

Gauri Shanker Sharma

Vs

State of U. P.

Criminal Appeal Nos. 111 and 477 of 1979

(A.M. Ahmadi, Smt. M.S. Fathima Beevi JJ)

12.01.1990

JUDGMENT

AHMADI, J. –

1. In Criminal Case No. 3 of 1975, three persons were put up for trial before the learned Special Judge, Sultanpur (U. P.). The case arose out of the death of one Ram Dhiraj Tiwari in police custody. Accused 1, Rafiuddin Khan (respondent in Criminal Appeal No. 477 of District Sultanpur at all material times during the commission of the crime. Accused 2, Shamsher Ali (since acquitted) was posted at the said police station as Beat Constable No. 3. His companion accused 3 (appellant in Criminal Appeal No. 111 of 1979) was the Head Moharrir of the said police station. Crime No. 71 of 1971 under Section 395, IPC was registered at the said police station on May 25, 1971 concerning a dacoity committed at village Khara within the jurisdiction of the said police station. In that connection one Jagdamba was arrested on September 20, 1971. During interrogation by A-1 the said suspect is alleged to have made a confessional statement involving Ram Dhiraj Tiwari. On the basis of this information A-1 directed A-2 and Ram Jas (PW 6) and Harakh, both police chowkidars, to apprehend Ram Dhiraj and produce him before him. Pursuant thereto A-2 and his companions apprehended Ram Dhiraj from his residence in village Khajapur on October 19, 1971 at about 11.00 a. m. in the presence of his mother Kamaraji (PW 7), sister's husband Ram Niranjan Misra (PW 8) and labourer Jiyalal (PW 9). After his arrest Ram Dhiraj was brought to police station Kure Bhar at about 4.00 p. m. on the same day and handed over to A-1. PW 8 and Ram Baran Dubey (PW 10) are stated to have followed him to the police station. It is alleged that soon after Ram Dhiraj was brought to the police station and placed in charge of A-1, he was given a severe beating with lathi and dandas by A-1 and two constables, whose identity is not established, with a view to extracting a confession statement from him. When PW 8 and PW 10 tried to intervene, A-1 is alleged to have repeated his demand of Rs. 2000 from them to refrain from ill-treating Ram Dhiraj. Thereupon PW 8 went to village Pure Neelkanth three miles away to fetch Bindeshwari Prasad Shukla (PW 5) the husband of Ram Dhiraj's elder sister. On the arrival of PW 5 at the police station, A-1 is alleged to have repeated his demand of Rs. 2000. Since the bribe was not paid A-1 and his two companions renewed the torture with vengeance which lasted till about 9 or 10 p. m. As a result of the merciless beating Ram Dhiraj was badly injured. It is alleged that the fact that he was apprehended from his village and was brought to the police station on October 19, 1971 was not entered in the general diary register but a false entry was posted in the said general diary register regarding his arrest on the next day i. e. October 20, 1971, at about 6.00 a. m. from near a culvert in village Hanna-Harora by A-2 and his two chowkidars. The defence version was that as he tried to resist arrest A-2 and his two companions beat him up as a result of which he sustained the injuries in question. Another entry was made in the same general diary on the same day purporting to transfer Ram Dhiraj to police station Sadar for admission to the District Jail. General diary entry No. 14 was made to show that

Ram Dhiraj was sent from Sardar police station at about 12.15 p. m. for admission to the District Jail as he had sustained injuries. It, however, transpired later that Ram Dhiraj died at about 4.00 p. m. on the same day while he was being taken to the residence of one of the Magistrates at Sultanpur for remand. On his demise his dead body was taken to Kotwali Sultanpur where an entry No. 30 regarding his death was made in the general diary at about 4.20 p. m. On October 21, 1971 an inquest was made on the dead body and thereafter the dead body was sent for post-mortem examination. PW 1, Dr. Mitra performed the autopsy and found as many as 28 ante-mortem injuries on the body of the deceased.

