

(2005) 07 BOM CK 0041
In the Bombay High Court
Case No : Criminal Appeal No. 413 of 2003

The State of Maharashtra

APPELLANT

Vs

Ashoksingh Balaramsingh Chavan and Others

RESPONDENT

Date of Decision : 20-07-2005

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 174
Penal Code, 1860 (IPC) — Section 302, 323, 325, 34, 380

Citation : (2005) 107 BOMLR 1514

Hon'ble Judges : P.S. Brahme, J;K.J. Rohee, J

Bench : Division Bench

Advocate : T.A. Mirza, app, for the Appellant; V.R. Mundra, for Respondent Nos. 1 to 3 and A.S. Mardikar, for Respondents 4 to 15, for the Respondent

Final Decision : Dismissed

Judgement

K.J. Rohee, J.—The State has preferred this appeal against the acquittal of the respondents for the offences punishable under Sections 302, 325 read with Section 34 of I.P.C. by 3rd Additional Sessions Judge, Akola, in Sessions Trial Nos. 78/2002 and 159/2002 by common judgment dated 31.3.2003.

2. There are two sets of the accused persons. The first set is original accused Nos. 1, 2, 3 (respondents No. 1 to 3) who are the Watchmen in Birla Oil Industries, Akola and accused No. 10 Shafakat Hussain is the owner of the Godown situated in Birla Oil Industries, Akola. Accused Nos. 4 to 9 and 11 to 17 are the police personnel who were attached to Ramdaspath Police Station, Akola at the relevant time. The trial against accused No. 13 A.S.I. Ingle abated because of his death whereas the State has not preferred appeal against acquittal of accused No. 10 Shafakat Hussain.

3. The prosecution against the Police Officials arose out of the judgment by Division Bench of this Court in Criminal Writ Petition No. 277/2000 decided on 17.9.2001 directing the State Government to prosecute the Police Personnel who are responsible for the death of Suresh Fattuji Gedam while in Police Lock up. A

brief narration of the facts is necessary in order to appreciate the controversy.

4. On 29.9.1999 at about 5.30 p.m. a phone call was received at Police Station Ramdaspath, Akola from PW2 Manohar Govindsingh Mohta, Administrative Officer of Birla Oil Industries, Akola, informing that some persons were apprehended while committing theft in Birla Oil Industries. Accordingly an entry was taken in the station diary and A.S.I. Ingle (Accused No. 13) along with two Police Constables proceeded to Birla Oil Industries by Police jeep. When they reached there, three thieves namely Suresh Fattuji Gedam, Sk. Nazir Sk. Mohammad and Sk. Lukman Sk. Raheman were found detained there by the watchmen of the said Industries. A.S.I. Ingle was informed that in the afternoon those thieves were caught red-handed while trying to commit theft. Those thieves along with stolen property were brought to Police Station Ramdaspath at 6.10 p.m. Since there were visible injuries on the person of all the three thieves, they were immediately sent by Police Jeep to General Hospital for examination and treatment. Dr. V.R. Kalne (PW13), Medical Officer, who was on duty examined the thieves, noted the injuries on their person, gave them treatment, but did not feel it necessary to admit any of them in the hospital. Hence all the three thieves were brought back to Police Station Ramdaspath. On the basis of the report lodged by PW2 Mohta, Crime No. 205/99 u/s 380/511 read with 34 of I.P.C. was registered against them at 8.30 p.m. Arrest Panchanamas were prepared and they were lodged in lock-up at 8.40 p.m. At that time Ashok Moti Baman and Hamidkhan Mustafakhan were already in the lock-up.

5. During the night intervening 29.9.1999 and 30.9.1999 Santosh Ramkrishna Shirsat, Lakhan Ramaji Pawase and Vishal Dashrath Sangade were also put up in the lock-up one after another in different crime. Thus there were eight accused persons confined in the lock-up of Police Station Ramdaspath which measures 22 ft. X 10 ft.

