

**(1982) 01 OHC CK 0016**

**In the Orissa High Court**

**Case No :** Government Appeal No. 101 of 1977 and Criminal Appeal No. 105 of 1977

State of Orissa

APPELLANT

Vs

Trinath Dash and Others <BR> Trinath alias Trinath Charan  
Dash and Others Vs State of Orissa

RESPONDENT

**Date of Decision :** 05-01-1982

**Acts Referred:**

Criminal Procedure Code, 1973 (CrPC) — Section 164  
Penal Code, 1860 (IPC) — Section 201, 203, 302, 304, 311

**Citation :** (1982) 54 CLT 83

**Hon'ble Judges :** P.K. Mohany, J;B.K. Behera, J

**Bench :** Division Bench

**Advocate :** P.K. Dhal, S.C. Sahu and K.K. Jena, in Cr. A. No. 105 of 1977, P.K. Misra, J.K. Misra, M. Mohanty, in Cr. A. No. 106 of 1977, P.K. Misra, M. Mohanty, in Cr. A. No. 112 of 1977 and Addl. Government in G.A. No. 101 of 1977, for the Appellant; Additional Government Advocate in Cr. A. Nos. 105, 106 and 112 of 1977, P.K. Dhal, S.C. Sahu, K.K. Jena, P.K. Misra and J.K. Misra, in G.A. No. 101 of 1977, for the Respondent

**Final Decision :** Allowed

## Judgement

B.K. Behera, J.—The Appellants in Criminal Appeal Nos. 105, 106 and 112 of 1977, who figure as Respondents in Government Appeal No. 101 of 1977, while functioning as Police personal attached to the Nuagaon Police Station in the district of Puri, stood charged under Sections 302, 342, 201, 203, 331 and 323, all read with Section 34 of the Indian Penal Code, for having wrongfully confined Muli Naik (hereinafter referred to as the "deceased") a resident of village Mahitama, for committing murder of the deceased, causing evidence of the offence of murder to disappear by hanging the dead body of the murdered deceased to a tree in order to screen themselves from legal punishment, giving false information that the deceased had committed suicide causing grievous hurt to the deceased for the purpose of extorting from him a confessional statement

in a case under Sections 457 and 380 of the Indian Penal Code (hereinafter called the Code) in which the deceased and Magi Naik (P.W. 5) were the suspects and causing hurt to Magi Naik while he was in the Police lock-up.

2. We would now proceed to state the case of the prosecution. In July, 1975, the accused Trinath Dash, accused Brundaban Swain and the accused Kalandi Charan Patro were functioning as Officer-in-Charge, Assistant Sub-Inspector and Write Constable respectively and the remaining accused persons were functioning Constables being attached to the Nuagaon Police Station in the district of Puri. In a case of theft committed on 26-7-1975 at Mahitama in the house of Shankar Naik (P.W. 1) reported by him verbally to the Officer-in-Charge, the deceased and Magi Naik (P.W. 5) were the suspects. Under the direction of the Officer in Charge Trinath Dash, Sahadev Naik (P.W. 1), the Grama Rakshi of village Mahitama, of which village the two suspects were residence, produced Magi Naik (P.W. 5) and the deceased before the Officer;in Charge Trinath Dash on 27-7-1975 and after their personal search, the suspects were kept con find in the Police lock-up although they had not been arrested. Magi Naik (P.W. 5) and the deceased were tortured at the police station with a view to obtaining confessional statements from them. On 28-7-1975, P.W. 5 and the deceased were asked to pay Rs. 400/-, but as they refused, they were assaulted by means of fist blows, slaps, sticks and boots by the accused Trinath Dash. Brundaban Swain, Kalandi Charan Patra, Madhab Sahu and Agadhu Champati for which P.W. 5 sustained injuries and the deceased became unconscious. On 29-7-1975, P.W. 5 was forwarded to the Court when the deceased had still been kept in the Police lock up on 29-7-1975, during the night time, the deceased was further assaulted inside the police station. On the day following. i.e., on 30-7-1975, no one was allowed to enter the police station. Even the sweepress attached to the police station and the Grama Rakshis who had come on duty were not allowed to go inside the police station. P.W. 4 Arnapurna Dei (the wife of the deceased) and P.W. 12 Bhagaban Naik, the brother of the deceased, had come with food for Muli Naik, but neither of them was allowed to meet Muli or give food to him. During the night of the 30th/31st July, 1975, the accused persons, with the help of Kama Naik (P.W. 13) and Rama Naik (P.W. 14), two Grama Rakshis, who had come on duty on 29-7-1975 and had been asked to wait, brought the dead body of Muli Naik from inside the male Hazat and kept on a bamboo Tati on which two sacks had been spread and the dead body was tied to the bamboo Tati by means of ropes. The dead body was carried from the police station to a mango grove near village Mudrang falling on the way to village Sikargochha and was hung to a mango tree by means of a Gamuchha (napkin) tied to its neck to give a colour of suicide. The accused Trinath Dash told all of them not to disclose as to what had happened. He asked the Grama Rakshi Ram Naik (P.W. 14) to go to Sikargochha in the morning to the house of his relative and on return from that village, lodge a report that a dead body was hanging from a mango tree. Although no such report was made by Rama Naik, the accused Trinath Dash made out a case that such a report had been lodged and he (Trinath Dash) proceeded towards