2. The prosecution case against A-1 was that he was responsible for having beaten the suspect Ram Dhiraj in the company of two others which resulted in as many as 28 injuries to which he ultimately succumbed. It was also alleged that he had demanded a bribe of Rs. 2000 to desist from meting out third degree punishment to the suspect. He was, therefore, charged under Sections 304, 330, 201, 218/34, IPC, while his companion A-3 was charged under Sections 201 and 218, IPC. All the three accused persons denied the charges levelled against them and claimed to be tried. They however did not deny the fact that Ram Dhiraj died in police custody. The case set up by A-1 was that he was away from the police station between 5.00 p. m. and 7.30 p. m., on October 19, 1971 and, therefore, the allegation that he had tortured Ram Dhiraj is fabricated and wholly false. A-2 admitted the fact that Ram Dhiraj was arrested outside his village house at Khajapur on October 19, 1971 and was brought to the police station Kure Bihar on the same day at about 4.00 p. m. He, however, denied having caused any injury to him during arrest. A-3 denied the prosecution allegation that he had deliberately and wilfully posted false entries in General Diary to help A-1.

3. The learned Special Judge before whom the accused were tried came to the conclusion that the deceased was arrested from his residence on October 19, 1971 as alleged by the prosecution and not from near the culvert of village Hanna-Harora on October 20, 1971; that no beating was given to him the time of his arrest and he was beaten in police station Kure Bhar where he was taken on October 19, 1971 itself after his arrest by A-1 and two other constables who could not be identified. He also found that the fact he was brought to the police station on October 19, 1971 was deliberately suppressed and A-3 omitted to perform his duty by not posting an entry in that behalf in the General Diary and instead posting a false entry No. (Ex. Ka 13) on the next day, October 20, 1971. He also found that a false entry was posted in the diary to show that he was sent to Sardar police station where he died before admission to jail. Lastly, he found that A-2 had counter signed the general diary entry No. 10 without knowing the contents thereof. On facts found proved, the trial court convicted A-1 under Section 304 (Part II) and sentenced him to suffer rigorous imprisonment for 2 years on each count. The substantive sentences were ordered to run 661 of 1975 in High Court. The State did not question the acquittal of A-2. The High Court accepted the defence version that A-1 was not at the police station on October 19, 1971 till 7.30 p. m. as proved through DW 1 and DW 2 and, therefore, the prosecution witnesses PW 5, unacceptable. It also found that the three prosecution witnesses PW 5, PW 8 and PW 10 were not eye-witnesses to the incident and hence their story about beating in the police station and the demand of bribe cannot be accepted. It lastly held that A-1 could not be held responsible for the omission to post an entry in the general diary about the arrival of the deceased to the police station at 4.00 p. m. as he himself had returned to the police station at 7.30 p. m. On this line reasoning the High Court allowed A-1's appeal and set aside the conviction on all counts. The High Court, however, maintained the conviction of A-3 but reduced the sentence to rigorous imprisonment for 6 months.

4. Criminal Appeal No. 111 of 1979 is preferred by A-3 questioning his conviction while Criminal Appeal No. 477 of 1979 is preferred by the State questioning the acquittal of A-1. As both these

appeals arise out of the same judgment, we think it would be convenient to dispose them of by this common judgment.

5. The fact that Ram Dhiraj died of injuries received by him after his arrest and while he was in police custody is not seriously disputed. The prosecution version is that he was beaten in the police station on October 19, 1971 by A-1 and his two companions after he was arrested from his residence and brought to the police station. The defence version on the other hand is that the deceased was arrested on October 20, 1971 by A-2 and his two companions from near a culvert in village Hanna-Harora and he was beaten up by them as he resisted arrest. Of course A-2 has denied this in his statement recorded under Section 313 of the Criminal Procedure Code. Be that as it may, both the prosecution as well as the defence version suggest that the deceased had received a beating at the hands of the police after his arrest. The evidence of PW 1, Dr. Misra shows that the police after his arrest. The evidence of PW 1, Dr. Misra shows that the deceased had received as many as 28 injuries by some blunt weapon or weapons which resulted in his death due to shock and haemorrhage on the afternoon of October 20, 1971. The trial court has come to a firm conclusion that these injuries were caused to the deceased in the police station after his arrest. The High Court also opines that the "number of injuries speaks that most probably he had not received those injuries only during arrest and that he was subjected to severe assault some time after his arrest." Even this halting finding recorded by the High Court was seriously beaten while in police custody. The fact that Ram Dhiraj died a homicidal death is, therefore, rightly not contested before us.

