
(1991) 04 AHC CK 0015
In the Allahabad High Court
Case No : Criminal Appeal No. 1293 of 1986

Brinda Ban Mouria and Others	Vs	APPELLANT
State of U.P.		RESPONDENT

Date of Decision : 16-04-1991

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 151, 161, 82, 83
Penal Code, 1860 (IPC) — Section 302, 34

Citation : (1991) 15 ACR 708

Hon'ble Judges : Palok Basu, J; P.P. Gupta, J

Bench : Division Bench

Advocate : Ravindra Rai and N.D. Shukla, for the Appellant;

Judgement

Palok Basu, J.—What a tragedy it is to find that the police personnel have manoeuvred the record in such a manner that the real culprit cannot be brought to book for the loss of life of a young man in police custody. Before entering into the merits of the appeal, it may be relevant to mention here that it can not be disputed that the death of one Dharmdeo has taken place when, he was in police custody. When the protector of the law becomes the wrecker of the law, it is well-nigh impossible to secure protection for the citizens, as the casualties are the law and protection both. From the facts and circumstances it appears that various police officers posted in the Police Station Harpur Budhat Gorakhpur, on 20-10-1982 were squarely responsible for not entending security to the arrested person.

2. This appeal was filed by Brindaban Maurya, Mundrika and Ram Asrey against the judgment of the Additional Sessions Judge (Special Judge), Gorakhpur in Sessions Trial No. 579 of 1983 dated 15-5-1986 convicting Appellant Mundrika u/s 302 IPC and Brindaban and Ram Asrey u/s 302/34 IPC and sentencing all to imprisonment for life.

3. The charge against the Appellant was that on 20-10-1982 at about noon in village Raghunathpur, Police-Station Harpur Budhat, district-Gorakhpur, they

committed the murder of Dharmdeo by causing him injuries in furtherance of their common intention. During the pendency of the appeal, Brindaban Maurya has reportedly died and, therefore, his appeal abates.

4. Sri P.N. Misra, learned Counsel for the Appellants has been heard at length in support of this appeal whereas Sri Ram Chandra Deepak has represented the State of U.P. The entire record has been thoroughly examined. Those officials whose conduct will be discussed in the following paragraphs deserve the severest punishments departmentally if on enquiry in accordance with law they are found guilty of misconduct, dereliction of duty and negligence in permitting the deceased Dharamdeo to die in their custody under circumstances almost close to culpable homicide. It is a different matter altogether that due to lacuna left intentionally in the prosecution case set up in the court, the accused have to be acquitted perforce.

5. The prosecution case is that PW 1 Smt. Kabutra had sown gram in her field lying in northern part of village Raghunathpur, police-station-Harpur Budhat, district-Gorakhpur. Four persons, namely, Ori, Lachhan, Ragghu and Musafir were found up-rooting the crop on 19-10-1982 which was objected to by PW 1 Smt. Kabutra and Shyam Lal, younger brother of the husband of Smt. Kubutra, i.e. uncle of Dharamdeo. They did not pay any heed. On 20-10-1982 Ori and Lachhan were up-rooting remaining crop and were also ploughing it. Smt. Kabutra and Shyam Lal again protested. PW 2 Shivdass who was going to his nearby field with plough rushed there. At that point of time Appellant Mundrika accompanied by Musafir and Gabbu reached there and Mundrika threatened to finish the entire family of Smt. Kabutra saying that the matter will be decided through the police-station and Mundrika proceeded to the police-station. Shyam Lal is said to have taken an application to the said police-station and handed it over to PW 4 Gorakh Singh, Station Officer alleging therein that Ori and Lachhan were trying to dispossess Smt. Kabutra forcibly and there was an apprehension of the breach of peace. PW 5 Shambhu Singh, Sub-Inspector posted at the police-station was directed by the Station Officer to go to the site and do the needful. This order was carried through head-constable alongwith application of Shyam Lal for contacting PW 5 Shambhu Singh somewhere in the village for which place he had already gone in the morning. Consequently Ram Asrey Appellant, a constable in the police-station, went on a Jeep and met PW 5 Shambhu Singh near village-Parmeshwarpur who was having two constables with him. Consequently all the four, i.e., PW 5 Shambhu Singh, Appellant Ram Asrey, constable, and two other constables reached the site around 10.30 A.M. and found that a crowd had collected there which included Dharamdeo (deceased) Shyam Lal, Ori and Ram Makshtra who was grappling and exchanging hot words. Consequently, these four were arrested u/s 151 Code of Criminal Procedure and they reached the police-station-Harpur Budhat around 12.30 P.M when PW 4 Gorakh Singh was present. An entry was made in the general diary report No. 15 (Ext. Ka 3) about the arrival of four persons. PW 6 Bhullar Prasad constable who was on guard duty to transfer those four arrested person from custody into

police lock up.

