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the matter, on 30-10-1996, the appellant requested the authorities concerned to grant some time on humanitarian ground to the occupants whose houses were to be demolished. This aspect was reported in the newspaper under the caption "MAYOR PROVES TO BE A STUMBLING BLOCK IN ANTI-ENCROACHMENT DRIVE — GIVE ENCROACHERS MORE TIME, SAYS MAYOR."

**7.** On the basis of the said news item, contempt proceedings were initiated on 31-10-1996 against the appellant.

**8.** In our view, *prima facie* there is no question of initiating any contempt proceedings in a case where the Mayor of the city requests the authorities to give some time for vacating the premises and for removing the household articles of the occupants whose houses were being demolished. In any set of circumstances, it cannot be said that he committed any breach of the order passed by the High Court, because as quoted above the High Court only directed Indore Municipal Corporation and Indore Development Authority that they may initiate action in regard to matters of removing unauthorised encroachment.

**9.** In this view of the matter, the impugned judgment and order passed by the High Court convicting and sentencing the appellant under the Contempt of Courts Act cannot be justified by any standard. Hence, the impugned order is set aside.

**10.** In the result, the appeal is allowed to the aforesaid extent. Amount of fine deposited by the appellant be released in his favour.

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**(2005) 9 Supreme Court Cases 631**

(BEFORE ARIJIT PASAYAT AND C.K. THAKKER, JJ.)

MUNSHI SINGH GAUTAM (DEAD) AND OTHERS . . Appellants;

*Versus*

STATE OF M.P. . . Respondent.

Criminal Appeal No. 919 of 1999†, decided on November 16, 2004

A. **Evidence Act, 1872 — Ss. 101-104, 114 and 145 — Police atrocities/ Custodial violence or deaths — Proof — Onus and standard of — Approach to be followed by courts — Lack of direct ocular evidence due to complicity of police personnel — Implications of — Effect of falsity of stand taken by the police personnel — Held, exaggerated adherence to and insistence upon establishment of proof beyond every reasonable doubt in such cases often results in miscarriage of justice and makes the justice-delivery system suspect and vulnerable — Torture in police custody receives encouragement by this type of unrealistic approach because it reinforces the belief in the mind of the police that no harm would come to them if one prisoner dies in the lock-up because there would hardly be any evidence available to the prosecution to directly implicate them in the torture — Given the serious**

† From the Judgment and Order dated 21-7-1999 of the Madhya Pradesh High Court in Crl. A. No. 478 of 1993

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**nature of the crime and its far-reaching ramifications, courts must deal with such cases in a realistic manner and with the sensitivity they deserve — Government and legislature urged to implement recommendations made in 113th Report of Law Commission for amendment of Evidence Act to raise a rebuttable presumption in respect of such offences against the police officers concerned — However, cautioned that courts were to be vigilant against false accusations of custodial torture — On facts, contradiction between statement made by accused *G* under S. 313 CrPC on the one hand, and statement made by him before PW 11 and plea taken in court on the other, the case being one of custodial torture, held, enough to fasten guilt on accused *G* — Sentence imposed under S. 304 Part II IPC by trial court, confirmed — Penal Code, 1860 — Ss. 166, 330, 331 and 304 Part II — Constitution of India — Art. 21 — Criminal Trial — Circumstantial evidence — False explanation or statement or false alibi — False statement made by accused to prosecution witness — Used as circumstance against accused, to uphold conviction**

Disposing of the appeal in the terms below, the Supreme Court

*Held* :

Direct ocular evidence of the complicity of the police personnel is rarely available in cases of police torture or custodial death. They alone can 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 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 of the whole matter. The exaggerated adherence to and insistence upon the establishment of proof beyond every reasonable doubt by the prosecution, at times even when the prosecuting agencies are themselves fixed in the dock, ignoring the ground realities, the fact situation 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 and vulnerable. In the ultimate analysis 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 one prisoner dies in the lock-up because there would hardly be any evidence available to the prosecution to directly implicate them in the torture. The courts must not lose sight of the fact that death in police custody is perhaps one of the worst kinds of crime 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/undertrial 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 a law unto themselves. Unless stern measures are taken to check the malady of the very fence eating the crop, the foundations of the criminal justice-delivery system would be shaken and civilisation itself would risk the consequence of heading towards total decay resulting in anarchy and authoritarianism reminiscent of barbarism. The courts must, therefore, deal with such cases in a realistic manner and with the sensitivity which they deserve,

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otherwise the common man may tend to gradually lose faith in the efficacy of the system of the judiciary itself, which if it happens, will be a sad day for anyone to reckon with. (Paras 6 and 7)

Therefore, the Law Commission in its 113th Report recommended amendments to the Evidence Act, 1872 so as to provide that in the prosecution of a police officer for an alleged offence of having caused bodily injuries to a person while in police custody, if there is evidence that the injury was caused during the period when the person was in the police custody, the court may presume that the injury was caused by the police officer having the custody of that person during that period unless the police officer proves to the contrary. The onus to prove the contrary must be discharged by the police official concerned. Keeping in view the dehumanising aspect of the crime, the flagrant violation of the fundamental rights of the victim of the crime and the growing rise in crimes of this type, where only a few come to light and others do not, the Government and the legislature must give serious thought to the recommendation of the Law Commission and bring about appropriate changes in the law not only to curb custodial crime but also to see that custodial crime does not go unpunished. (Para 8)