6. In the early morning of 30.9.1999, it was noticed that Suresh Gedam was lying dead in the lock-up. Hence intimation was sent to superior officers. A.D. No. 32/99 u/s 174 of Cr.P.C. was registered. Mr. H.S. Kamble, Sub Divisional Magistrate, Akola (who himself is M.B.B.S.) prepared inquest panchanama (Exh.141) of the dead body of Suresh Gedam in presence of the panchas between 12.04 hours and 13 hours. On the same day post mortem examination was held by Dr. A.D. Thote and Dr. Rajkumar Chavan under the supervision of the Civil Surgeon Dr. A.R. Bhople (PW14). They found multiple contusions mainly on the back, left arm, left thigh and right arm. In the opinion of the team of doctors who conducted post-mortem examination (vide Ex. 162) the immediate cause of death was Syncope due to sudden cardiac arrest due to multiple injuries sustained which were ante-mortem and were caused by hard and blunt object. The injuries were sufficient to cause death in ordinary course of nature. The probable time of death was within 12 hours.

7. On 5.10.1999, Mr. Sahare, Police Inspector and In-charge Deputy Commissioner of Police, State C.I.D. (Crimes) Akola registered Crime No. 213/99

u/s 302, 325, 323 read with 34 of I.P.C. against the watchmen of Birla Oil Industries viz. accused Nos. 1, 2 and 3 (Respondent Nos. 1 to 3).

8. It seems that in the year 2000 the father of Suresh Gedam filed Criminal Writ Petition No. 277/2000 and prayed for ordering an inquiry into the cause of death of Suresh and for prosecuting the Police Officers and others responsible for the death of his son. As stated earlier, the said writ petition was decided on 17.9.2001 in which it was held that Suresh Gedam died while he was in Police custody because of the injuries suffered out of custodial violence. In addition to the compensation granted to the father of deceased Suresh, the court directed to prosecute the Police Officers responsible for the death of Suresh Gedam. The Court also directed that the investigation be handed over to an officer of the rank of D.I.G.P. or above. Accordingly PW1 Rajendra Anandrao Sonwane, Additional Commissioner of Police, conducted further investigation in Crime No. 213/99. After completion of investigation, two charge sheets came to be filed as stated earlier.

9. Accused Nos. 1 to 3 and 10 were charged for the offence punishable u/s 325 read with 34 of I.P.C. for voluntarily causing hurt to Sk. Nazir Sk. Mohammad and Sk. Lukman Sk. Raheman. In addition to that accused Nos. 1 to 3, accused Nos. 4 to 9 and accused Nos. 11 to 17 were charged for the offence punishable u/s 302 read with 34 of I.P.C. The prosecution examined in all 20 witnesses in support of the charges. Sk. Nazir Sk. Mohammad and Sk. Lukman Sk. Raheman (the injured) were examined as Court witnesses No. 1 and 2 respectively. Several documents were proved including arrest panchanamas, injury certificates, inquest panchanama, post mortem report and several station diary entries.

10. The defence of all the accused persons was that of total denial.

11. After considering the evidence on record, the learned trial Judge came to the conclusion that Suresh Gedam met with homicidal death in the lock-up of Police Station Ramdaspath, Akola during the night of 29.9.1999 and 30.9.1999. The learned trial Judge found that the prosecution did not prove that accused Nos. 1 to 3 and 10 assaulted Suresh Gedam, Sk. Nazir Sk. Mohammad and Sk. Lukman Sk. Raheman with iron pipe, rubber pipe, wooden stick and fist and kick blows. The learned trial Judge further held that the prosecution failed to prove that accused Nos. 4 to 9 and 11 to 17 tortured Suresh Gedam while he was in Police custody with intend to cause his death. The learned trial Judge, therefore, acquitted all the accused of all the charges.

12. We have heard Mr. T.A. Mirza, Additional Public Prosecutor for the State/Appellant; Mr. V.R. Mundra, Advocate for respondents No. 1 to 3 (original accused Nos. 1 to 3) and Mr. A.S. Mardikar, Advocate for respondents No. 4 to 15. We have also gone through the record and proceedings of the sessions trial with the assistance of the learned Counsel for the parties.

13. At the very outset Mr. Mirza, the learned A.P.P. submitted that there is no direct evidence against the accused persons for the offences with which they are

charged and that the reliance of the prosecution is only on circumstantial evidence.

