During interrogation by AI the said suspect is alleged to have made a confessional statement involving Ram Dhiraj Tiwari. On the basis of this information A 1 directed A2 and Ram Jas (PW 6) and Harakh, both police chowkidars, to apprehend Ram Dhiraj and produce him before him. Pursuant thereto A2 and his companions apprehended Ram Dhiraj from his residence in village Khajapur on 19.10.1971 at about 11.00 a.m. in the presence of his mother Kamaraji (PW 7), sister's husband Ram Niranjan Misra (PW 8) and labourer Jiyalal (PW 9). After his arrest Ram Dhiraj was brought to police station Kure Bhar at about 4.00 p.m. on the same day and handed over to A1. PW 8 and Ram Baran Dubey (PW 10) are stated to have followed him to the police station. It is alleged that soon charge of A1, he was given a severe beating with lathi and dandas by A1 and two constables, whose identity is not established, with a view to extracting a confessional statement from him. When PW 8 and PW 10 tried to intervene., A1 demanded a sum of Rs.2000 from them to refrain from ill-treating Ram Dhiraj. Thereupon PW 8 went to Village Pure Neelkanth three miles away to fetch Bindeshwari Prasad Shukla (PW 5) the husband of Ram Dhiraj's elder sister. On the arrival of PW 5 at the police station, A1 is alleged to have repeated his demand of Rs.2000. Since the bribe was not paid A1 and his two companions renewed the torture with vengeance which lasted till about 9 or 10 p.m. As a result of the merciless beating Ram Dhiraj was badly injured. It is alleged that the fact that he was apprehended from his village and was brought to the police station on 19.10.1971 was not entered in the general diary register but a false entry was posted in the said general diary register regarding his arrest on the next day i.e. 20.10.1971, at about 6.00 a.m. from near a culvert in village Hanna-Harora by A2 and his two chowkidars. The defence version was that as he tried to resist arrest A2 and his two companions beat him up as a result of which he sustained the injuries in question. Another entry was made

in the same general diary on the same day purporting to transfer Ram Dhiraj to police station Sadar for admission to the District Jail. General Diary Entry No. 14 was made to show that Ram Dhiraj was sent from Sardar police station at about 12.15 noon for admission to the District Jail as he had sustained injuries. It, however, transpired later that Ram Dhiraj died at about 4.00 p.m. on the same day while he was being taken to the residence of one of the Magistrates at Sultanput for remand. On his demise his dead body was taken to Kotwali Sultanpur where an entry No. 30 regarding his death was made in the general diary at about 4.20 p.m. On 21.10.1971 an inquest

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was made on the dead body and thereafter the dead body was sent for post mortem examination. PW 1 Dr. Mitra performed the autopsy and found as many as 28 ante-mortem injuries on the body of the deceased.

The prosecution case against A1 was that he was responsible for having beaten the suspect Ram Dhiraj in the company of two others which resulted in as many as 28 injuries to which he ultimately succumbed. It was also alleged that he had demanded a bribe of Rs.2000 to desist from meting out third degree punishment to the suspect. He was, therefore, charged under Section 304, 330, 201, 218/34, I.P.C., while his companion A3 was charged under Section 201 and 218, I.P.C. All the three accused persons denied the charges levelled against them and claimed to be tried. They however did not deny the fact that Ram Dhiraj died in police custody. The case set up by A1 was that he was away from the police station between 5.00 p.m. and 7.30 p.m., on 19.10.1971 and, therefore, the allegation that he had tortured Ram Dhiraj is fabricated and wholly false. A2 admitted the fact that Ram Dhiraj was arrested outside his village house at Khajapur on 19.10.1971 and was brought to the police station Kure Bhar on the same day at about 4.00 p.m. He, however, denied having caused any injury to him during arrest. A3 denied the prosecution allegation that he had deliberately and wilfully posted false entries in the General Diary to help A1.