But at the same time there seems to be a disturbing trend of increase in cases where false accusations of custodial torture are made, trying to take advantage of the serious concern shown and the stern attitude reflected by the courts while dealing with custodial violence. It needs to be carefully examined whether the allegations of custodial violence are genuine or are sham attempts to gain undeserved benefit masquerading as victims of custodial violence. The case in hand is a unique case in the sense that the complainant filed a complaint alleging custodial torture while the accused alleged false implication because of oblique motives. The categorical statement of the accused *G* under Section 313 CrPC that the deceased was lying injured near the *nala* and information to that effect was received at the police station is contradicted by his statement before PW 11 and by his plea that the deceased had come to the police station in a severe condition and after telling his name, had collapsed. In this view of the matter, the case being one of custodial torture, accusations have been established so far as accused-appellant *G* is concerned. (Paras 9, 27 and 28)

*Sahadevan* v. *State*, (2003) 1 SCC 534 : AIR 2003 SC 215, *relied on*

B. **Constitution of India — Arts. 21, 20 and 22 — Police atrocities/ Custodial violence or deaths — Implications of — Guarantees against — Reasons for increase in instances of, assuming "alarming proportions" — Dignity — Right to live with — Held, life or personal liberty includes a right to live with human dignity — There is an inbuilt guarantee against torture or assault by the State or its functionaries — Arts. 20(3) and 22 and Ch. V CrPC, 1973 and even Art. 5 of the Universal Declaration of Human Rights, 1948 further manifest the protection extended to every citizen in this regard and the guarantees held out for making life meaningful and not a mere animal existence — Torture, assault and death in custody raise serious questions about the credibility of the rule of law and administration of the criminal justice system — Increase in instances of custodial violence/torture attributed to misuse of police machinery by those at the helm of affairs to settle personal scores — State of affairs bemoaned, that concern shown and**

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**anguish expressed by Supreme Court in this regard in many cases had fallen on deaf ears and the situation was not showing any noticeable change**
**(Paras 2 to 5)**

*Raghbir Singh* v. *State of Haryana*, (1980) 3 SCC 70 : 1980 SCC (Cri) 526 : AIR 1980 SC 1087; *Shakila Abdul Gafar Khan* v. *Vasant Raghunath Dhoble*, (2003) 7 SCC 749 : 2003 SCC (Cri) 1918, *referred to*

*Gauri Shanker Sharma* v. *State of U.P.*, 1990 Supp SCC 656 : 1991 SCC (Cri) 67 : AIR 1990 SC 709; *Bhagwan Singh* v. *State of Punjab*, (1992) 3 SCC 249 : 1992 SCC (Cri) 629; *Nilabati Behera* v. *State of Orissa*, (1993) 2 SCC 746 : 1993 SCC (Cri) 527 : AIR 1993 SC 1960; *Pratul Kumar Sinha* v. *State of Bihar*, 1994 Supp (3) SCC 100 : 1994 SCC (Cri) 1666; *Kewal Pati* v. *State of U.P.*, (1995) 3 SCC 600 : 1995 SCC (Cri) 556; *Inder Singh* v. *State of Punjab*, (1995) 3 SCC 702 : 1995 SCC (Cri) 586 : 1995 SCC (L&S) 857 : (1995) 30 ATC 122; *State of M.P.* v. *Shyamsunder Trivedi*, (1995) 4 SCC 262 : 1995 SCC (Cri) 715; *D.K. Basu* v. *State of W.B.*, (1997) 1 SCC 416 : 1997 SCC (Cri) 92, *relied on*

C. **Criminal Procedure Code, 1973 — Ch. XII (Ss. 156 to 176) — Investigation — Powers of police — Held, do not include torturing a person to extract information, be he an accused or a witness — Duty to investigate should be discharged within four corners of law — Constitution of India — Art. 21 — Custodial torture — Protection against** **(Para 10)**

*Sahadevan* v. *State*, (2003) 1 SCC 534 : AIR 2003 SC 215, *relied on*

D. **Penal Code, 1860 — S. 304 Part II — "Act done with knowledge that it is likely to cause death but without any intention to cause death" — Inference of — When justified — Police atrocities/custodial violence — Custodial death — Medical evidence showing that injuries of deceased confined to skin and upper level of body — Grievous injuries not found on vital parts of body — Deceased when assaulted in custody was inebriate and infected with TB in right lung — Given the nature of injuries, health and state of deceased at time of the custodial assault, combined effect of inebriation and injuries resulting in quicker death, held, conviction of accused *G* in terms of S. 304 Part II for custodial violence leading to death could not be faulted — Constitution of India — Art. 21 — Custodial violence/death — Sentence for** **(Para 29)**

E. **Criminal Trial — Test identification parades — Evidentiary value and importance of — Held, do not constitute substantive evidence — Substantive evidence is the evidence of identification in court — Said tests however have immense corroborative value — Criminal Procedure Code, 1973, S. 162 — Evidence Act, 1872, S. 9** **(Paras 17 and 16)**

F. **Criminal Trial — Test identification parades — When necessary — If obligatory — Held, failure to hold a test identification parade would not make inadmissible the evidence of identification in court — Weight to be attached to such identification is a matter for court of fact — It would depend on how reliable testimony as to identification is, uncorroborated by a test identification parade — Prosecution has to be cautious to ensure that there is no scope for accused to allege that evidence of identification is vitiated due to non-holding of (a timely) TI parade — If, however, circumstances are beyond control of the prosecution and there is some delay, it cannot be said to be fatal to the prosecution — Position where accused previously known to witness concerned, not known and seen only once, and**

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**not known and seen a number of times, distinguished — On facts, a TI parade would have made no difference as one witness did not claim to have seen the accused and the other's evidence was in any case unreliable as it was full of unexplained contradictions — Criminal Procedure Code, 1973, S. 162 — Evidence Act, 1872, S. 9 (Paras 16, 17, 19, 22 and 27)**