14. Mr. Mundra, the learned Counsel for respondents No. 1 to 3 pointed out that the prosecution in fact gave up the case against respondents No. 1 to 3 for the offence punishable u/s 302/34 I.P.C. In this respect Mr. Mundra invited our attention to para 19 of the impugned judgment. It clearly shows that the prosecution chose to concentrate its case only against the police personnel about the custodial death of Suresh Gedam. The prosecution gave up the allegations of murder against respondents No. 1 to 3. The prosecution did not adduce any evidence against accused No. 10 Shafakat Hussain (the owner of the godown). The prosecution examined PW17 V.V. Thakre and PW18 R.T. Junankar in respect of identification parade in which Sk. Nazir and Sk. Lukman (the injured) associates of Suresh Gedam identified accused Nos. 1 to 3, but the learned Public Prosecutor himself did not rely on the evidence of PW17 and PW18. Hence the trial Court proceeded to consider the evidence of the prosecution in order to find out whether the prosecution succeeded in proving the guilt of the remaining accused persons viz. the police personnel. In view of this position, we have no difficulty in confirming the acquittal of respondents No. 1 to 3.

15. So far as the charge against police personnel is concerned, Mr. Mirza, the learned A.P.P. submitted that in case of custodial death generally direct evidence is not available and the Police Officials can alone explain the circumstances in which the person in their custody died. According to Mr. Mirza the evidence on record clearly establishes that Suresh Gedam was brought by the Police Personnel of Ramdaspath Police Station from Birla Oil Industries, thereafter he was sent to General Hospital for medical examination, after his examination he was brought back to Police Station Ramdaspath and was lodged in the lock-up at about 8.45 p.m. Since then he was exclusively in the Police custody. In view of these circumstances, it was for the police personnel in-charge of the lock-up to explain as to how Suresh Gedam was found dead on the next day morning. Mr. Mirza, the learned A.P.P. placed his reliance on the following observations of the Apex Court in State of M.P. Vs. Shyamsunder Trivedi and Others, :

"Rarely in case of police torture or custodial death, direct ocular evidence of the complicity of the police personnel would be available. General speaking, it would be police officials alone who can only explain the circumstances in which a person in their custody had died. Bound as they are by the ties of brotherhood, it is not unknown that the police personnel prefer to remain silent and more often than not even pervert the truth to save their colleagues - and the present case is an apt illustration - as to how one after the other police witnesses feigned ignorance about the whole matter.

The exaggerated adherence to and insistence upon the establishment of proof beyond every reasonable doubt, by the prosecution, ignoring the ground realities, the fact-situations and the peculiar circumstances of a given case, as in the present case, often results in miscarriage of justice and makes the justice

delivery system suspect. In the ultimate analysis the society suffers and a criminal gets encouraged. Tortures in police custody, which of late are on the increase, receive encouragement by this type of an unrealistic approach of the courts because it reinforces the belief in the mind of the police that no harm would come to them if an odd prisoner dies in the lock-up because there would hardly be any evidence available to the prosecution to directly implicate them with the torture. The courts must not lose sight of the fact that death in police custody is perhaps one of the worst kind of crimes in a civilised society, governed by the rule of law and poses a serious threat to an orderly civilised society. Torture in custody flouts the basic rights of the citizens recognised by the Indian Constitution and is an affront to human dignity. Police excesses and the maltreatment of detainees/under trial prisoners or suspects tarnishes the image of any civilised nation and encourages the men in "khaki" to consider themselves to be above the law and sometimes even to become law unto themselves. Unless stern measures are taken to check the malady, the foundations of the criminal justice delivery system would be shaken and the civilization itself would risk the consequence of heading towards perishing. The courts must, therefore, deal with such cases in a realistic manner and with the sensitivity which they deserve, otherwise the common man may lose faith in the judiciary itself, which will be a sad day. "

16. It may be noted that in the case cited supra the suspect in a murder case was brought to the Police Station for interrogation. It was alleged that he was beaten and tortured by the police personnel with an intention of extracting confessional statement from him in connection with the murder and as a result of the extensive injuries caused to him he died in the Police custody at the Police Station. In the background of these circumstances, the apex Court observed that the police officials alone were in a position to explain the circumstances in which was the suspect in their custody had died. However, the facts of the present case are different because in the present case Suresh Gedam was brought to the Police Station from Birla Oil Industries in an injured condition. As soon as he was brought to the Police Station, injuries were found on his person and he was immediately referred to General Hospital for examination and treatment. It has come in evidence that Suresh Gedam and his associates gave history of assault by public. In view of these peculiar circumstances, the case relied on by Mr. Mirza will not be applicable in order to draw any inference against the police personnel.