The learned Special Judge before whom the accused were tried came to the conclusion that the deceased was arrested from his residence on 19.10.1971 as alleged by the prosecution and not from near the culvert of village Hanna-Harora on 20.10.1971; that no beating was given to him at the time of his arrest and that he was beaten in police station Kure Bhar where he was taken on 19.10.1971 itself after his arrest by A1 and two other constables who could not be identified. He also found that the fact that he was brought to the police station on 19.10.1971 was deliberately suppressed and A3 omitted to perform his duty by not posting an entry in that behalf in the General Diary and instead posting a false entry No. 10 (Exh. Ka 13) on the next day, 20.10.1971. He also found that a false entry was posted in the diary to show that he was sent to Sadar police station where he died before admission to jail. Lastly he found that A2 had counter-signed the general diary entry No. 10 without knowing the contents thereof. On facts found proved, the trial court convicted A1 under Section 304 (Part II) and sentenced him to suffer Rigorous Imprisonment for 7 years, under Section 330 and sentenced him to suffer Rigorous Imprisonment for 3 years, under Section 201 and 218/34 and 161 I.P.C. and

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under Section 5(1)(d) read with Section 5(2) of the Prevention of Corruption Act, 1947 and sentenced him to Rigorous

Imprisonment for 2 years on each count--all substantive sentences to run concurrently. A2 was acquitted of all the charges levelled against him. A3 was, however, convicted under Sections 201 and 218 I.P.C. and was ordered to suffer Rigorous Imprisonment for 2 years on each count. The substantive sentences were ordered to run concurrently. Both the convicted accused preferred Criminal Appeal No. 661 of 1975 in the High Court. The State did not question the acquittal of A2. The High Court accepted the defence version that A1 was not at the police station on 19.10.1971 till 7.30 p.m. as proved through DW1 and DW2 and, therefore, the prosecution version was unacceptable. It also found that the three prosecution witnesses PW5, PW8 and PW 10 were not eye witnesses to the incident and hence their story about beating in the police station and the demand of bribe cannot be accepted. It lastly held that A 1 could not be held responsible for the omission to post an entry in the general diary about the arrival of the deceased to the police station at 4.00 p.m. as he himself had returned to the police station at 7.30 p.m. On this line of reasoning the High Court allowed A1's appeal and set aside the conviction on all counts. The High Court, however, maintained the conviction of A3 but reduced the sentence to Rigorous Imprisonment for 6 months.

Criminal Appeal No. 111 of 1979 is preferred by A3 questioning his conviction while Criminal Appeal No. 477 of 1979 is preferred by the State questioning the acquittal of A1. As both these appeals arise out of the same judgment. We think it would be convenient to dispose them of by this common judgment.

The fact that Ram Dhiraj died of injuries received by him after his arrest and while he was in police custody is not seriously disputed. The prosecution version is that he was beaten in the police station on 19.10.1971 by A1 and his two companions after he was arrested from his residence and brought to the police station. The defence version on the other hand is that the deceased was arrested on 20.10.1971 by A2 and his two companions from near a culvert in village Hanna-Harora and he was beaten up by them as he resisted arrest. Of course A2 has denied this in his statement recorded under Section 313 of the Criminal Procedure Code. Be that as it may, both the prosecution as well as the defence version suggest that the deceased had received a beating at the hands of the police after his arrest. The evidence of PW1, Dr. Misra shows that the deceased had received as many as 28 injuries. by some blunt weapon or weapons which resulted in his death due to

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shock and haemorrhage on the afternoon of 20.10.1971. The trial court has come to a firm conclusion that these injuries were caused to the deceased in the police station after his arrest. The High Court also opines that the "number of injuries speaks that most probably he had not received those injuries only during arrest and that he was subjected to severe assault sometime after his arrest". Even this halting.. finding recorded by the High Court shows that both the courts felt that the deceased was seriously beaten while in police custody. The fact that Ram Dhiraj died a homicidal death is, therefore, rightly not contested before us.