*Matru* v. *State of U.P.*, (1971) 2 SCC 75 : 1971 SCC (Cri) 391; *Santokh Singh* v. *Izhar Hussain*, (1973) 2 SCC 406 : 1973 SCC (Cri) 828; *Kanta Prashad* v. *Delhi Admn.*, AIR 1958 SC 350 : 1958 Cri LJ 698; *Vaikuntam Chandrappa* v. *State of A.P.*, AIR 1960 SC 1340 : 1960 Cri LJ 1681; *Budhsen* v. *State of U.P.*, (1970) 2 SCC 128 : 1970 SCC (Cri) 343 : AIR 1970 SC 1321; *Rameshwar Singh* v. *State of J&K*, (1971) 2 SCC 715 : 1971 SCC (Cri) 638 : AIR 1972 SC 102; *Jadunath Singh* v. *State of U.P.*, (1970) 3 SCC 518 : 1971 SCC (Cri) 124 : AIR 1971 SC 363; *Parkash Chand Sogani* v. *State of Rajasthan*, Criminal App. No. 92 of 1956, decided on 15-1-1957 (SC); *Harbajan Singh* v. *State of J&K*, (1975) 4 SCC 480 : 1975 SCC (Cri) 545; *Ram Nath Mahto* v. *State of Bihar*, (1996) 8 SCC 630 : 1996 SCC (Cri) 726; *Suresh Chandra Bahri* v. *State of Bihar*, 1995 Supp (1) SCC 80 : 1995 SCC (Cri) 60; *State of U.P.* v. *Boota Singh*, (1979) 1 SCC 31 : 1979 SCC (Cri) 115; *Ramanbhai Naranbhai Patel* v. *State of Gujarat*, (2000) 1 SCC 358 : 2000 SCC (Cri) 113; *Malkhansingh* v. *State of M.P.*, (2003) 5 SCC 746 : 2003 SCC (Cri) 1247, *relied on*

*State (Delhi Admn.)* v. *V.C. Shukla*, (1980) 2 SCC 665 : 1980 SCC (Cri) 561 : AIR 1980 SC 1382; *Rajesh Govind Jagesha* v. *State of Maharashtra*, (1999) 8 SCC 428 : 1999 SCC (Cri) 1452 : AIR 2000 SC 160; *State of H.P.* v. *Lekh Raj*, (2000) 1 SCC 247 : 2000 SCC (Cri) 147 : AIR 1999 SC 3916, *cited*

D-M/AZK/30784/SR

Advocates who appeared in this case :

Uday U. Lalit, Senior Advocate (Y.P. Singh, Chatanya Siddharth, Mukesh K. Sharma, Ms Prakrati Purnima, D.K. Gupta and Debasis Misra, Advocates, with him) for the Appellants;

R.P. Gupta, Senior Advocate (Sekhar Kumar and Ms Kamakshi S. Mehlwal, Advocates, with him) for the Respondent.

***Chronological list of cases cited*** ***on page(s)***

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20. (1975) 4 SCC 480 : 1975 SCC (Cri) 545, *Harbajan Singh* v. *State of J&K* 644*e-f*
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28. Criminal App. No. 92 of 1956, decided on 15-1-1957 (SC), *Parkash Chand Sogani* v. *State of Rajasthan* 644*a-b*, 644*d*

The Judgment of the Court was delivered by

**ARIJIT PASAYAT, J.**— "If you once forfeit the confidence of our 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", said Abraham Lincoln. This Court in *Raghbir Singh* v. *State of Haryana*[1] and *Shakila Abdul Gafar Khan* v. *Vasant Raghunath Dhoble*[2] took note of these immortal observations while deprecating custodial torture by the police.

**2.** Custodial violence, torture and abuse of police power are not peculiar to this country, but it is widespread. It has been the concern of the international community because the problem is universal and the challenge is almost global. The Universal Declaration of Human Rights in 1948 which marked the emergence of a worldwide trend of protection and guarantee of certain basic human rights stipulates in Article 5 that "No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment." Despite this pious declaration, the crime continues unabated, though every civilised nation shows its concern and makes efforts for its eradication.

1. (1980) 3 SCC 70 : 1980 SCC (Cri) 526 : AIR 1980 SC 1087
2. (2003) 7 SCC 749 : 2003 SCC (Cri) 1918

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**3.** If it is assuming alarming proportions, nowadays, all around it is merely on account of the devilish devices adopted by those at the helm of affairs who proclaim from rooftops to be the defenders of democracy and protectors of people's rights and yet do not hesitate to condescend behind the screen to let loose their men in uniform to settle personal scores, feigning ignorance of what happens and pretending to be peace-loving puritans and saviours of citizens' rights.

**4.** Article 21 which is one of the luminary provisions in the Constitution and is a part of the scheme for fundamental rights occupies a place of pride in the Constitution. The article mandates that no person shall be deprived of his life and personal liberty except according to the procedure established by law. This sacred and cherished right i.e. personal liberty has an important role to play in the life of every citizen. Life or personal liberty includes a right to live with human dignity. There is an inbuilt guarantee against torture or assault by the State or its functionaries. Chapter V of the Code of Criminal Procedure, 1973 (for short "the Code") deals with the powers of arrest of persons and the safeguards required to be followed by the police to protect the interest of the arrested person. Articles 20(3) and 22 of the Constitution further manifest the constitutional protection extended to every citizen and the guarantees held out for making life meaningful and not a mere animal existence. It is, therefore, difficult to comprehend how torture and custodial violence can be permitted to defy the rights flowing from the Constitution. The dehumanising torture, assault and death in custody which have assumed alarming proportions raise serious questions about the credibility of the rule of law and administration of the criminal justice system. The community rightly gets disturbed. The cry for justice becomes louder and warrants immediate remedial measures. This Court has in a large number of cases expressed concern at the atrocities perpetrated by the protectors of law. Justice Brandeis's observation which has become classic is in the following immortal words:

> Government as the omnipotent and omnipresent teacher teaches the whole people by its example, if the Government becomes a lawbreaker, it breeds contempt for law, it invites every man to become a law unto himself. (In US p. 485, quoted in at p. 659.)