17. Mr. V.R. Mundra and Mr. A.S. Mardikar submitted that in case of appeal against acquittal the scope of appeal is circumscribed by limitation. They submitted that unless approach of lower Court to consideration of evidence is vitiated by manifest illegality or conclusion arrived at by the lower Court is perverse, no interference with the order of acquittal is permissible. In this respect, they relied on the following cases :

i) The State of Maharashtra Vs. Ishwar Sambhaji Babar,

ii) 2003 ALL MR (Cri.) 1441 State of Maharashtra v. Haribhau Krishnaji Deshmukh

iii) 2004 ALL MR (Cri.) 3019 State of Maharashtra v. Ashok Kerba Shendkar

18. Mr. A.S. Mardikar, the learned Counsel for respondents No. 4 to 15, submitted that several eye witnesses were available to the prosecution in respect of the alleged custodial torture of Suresh Gedam. Mr. Mardikar pointed out that the prosecution evidence clearly shows that when Suresh Gedam, Sk. Nazir and Sk. Lukman were lodged in lock-up in the Police Station, there were already two persons in the lock-up viz. Ashok Baman and Hamidkhan Mustafakhan. Thereafter during the night three more persons were lodged in the lock-up in connection with various crimes. They were Santosh Shirsat, Lakhan Pawase and Vishal Sangade. Thus as many as eight inmates including Suresh Gedam were there in the lock-up during the fateful night. They were the most important witnesses to demonstrate as to what happened to Suresh Gedam after he was lodged in the lock-up. However, none of them has been examined by the prosecution though their statements were recorded during investigation. The prosecution even did not examine Sk. Nazir and Sk. Lukman, the co-accused of Suresh Gedam. Sk. Nazir and Sk. Lukman were examined as Court witnesses on their own application. Mr. Mardikar submitted that the evidence of Sk. Nazir and Sk. Lukman read with the entries in the station diary during the relevant time clearly establishes that neither any police personnel entered the lock-up during the fateful night nor any inmate including Suresh Gedam was taken out of the lock-up during night. Thus when no Police personnel entered the lock-up and Suresh Gedam was not removed from the lock-up, there was no question of torture to him.

19. Mr. Mardikar further pointed out that even according to the prosecution case when the trio viz. Suresh Gedam, Sk. Nazir and Sk. Lukman were arrested at Birla Oil Industries, they were brought to Ramdaspath Police Station along with the stolen property which they attempted to steal. Thus there was no question of any recovery of property from them. Since they were caught red-handed by the watchmen while attempting to commit theft, there was no question of any kind of interrogation to them. The only thing after registration of crime No. 205/99 u/s 380/511 read with 34 of I.P.C. against the trio was to record the statements of the watchmen and to prepare charge sheet.

20. We find considerable force in the submissions made by Mr. Mardikar. We find that there was no reason for the police personnel to select one of the trio and to subject him to ill-treatment. It is true that Sk. Nazir and Sk. Lukman have a criminal record, but only on that count their testimony regarding no torture to Suresh Gedam by the police personnel can be discarded. It may be noted that their testimony is supported even by the entries in the station diary.

21. Mr. Mirza, the learned A.P.P., further submitted that the prosecution has led evidence to show as to who were the police personnel in-charge of lock-up during the fateful night and all of them have been prosecuted. Mr. Mardikar, the learned Counsel, on the other hand submitted that the prosecution was not fair in conducting the investigation and the prosecution selected certain Police Officers

for being prosecuted. He submitted that as many as six police personnel who were on duty in the Police Station at the relevant time who are not prosecuted. We find enough force in this submission also. We fail to understand as to why certain police personnel only have been selected for being prosecuted for the alleged custodial torture of Suresh Gedam. The benefit of this circumstance must go to the police personnel who have been prosecuted.