Having regard to the rival versions, the crucial question which must be answered is regarding the date, time and place of arrest. It is not in dispute that an offence of dacoity at village Khera was registered at Police Station Kure Bhar on 25.5.1971. One Jagdamba was arrested in that

connection on 20.9.1971. A1 was investigating that crime. In the course of interrogation by A1, Jagdamba is stated to have revealed the name of Ram Dhiraj as his accomplice. The evidence of PW 6 Chowkidar Ram Jas is that A1 had directed A2 to arrest Ram Dhiraj and produce him before him. A2, PW 6 and Chowkidar Harakh then went to fetch Ram Dhiraj. In the absence of any specific information, the first place to visit to locate the wanted man would be his residence. PW 6 also deposed that the police party went in search of the deceased to his village and apprehended him from near his residence. However, the evidence of PW 6 was challenged on the ground that he had in his statement before M.M. Swarup, Executive Magistrate, affirmed the defence of AI that the deceased was apprehended from near a culvert in village Harma-Harora on 20.10.1971. The learned trial Judge negatived this contention as the certified copy of the statement said to have been made to M.M. Swarup in an enquiry under Section 176 of the Code of Criminal Procedure was inadmissible in evidence since the said enquiry could not be equated to a judicial proceedings and was, therefore, inadmissible in evidence. He was of the view that the same could not be admitted in evidence under Section 90 of the Evidence Act. In this view the proper course was to call for the original statement, confront the witness with the contradictory part and on proof use it as evidence to discredit the witness. We agree with the learned trial judge that the contents of a certified copy of the statement recorded under Section 176 of the Code would not be admissible in evidence unless the contradiction is proved by putting it to the witness in cross-examination and the maker has had an opportunity to admit or deny it. In our view it has to be proved like any other previous statement. The trial judge also opined that even if the statement was admis

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sible under Section 90, Evidence Act that statement per se cannot efface his substantive evidence in court for the simple reason that at the time of recording of that statement he was under the direct influence of A1 his superior, and was, therefore, not a free agent. The learned trial judge was, therefore, of the opinion that the contradiction even if proved cannot militate against the truth of his statement. The High Court has endorsed the finding of the trial court that as PW 6 was a chowkidar under the administrative control of A1 he could be prevailed upon to support the defence theory in it, he inquiry under Section 176. The High Court also held that the short signature of PW 7 as 'Jassi' in the General Diary--Entry No. 10 must have been obtained by A3 to add sanctity to the defence version. The High Court finally stated that even if absolute reliance is not placed on the evidence of PW 6 in this behalf, his evidence is duly corroborated by the evidence of other witnesses, viz., PW 7 Karamraji, PW 8 Ram Niranjana Misra and PW 9 Jai Lal, the mother, brother-in-law and labourer of the deceased. These three witnesses have also deposed that the deceased was arrested from his village Khajapur at about 11.00 a.m. on 19.10.1971. The High Court has rightly observed that barring minor discrepancies in their evidence as to dress of members of the police party, presence of others, etc., there is nothing brought out in their cross-examination to discredit their evidence in this behalf. The prosecution also examined PW 3 Baij Nath and PW 4 Mewa Lal, who have their shops near the culvert of village Hanna-Harora to negative the defence version regarding the arrest of the deceased from there. Therefore, both the courts have recorded a concurrent finding of fact that the deceased was ar-

rested on 19.10.1971 at about 11.00 a.m. from his village Khajapur. That means that the entry in the general diary that the deceased was arrested on 20.10.1971 and was brought to the police station later can be brushed aside as false. The need to make a false entry speaks for itself.

The next question is where, when and by whom were the injuries inflicted on the deceased. The High Court observes that the medical evidence on record shows that the injuries found on the person of the deceased were caused on the evening of 19.10.1971. In fact according to the High Court the medical evidence lends credence to the prosecution case that the deceased was arrested on 19.10.1971. The High Court holds as under:

"After considering the injuries of the deceased I have not the least doubt in my mind that those injuries were not caused to him during arrest, and that he was beaten some-

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times after his arrest and before he was sent to jail from police station Kure Bhar".

There is, therefore, no doubt that the High Court reached a firm finding that the arrest was made on 19.10.1971 at about 11.00 a.m. from village Khajapur and the injuries noticed by the medical officer on the person of the deceased at the time of the autopsy were inflicted after his arrest and not during the course of arrest.