**5.** The diabolic recurrence of police torture results in a terrible scare in the minds of common citizens that their lives and liberty are under a new and unwarranted peril because the guardians of the law destroy the human rights by custodial violence and torture invariably resulting in death. The vulnerability of human rights assumes a traumatic torture when functionaries of the State, whose paramount duty is to protect the citizens and not to commit gruesome offences against them, in reality perpetrate them. The concern which was shown in *Raghbir Singh case*[1] more than two decades back seems to have fallen on deaf ears and the situation does not seem to be showing any noticeable change. The anguish expressed in *Gauri Shanker*

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*Sharma* v. *State of U.P.*[3], *Bhagwan Singh* v. *State of Punjab*[4], *Nilabati Behera* v. *State of Orissa*[5], *Pratul Kumar Sinha* v. *State of Bihar*[6], *Kewal Pati* v. *State of U.P.*[7], *Inder Singh* v. *State of Punjab*[8], *State of M.P.* v. *Shyamsunder Trivedi*[9] and by now celebrated decision in *D.K. Basu* v. *State of W.B.*[10] seems not even to have caused any softening of attitude in the inhuman approach in dealing with persons in custody.

**6.** Rarely in cases of police torture or custodial death, direct ocular evidence is available of the complicity of the police personnel, who alone 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 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.

**7.** The exaggerated adherence to and insistence upon the establishment of proof beyond every reasonable doubt by the prosecution, at times even when the prosecuting agencies are themselves fixed in the dock, ignoring the ground realities, the fact situation 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 and vulnerable. In the ultimate analysis 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 at times of the courts as well, because it reinforces the belief in the mind of the police that no harm would come to them if one prisoner dies in the lock-up because there would hardly be any evidence available to the prosecution to directly implicate them in the torture. The courts must not lose sight of the fact that death in police custody is perhaps one of the worst kinds of crime 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/undertrial 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 a law unto themselves. Unless stern measures are taken to check the malady of the very fence eating the crop, the foundations of the criminal justice-delivery system would be shaken and civilisation itself would risk the consequence of heading towards total decay resulting in anarchy and authoritarianism

3 1990 Supp SCC 656 : 1991 SCC (Cri) 67 : AIR 1990 SC 709
4 (1992) 3 SCC 249 : 1992 SCC (Cri) 629
5 (1993) 2 SCC 746 : 1993 SCC (Cri) 527 : AIR 1993 SC 1960
6 1994 Supp (3) SCC 100 : 1994 SCC (Cri) 1666
7 (1995) 3 SCC 600 : 1995 SCC (Cri) 556
8 (1995) 3 SCC 702 : 1995 SCC (Cri) 586 : 1995 SCC (L&S) 857 : (1995) 30 ATC 122
9 (1995) 4 SCC 262 : 1995 SCC (Cri) 715
10 (1997) 1 SCC 416 : 1997 SCC (Cri) 92 : JT (1997) 1 SC 1

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reminiscent of barbarism. The courts must, therefore, deal with such cases in a realistic manner and with the sensitivity which they deserve, otherwise the common man may tend to gradually lose faith in the efficacy of the system of the judiciary itself, which if it happens, will be a sad day, for anyone to reckon with.

**8.** Though Sections 330 and 331 of the Indian Penal Code, 1860 (for short "IPC") make punishable those persons who cause hurt for the purpose of extorting a confession by making the offence punishable with sentence up to 10 years of imprisonment, but the convictions, as experience shows from track record have been very few compared to the considerable increase of such onslaught because the atrocities within the precincts of the police station are often left without much traces or any ocular or other direct evidence to prove as to who the offenders are. Disturbed by this situation the Law Commission in its 113th Report recommended amendments to the Evidence Act, 1872 (in short "the Evidence Act") so as to provide that in the prosecution of a police officer for an alleged offence of having caused bodily injuries to a person while in police custody, if there is evidence that the injury was caused during the period when the person was in the police custody, the court may presume that the injury was caused by the police officer having the custody of that person during that period unless the police officer proves to the contrary. The onus to prove the contrary must be discharged by the police official concerned. Keeping in view the dehumanising aspect of the crime, the flagrant violation of the fundamental rights of the victim of the crime and the growing rise in crimes of this type, where only a few come to light and others do not, the Government and the legislature must give serious thought to the recommendation of the Law Commission and bring about appropriate changes in the law not only to curb the custodial crime but also to see that the custodial crime does not go unpunished. The courts are also required to have a change in their outlook, approach, appreciation and attitude, particularly in cases involving custodial crimes and they should exhibit more sensitivity and adopt a realistic rather than a narrow technical approach, while dealing with the cases of custodial crime so that as far as possible within their powers, the truth is found and the guilty should not escape so that the victim of the crime has the satisfaction, and that ultimately the majesty of law has prevailed.

**9.** But at the same time there seems to be a disturbing trend of increase in cases where false accusations of custodial torture are made, trying to take advantage of the serious concern shown and the stern attitude reflected by the courts while dealing with custodial violence. It needs to be carefully examined whether the allegations of custodial violence are genuine or are sham attempts to gain undeserved benefit masquerading as victims of custodial violence. The case in hand is a unique case in the sense that the complainant filed a complaint alleging custodial torture while the accused alleged false implication because of oblique motives.

**10.** It is the duty of the police, when a crime is reported, to collect evidence to be placed during trial to arrive at the truth. That certainly would

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not include torturing a person, be he an accused or a witness to extract information. The duty should be done within the four corners of law. Law-enforcers cannot take law into their hands in the name of collecting evidence.