6. It is said that PW 1 Smt. Kabutra, PW 2 Sheo Dass and other villagers had followed the police party and reached the police station shortly after the Jeep had arrived there. The evidence shows that the police station is about one mile from the village and is visible therefrom.

7. Ram Asrey, Appellant had some talk with PW 6 Bhullar Prasad when Mundrika Appellant also had conversation with Appellant Ram Asrey. When they were crossing road to carry the four arrested persons into the lock-up, Appellant Ram Asrey hit Dharamdeo with his hand from behind at the head of Dharamdeo as a result of which he fell down. Appellant Brindaban instigated Appellant Mundrika to strangle the neck whereupon Mundrika pressed by both the hands the neck of Dharamdeo who died on the spot. Some started shouting that Dharamdeo had an attack of epilepsy-fit and some started saying that Dharamdeo had been murdered. PW 4 Gorakh Singh, Station Officer who was taking his lunch and PW 5 Shambhu Singh, Sub-Inspector who was in the office making some entries rushed there and found the body of Dharamdeo lying on the ground. A nearby physician namely, Dr. Ramesh Chandra was allegedly called who declared Dharamdeo dead. At this PW 4 Gorakh Singh went to inform the District Magistrate and the Senior Superintendent of Police about the death of a man in the police custody. He returned to the police-station at 7 P.M. along with Circle Officer and the Sub-Divisional Magistrate when he found that a large crowd had collected. On asking of the Sub-Divisional Magistrate concerned Smt. Kabutra got a report Ext. Ka 1 written through someone, put her thumb-mark over it and lodged the FIR which is said to have been registered at 7.15 P.M. vide general diary entry No. 22 made by PW 7 Ram Singhasan Singh, head-Moharrir. PW 8 Sri Hari Shanker Pandey, Sub Divisional Magistrate conducted the inquest report Ext. Ka 7, prepared the photo-Nash Ext. Ka 8, challan Nash Ext. Ka 9 and the letter to the Chief Medical Officer for post-mortem examination on the dead-body of Dharamdeo, the dead body was sealed and handed over to two constables. The post mortem examination of the dead body of Dharamdeo was conducted by Dr. K.K. Mall PW 3 on 21-10-1982 at 4.30 P.M. On external examination he found that the deceased was young man of good muscular built and rigour mortis was present in both the lower limbs. There was clotted blood on the right side angle of mouth. He also found the following ante--mortem injury on the dead body:

Multiple abrasion in an area of 3" x 1 1/2" on front and right side of the neck.

On internal examination he found sub-dural haemotoma in an area of 6" x 4" on the top of the head. He found fracture of hyoid bone and there was blood clot in the larynx. Both the lungs were congested. The liver, spleen and Kidneys were also congested. The death had been caused about a day before the post-mortem examination and the cause of death was asphyxia due to strangulation. He prepared the post-mortem examination report Ext. Ka 2.

8. The investigation was conducted by PW 10 Shyam Narain, Sub-Inspector who

is said to have recorded the Statement of PW 1 Smt. Kabutra on 2-11-1982 and some other witnesses between 3-11-82 and 11-11-82 whereafter he went to some training. Investigation was, therefore, taken up by PW 9 S.P. Rawat in January, 1983, who recorded the statement of some witnesses till 19-1-1983 on which date he arrested accused Brindaban (now dead). He recommended suspension of Appellant Mundrika who was a constable in 10th Battalion, P.A.C, Jahangirabad, at Barabanki whom he arrested on 30-11-1983. He took proceedings u/s 82/83 Code of Criminal Procedure against the appellant Ram Asrey who was reported to be absconding. Then ultimately after completing investigation he submitted charge-sheet Ext. Ka 11.