Sikargochha for investigation. At the spot, the accused Trinath Dash held inquest over the dead body as per the inquest report (Ext. 2/2) and sent the dead body to Nuagaon for postmortem examination without informing any of the relations of the deceased about his death. Before dissection of the dead body at the postmortem house at Nuagaon Bhagaban Naik (P.W. 12) complained before the doctor(P.W. 30) that the deceased had died owing to assault by the Police people. P.W. 30 held postmortem examination as per Ext. 10, the postmortem report. According to the Doctor, the death of the deceased could be homicidal and he might have been strangled when he was in a state of unconsciousness. P.W. 12 reported to the Sub-divisional Police Officer, Nayagarh, regarding the homicidal nature of the death of the deceased on account of assault by the Police people and this Police Officer enquired into the matter and suspected foul play by the Police staff. Later the Circle Inspector of Khandapara (P.W. 32) took up the enquiry, drew up the formal first information report (Ext. 24) having found a prima facie case under Sections 302, 342 and 201 of the Code -against the accused persons and a case was registered against them. In the course of investigation, Magi Naik (P.W. 5) and the accused Agadhu Champati were examined by the Doctor for having injuries on their persons. First P.W. 32 and then P.W. 33, the Inspector of Police of the Crime Branch, took charge of the investigation in the course of which a number of witnesses were examined and a number of documents and articles including the Dhoti of Magi Naik (P.W. 5) suspected to have stains of blood were seized. Steps were taken for the identification of the culprits. On the completion of investigation, P.W. 33 submitted a charge-sheet against the accused persons.

3. The plea of the accused persons was one of denial and false implication in the case. The case of the defence was that the deceased and Magi Naik (P.W. 5) were not brought to the police station on 27-7-1975 and only Magi Naik (P.W.5) was brought on 29-7-1975 and on the same day, he was forwarded to the Court. On the basis of the Unnatural Death Report (Ext. 1/4) lodged by Rama Naik (P.W. 14), the matter was enquired into. According to the accused Trinath Dash and the accused Brundaban Swain, they had investigated into and instituted criminal cases in which some of the witnesses had figured as accused persons and some were suspects and therefore, they had falsely involved them in this case.

4. At the trial, the prosecution examined thirty-three witnesses to bring home the charges. No witness had been examined on behalf of the defence. Both the sides placed reliance on a large number of documents. On a consideration of the oral and documentary evidence, the learned Additional Sessions Judge found that the charges against the accused persons under Sections 302, 331 and 323 read with Section 34 of the Code, the charge u/s 203 read with Section 34 of the Code against the accused person other than the accused Trinath Dash and Brundaban Swain and the charge u/s 342 read with Section 34 of the Code against the accused persons other than the accused Trinath Dash had not been established and they were accordingly acquitted of those charges. All the accused persons were convicted u/s 201 of the Code and the accused Trinath Dash and Brundaban

Swain were sentenced thereunder to undergo rigorous imprisonment for a period of three years and to pay a fine of Rs. 2,000/- and in default of payment thereof, to undergo rigorous imprisonment for a further period of nine months and the other accused persons were sentenced thereunder to undergo rigorous imprisonment for a period of one year and six months and to pay a fine of Rs. 500/- and in default of payment thereof, to undergo rigorous imprisonment for a further period of six months. Accused Trinath Dash and Brundaban Swain were convicted u/s 203 of the Code, but no separate sentence was passed against them thereunder. The accused Trinath Dash was convicted u/s 342 of the Code and sentenced thereunder to pay a fine of Rs. 500/- and in default of payment thereof, to undergo rigorous imprisonment for a period of three months.

5. The State Government has preferred an appeal against the order acquitting the accused persons in respect of some of the charges. The accused-convict Trinath Dash and six other accused convicted persons, namely. Brundaban Swain, Kalandi Charan Patra, Agadhu Champati, Madhaba Sahu, Raghunath Panda and Ananda Chandra Misra, Appellants in Criminal Appeal No. 105 of 1977, the accused-convict Sudhakar Patnaik, Appellant in Criminal Appeal No. 106 of 1977 and the accused-convict Salabat Khan, Appellant in Criminal Appeal No. 112 of 1977, have preferred appeals against the judgment and order of conviction and sentences passed against them.

6. The Government Appeal and the three Criminal Appeals arising out of the same judgment and order of acquittal in respect of some charges and conviction in respect of some charges have been heard together and this common judgment shall govern all the appeals.

7. At the hearing, the learned Additional Government Advocate has submitted, and in our view rightly, that the evidence on record did not warrant an order of conviction of the accused persons or any of them u/s 302 read with Section 34 of the Code. He has, however, submitted "that the order of acquittal passed by learned trial Judge in respect of the charges under Sections 331 and 323 of the Code was not legal and correct, as there was sufficient evidence to sustain these charges. The learned Counsel for the Respondents in the Government Appeal and Appellants in the other appeals have submitted that the order of acquittal in respect of some of the charges was well-based and that the order of conviction in respect of the other charges was not well founded on facts and could not be sustained in law,.