**11.** Facts of the present case as unfolded by the prosecution during trial are as follows:

On the night intervening 19-6-1984 and 20-6-1984, to extort a confession from one Shambhu Tyagi (hereinafter referred to as "the deceased"), he was brought to the police station where he was beaten as a result of which he died; and thereafter to remove the traces of the crime and conceal the acts, the dead body was thrown near a *nala*. The accused persons, five in number, who were police officers of Police Station Shahjahanabad, Bhopal thus committed offences punishable under Sections 330, 302 and 201 IPC. In relation to a scooter theft, Mahesh Sharma and Rajkumar Sharma (PW 12) were brought to Police Station Shahjahanabad. As name of the deceased was disclosed by these persons, around 1.30 a.m. (after midnight) the accused persons went to the house of the deceased from where he was brought to the police station. When the deceased was brought Jawahar (PW 14) had seen the accused persons. Thereafter to extort confession the deceased was badly beaten as a result of which he died. These accused police officers forged the *roznamacha* report to conceal the crime by recording that they received an information that some person was lying in the *nala* bed and the said person was badly intoxicated. As the witnesses and public at large raised hue and cry, the then Superintendent of Police, Bhopal wrote a letter to the District Magistrate and also sent a letter to the Inspector General of Police for getting the matter investigated through some independent agency. On the basis of the said letters, the District Magistrate got the matter enquired through CID Police. Statements were recorded; the medical reports were obtained; documents were seized; panchnamas were prepared; and on completion of the investigation, the charge-sheet was filed in the court concerned. Each of the accused persons denied the allegations. The trial was conducted by learned IInd Additional Sessions Judge, Bhopal. The trial court after recording the evidence and hearing the parties found each of the accused persons guilty and sentenced them. The trial court convicted each of the accused persons for offences punishable under Sections 304 Part I, 330 and 201 IPC sentencing each to undergo RI for 7 years, 3 years and 2 years respectively. All the sentences were directed to run concurrently. Being aggrieved by the said judgment, conviction and sentence, the accused-appellants filed appeals before the High Court.

**12.** The appellants filed appeals before the Madhya Pradesh High Court. By the impugned judgment the High Court dismissed the appeals. During pendency of the present appeal before this Court, Accused 1 Munshi Singh Gautam expired and by order dated 2-10-2004 the appeal was held to have abated so far as he is concerned.

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**13.** In support of the appeal, Mr Uday U. Lalit, learned Senior Counsel submitted that the prosecution version as unfolded is not supported by any cogent and credible evidence. The prosecution version mainly rests on the evidence of Rajkumar (PW 12) and Jawahar (PW 14). While the latter's version has been relied upon by the prosecution to contend that he had witnessed the deceased being taken away by the police officers, PW 12 on the other hand claimed to have witnessed beatings given by the accused persons to the deceased. It is pointed out that the medical evidence tendered by Dr. D.K. Satpathy (PW 16) clearly rules out the time of beatings as claimed to have been witnessed by Rajkumar (PW 12). His evidence is clearly to the effect that the deceased was suffering from TB and one lung was totally damaged. Taking into account the quantity of liquor found in his stomach, the time of death was fixed about 4 hours before the post-mortem which started around 1.00 p.m. on 20-6-1984. His evidence is also to the effect that all the injuries were not of the same time; some were about 4 hours old and the others were 12 hours old and some were one or two days old. Rajkumar (PW 12) is a liar as is evident from his testimony. He has given different version as to when he was arrested. Though he claimed that he was also beaten along with one Mahesh who was not examined, he did not make any grievance before the Magistrate when he was produced after his arrest. He gave varying dates so far as his date of arrest is concerned. At one place it was stated to be 20-6-1984 whereas on another place it was stated to be 23-6-1984. Though he claimed that he was aware of the names of the accused persons, he did not mention it in his statement given during investigation. No explanation has been offered for it. He was not acquainted with the accused persons. Similarly, Jawahar (PW 14) claimed to have seen the accused persons. He identified them for the first time in court. In his cross-examination he had accepted that he did not give the physical description of the accused persons. He clearly admitted that he could not have given the description because he had not seen them on the alleged date of occurrence. Therefore, the courts below in the absence of any test identification parade should not have placed reliance on their evidence. In any event, when Jawahar (PW 14) accepted that he had not seen the accused persons the test identification parade would not have also improved the situation. He had categorically stated that the deceased was wearing a *janghia* when he was taken by the police. The doctor (PW 16) who conducted the post-mortem found that the deceased was fully dressed with pant and shirt. Therefore, it was submitted that the conviction as recorded by the trial court and affirmed by the High Court is unsustainable.

**14.** In response, Mr R.P. Gupta, learned counsel appearing for the respondent State submitted that as is well known, in case of custodial death, it is very difficult to have flawless evidence. The evidence of Rajkumar (PW 12) is cogent and credible as found by the courts below. Even though there are some minor flaws here and there, they do not affect the credibility of the prosecution version. Evidence of Jawahar (PW 14) has been corroborated by

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the evidence of other witnesses. The medical evidence which is hypothetical in nature should not be given undue importance bypassing eyewitness's version. Merely because Mahesh has not been examined that does not render the prosecution version vulnerable as claimed by the accused-appellants. It is pointed out that in order to hide actual state of affairs a thoroughly misconceived plea that the police received information about somebody lying injured near *nala* was made out. This plea is also falsified when the evidence of the doctor is noted. Dr. K.N. Agarwalla (PW 11) has categorically stated that the body of the deceased was brought to the hospital around 8.15 a.m. by one police constable Shiv Prasad No. 238 of Shahjahanabad Police Station and accused Gulab Singh Chaudhary. They told him that the deceased had come to the police station in a very bad state and with much difficulty he had told his name and thereafter fallen down unconscious. It was further stated that they took him to the emergency ward, where he was declared dead. In the examination under Section 313 of the Code the accused-appellant Gulab Singh Chaudhary has taken a similar stand. This is clearly falsified by the defence version and evidence that police officers had gone to the spot on hearing that somebody was lying injured there. Therefore, it was submitted that the trial court and the High Court were justified in finding the accused-appellants guilty.