9. All the Appellants pleaded not guilty to the charge. Appellant Mundrika admitted his posting as a constable in 10th Battalion P.A.C. Barabanki and said that he had come on leave in the village where the political leaders got him falsely implicated. Accused Brindaban Maurya had also attributed his false implication due to enmity having appeared as a witness against Smt. Kabutra in a revenue litigation. Appellant Ram Asrey alleged that he was a constable posted at police station Harpur Budhat, Gorakhpur, Station Officer and some Diwanji wanted to take Begar (unpaid labour) from him and he too has been prosecuted wrongly at their instance and also under the influence of the political leaders. The Appellants had examined DW 1 Sita Ram to prove general diary entry No. 11 of police station Harpur Budhat, a true copy of which has been filed on the record as Ext. Kha 6.

10. At this stage it is to be pointed out that if one goes by record prepared and maintained at the police station concerned then there would be no eye-witness of the entire incident in which Dharamdeo has lost his life. On the other hand, the prosecution has produced PW 1 Smt. Kabutra and PW 2 Shiv Dass as eye-witnesses of the incident. Since the prosecution's own case now, as sent to the court through the charge sheet is that the entire incident has to be seen only through the eyes of Smt. Kabutra and Shiv Dass, the testimony of Smt. Kabutra and Shiv Dass has to be scanned meticulously because the argument on behalf of the Appellants is that they were never eye witnesses of the incident and once they are discarded there would be no legal evidence to prove that the Appellants were responsible in murdering Dharamdeo deceased. Though the learned A.G.A. argued that on the facts and circumstances of the present case the testimony of Smt. Kabutra and Shiv Dass should be believed, he also could not deny that Dharamdeo and the other three persons were in the police custody when alleged incident is said to have happened.

11. There may be available two ways of evaluating eye-witness account in this case. Firstly since it may be normally expected that police records produced during the trial may have been manoeuvred in a way and manner so as to absolve the officers of the police station and make some one a scape post, the eye-witness account has to be scrutinised on their testimony as it is. The argument of the learned A.G.A. for the State that delay in lodging the FIR in this

case should not be taken to be a factor going against the eyewitness account furnished by Smt. Kabutra and Shiv Dass, has enough force. Simultaneously the argument of the defence Counsel that material omissions in the FIR by an eye-witness going to the root of the matter must not be lost sight of, is of equal importance. Secondly, the police record and the police-witnesses may be believed and not PW 1 and PW 2. As compared to the eye-witness account furnished by Smt. Kabutra and Sheo Dass it may be mentioned that PW 6 Bhullar Prasad, a constable in the police station, who too furnished an eye-witness account, has an entire different picture to point as to the manner of the death of Dharamdeo. Thus, for harmonising the aforesaid two ways, the eye-witness account furnished by Smt. Kabutra and Sheo Dass has to be examined interpreted independent of the evidence furnished by police witnesses as to the manner of the assault or regarding collateral facts and circumstances.

12. PW 1 Smt. Kabutra has stated in the examination-in-chief about the incident having happened in the earlier part of the day of the incident. She further said that after the police had arrested her son Dharamdeo and three others and had taken them to the police station on a Jeep she, Shiv Dass and others followed them to the police station. Her son was made to sit on the road in front of the police station. Mundrika had some conversation with Ram Asrey. When Dharamdeo was being taken for being put in side the lock-up Ram Asrey gave a blow by hand as a result of which he fell down. At the instigation of Brindaban, accused Mundrika throttled the neck and killed Dharamdeo by both his hands. She was at four or five steps from Dharamdeo. Shiv Dass and others were by her side. She had handed over an application at the police station but she can not say who the man was but he had taken down all that she had said. She proved the paper on which the alleged FIR has been written with pen-ink and there is no thumb mark at the end of it.

13. In the cross-examination however, she has said that in the morning Shyam Lal had gone to the field at 8 A.M. and she had not accompanied him. He had come back to tell her about the ploughing by Ori and Lachhan. She had gone to object but she was side-lined by the hand of aggressors. She dictated a report at her residence to Shyam Lal who went to hand it over to the police station and returned at 4 P.M. Shyam Lal had not told her as to where Dharamdeo was. She was at her residence until Shyam Lal had returned from the police station. She did not go to the police station after Shyam Lal had returned. Brijraj, Adya and Sadhu Ram had come after Shyam Lal had returned. The report about Dharamdeo's death had been prepared by all of them. Those people wrote out a FIR and she was asked to put her thumb mark which was lodged by some one whose details she did not remember as she was perturbed.