8. While dealing with an appeal against acquittal in respect of some of the charges, it may be kept in mind that when two views on the evidence are reasonably possible and the evaluation of evidence by the trial Court does not suffer from illegality, manifest error or perversity, the order of acquittal is not to be reversed. Although in an appeal from an order of acquittal, the powers of the High Court to reassess the evidence and reach its own conclusions are as extensive as in an appeal against an order of conviction, yet, as a rule of prudence, it should always give proper weight and consideration to matters, such

as: (1) the views of the trial judge as to credibility of the witnesses; (2) the presumption of innocence in favour of the accused, a presumption certainly not weakened by the fact that he had been acquitted at the trial Court; (3) the right of the accused to the benefit of any doubt; and (1) the slowness of an appellate Court in disturbing a finding of fact arrived at by a Judge who had the advantage of seeing the witnesses. Where two reasonable conclusions can be drawn from the evidence on record, the High Court should, as a matter of judicial caution, refrain from interfering with the order of acquittal recorded by the trial Court. In other words, if the main grounds on which the Court below has based its order acquitting the accused are reasonable and plausible and may not be entirely and effectively dislodged or demolished, the High Court should not disturb the acquittal. The learned Counsel for Appellants in Criminal Appeal No. 105 of 1977 has referred to and relied on a number of judicial pronouncements of the Supreme Court. In this connection, reference may be made to the principles laid down in Ganesh Bhavan Patel and Another Vs. State of Maharashtra, , K. Gopal Reddy Vs. State of Andhra Pradesh, , Antar Singh Vs. State of Madhya Pradesh, , K. Lakshmana Rao Vs. Public Prosecutor, State of Andhra Pradesh and Another, , Chowdikodlu Asuralli Dyavappa and Another Vs. State of Mysore, , Harijan Magha Jesha Vs. State of Gujarat, , Kanbi Purshottam Ladha Vs. State of Gujarat, , Hasan Ahmad Mai Isha and Others Vs. State of Gujarat, , Marudanal Augusti Vs. State of Kerala, , Dinanath Singh and Ors Vs. State of Bihar, , Gulam Mahmood A. Malek Vs. State of Gujarat, , Sirajuddin alias Siraj Vs. State of Karnataka, , Ajit Singh Thakur Singh and Another Vs. State of Gujarat, and Tara Singh Vs. State of Madhya Pradesh, . These principles are to be kept in mind while assessing the findings of the trial Court with regard to the order of acquittal in respect of some of the charges.

9. This is a case where Police officials are involved. The records maintained at the police station were under the control of the accused Trinath Dash. While according to the prosecution, many of the documents had been interpolated and suppressions had been made by not making relevant entries, according to the defence, the records had properly been maintained and should have the presumption of correctness. While it is true that a presumption that a person acts honestly applies as much to Police officers as to any other person and in this connection, reliance has been placed on an observation of the Supreme Court in the case of Aher Raja Khima Vs. The State of Saurashtra, , in a case of this nature, where only the Police officials are involved and they have to defend themselves, their acts and conduct, to which reference had been made by the learned trial Judge at appropriate places, which according to him, appear to be suspicious, have been taken note of.

10. Our attention has been invited by Mr. Dhal to the recording of the statements of a large number of witnesses u/s 164 of the Code of Criminal Procedure to bind them down to their previous statements on oath and this, according to the learned Counsel, was not a satisfactory state of affairs when a large number of Police officials were involved. We are aware of the dictum laid down by the

Supreme Court in the case of Balak Ram Vs. State of U.P., , in this regard and their Lordships observed:

It cannot be overlooked that the statements of Jhilmili, Ram Prakash and Aryendra were recorded u/s 164, Code of Criminal Procedure, in June 1971, soon after the incident. The Investigating Officer says that he got the statements recorded by way of precaution. That could be true and it would be wrong to find fault with the Investigating Officer merely because he got the statements of these witnesses recorded u/s 164. Nor can the evidence of a witness be discarded for the mere reason that his statement was recorded u/s 164. But the High Court overlooked that the evidence of witnesses whose statements are recorded u/s 164 must be approached with caution. Ram Charan and Others Vs. State of U.P., . Such witnesses feel tied to their previous statements given on oath and have but a theoretical freedom to depart from the earlier version. A prosecution for perjury could be the price of that freedom. It is, of course, open to the Court to accept the evidence of a witness whose statement was recorded u/s 164, but the salient rule of caution must always be borne in mind. That is all the more necessary when almost all the eye-witnesses are subjected to this tying-up process. Even Aryendra, the sister's son of Dharam Pal, was not thought to be above suspicion.

In the instant case, the statements of P.Ws. 2 to 14 including the widow (P.W. 4) and the brother (P.W. 12) of the deceased besides one of the alleged victims (P.W. 5) and some Grama Rakshis had been recorded u/s 164, but as has been submitted on behalf of the prosecution, this had been done as a measure of caution as a number of Police officials including the Officer-in-Charge of a police station were involved. The evidence of such witnesses should be scrutinised with great care, but it is not to be rejected outright on the sole ground that their statements had been recorded u/s 164.

11. The learned Additional Government Advocate has submitted that the evidence of the prosecution witnesses is independent evidence and there is nothing to show that they had an axe to grind against any of the accused persons and therefore, their evidence should be accepted. Mr. Dhal has, on the principles laid down in the cases of Sadhu Charan Panda Vs. Mahani Tripathy and Another, , and AIR 1930 108 (Nagpur) , submitted that even if some witnesses are found to be disinterested and there is nothing to show any animus on their part to depose against the accused persons, their evidence is not to be accepted on that ground. We have come across some observations of our Lord the Chief Justice of India in the case of Shankarlal Gyarasilal Dixit Vs. State of Maharashtra, . His Lordship observed in paragraph 33 of the judgment thus:

Our judgment will raise a legitimate query. If the Appellant was not present in his house at the material time, why then did so many people conspire to involve him falsely. The answer to such questions is not always easy to give in criminal cases. Different motives operate on the minds of different persons in the making of unfounded accusations. Besides, human nature is too willing, when faced with

brutal crimes, to spin stories out of strong suspicions....

