

injury and the vital and delicate part of the body at which it was aimed, we are unable to agree with Mr. Singh that the act of A2 could in any way fall under Section 304, Part I or Part II. The High Court was, therefore, absolutely correct in holding that A2 was guilty of committing murder of the deceased Francis particularly in view of the brutal injury caused on the chest of the deceased.

6 As regards A1, Mr. Singh conceded that if the charge of unlawful assembly failed he would be only liable for having caused simple hurt by sharp cutting instrument, namely knife and would have to be convicted under Section 324. In fact his conviction under Section 324 by the High Court and sentence of 3 years' RI has not been challenged by the learned counsel for the appellant and we uphold the same.

7. As regards A3, there is clear evidence of PW 1 which is supported by other witnesses also that A3 had beaten him on the back and shoulder with stick. The doctor also found the injuries on the back and shoulder of PW 1 only in the nature of abrasions and were, therefore, simple.

8. We, therefore, uphold the conviction of A3 under Section 323 but reduce the sentence to the period already served and in lieu of the sentence remitted we impose a fine of Rs. 500 and in default one month's rigorous imprisonment. The entire fine, if realised, shall be paid to PW 1 as compensation.

9. As regards A4 and A5, there is really no evidence to connect them with the assault either on the deceased or on the injured witness PW 1. No overt act has been ascribed to A5. So far as A4 is concerned it is alleged by PW 1 that he had beaten him with a stick on the left knee but the doctor does not find any such injury. In the FIR also PW 1 did not at all mention that he was assaulted by A4 on the knee. For these reasons, therefore, we agree with Mr. Singh that accused 4 and 5 cannot be convicted. In view of our finding that there is no evidence to substantiate the charge regarding the existence of an unlawful assembly of the accused persons, we acquit all of them of the charges under Sections 149, 148 and 147. A4 and A5 are also acquitted of all the charges. Conviction and sentence of A2 under Sections 302, IPC, are affirmed and those of A1 under Section 324, IPC are also confirmed. Appeals arising out of special leave petitions are accordingly allowed in part and the appeal is disposed of accordingly.

(1980) 3 Supreme Court Cases 70

(BEFORE V. R. KRISHNA IYER AND E. S. VENKATARAMIAH, JJ.)

RAGHBIR SINGH	..	Petitioner ;
	<i>Versus</i>	
STATE OF HARYANA	..	Respondent.

Special Leave Petition (Criminal) No. 679 of 1980†, decided
on March 31, 1980

Penal Code, 1860 — Section 302 — Third degree treatment by investigating officer causing death in lock-up — No error in appreciation of evidence and concurrent findings of courts below on

†From the Judgment and Order dated December 6, 1979 of the Punjab and Haryana High Court in Criminal Appeal No. 880 of 1978

commission of offence under Section 302 by the accused officer — No interference by Supreme Court under Article 136 called for — Constitution of India, Article 136

Constitution of India — Article 21 — Human rights — Third degree treatment by police offends human rights concept — State urged to take adequate measures — Criminal Procedure Code, 1973, Section 163

The diabolical recurrence of police torture during investigation resulting in a terrible scare in the minds of common citizens that their lives and liberty are under a new peril when the guardians of the law gore human rights to death, is disastrous to our human rights awareness and humanist constitutional order. Therefore, the State should organise special strategies to prevent and punish brutality by police methodology in order to stamp out the vice of third degree treatment.

Petition dismissed

R/4802/CR

Advocates who appeared in this case :

A. N. Mulla, Senior Advocate (T. L. Garg and N. D. Garg, Advocates, with him), for the Petitioner.

The Order of the Court was delivered by

Krishna Iyer, J.—The criminal scenario with a tragic crescendo which has been unfurled in this special leave petition starts with a bunch of ‘suspects’ being brought up to the police post which was in the charge of the petitioner, an Assistant Sub-Inspector. A case of theft in some officer’s house had been reported to the police the previous night and so as part of the investigation suspects were picked up and suffered, as part of the process of ‘investigation’, severe flagellation. Chhabila, one of those so tortured, succumbed to his injuries. This triggered off investigation into the murderous conduct of the investigator, the petitioner and another. Medical examination revealed the cruel cause of death as asphyxiation. One of the injuries which, according to the doctor, made the deceased unconscious was torture on both the soles of the feet of the victim. A trial for murder followed, a conviction under Section 302 was entered and eventually the High Court confirmed the conviction and sentence of life imprisonment so far as the petitioner was concerned. A false explanation of suicidal hanging was set up by the police officer-accused but this was rejected and eventually, on a study of the circumstances and the incontrovertible facts of flagellation and asphyxiation within police premises and the testimony of eyewitnesses about nocturnal detention within the police station and beating up of the victim, the courts below concurrently found the guilt of the petitioner proved beyond reasonable doubt. Strenuous submissions have been made to us by Shri Mulla to discredit the prosecution version of murder but we are not in the least convinced that there is any error in the appreciation or the conclusion.

2. We are deeply disturbed by the diabolical recurrence of police torture resulting in a terrible scare in the minds of common citizens that their lives and liberty are under a new peril when the guardians of the law gore human rights to death. The vulnerability of human rights assumes a traumatic, torturous poignancy; the violent violation is perpetrated by the police arm of the State whose function is to protect the citizen and not to commit gruesome offences against them as has happened in this case. Police lock-up, if reports in newspapers have a streak of credence, are becoming more

and more awesome cells. This development is disastrous to our human rights awareness and humanist constitutional order.

3. The State, at the highest administrative and political levels, we hope, will organise special strategies to prevent and punish brutality by police methodology. Otherwise, the credibility of the rule of law in our Republic vis-a-vis the people of the country will deteriorate.

4. We conclude with the disconcerting note sounded by Abraham Lincoln :

If you once forfeit the confidence of your fellow citizens you can never regain their respect and esteem. It is true that you can fool all the people some of the time, and some of the people all the time, but you cannot fool all the people all the time.

These observations have become necessary to impress upon the State police echelons the urgency of stamping out the vice of 'third degree' from the investigative armoury of the police.

(1980) 3 Supreme Court Cases 72

(BEFORE P. N. SHINGHAL AND E. S. VENKATARAMIAH, JJ.)

Civil Appeal No. 626 of 1971

THAKUR BHIM SINGH (DEAD) BY LRs AND ANOTHER .. Appellants ;

Versus

THAKUR KAN SINGH .. Respondent.

And

Civil Appeal No. 629 of 1971

THAKUR KAN SINGH .. Appellant ;

Versus

THAKUR BHIM SINGH (DEAD) BY LRs AND ANOTHER .. Respondents.

Civil Appeals Nos. 626 and 629 of 1971[†], decided on December 21, 1979

Benami Transactions — Concept and kinds of — Intention of the person who contributed the purchase money is determinative of nature of transaction — Intention can be derived from contemporaneous facts and circumstances — However, conduct and declarations of such person subsequent to the transaction can also be admitted for using against him or his representative-in-interest on his death — 'B' acquiring a house out of his own funds and granting a patta in the name of his minor nephew on his passing examination — Inclusion of name of the nephew's father also in the patta would not make the circumstance less favourable for the nephew, as the nephew was then a minor — Subsequent to grant of the patta, 'B' also making declarations and statements before reliable witnesses

[†]From the Judgment and Order dated August 5, 1970 of the Rajasthan High Court in R. F. A. No. 31 of 1960