14. It is rightly argued that the statement in para No. 3 of cross-examination takes Smt. Kabutra at her house when the incident had happened in the field and it is only when her DEWAR (husband's brother) had come that something about making of a report was done.

15. In para 6 of her cross-examination she has further stated that it was wrong to say that she had come to know of the death of Dharamdeo through Sadhu Saran, etc. but the fact was that she was present when the death of Dharamdeo happened at the place of occurrence. In the next breath she said that the rumour spread in the village around evening that Dharamdeo had died. Brijran, Sadhu Saran, etc. had come soon after the aforesaid rumour spread, when those people had come to her house, her immediate neighbour Basawan, Bhikhari and Ghanshyam had also come to her house. This shows that by about day's time she was at her residence and not only that some of her acquaintance had heard but immediate neighbour had come to her house. It means that at about day time she was available in the house and, therefore, by all expectations at 715 p.m. when the alleged FIR was said to have been lodged by Smt. Kabutra at the police station personally having got it written there at the police station through an unknown man, she should be present at her residence rather than at the police station.

16. In para 8 of her cross-examination she further says that the field which was ploughed by those persons in the morning of the day of the incident belonged to her mother and that a litigation had taken place between her on one side and Ori and Lachhan on the other in which accused Brindaban had appeared as a witness against her. She denied the suggestion that she is not the daughter of the original tenure holder, namely, Munna. She had further admitted that accused Brindaban had spoken against her saying that she was not the daughter of Munna having taken bribe. She had admitted that she lost at the Tehsildar level but had won in the Commissioner's stage. In para 9 she has admitted that she had let out her field to PW 2 Shiv Dass along with two others namely, Nandlal and Parma. She admitted that Shiv Dass was present in the court on the day her statement was being recorded. She further admitted that Shiv Dass is brother of Lauhar and Lauhar has appeared as a witness in her favour in the aforesaid revenue litigation. In para 10 she denied that her son Dharamdeo was an old patient of epilepsy fit.

17. It was pointedly asked of her as to why she had not mentioned about the manner of assault, that is by throttling in the FIR as was being said by her in the court. And, why she omitted to mention that Appellant Ram Asrey had assaulted by hand on the head of Dharamdeo as a result of which Dharamdeo became unconscious and fell down. The reply given by her that FIR was lodged by village people, therefore, she could not say why that fact was not mentioned in the FIR. The answer further was that as she may have been perturbed and that is why she cannot say why this fact has been omitted to be written in the FIR. In para 13 she was asked as to why as she had not mentioned in her statement u/s 161 Code of Criminal Procedure the alleged threat by Mundrika Appellant of exterminating her family, she could not explain this material omission.

18. In para 11 of the cross-examination which was made on behalf of the Appellant Ram Asrey she says that one Maqsoodan had told her about the name

of Ram Asrey. She did not know the name of Ram Asrey when she had come to the village. Before that she did not know the name of Ram Asrey. Some further cross-examination in the following lines in the said paragraph appears to indicate that she had tried to come out with an explanation of knowing the name of Ram Asrey from before. The said attempt appears to be in futility as the earlier part is more plausible and acceptable that Ram Asrey was not known to her from before.

19. In view of the aforesaid discussion the claim of Smt. Kabutra that she was an eye-witness becomes extremely doubtful, if not impossible. This takes us to examine whether she has been corroborated in material particulars by the other alleged eye-witness or he has further diminished her evidentiary value as well as his.

20. Thus, coming to the statement of PW 2 Shiv Dass it may be noticed that his examination by the Investigating Officer u/s 161 Code of Criminal Procedure was done on 19-1-1983 that is after about 3 months. However, in his examination-in-chief he had tried to narrate about the incident on the preceding day of the occurrence, then he has said that on the day of the incident he was going to sow on his field with his bullocks and plough. Shyam Lal and Smt. Kabutra remonstrated against Ori and Lachhan who did not stop ploughing her field. The persons in the nearby field such as Sadhu, Chandrey, etc. had arrived then Mundrika Musafir and Gabbu came to the field and Mundrika said that Smt. Kabutra's family will be finished and its decision will be taken from the police station. He further said that he will teach a lesson through the police and left for the police station. Mundrika returned with a Daroga and two constables at 10 A.M. who arrested Dharamdeo and Shyam Lal, Ori and Lachhan. Smt. Kabutra asked him also to go to the police station and, therefore, he alongwith some other villagers went to the police station and saw that those four arrested persons were made to sit on the road. Mundrika was also there who talked something with Ram Asrey Appellant whereafter while taking Dharamdeo to the lock-up Ram Asrey beat Dharamdeo on the back as a result of which he fell down. At this Brindaban Pradhan said what are you seeing, hold him. At thus Mundrika throttled the neck of Dharamdeo who died.