The evidence of an interested witness is not to be discarded if he is found to be a natural, competent and reliable witness and the evidence of a disinterested witness cannot be accepted on the sole ground of his disinterestedness if the evidence of such a witness has no intrinsic worth. Often enough, an accused person may not be in a position to say as to how and why some witnesses have deposed against him and the mere fact that there is absence of evidence of animus on the part of a witness towards an accused person cannot stamp his evidence with truth. The main test is one of reliability. These principles relating to appreciation of evidence have, therefore, to be kept in mind.

12. As indicated in the judgment of the trial Court and by us, some material evidence in this case had come from the Grama Rakshis, the main witnesses being P.Ws. 2, 13 and 14. As has been laid down in the case of Madan alias Undu Naik v. The State 43 (1977) C.L.T. 512, a Grama Rakshi is a Police officer. A Grama Rakshi is under the administrative control of the Police authorities and for his delinquencies, action can be taken by such authorities, but from this fact alone, it cannot be said that such evidence has been procured by the investigating agency to bolster up a case against the persons who are no other than Police officials. Such witnesses had been performing duties at the Police Station of which the accused Trinath Dash was the Officer-in-Charge and to which were attached the other accused persons. If, as found by the learned trial Judge, their evidence is, trustworthy, such evidence is not to be discarded by drawing an unwarranted inference that being Grama Rakshis, they have come forward to depose falsely against the accused persons at the instance of the investigating agency. There is nothing to show that the persons conducting the investigation had any animus towards the accused persons and they would not, in the normal course of human conduct and action, make an attempt to collect false evidence against Police officials. It is in this background that the evidence of such witnesses has to be scanned and appreciated.

13. As has been submitted before us by the learned Additional Government Advocate, referring to the observations made in the case of Raghunath Padhy v. Ratnakar Naik and Anr. 31 (1965) C.L.T. 695, when the Police officers assault at the police station, it would not be possible to get independent evidence, but even if there be practical difficulty in establishing a case, in the absence of legal proof of a crime, no legal liability can be fixed.

14. First in the point of time would come the case of the prosecution relating to the charge of wrongful confinement of the deceased. The learned Additional Government Advocate has submitted that the evidence on record would sustain this charge against the accused Trinath Dash under whose direction the deceased and Magi (P.W. 5) had wrongfully been confined in the Police lock-up without being arrested. The learned Counsel for this accused has, however, submitted that the records maintained at the police station would belie the case of the prosecution that the deceased and Magi had been brought to the police station

and produced before the Officer-in-Charge by P.W. 2 on 27-7-1975 and consequently, the other incidents relating to the accused regarding wrongful confinement would have to be discarded.

15. It would admit of no doubt that in respect of a theft in the house of Shankar Nalk (P.W. 1) of village Mahitama on 26-7-1975 (Saturday), P.W. 1 had lodged the report at the police station. Ext. 3/4 was the first information report. P.W. 1 had suspected the deceased and Magi (P.W. 5) to be the culprits. The evidence of P.W. 1 and his natural father (P.W. 18) was that on the day of theft, being accompanied by the Grama Rakshi, P.W. 1 went to the police station and reported the occurrence. On the next day, according to P.W. 1, the Grama Rakshi Sahadev Naik (P.W. 2) who had, on the day of report been directed by the accused Trinath Dash to bring the deceased and Magi to the police station, brought the deceased and Magi to the police station where the accused Trinath asked them as to whether they had committed theft to which they denied and thereafter, the accused Trinath directed the Constable accused Champati to search the persons of the suspects and to keep them in the Police lock-up and accordingly the Constable Champati searched the persons of the deceased and Magi and put them inside the Police lock-up. P.W. 1 had testified that till they left the police station, the deceased was still in the Police lock-up. We see no reason to discard the evidence of P.W. 1 in this regard. P.W. 2 was the Grama Rakshi who was present when P.W. 1 lodged the report and as deposed to by him, under the direction of the accused Trinath, had produced the deceased and Magi on the day following, i.e., on 27-7-1975. According to him, the Constable accused Sudhakar Patnaik was directed by the accused Trinath Dash to search the persons of the deceased and Magi and to keep them in the Police lock-up and the accused Sudhakar searched the persons of the deceased and Magi and kept them in the Police lock-up. That the persons of the deceased and Magi were searched and that they were kept in the Police lock-up under the direction of the accused Trinath would admit of no doubt on the basis of the evidence of P.Ws. 1 and 2. There was the evidence of P.W. 4 the wife of the deceased, that her husband (deceased) and Magi were taken to the Police Station by P.W. 2. P.W.3 Magi had testified that P.W. 2 called him and the deceased and asked them to come to the police station as the Officer-in-Charge had directed that they should be brought to the police station. His evidence would also show that after the persons of these two suspects were searched, they were kept inside the Hazat by locking the door from outside. P.Ws. 6 and 7 have testified that on a Monday (corresponding to 28-7-1975) they had attended duties at the police station and had seen two criminals inside the Hazat of the Nuagaon Police Station. The learned trial Judge did not place implicit reliance on the evidence of P.W. 7, who, on his own showing, had defective eye-sight, but rightly accepted the evidence of the other witness in this regard. There was also the evidence of P.W. 12, the brother of the deceased, that in connection with the case of theft in the house of P.W. 1, the deceased had been taken to the police station and he got this information from P.W. 4 and the deceased did not return home thereafter for