Now it is not in dispute that A 1 was serving as the Station Officer of police station Kure Bhar on the 19/20.10.1971. He was in charge of the investigation of the dacoity case in which Jagdamba was arrested. It was he who had interrogated Jagdamba and had secured a confessional statement from him. The information divulged by Jagdamba necessitated the arrest of the deceased. It is, therefore, reasonable to infer that AI would interrogate the deceased also. Since the arrest was made from village Khajapur, the presence of PW 7, PW 8 and PW 9 at the time of the arrest cannot be doubted. PW 8 and PW 10 deposed that they had followed the deceased to the police station after his arrest. PW 8, the brother-in-law of the deceased and PW 10 have deposed that after the deceased was taken to the police station he was subjected to third degree treatment by AI and two policemen whom they have not identified. Both have stated on oath that A 1 and his two unidentified companions beat the deceased with lathi and danda to extract a confession from him and when they entreated A 1 not to beat the deceased, he demanded Rs.2000 from them. PW 8 then went to village Desarwa of Pure Nilkanth to fetch PW 5, the husband of the elder sister of the deceased. On the arrival of PW 5 at the police station he too requested AI not to beat the deceased but AI reiterated his demand for Rs.2000. When the witness expressed his inability to meet the demand, AI resumed the ill-treatment to the deceased. It is true that PW 5 and PW 8 were the brother-in-law of the deceased and PW 10 his neighbour but that by itself, without anything more, was not sufficient to doubt their testimony which receives corroboration from medical evidence. We are, therefore, of the opinion that unless there are sound grounds to reject their evidence it would not be proper to brush aside their evidence on the specious plea that they are interested witnesses.

Even though the High Court came to the conclusion that the deceased was beaten after his arrest, the High Court refused to place reliance on the direct testimony of these three witnesses insofar as the involvement of A1 is concerned. The first reason assigned is that since

the village of PW 5 is 11 or 12 miles from Khajapur which in turn is about 10 miles from Kure Bhar, it is not possible that he could have reached the police station by about 4.30 p.m. In the first place the exact time of arrival of deceased to the police station is not known. Secondly when the witnesses spoke about the time-factor they merely mentioned the approximate time and not the exact time of PW 8's departure and return to the police station with PW 5. We are, therefore, of the opinion that the evidence of the prosecution witnesses cannot be thrown overboard on such an infirm ground.

The High Court has also cast doubts on the evidence of PW 5 on the ground that he told a deliberate lie that there was no sentry at the police station to make his entry in the police station probable. This too appears to us to be a weak reason for discarding his evidence. His presence at the police station is established by the telegram that he sent to the superior police officers complaining about the beating given to the deceased. We, therefore, do not think that the High Court was justified in refusing to act on his evidence on this ground.

In the application Ex. Ka 3 the name of A2 was mentioned as one of the constable who was assisting A1 in beating the deceased to extract a confession from him. However, in the substantive evidence the witness did not name A2 but merely stated that A1 and two other constables had beaten the deceased. The High Court, therefore, inferred that he had wrongly named A2 as one of the assailants in Ex. Ka. 3 and was, therefore, not a reliable witness. But both in the telegram, and application Ex. Ka. 3 the name of A1 is mentioned. The omission to name A2 as one of the constables involved in the beating cannot absolve A1. We are, therefore, inclined to think that the High Court was not right in refusing to act on the evidence of the witness on such consideration.

The High Court rejects the evidence of the three prosecution witnesses on the ground that the telegram was sent by PW 5 as late as 23.10. 1971. In our opinion the High Court failed to appreciate that 19th and 20th were lost in trying to secure the release of the deceased from AI. After the suspect died on the 20th the next day i.e., 21st was lost in post mortem examination and securing the dead body of the deceased for funeral. His evidence discloses that the dead body was not delivered to him till 4.30 p.m. On that day he went to village Khajapur and broke the news of death to PW 7 and other family members. He has deposed that he sent the telegram only after he received threats from A 1. The trial court has discussed this aspect of

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the case in detail and has rightly pointed out that it was a difficult decision to take for PW 5 as he may not like to incur the wrath of A1. But when A1 threatened him, he was left with no choice but to inform his superiors. The High Court, with respect, has failed to properly appreciate and assess the situation. After all everyone thinks twice before deciding to make so serious a complaint against a police officer. We do not think there was so serious a delay as to throw out the evidence of the three witnesses on that ground.