21. In para 3 of the cross-examination PW 2 Shiv Dass admits that Dharamdeo had died about 12 noon and Appellant Ram Asrey had said then that Dharamdeo has an attack of epilepsy-fit. The doctor was called who said that Dharamdeo was dead and it was not a case of epilepsy-fit. In para 4 he has admitted that after this incident he and several others had come to Gorakhpur city as the matter related to police station. In Sahjanwa (a village in the way) they met a leader Durga Shukla. One Ramdass, son-in-law, of Smt. Kabutra was with them. They met the Senior Supdt. of Police at Goarkhpur and handed over a written report about the death of Dharamdeo. In para 5 of the cross-examination he has said that Shyam Lal had reached the field prior to his reaching his field. But he could not say who the Sub Inspector or the constables were who had gone to the field. He has said that his field is about 12 Bighas south of the field of Smt.

Kabutra. It may be remembered that the prosecution case is that Ram Asrey, Appellant was one of the constables who had gone to the field alongwith Sub Inspector Shambhu Singh. In para 6 of the cross-examination he has been referred to his statement u/s 161 Code of Criminal Procedure wherein he had said that he had not accompanied Smt. Kabutra to the police station. This contradiction has been duly proved by PW 9 S.P. Rawat, Sub Inspector, the Investigating Officer.

22. In para 7 of the cross-examination he has further stated that when he and Smt. Kabutra had reached the police station no other person of the village had gone with them. They remained about four steps away from the police station. Dharamdeo was taken towards east after five or ten minutes of their reaching. Before that neither he nor Smt. Kabutra had gone to the police station, Smt. Kabutra had told him that may be that her son is there in the police station and may be that by taking money they may release him.

23. It is to be noticed, therefore, that the very purpose of presence of not only PW 2 Shiv Dass but even that of PW 1 Smt. Kabutra is negated by this witness.

24. In para 9 of his cross-examination PW 2 Shiv Dass says that because of beating by Ram Asrey Dharamdeo died. In the next sentence he says that after falling down of Dharamdeo the neck was throttled by both the hands. From his statement u/s 161 Code of Criminal Procedure earlier recorded, which has been duly proved, it appears that he has said that by one hand Dharamdeo's mouth was caught and by the other his head was twisted by giving a jerk as a result of which a sound of Khat was produced and then Dharamdeo fell down and started shivering. In para 10 he has said that as soon as Dharamdeo died he ran away from the place. He admitted that he had taken the field of Smt. Kabutra on Adhiya/Batai. In para 13 of the cross-examination PW 2 Shiv Dass says that he had seen the Appellant Ram Asrey for the first time in the police station and it was only then that he could know his name because all others were shouting that it was Ram Asrey constable who has killed Dharamdeo. His contradictory statements made before the Investigating Officer and the court as also his answers in the cross-examination make it extremely doubtful, if not impossible, to hold that he was an eye-witness. It may further be noticed that in his statement he has said that after five or seven minutes of entering the police station he heard the sound of Dhamaka (blast), Dharamdeo, one of the arrested persons had fallen on the floor about ten steps away from the office. Ram Asrey accused was present there. The Doctor Ramesh Chandra was called who declared Dharamdeo dead after examination. About two or two and a half hours after people were discussing that Mundrika and Ram Asrey have killed Dharamdeo. He again said that the crowd was talking then and there that Dharamdeo had been killed by those two persons, Ram Asrey and Mundrika.

25. In view of the aforesaid discussion and critical examination of eyewitness testimony furnished by PW 1 Smt. Kabutra and PW 2 Shiv Dass it is not possible to hold that they were eye-witnesses and they really saw the incident happening

at the police station.