which P.W. 4, the widow of the deceased, came to him on Wednesday (30-7-1975) and both he and P.W. 4 came to the police station with some rice to be given to the deceased, but they were not allowed to go inside the police station and meet the deceased after which they returned to the village. According to this witness, the accused Constables Champati and Salabat Khan did not allow food to be given to the deceased and did not allow them to meet him. In addition, there was the evidence of P.W. 18, the natural father of P.W. 1, that on a Sunday, i.e. on 27-7-1975, the Grama Rakshi Sahadev (P.W. 2) brought the deceased and Magi to the police station. His evidence would further show that on that day, the Officer-in-Charge went to the village of P.W. 1 in connection with the investigation of that case and on the day following, the accused Trinath told at the police station that Magi had been instigating the deceased not to speak anything about the theft and that he was forwarding Magi to the Court and the deceased would be kept in the lock-up for some time more for interrogation. This witness had categorically stated that on Tuesday, i.e. on 29-7-1975, he had seen the deceased and Magi at the police station and both of them were inside the Hazat. For good and sufficient reasons, the learned trial Judge accepted the evidence of P.Ws. 1, 2, 4, 5, 6, 12 and 18 and held that it had been established beyond all reasonable doubt that the deceased had been brought to the police station on 27-7-1975 and had been kept in the Police lock-up. No doubt, in the forwarding report (Ext. B/1) while forwarding Magi Naik (P.W. 5) in the case of theft, it had been mentioned that Magi and the deceased had disappeared from the village and Magi was found out and arrested, but the deceased was not traced, but the evidence already discussed above would belie this statement made by accused Trinath in Ext B/1. Moreover, as rightly noticed by the learned trial Judge, as per the station diary entry (Ext. 13), the accused Trinath had gone to village Mahitama for investigation in the case of theft on 27-7-1975 and remained there for the night and returned to the police station on the next day and on that day, again went to the same village for investigation and although he had made the entries (Ext. 15) in his personal diary on 27-7-1975 and 28-7-1975 regarding the investigation into the case of theft, neither the station diary nor the personal diary contained any entry about the disappearance of the deceased and Magi from the village or about the steps taken to trace them out.

16. Mr. Dhal has invited our attention to the facts that on 27-7-1975, the Inspector of Police had gone to the Nuagaon Police Station which one could get from Ext. K, the personal diary of the Circle Inspector and it has been submitted before us that Additional Superintendent of Police was to visit the police station, as would be clear from Ext. O, the tour programme, but there was no evidence to show that the Inspector of Police did visit the Hazat at the police station nor was there evidence to show that the Additional Superintendent of Police did visit the police station. From these facts, therefore, the case of the prosecution that the deceased and Magi had been kept confined in the Police lock-up although they had not been arrested was not to be thrown out. In view of the overwhelming acceptable evidence from the side of the prosecution with regard

to this charge, the case of the prosecution with regard to this charge, the case of the prosecution is not to be thrown out merely because there had been no entries in the police registers maintained at the police station which were to be made in case accused persons were duly detained in the Police lock-up. For the aforesaid reasons, we agree with the view taken by the learned trial Judge that the charges u/s 342 of the Code had been established against the accused Trinath Dash under whose direction the deceased Muli had been kept in the Police lock-up without being arrested. All the accused persons could not be held liable u/s 342 read with Section 34 of the Code for having wrongfully confined the deceased Mulia alias Muli Naik. The sentence passed against the accused Trinath who was no other person than the Officer-in-Charge of the police station, for his conviction under this section, cannot, in the circumstances of the case, be said to be severe. The order of conviction of this accused u/s 342 of the Indian Penal Code and the sentence passed against him thereunder are therefore, maintained.

17. What happened after the wrongful confinement of the deceased Muli, however, remained a mystery and had not successfully been established by the investigating agency beyond reasonable doubt. All the accused persons stood charged u/s 311 read with Section 34 of the Code for voluntarily causing grievous hurt for the purpose of extorting a confession. To whom the accused persons had allegedly caused grievous hurt had not specifically been mentioned in the charge and the words, "extorting from him confession" had been used. More properly, the name of the person should have been mentioned in the charge. In the context and reading the previous charge u/s 203 read with Section 34 of the Code, the reference was evidently to the deceased Muli and the accused persons could not be said to have been prejudiced by the omission of the particular name of the person in the charge u/s 311 read with Section 34 of the Code. The accused persons also stood charged u/s 302 read with Section 34 of the Code for having intentionally caused the death of the deceased and u/s 323 read with Section 34 of the Code for causing hurt to Magi Naik. The learned trial Judge, on a careful and detailed examination of the evidence adduced from the side of the prosecution in this regard, has come to find that these charges have not been established against the; accused persons or any of them, although a halting and hesitating finding has been recorded by him in paragraph 71 of the judgment that the death of the deceased Muli was homicidal in nature and this conclusion was reached in spite of the fact that the evidence of P.W. 30, the Doctor who had conducted the autopsy of per Ext. 10, the postmortem report, had not been relied on by the learned trial Judge. As has been submitted at the Bar by both the sides, from the evidence of P.W. 30, it could not be said for certain that the death of the deceased Muli was homicidal in nature. According to the learned Judge, the case of the accused persons was that the death of Muli was suicidal in nature as an attempt had been made by the accused persons to make out a case of hanging from a tree and unnatural death. But as rightly pointed out by Mr. Dhal, this was not a correct statement of facts as such a case had not been set out by the accused persons who had, however, sought to show

that after an unnatural death report had been made by p.w. 14 Rama Naik, a Grama Rakshi, the matter was enquired into, inquest was held and the dead body was sent for postmortem examination. The learned Judge observed in paragraph 71 of the judgment thus:

All the accused persons have stood charged u/s 302, Indian Penal Code. It is no doubt established that the deceased Muli Naik died inside the Thana. It is however not established as to who caused the death and in which manner the death was caused as the evidence of P.W. 5 has not been believed and as the post-mortem report does not fully support the prosecution. In these circumstances, it is difficult to make any of the accused specifically responsible for causing the death of Muli Naik. The death of Muli Naik was either homicidal as alleged by the prosecution or suicidal as alleged by the defence. The death cannot be due to any other causes like disease, or accident etc. It has been held that the circumstances justified that the death cannot be suicidal and hence there is no escape from the conclusion that the death was homicidal. Of course, the medical evidence does not unmistakably point to this conclusion, but it has already been held that the medical evidence cannot be believed. From the circumstances it is quite clear that the P.W. 30 has suppressed injuries in the post-mortem report and he has not given a correct view, but has probably tried to support the accused persons. The postmortem report was also prepared at a time, when the matter was being investigated by accused Trinath Dash and when it was being shown that the death of Muli Naik was suicidal. The inquest report also shows that the death was suicidal and there is a possibility that this also might have influenced the opinion of the doctor. Further, at the time of the post-mortem examination it was not known that a case like this one would be instituted against the accused persons. The ligature had also been removed from the neck of the deceased at the time of the postmortem examination and as such the doctor was not in a position to correctly judge the nature of the death. In view of the suppression of the injuries, pointed out by P.W. 12 at the time of the post-mortem examination, in the postmortem report, there is no doubt that there is falsity in the post-mortem report. In case, however, the doctor would have liked to give an honest opinion regarding the death, then also there were many impediments for that. So, the postmortem report is not a safe guide. In any case, the death must be held to be homicidal as the theory of suicide has been falsified. Since the death of Muli took place in the Thana, so it must be presumed that some of the accused persons must have caused the death. Thus, there is enough suspicion that of the accused persons have caused the death of the deceased, although there is not a clear proof as to who caused the death. In the circumstances, the accused persons can neither be convicted u/s 302, Indian Penal Code or u/s 304, Indian Penal Code.

In the absence of clear and cogent materials to attack the bona fides of the Doctor (P.W. 30), the stringent criticism made by the learned trial Judge against this witness, in our view, was not justified. There were several possibilities as to the death of Muli. While there could be no doubt that the deceased Muli had been

confined at the police station and the dead body of Muli was later taken from the police station and hanged to a tree to which aspect we will come later while discussing the evidence with regard to the charge u/s 201 of the Code, there could be no doubt that death of Muli had taken place inside the police station sometime after 29-7-1975 as on that date, which was a Tuesday, P.W. 18 had seen the deceased and Magi at the police station kept inside the Hazat, but as to how and under what circumstances Muli died, there was no clear, cogent and acceptable evidence. The only witness who had spoken about the assault by the accused persons at the police station on him and the deceased was P.W. 5 Magi. The learned trial Judge has discussed the evidence with regard to this part of the prosecution case in paragraphs 29 to 40 of the judgment and discarded the charge u/s 323 read with Section 34 of the Code with regard to the assault on Magi. The trial Judge took into consideration the statement made by P.W. 5 to the effect that he had been held up in the case of theft on suspicion and had been let off as he was to become a witness in this case and, therefore, some suspicion would naturally be created against the testimony of this witness who had been induced to speak in favour of the prosecution in this case. The learned trial Judge rightly observed that the evidence of this witness should not be acted upon without corroboration and his evidence should be scrutinised with great care. This witness had spoken about demand of Rs. 400/- by the accused Trinath in the case of theft and about the assault on them after they refused to pay the amount and according to him, he and Muli sustained injuries on their persons and Muli lay unconscious. According to the learned trial Judge, the evidence of this witness with regard to the demand of Rs. 400/- and with regard to the fact that Muli lay unconscious had, not been corroborated and this part of his evidence could not be relied on. The learned Judge then proceeded to examine his evidence with regard to the assault on him and Muli. It was observed in paragraph 34 of the judgment that the medical evidence did not sufficiently corroborate the testimony of P.W. 5 with regard to the injuries as per the injury certificate (Ext. 7) issued by P.W. (sic), the Doctor, who had examined him.

Notice was also taken of the fact that as per Ext. B, the order passed in the order-sheet dated 29-7-1975, P.W. 5 did not complain of any ill-treatment by the Police before the Sub-divisional Judicial Magistrate, Nayagarh. While discussing this part of the evidence of P.W. 5, the learned trial Judge observed that there were several possibilities as to why the accused persons might not complain regarding the ill-treatment by the Police and these were known possibilities and he further observed:

...The ill-treatment of police to suspects in crimes is proverbial, although that is not a matter of record in many cases. Many cases of ill-treatment during the emergency even to educated political workers have come to light although those are not matters of records....