22. Mr. Mirza, the learned A.P.P., submitted that immediately after the trio was brought to the Police Station, they were sent for medical examination as all the three were injured. PW13 Dr. V.R. Kalne (Medical Officer) who examined them issued injury certificates. The evidence of Dr. Kalne shows that when he examined Suresh Gedam at 6.45 p.m., he found linear abrasions over abdomen and multiple abrasions all over back and over left arm. The age of the injuries was within six hours ; whereas when autopsy was conducted on the dead body of Suresh Gedam, PW14 Dr. A.R. Bhople (Civil Surgeon) found four linear abrasions transversally placed in epigastric area and left lumbar region above umbilicus and several contusions on back and arms as shown in the diagram attached with the post mortem report (Exh.162). All these injuries were ante mortem and within 24 hours. The immediate cause of death was syncope due to sudden cardiac arrest due to multiple injuries sustained. Mr. Mirza, therefore, submitted that the medical evidence clearly establishes that Suresh Gedam must have been tortured while in lock up by police personnel which resulted in his death.

23. The trial Court has discussed the evidence of Dr. Kalne in details from paragraph 27 to paragraph 36 in the judgment. The trial Court came to the conclusion that the examination of Suresh Gedam by Dr. Kalne was not proper and careful and he failed to take note of all the injuries on the person of Suresh Gedam. In fact the trial Court found that the examination of Suresh Gedam by Dr. Kalne was not careful and cautious. It further held that it cannot be concluded with certainty that the injuries found by Autopsy Surgeons on the dead body of Suresh Gedam were not present on his body at the time when Dr. Kalne examined him. Dr. Kalne admitted that as there were innumerable injuries on the person of Suresh Gedam, he was unable to distinguish them by giving dimensions and size of each injuries. It appears that after the death of Suresh Gedam in lock-up, the matter took a serious turn and the Sub Divisional Magistrate who drew inquest panchanama on the dead body of Suresh Gedam as well as Dr. Bhople, the Civil Surgeon, who conducted autopsy, took precaution in describing the injuries on the body of Suresh Gedam in details. On the contrary Dr. Kalne, who examined Suresh Gedam soon after the incident and when Suresh Gedam was very much alive, took it lightly. He completed the medical examination of all the three injured within 15 minutes and did not take pains to describe the injuries in details. Thus as held by the trial Court it cannot be said that the injuries mentioned in post-mortem report were caused after Suresh Gedam was lodged in the lock-up.

24. Another aspect of the present case is that Suresh Gedam, Sk. Nazir and Sk.

Lukman were arrested in an injured condition and all the three had sustained injuries. This is corroborated by the fact that after they were brought to Police Station Ramdaspath all of them were immediately referred to General Hospital. They gave history of assault by public. The prosecution tried to adduce evidence to show that Suresh Gedam was in a position to walk and for that purpose PW7 Jahirouddin, who was on duty as a Ward Body in the hospital when the trio was brought there, has been examined. However, the trial Court has rightly disbelieved him as his statement was recorded about a year after the incident and it is highly improbable that PW7 Jahirouddin would remember the details in respect of Suresh Gedam when such accused are brought often by Police to the General Hospital.

25. It has come in evidence that besides the watchmen, several persons had gathered on the spot when the trio was apprehended red-handed while attempting to commit theft. It can be imagined that in such a situation the public must have mercilessly beaten the thieves. According to Dr. Kalne generally if multiple external injuries though simple are associated with internal injury to vital organs like percrea then they may cause traumatic, hemorrhagic shock resulting in death. This is what must have happened in the present case.

26. It has come in evidence that because of the beating Suresh Gedam felt severe pain. He also complained about the pain to Dr. Kalne when Dr. Kalne examined him. It has come in evidence that Suresh Gedam even requested Dr. Kalne to admit him in the hospital, but Dr. Kalne overlooked his request. Had Suresh Gedam been admitted in the hospital and succumbed to the injuries in the hospital itself, his death would not have attracted so much attention. But since Suresh Gedam was brought back from the hospital, was lodged in the lock-up and he died in the lock-up, the matter turned serious. We are satisfied that though Suresh Gedam died while in lock-up, it is not a case of custodial death as a result of torture by police personnel. The trial Court has scrutinized the evidence in details with all seriousness and properly appreciated the same. We do not find any error much less perversity in appreciating evidence by the trial Court. We do not find infirmity in the judgment of the trial Court. We see no merit in the appeal as regards the acquittal of the respondents. The appeal is, therefore, dismissed.