PW 10's evidence has been rejected on a very flimsy ground. He is the neighbour of the deceased. He was at the police station upto 7.00 or 8.00 p.m. and claims to have seen A1 beating the deceased. His evidence is rejected on the ground that he was interested in getting the policemen punished because the deceased was beaten to death while in

police custody. It is further stated that all others associated with him are keen to see that somebody gets punished for the assault on the deceased. We find it difficult to comprehend why this witness would falsely involve A1 if he was not responsible for the injuries caused to the deceased. The conduct of this witness is branded as unnatural because he did not go to inform PW 7 and others about the death of the suspect. Since PW 5 and PW 8 were aware of the death. There was no need for PW 10 to inform the family members of the deceased as he would be justified in believing that PW 5 and PW 8 must have informed them. We are, therefore, of the view that the High Court had rejected the evidence of PW 10 on thoroughly untenable grounds.

That brings us to the question whether the alibi set up by A1 can come to his rescue. In this connection reliance is placed on the evidence of DW 1, Jaswant Singh, Station Officer, Machlishahr Police Station. He claims to have come to Kure Bhar on 19.10.1971 for investigation of an offence under Section 363/366 I.P.C. of his police station. He wants us to believe that he was at the Kure Bhar police station from 5.00 p.m. to 9.30 p.m. According to him A1 was not at the police station till about 7.30 p.m. Reliance is placed on the general diary entry dated 19.10.1971 to show that A 1 had left the police station at about 10.30 a.m. for Tikar and had returned to the police station at 7.30 a.m. This entry is proved through DW 2. Now according to DW 1 even though he had come to Kure Bhar for investigation, he himself remained at the police station throughout and sent his men with A.S.I. (II) of Kure Bhar to Dilawar-Ka-Purwa for investigation. He wants us to believe that he came from his police station to investigate a crime but kept sitting at Kure Bhar police station throughout from 5.00 p.m. to 9.30 p.m. Is this natural conduct? The obvious reason for so stating

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is to discredit PW 5, PW 8 and PW 10 who have in unmistakable terms stated that A1 was at the police station and had beaten the deceased. DW 1 stand belied by the general diary entry made at his police station on 20.10.1971 to the effect that on reaching Kure Bhar he took A.S.I. (II) of that police station and went to village Dilawar-ka-Purwa for investigation and returned to his police station at 4.00 p.m. According to the said entry from Dilawar-ka-Purwa he went to Sultanpur where he passed the night, left for Ramnager next morning and returned to his police station via Durgaganj. The learned trial judge dealt with this part of the defence evidence thus:

"It is also improbable of belief that once station officer Jaswant Singh had taken care to come to Kurebhar in order to make the investigation of the crime of his police station, he had leisurely lingered on at PS Kurebhar and not personally proceeded to make the investigation of the said case". The learned trial judge observed that he appears to have come forward to help a member of his own fraternity. The learned trial judge, therefore, came to the conclusion: "If general diary entries Nos. 15 and 21 may have been falsely incorporated, where is the guarantee that the general diary entry No. 17 which falls in between these, may not have been falsely incorporated".

The learned trial judge also felt that it was not possible to believe that an important police officer like A 1 would spend the whole day from 10.30 a.m. to 7.30 p.m. inquiring about an application at Village Tiker.