The observation quoted above was not based on any material placed before the learned trial Judge and in our view, such an observation, bereft of relevancy and

unnecessary, ought not to have been made. Ultimately, however, the learned Judge held that the fact that it had been recorded under Ext. B that P.W. 5 did not complain of ill-treatment created certain doubt. Notice was also taken by the learned Judge that P.W. 5 had not complained to the Jailor regarding the assault on his person nor did he show injuries to him. Although the Doctor had been visiting the Jail every day, P.W. 5 had not complained to the Doctor regarding the injuries on his person nor had he shown the injuries to him. For the reasons recorded by the learned Judge in paragraph 38 of the judgment, he did not take serious notice of the fact that stains of blood had been detected in Dhoti of P.W. 5 seized by the Investigating Officer on 9-8-1975, i.e., about 12 days after the alleged assault. Notice was rightly taken by the learned Judge of the non-production of the note book of P.W. 32, the Investigating Officer, in which according to this witness, a note had been made that on 8-8-1975, he had found injuries on the person of P.W. 5. The learned Judge, in paragraph 40 of the judgment held thus:

From the foregoing discussions, it is quite clear that the medical evidence does not at all corroborate the testimony of Magi Naik regarding his injuries. In between the alleged date i.e. 28-7-1975, on which Magi Naik received the injuries and the date of his medical examination there had been several opportunities for Magi Naik to complain regarding his injuries on account of assault by the Police, but he had not availed any of the opportunities. The genuineness of the medical requisition issued by P.W. 32 and also medical examination of the injuries of Magi Naik are shrouded in the suspicion and the evidence of Magi Naik also suffers from exaggerations. In these circumstances, it is very difficult to place reliance on the testimony of Magi Naik regarding his injuries and the prosecution has failed to prove it beyond all reasonable doubts. In these circumstances, the charge under Sections 323/34, Indian Penal Code for assaulting Magi Naik must fail.

As the evidence of P.W. 5 with regard to the assault on his person by the Police officials was not accepted, the learned Judge found it difficult to rely on the testimony of this witness with regard to the assault on the person of the deceased Muli in paragraph 41 of the judgment. The learned Judge then took into consideration the evidence of P.Ws. 10 and 11 who had testified that on getting down from the bus in front of the Nuagaon Police Station and while taking rest at the Trinath Mandap in its front as it was raining, they had heard the cries of persons that they were dying and they heard sounds of beating. Regard being had to the situation where the two witnesses had placed themselves at the time of the alleged assault and the situation of the police station as per Ext. 26, the spot map, and the fact that the police station was at a fairly long distance from the road and the Trinath Mandap and in addition taking into consideration the fact that owing to rains, it would not be possible on the part of those persons to hear such cries and sounds of assault from that distance, the learned Judge rightly did not accept the evidence of these two witnesses and ultimately held in paragraph 43 of the judgment thus:

...In these circumstances, there is absolutely no evidence as to what happened to Muli Naik within the Thana.

The death of Muli could be homicidal or suicidal or could be by accident or by other reasons, such as cardiological failure. The prosecution must come forward with a particular theory and establish it. In the absence of clear and cogent medical evidence pointing to the conclusion of a homicidal death and/or in the absence of other credible evidence definitely pointing to a conclusion that death of Muli was homicidal in nature owing to assault on his person, it could not be said that death of Muli was homicidal in nature and it would be a dangerous proposition as recorded by the learned Judge, that "death must be held to be homicidal as the theory of suicide has been falsified", As already observed by us there could be no doubt that Muli had died while at the police station and this would arouse suspicion against the accused persons who had been attached to the police station, But suspicion, however grave, could not take the place of proof. The learned trial Judge rightly concluded that the accused persons could neither be convicted of murder nor of culpable homicide not amounting to murder. We would further say that the prosecution had failed to prove that an offence of murder or an offence of culpable homicide not amounting to murder coming under either Part I or Part II of Section 304 of the Code had been made out. The learned Additional Government Advocate, as earlier indicated, has submitted that the charge u/s 302 read with Section 34 of the Indian Penal Code has not been brought home to the accused persons and that he would not press the appeal with regard to that charge.

18. There is no clear and cogent evidence that in order to extract confessional statements, the deceased Muli had been tortured and assaulted. The learned Judge was, therefore, correct in coming to the conclusion that the offence u/s 331 of the Code had not been made out.

19. There remain for consideration the charges of causing evidence of the offence to disappear coming within the purview of Section 201 of the Code and giving false information that Muli Naik had committed suicide by hanging himself to a tree coming within the purview of Section 203 of the Code.