**15.** The evidence of Rajkumar (PW 12) and Jawahar (PW 14) relate to separate facets of the incident. The latter speaks about the accused-appellants having taken the deceased along with them after midnight of 19-6-1984. Rajkumar (PW 12) spoke of the assaults made inside the police station. Admittedly, there was no test identification parade.

**16.** As was observed by this Court in *Matru* v. *State of U.P.*[11] identification tests do not constitute substantive evidence. They are primarily meant for the purpose of helping the investigating agency with an assurance that their progress with the investigation into the offence is proceeding on the right lines. The identification can only be used as corroborative of the statement in court. (See *Santokh Singh* v. *Izhar Hussain*[12].) The necessity for holding an identification parade can arise only when the accused are not previously known to the witnesses. The whole idea of a test identification parade is that witnesses who claim to have seen the culprits at the time of occurrence are to identify them from the midst of other persons without any aid or any other source. The test is done to check upon their veracity. In other words, the main object of holding an identification parade, during the investigation stage, is to test the memory of the witnesses based upon first impression and also to enable the prosecution to decide whether all or any of them could be cited as eyewitnesses of the crime. The identification proceedings are in the nature of tests and significantly, therefore, there is no provision for it in the Code and the Evidence Act. It is desirable that a test

11 (1971) 2 SCC 75 : 1971 SCC (Cri) 391
12 (1973) 2 SCC 406 : 1973 SCC (Cri) 828

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identification parade should be conducted as soon as after the arrest of the accused. This becomes necessary to eliminate the possibility of the accused being shown to the witnesses prior to the test identification parade. This is a very common plea of the accused and, therefore, the prosecution has to be cautious to ensure that there is no scope for making such an allegation. If, however, circumstances are beyond control and there is some delay, it cannot be said to be fatal to the prosecution.

**17.** It is trite to say that the substantive evidence is the evidence of identification in court. Apart from the clear provisions of Section 9 of the Evidence Act, the position in law is well settled by a catena of decisions of this Court. The facts, which establish the identity of the accused persons, are relevant under Section 9 of the Evidence Act. As a general rule, the substantive evidence of a witness is the statement made in court. The evidence of mere identification of the accused person at the trial for the first time is from its very nature inherently of a weak character. The purpose of a prior test identification, therefore, is to test and strengthen the trustworthiness of that evidence. It is, accordingly, considered a safe rule of prudence to generally look for corroboration of the sworn testimony of witnesses in court as to the identity of the accused who are strangers to them, in the form of earlier identification proceedings. This rule of prudence, however, is subject to exceptions, when, for example, the court is impressed by a particular witness on whose testimony it can safely rely, without such or other corroboration. The identification parades belong to the stage of investigation, and there is no provision in the Code which obliges the investigating agency to hold or confers a right upon the accused to claim a test identification parade. They do not constitute substantive evidence and these parades are essentially governed by Section 162 of the Code. Failure to hold a test identification parade would not make inadmissible the evidence of identification in court. The weight to be attached to such identification should be a matter for the courts of fact. In appropriate cases it may accept the evidence of identification even without insisting on corroboration. (See *Kanta Prashad* v. *Delhi Admn.*[13], *Vaikuntam Chandrappa* v. *State of A.P.*[14], *Budhsen* v. *State of U.P.*[15] and *Rameshwar Singh* v. *State of J&K*[16].)

**18.** In *Jadunath Singh* v. *State of U.P.*[17] the submission that absence of test identification parade in all cases is fatal, was repelled by this Court after exhaustive considerations of the authorities on the subject. That was a case where the witnesses had seen the accused over a period of time. The High Court had found that the witnesses were independent witnesses having no affinity with the deceased and entertained no animosity towards the

13 AIR 1958 SC 350 : 1958 Cri LJ 698
14 AIR 1960 SC 1340 : 1960 Cri LJ 1681
15 (1970) 2 SCC 128 : 1970 SCC (Cri) 343 : AIR 1970 SC 1321
16 (1971) 2 SCC 715 : 1971 SCC (Cri) 638 : AIR 1972 SC 102
17 (1970) 3 SCC 518 : 1971 SCC (Cri) 124 : AIR 1971 SC 363

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appellant. They had claimed to have known the appellants for the last 6-7 years as they had been frequently visiting the town of Bewar. This Court noticed (SCC pp. 522-23, para 11) the observations in an earlier unreported decision of this Court in *Parkash Chand Sogani* v. *State of Rajasthan*[18] wherein it was observed:

> "It is also the defence case that Shiv Lal did not know the appellant. But on a reading of the evidence of PW 7 it seems to us clear that Shiv Lal knew the appellant by sight. Though he made a mistake about his name by referring to him as Kailash Chandra, it was within the knowledge of Shiv Lal that the appellant was a brother of Manak Chand and he identified him as such. These circumstances are quite enough to show that the absence of the identification parade would not vitiate the evidence. A person who is well known by sight as the brother of Manak Chand, even before the commission of the occurrence, need not be put before an identification parade in order to be marked out. We do not think that there is any justification for the contention that the absence of the identification parade or a mistake made as to his name, would be necessarily fatal to the prosecution case in the circumstances."