26. This makes relevant at this stage to examine what PW 6 Bhullar Prasad has to say who also proposes himself to be an eye-witness posted as a constable at that police station- He says that he was the guard and was on duty for the period 12 noon to 3 p.m. and the incident happened 12.30 pm., Shambhu Singh, Sub-Inspector brought four persons in the custody to the police station and got busy in making entries in the general diary. The constables went to deposit their arms at the Malkhana, those who were arrested were searched and Diwanji said that he would be putting those suspected persons in the lock-up. At this Ram Asrey constable, the accused present in court, and he carried four persons for lodging them in the lock up. When they had reached about seven paces from the office of the police station on the main road, Ram Asrey accused pushed one of the four persons who fell down by which time I went with three persons and got busy in putting them in the lock-up which was twenty paces from that spot where the man had fallen, his body started shaking and froth started pouring out of the mouth. The persons present nearby started massaging his feet-sole and said that he has an attack of epilepsy fit. In said man died there. Dr. Ramesh Chandra was called who pronounced him dead after examination. The members of the public were however, saying that the accused present in the dock were res-possible for killing the deceased. I was walking behind Ram Asrey while carrying the arrested persons into the lock-up.

27. The aforesaid statement of PW 6 Bhullar Prasad rules out completely the manner of the assault narrated or attempted to be narrated by PW 1 Smt. Kabutra and PW 2 Shiv Dass.

28. It may be remembered that while the narration of the incident as given by Smt. Kabutra and PW 2 Shiv Dass may have to be discarded for the reasons noted above, the alleged eye-witness account given by PW 6 Bhullar Prasad has also to be discarded for those very reasons. Bhullar Prasad was the constable on duty guarding the police station. Sub-Inspector of police station who had arrested four persons admittedly from the village Raghunathpur was present at the police station. The Station Officer of the police station alleges that he too was at the police station but at the time of incident had gone to his quarter for lunch. This part of the presence, absence or intentional fabrication of a story by manoeuvring police papers will have to be examined. Let it be noted that added reasons to give benefit to the Appellants is that one does not know as to whether how many of the police personnel attached to the police station or all or some of them were actually responsible for killing the innocent man Dharamdeo. As stated in the opening paragraph the conclusion is irresistible that the truth has been attempted to be obliterated in such a manner so as to screen the real offender or create doubt about the persons put in the dock as accused and, therefore, challan of the accused was an eye wash for the general public.

29. The statement of Bhullar Prasad makes him an eye-witness of whatever he has seen. It is absolutely impossible to know the reason why Bhullar Prasad was

not scribe of the FIR if he had seen the incident just outside the police station. There can only be two reasons for Bhullar Prasad's inaction or his intentional evidence of statutory duty. Firstly, what he was deposing in court was not true and secondly, he did not want to become a witness against those persons who really had committed the murder of Dharamdeo while in police custody. To say the least, his statement is an utter lie and he has tried to save himself by saying that he was walking a little after Ram Asrey who was ascertaining the arrested persons to the lock-up,

30. Coming to the statement of PW 5 Shambhu Singh, Sub-Inspector, who had admittedly arrested four persons including the deceased around 10 a.m. on 20-10-1982 from village Raghunathpur, his primary duty was to keep the citizens under safe custody unless handed over to judicial authorities. He has attempted to by-pass his responsibilities by saying that after having come to the police station he got busy in making entries in the general diary and, therefore, asked the Guard (PW 6, Bhullar Prasad) to put the arrested persons in the lock up. How much and how far Shambhu Singh was responsible for injuries sustained by Dharamdeo cannot be conclusively held in this appeal due to paucity of materials. Primarily, however, since he was Arresting Officer, his responsibility could be over only when the arrested persons had been safely lodged inside the lock-up under lock and key and were ultimately produced before the Magistrate for obtaining judicial remand. His attempt to save himself and wash his hands of the responsibility of safe custody of the arrested citizens is reprehensible, if not condemnable out right.

31. PW 4 Gorakh Singh was admittedly posted as Station Officer Incharge, police station Harpur Budhat district-Gorakhpur on 20-10-1982. He has admitted that a written complaint had come to him by Shyam Lal alleging apprehension of the breach of peace regarding possession of fields of his sister-in-law Smt. Kabutra and that he had asked the constable to hand over the complaint to the Sub-Inspector Shambhu Singh in the village where he had already gone in morning. Accused 12 noon Sub-Inspector had come to the police-station with four persons under custody. Shambhu Singh told him that both the sides were being prosecuted/arrested u/s 151 Code of Criminal Procedure. Thereafter he left for his quarter saying that lawful proceedings be drawn- He further says that when he was taking his lunch around 12.30 he heard sounds "Mirgi Mirgi" (epilepsy lit. epilepsy fit). When repeatedly he heard this sound he came out of his quarter after washing his mouth and saw that one of the arrested persons was lying on the floor and some persons were massaging his feet-sole and some were spraying water. He sent for Dr. Ramesh Chandra who came and told that the man had died. Since the man had died in police custody, the matter was serious and, as such, he went to the higher authorities for information. He had informed the District Magistrate Senior Supdt. of Police, Circle Officer, Rural, and other officers around 4 P.M. The Circle Officer Sri Ajit Singh Varma and the Sub-Divisional Magistrate Sadar had reached the police-station at 7 P.M. There was enough crowd at the police-station which was shouting that Mundrika, Ram Asrey and