20. It would appear from the evidence of P.W. 3, the sweepress attached to the police station, that when on Wednesday (corresponding to 30-7-1975), she went to sweep the floor of the Thana, the accused Constable Champati told her that they had already done her work and asked her to go back. There was the evidence of P.W. 4 and that of P.W. 12, the widow and the brother respectively of the deceased, that on the Wednesday they went to see the deceased and to give some rice, but they were not allowed to meet him. There was, in addition, the evidence of P.W. 13 that the accused Trinath had told them not to leave any member of the public inside the Thana. P.W. 14 had testified that the accused Constable Salabat Khan asked him to remain on duty at the Hazrat gate and not to allow any member of the public to go there. P.W. 15, another Grama Rakshi, had testified that on 30-7-1975, when he went to the police station on duty at

noon and was about to sit on the verandah, the accused Constable Champati called him to go to the residence of the Officer-in-Charge who asked him to call the Assistant Sub-Inspector of Police and the Assistant Sub-Inspector told him that he should come two days after as they were busy otherwise and that he would make him present. According to this witness, never before had the Officer-in-Charge or the Assistant Sub-Inspector told him to go away from the police station soon after his arrival. There was also the evidence of P.W. 19, the Grama Rakshi of Nuagaon, that as soon as he reached the gate of the police station on Wednesday, the accused Salabat Khan told him that he was wanted by the Assistant Sub-Inspector of Police and the Assistant Sub-Inspector told him to come with Gumani Naik (P.W. 16) on the day following and therefore, he left the police station. These were telling circumstances which would naturally bring in a lot of suspicion about the bona fides of the Police officials and would indicate, as has been submitted before us by the learned Additional Government Advocate, that by then, the deceased had died at the police station. The prosecution had led evidence through P.Ws. 2, 23, 24 and 25 to establish that the accused Trinath had given out before them that the deceased had committed suicide inside the Hazat. The learned trial Judge, however, rightly did not place reliance on their testimony in this regard for the reasons stated by him in paragraph 66 of the judgment.

21. P.Ws. 13 and 14, two Grama Rakshis, had given a graphic description as to how and under what circumstances the dead body of the deceased was carried from the police station and hanged to a tree near village Sikargochha and Mudaranga in order to give a colour that it was a case of suicidal death. The evidence of these two witnesses, as rightly noticed by the learned Judge, was quite consistent. Both these witnesses had come for duty at the police station on 29-7-1975 and slept at the police station during the night. That these two witnesses had come to the police station had been admitted by the accused Trinath. According to both these witnesses, they were asked to remain present on 30-7-1975 and the Officer-in-Charge Trinath had paid for their food and they had been instructed not to allow anyone to come to the police station. According to them, during the night time, the dead body of the deceased was taken from the Thana Hazat to the mango grove and there the dead body was hanged to a mango tree with the help of a napkin and P.W. 13 assisted in getting the dead body hanged by ascending the tree. According to both of them, after returning from the mango grove, P.W. 14 was asked by accused Trinath to go to the house of his relation in Sikargochha and in the following morning, return from that village and lodge a report that a dead body was hanging and it was in evidence that on being so directed, P.W. 14 went towards Sikargochha, returned back and although he did not lodge any report, the Officer-in-Charge made out a case that such a report had been lodged and then enquired into it. P.Ws. 13 and 14 were natural and competent witnesses and there was no reason to discard their testimony. Their presence at the police station on 29-7-1975 had been noted as per Ext, 14, the Hazira Khata.

Normally they were not to remain at the police station on the day following, but they were asked to wait. According to the defence, P.W. 14 had lodged the unnatural death report on 31-7-1975, as per Ext. 1/4. It would appear from the evidence that P.Ws. 13 and 14 had gone to the mango tree and the assisted in bringing the dead body to the police station and both of them had also accompanied the dead body to Nayagarh for autopsy. There could thus be no doubt from the evidence that with the assistance of these two witnesses, the dead body of the deceased was taken by the accused persons from the police station and hanged to a tree in order to give a colour of suicidal death.

22. As earlier indicated, it had not clearly been established as to how and under what circumstances the deceased died at the police station and as the commission of the offence of murder or culpable homicide not amounting to murder had not been established, neither a charge u/s 201 nor a charge u/s 203 of the Code could be said to have been established. That apart, a question would arise as to whether by merely removing the dead body of a murdered person from one place to another, a person can be said to have caused evidence of the said offence to disappear. If a murder has been committed and the dead body is removed and hanged to a tree in order to give a colour of suicidal hanging such an act, by itself, will not amount to causing evidence of the offence to disappear. In this connection reference may be made to the principles laid down in the cases of *Palvinder Kaur Vs. The State of Punjab* (Rup Singh-Caveator), , *Raghav Prapanna Tripathi Vs. The State of Uttar Pradesh*, , *Harbans Lal Vs. The State*, , *Nagendra Bhakta Vs. Emperor*, , *Upendra Chandra Poddar and Others Vs. Emperor*, , *Jit Singh and Others Vs. The State*, and *Jogta Kikla Vs. The State*, . Although in view of our findings, this question becomes only academic, as has been laid down in the aforesaid decisions no offence u/s 201 of the Indian Penal Code could be said to have been established by the removal of the dead body from the police station and hanging to a tree to give a colour of suicidal hanging nor could it be said that any false information had been got lodged by the accused persons Trinath Dash and Brundaban Swain through P.W. 14.

23. In the result, the Government Appeal is dismissed and the orders of acquittal in respect of different charges for which this appeal has been preferred are maintained. Criminal Appeal No. 105 of 1977 is allowed in respect of the accused persons other than the accused Trinath Dash and the orders of conviction and sentences passed against the accused persons other than the accused Trinath Dash are set aside. This appeal is allowed in part in so far as the Appellant Trinath Dash is concerned. The order of conviction and sentence passed against him u/s 342 of the Indian Penal Code is maintained and the orders of convictions and sentences passed against him in respect of the other offences are set aside. Criminal Appeal Nos. 106 and 112 of 1977 are allowed and the orders of conviction and sentences passed against the Appellants in these two appeals are set aside.

P.K. Mohanti, J.

24. I concur.