The learned judge in the High Court considers the approach of the learned trial judge unacceptable because:

"Sub-Inspector Juswant Singh has stated that he himself had stayed at Police Station Kurebhar and had sent other members of his party and an A.S.I. of Police Station Kurebhar to Dilawar-Ka-Purwa. The mere fact that S.I. Jaswant Singh happens to be a Sub-Inspector of Police is no ground to reject his testimony. After all there should be some reason for a police officer posted at police station Machlishahr at Jaunpur to falsely depose for defending Rafi

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Uddin Khan appellant. If S.I. Jaswant Singh's evidence is disbelieved in the present case, he himself incurs the risk of losing his job"

This line of reasoning does not commend to us. We fail to understand how the learned judge could persuade himself to accept the evidence of DW 1 on the specious plea that if he did not tell the truth he ran the risk of losing his job. The learned trial judge gave sound reasons for disbelieving the evidence of DW 1 that he did not stir out of Kure Bhar police station from 5.00 p.m. to 9.30 p.m. The High Court failed to appreciate that on realising that the condition of the deceased had deteriorated, a false entry was made by A3 at the behest of A1 to show that (i) the deceased was not arrested on 19.10.1971 nor was he brought to the police station Kure Bhar by about 4.00 p.m. and (ii) that he was actually arrested by A2 from near the culvert of village Hanna-Harora on 20.10.71 and was given a beating before actual arrest, a fact which is denied by A2 in his statement under Section 313 of the Code. Thus the foundation for absolving himself from the responsibility of having ill-treated the deceased was laid. The trial court rightly holds that there is no guarantee that entry 17 is accurate when entries 15 and 21 are found to be false. The entry in the case diary regarding crime No. 28 of Machlishahr recorded by A.S.I. Bankey Bihari who had accompanied DW 1 clearly mentions that when they reached Kure Bhar they met the Thana Adhiyakshakh (i.e. A 1) at about 5.00 p.m. which negatives the theory that A1 had left the police station at 10.30 a.m. and had not returned till 7.30 p.m. of 19.10. 1971. Without coming to grips with the circumstances pointed out by the trial court for disbelieving DW 1, the High Court surprisingly accepted his evidence as gospel truth only because he ran the risk of losing his job. The High Court should have realised that cases are not unknown where police officer have given inaccurate accounts to secure a conviction or to help out a colleague from a tight situation of his creation. The High Court should also have realised that it is generally difficult in cases of deaths in police custody to secure evidence against the policemen responsible for resorting to third degree methods since they are in charge of police station records which they do not find difficult to manipulate as in this case. It is only in a few cases, such as the present one, that some direct evidence is available. In our view the reasons assigned by the High Court are too weak to stand judicial scrutiny.

We are aware that so far as A 1 is concerned, we are called upon to interfere in an acquittal appeal. Since it is said that an acquittal

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reinforces the presumption of innocence we have carefully considered the reasons given by the High Court for setting aside the conviction of A 1. We are satisfied beyond any manner of doubt that the High Court completely misdirected itself. We have dealt with the facts at some length to justify our interference under Article 136 of the Constitution. Had we not been fully satisfied that gross injustice

was done because the High Court misdirected itself we would not have interfered in exercise of our powers under Article 136 of the Constitution.

For the above reasons we dismiss Appeal No. 111 of 1979 preferred by A3 as we are satisfied that his conviction is correctly recorded. We allow the State's appeal No. 477 of 1979 and restore the conviction of A1 recorded by the trial court by setting aside his acquittal by the High Court. On the question of sentence a fervent appeal was made by his counsel that having regard to the passage of time and the changed circumstances A1 should not be sent to jail and the sentence of fine should suffice. We are unable to accede to this request. The offence is of a serious nature aggravated by the fact that it was committed by a person who is supposed to protect the citizens and not misuse his uniform and authority to brutally assault them while in his custody. Death in police custody must be seriously viewed for otherwise we will help take a stride in the direction of police raj. It must be curbed with a heavy hand. The punishment should be such as would deter others from indulging in such behaviour. There can be no room for leniency. We, therefore, do not think we would be justified in reducing the punishment imposed by the trial court.

A1 is on bail. Since the trial court's order of his conviction and sentence is restored he will surrender to his bail within a week's time to serve his sentence.

R.S.S.

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