The Court concluded: (SCC pp. 523-24, para 15)

> "*15*. It seems to us that it has been clearly laid down by this Court, in *Parkash Chand Sogani* v. *State of Rajasthan*[18] that the absence of test identification in all cases is not fatal and if the accused person is well known by sight it would be waste of time to put him up for identification. Of course if the prosecution fails to hold an identification on the plea that the witnesses already knew the accused well and it transpires in the course of the trial that the witnesses did not know the accused previously, the prosecution would run the risk of losing its case."

**19.** In *Harbajan Singh* v. *State of J&K*[19], though a test identification parade was not held, this Court upheld the conviction on the basis of the identification in court corroborated by other circumstantial evidence. In that case it was found that the appellant and one Gurmukh Singh were absent at the time of roll call and when they were arrested on the night of 16-12-1971 their rifles smelt of fresh gunpowder and that the empty cartridge case which was found at the scene of offence bore distinctive markings showing that the bullet which killed the deceased was fired from the rifle of the appellant. Noticing these circumstances this Court held: (SCC p. 481, para 4)

> "In view of this corroborative evidence we find no substance in the argument urged on behalf of the appellant that the investigating officer ought to have held an identification parade and that the failure of Munshi Ram to mention the names of the two accused to the neighbours who came to the scene immediately after the occurrence shows that his story cannot be true. As observed by this Court in *Jadunath Singh* v. *State of*

18. Criminal App. No. 92 of 1956, decided on 15-1-1957 (SC)
19. (1975) 4 SCC 480 : 1975 SCC (Cri) 545

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*U.P.*[17] absence of test identification is not necessarily fatal. The fact that Munshi Ram did not disclose the names of the two accused to the villagers only shows that the accused were not previously known to him and the story that the accused referred to each other by their respective names during the course of the incident contains an element of exaggeration. The case does not rest on the evidence of Munshi Ram alone and the corroborative circumstances to which we have referred to above lend enough assurance to the implication of the appellant."

**20.** It is no doubt true that much evidentiary value cannot be attached to the identification of the accused in court where identifying witness is a total stranger who had just a fleeting glimpse of the person identified or who had no particular reason to remember the person concerned, if the identification is made for the first time in court.

**21.** In *Ram Nath Mahto* v. *State of Bihar*[20] this Court upheld the conviction of the appellant even when the witness while deposing in court did not identify the accused out of fear, though he had identified him in the test identification parade. This Court noticed the observations of the trial Judge who had recorded his remarks about the demeanour that the witness perhaps was afraid of the accused as he was trembling at the stare of Ram Nath — the accused. This Court also relied upon the evidence of the Magistrate, PW 7 who had conducted the test identification parade in which the witness had identified the appellant. This Court found, that in the circumstances if the courts below had convicted the appellant, there was no reason to interfere.

**22.** In *Suresh Chandra Bahri* v. *State of Bihar*[21] this Court held that it is well settled that substantive evidence of the witness is his evidence in the court but when the accused person is not previously known to the witness concerned then identification of the accused by the witness soon after his arrest is of great importance because it furnishes an assurance that the investigation is proceeding on the right lines in addition to furnishing corroboration of the evidence to be given by the witness later in court at the trial. From this point of view it is a matter of great importance, both for the investigating agency and for the accused and a fortiori for the proper administration of justice that such identification is held without avoidable and unreasonable delay after the arrest of the accused. It is in adopting this course alone that justice and fair play can be assured both to the accused as well as to the prosecution. Thereafter this Court observed: (SCC p. 126, para 78)

> "But the position may be different when the accused or a culprit who stands trial had been seen not once but for quite a number of times at different points of time and places which fact may do away with the necessity of TI parade."

20 (1996) 8 SCC 630 : 1996 SCC (Cri) 726
21 1995 Supp (1) SCC 80 : 1995 SCC (Cri) 60

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**23.** In *State of U.P.* v. *Boota Singh*[22] this Court observed that the evidence of identification becomes stronger if the witness has an opportunity of seeing the accused not for a few minutes but for some length of time, in broad daylight, when he would be able to note the features of the accused more carefully than on seeing the accused in a dark night for a few minutes.

**24.** In *Ramanbhai Naranbhai Patel* v. *State of Gujarat*[23] after considering the earlier decisions this Court observed: (SCC p. 369, para 20)

> "*20*. It becomes at once clear that the aforesaid observations were made in the light of the peculiar facts and circumstances wherein the police is said to have given the names of the accused to the witnesses. Under these circumstances, identification of such a named accused only in the Court when the accused was not known earlier to the witness had to be treated as valueless. The said decision, in turn, relied upon an earlier decision of this Court in the case of *State (Delhi Admn.)* v. *V.C. Shukla*[24] wherein also Fazal Ali, J., speaking for a three-Judge Bench made similar observations in this regard. In that case the evidence of the witness in the Court and his identifying the accused only in the Court without previous identification parade was found to be a valueless exercise. The observations made therein were confined to the nature of the evidence deposed to by the said eyewitnesses. It, therefore, cannot be held, as tried to be submitted by learned counsel for the appellants, that in the absence of a test identification parade, the evidence of an eyewitness identifying the accused would become inadmissible or totally useless; whether the evidence deserves any credence or not would always depend on the facts and circumstances of each case. It is, of course, true as submitted by learned counsel for the appellants that the later decisions of this Court in the case of *Rajesh Govind Jagesha* v. *State of Maharashtra*[25] and *State of H.P.* v. *Lekh Raj*[26] had not considered the aforesaid three-Judge Bench decisions of this Court. However, in our view, the ratio of the aforesaid later decisions of this Court cannot be said to be running counter to what is decided by the earlier three-Judge Bench judgments on the facts and circumstances examined by the Court while rendering these decisions. But even assuming as submitted by learned counsel for the appellants that the evidence of these two injured witnesses i.e. Bhogilal Ranchhodbhai and Karsanbhai Vallabhbhai identifying the accused in the Court may be treated to be of no assistance to the prosecution, the fact remains that these eyewitnesses were seriously injured and they could have easily seen the faces of the persons assaulting them and their appearance and identity would well remain imprinted in their minds especially when they were assaulted in broad