the Pradhan of village Raghunathpur had jointly killed Dharamdeo. They were saying on seeing the higher officials. At this the Sub-Divisional Magistrate asked that if one wanted to say anything he may give it in writing. At this those people handed over a report on the basis of which the FIR of the case was registered at the police-station. When he had seen Dharamdeo for the first time his body had become motionless and was not shaking and the three persons who were arrested along with him were nearabout Dharamdeo.

32. In the cross-examination he has said that none had complained to him that Dharamdeo had been murdered. No body had asked from him as to whether the accused had killed Dharamdeo.

33. The aforesaid statement of PW 4 Gorakh Singh is nothing but an attempt to keep himself at a safe distance from the incident and yet pretend having discharged his official duty in a lawful manner. He himself says that the four persons were brought in custody when he was on duty. It was his primary duty, therefore, to see that all the four were lodged inside the lockup. The same things can be said about this witness which has been said regarding the earlier two police witnesses, namely, PW 6 Bhullar Prasad and PW 5 Sambhu Singh, Sub-Inspector. There is a conscious effect on the part of this witness to hoodwink the court by producing manoeuvred records of the police-station so that the culprits are not brought to book.

34. It may be interesting to mention here that the prosecution case set up in the court through the alleged eye-witness testimony of PW 1 Smt. Kabutra and PW 2 Shiv Dass stands fully contradicted and discredited by the statement of PW 6 Bhullar Prasad, constable, PW 5 Shambhu Singh, Sub-Inspector, and PW 4 Gorakh Singh, Station Officer. It is difficult to believe that Ram Asrey alone was responsible along with another constable Mundrika not posted at the said police-station in assaulting Dharamdeo in the manner as either alleged by the set-up eye-witnesses comprising of PW 1 Smt. Kabutra and PW 2 Shiv Dass or the set of witnesses comprising of PW 4 Gorakh Singh, PW 5 Shambhu Singh and PW 6 Bhullar Prasad.

35. A comment has to be made relating to Ext. Ka 3. Which was the only relevent document said to have been prepared by PW 5 Shambhu Singh, Sub-Inspector. This is general diary entry which he was supposed to have made after effecting the arrest of four persons and having brought them at the police-station. In his statement he admits that he had set down to write this report when the incident has happened outside the office. If this was so, the entry could not have been completed as it is. The noting should have indicated that he had stopped writing and had gone to the spot and had seen the incident and then incorporated in the general diary what had happened outside. The other way of looking of the document would be that if what has been written herein was really true then nobody should have waited for a FIR to be lodged by PW 1 Smt. Kabutra at 7.15 P.M. in the evening. Some entry or the message could have become a FIR and the case could have been registered against the guilty persons

mentioned therein. However, all this may have to be examined properly in accordance with law in the departmental proceedings which should be held against the Appellant Ram Asrey and PW 4 Gorakh Singh PW 5 Shambhu Singh, PW 6 Bhullar Prasad and such other police personnel attached to the police-station Harpur Budhat, district-Gorakhpur, as may be found involved in preliminary enquiry. The other set of departmental enquiry may be held against the Appellant Mundrika, son of Pitambar, then posted as constable in 10th Battalion P.A.C. Jahangirabad at Barabanki. The departmental proceedings if started may be completed in accordance with law as expeditiously as possible.

36. With the aforesaid observations and directions this Court is constrained to allow this appeal. The conviction of Mundrika u/s 302 IPC and the conviction of Ram Asrey u/s 302/34 IPC and the sentences of imprisonment for life to each of them are set aside. They are on bail. They need not surrender and their bail bonds are discharged.

37. Let certified copies of this judgment be sent to the Chief Secretary, Government of Uttar Pradesh Lucknow, and the Director General, U.P. Police Force, Lucknow, for suitable follow up action.