22 (1979) 1 SCC 31 : 1979 SCC (Cri) 115
23 (2000) 1 SCC 358 : 2000 SCC (Cri) 113
24 (1980) 2 SCC 665 : 1980 SCC (Cri) 561 : AIR 1980 SC 1382
25 (1999) 8 SCC 428 : 1999 SCC (Cri) 1452 : AIR 2000 SC 160
26 (2000) 1 SCC 247 : 2000 SCC (Cri) 147 : AIR 1999 SC 3916

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daylight. They could not be said to be interested in roping in innocent persons by shielding the real accused who had assaulted them."

**25.** These aspects were recently highlighted in *Malkhansingh* v. *State of M.P.*[27]

**26.** Test identification parade would be of no consequence in view of Jawahar's (PW 14) evidence that he did not know the physical description of the accused-appellants as he had not seen them on the date of occurrence. What remains is the evidence of Rajkumar (PW 12).

**27.** It was contended that the police officers had assaulted the witness (PW 12) for a pretty long time and physical appearance and special features had been imprinted in the mind of the witness and merely because no test identification parade was held, that is of no consequence. This plea has to be examined in the light of evidence of Rajkumar (PW 12). His evidence is full of unexplained contradictions. At one place he says he was arrested on 20-6-1984, at another place he says he was arrested on 23-6-1984. He claimed that from 20-6-1984 till 22-6-1984 he was in police custody. In cross-examination it was accepted that it was not so because he was taken to U.P. on 21-6-1984 and 22-6-1984. In another vital improvement in his statement, he claimed that he knew the names of all the accused persons by 20-6-1984 itself. Significantly, the names of the accused persons are not stated by him when he was examined by the police. No explanation has been offered as to why he did not tell the names. This witness claimed that he had suffered several injuries. He admitted that he had not made any grievance to the Magistrate before whom he was produced after his arrest. He also accepted that the alleged injuries were not bleeding. But his statement was that the blood on the floor was cleaned by the accused persons. It is further stated that the police took his signatures when his statement was recorded for the first time. Ext. D-3 was recorded on 26-6-1984 by which time he claimed to have known the names of all the accused persons. Ext. D-3 did not contain any signature. Therefore, the evidence of PW 12 and PW 14 are not sufficient to fasten guilt on the accused persons. But one significant aspect cannot be lost sight of. That is the role of accused G.S. Chaudhary. His definite plea was that the deceased was lying injured near the *nala* and information to that effect was received at the police station. But his statement before Dr. K.N. Agarwalla (PW 11) was entirely different. The effect of a false stand being taken in case of custodial death was considered by this Court in *Sahadevan* v. *State*[28].

**28.** The plea that the deceased had come to the police station in a severe condition and after telling his name had collapsed gets falsified by the categorical statement made by the accused in his statement under Section 313 of the Code to the effect that information was received as to where the deceased was lying unconscious in an injured state. In this view of the matter,

27 (2003) 5 SCC 746 : 2003 SCC (Cri) 1247
28 (2003) 1 SCC 534 : AIR 2003 SC 215

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the case being one of custodial torture, accusations have been established so far as accused-appellant Gulab Singh alias Gulab Singh Chaudhary is concerned.

**29.** The residual question is what is the offence committed by him. The evidence of Dr. D.K. Satpathy (PW 16) is very relevant to decide the question. He found that the injuries were confined to the skin and upper level of the body. Grievous injuries were not found on vital parts of the body like head, liver, spleen, heart, lungs, etc. The duration of the injuries were widely variant. The right lung of the deceased was TB-affected. The combined effect of alcohol and the injuries shortened the period of death and resulted in a quicker death. That being so, the conviction in terms of Section 304 Part II IPC cannot be faulted. His appeal fails and is dismissed. He shall surrender to custody to serve remainder of his sentence. So far as other accused-appellants Bahadur Singh, Pooran Singh and Dhanraj Dubey are concerned, the prosecution has not been able to bring home the accusations. Therefore, their appeals deserve to be allowed which we direct. Their bail bonds are discharged.

**30.** The appeal is accordingly disposed of.

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**(2005) 9 Supreme Court Cases 648**

(*Record of Proceedings*)

(BEFORE Y.K. SABHARWAL AND H.K. SEMA, JJ.)

PRABHAS CHANDRA JANA AND OTHERS . . Appellants;

*Versus*

UNION OF INDIA AND OTHERS . . Respondents.

IAs Nos. 175-88 in CMP No. 437 of 1988 and CMP No. 25269 in Civil Appeal No. 1749 of 1987 and IAs Nos. 1-174, decided on February 10, 2003

**Human and Civil Rights — Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995 — Ss. 25 and 2(n) — Leprosy persons were not being taken for bacteriological investigation in terms of OM of Ministry of Health — Two patients meeting their unnatural death for want of bacteriological investigation — Averments made in petition in respect of — No mention in application as to when did it happen and whether the State Governments concerned were approached or not — Supreme Court directing the persons concerned to approach the State Government, in particular, the Department of Health Services, Leprosy Cell, State of Orissa and State of West Bengal, depending upon where the applicants were — Authorities to forthwith look into the grievances of those who approach them and get the necessary investigation conducted and follow-up action, if necessary (Para 2)**

W-M/28452/S

ORDER

**1.** On 27-1-2003 it was pointed out that leprosy persons are not being taken for bacteriological investigation at Balasore district in terms of OM dated 25-6-1980, Ministry of Health. Now the learned Additional