6. Having regard to the rival versions, the crucial question which must be answered is regarding the date, time and place of arrest. It is not in dispute that an offence of dacoity at village Khera was registered at Police Station Kure Bhar on May 25, 1971. One Jagdamba was arrested in that connection on September 20, 1971. A-1 was investigating that crime. In the course of interrogation by A-1, Jagdamba is stated to have revealed the name of Ram Dhiraj as his accomplice. The evidence 6, Chowkidar Ram Jas is that A-1 had directed A-2 to arrest and produce him before him. A-2, PW 6 and Chowkidar Harakh then went to fetch Ram Dhiraj. In the absence of any specific information, the first place to visit to locate the wanted man would be his residence. PW 6 also deposed that the police party went in search of the deceased to his village and apprehended him from near his residence. However, the evidence of PW 6 was challenged on the ground that he had in his statement before M. M. Swarup, Executive Magistrate, affirmed the defence of A-1 that the deceased was apprehended from near a culvert in village Hanna-Harora on October 20, 1971. The learned trial Judge negated this contention as the certified copy of the statement said to have been made to M. M. Swarup in an enquiry under Section 176 of the Code of Criminal Procedure was inadmissible in evidence unless the contradiction and the maker has had an opportunity to admit or deny it. In our view it has to be proved like any other previous statement. The trial Judge also opined that even if the statement was admissible under Section 176 of the Code would not be admissible in evidence unless the contradiction is proved by putting it to the witness in cross-examination and the maker has had an opportunity to admit or deny it. In our view it has to be proved like any other previous statement. The trial Judge also opined that even if the statement was admissible under Section 80, Evidence Act that statement per se cannot efface his substantive evidence in court for the simple reason that at the time of recording of that statement he was under the direct influence of A-1 his superior, and was, therefore, not a free agent. The learned trial Judge was, therefore, of the opinion that the contradiction even if proved cannot militate against the truth of his statement. The High Court has endorsed the finding of the trial court that as PW 6 was a chowkidar under the administrative control of A-1 he could be prevailed upon to support the defence version. The High Court finally stated that even if absolute reliance is not placed on the evidence of PW 6 in this behalf, his evidence is duly corroborated by the evidence of other

witnesses, viz. PW 7 Karamraji, PW 8 Ram Niranjana Misra and PW 9 Jai Lal, the mother, brother-in-law and labourer of the deceased. These three witnesses have also deposed that the deceased was arrested from his village Khajapur at about 11.00 a. m. on October 19, 1971. The High Court has rightly observed that barring minor discrepancies in their evidence as to dress of members of the police party, presence of others, etc. there is nothing brought out in their cross-examination to discredit their evidence in this behalf. The prosecution also examined PW 3 Baij Nath and PW 4 Mewa Lal, who have their shops near the culvert of village Hanna-Harora to negate the defence version regarding the arrest of the deceased from there. Therefore, both the courts have recorded a concurrent finding of fact that the defence version regarding the arrest of the deceased from there. Therefore, both the courts have recorded a concurrent finding of fact that the deceased was arrested on October 19, 1971 at about 11.00 a. m. from his village Khajapur. That means that the entry in the general diary that the deceased was arrested on October 20, 1971 and was brought to the police station later can be brushed aside as false. The need to make a false entry speaks for itself.

7. The next question is where, when and by whom were the injuries inflicted on the deceased. The High Court observes that the medical evidence on record shows that the injuries found on the person of the deceased were caused on the evening of October 19, 1971. In fact according to the High Court the medical evidence lends credence to the prosecution case that the deceased was arrested on October 19, 1971. The High Court holds as under "After considering the injuries of the deceased I have not the least doubt in my mind that those injuries were not caused to him during arrest, and that he was beaten sometime after his arrest and before he was sent to jail from police station Kure Bhar."

There is, therefore, no doubt that the High Court reached a firm finding that the arrest was made on October 19, 1971 at about 11.00 a. m. from village Khajapur and the injuries noticed by the medical officer on the person of the deceased at the time of the autopsy were inflicted after his arrest and not during the course of arrest.

8. Now it is not in dispute that A-1 was serving as the Station Officer of police station Kure Bhar on October 19/20, 1971. He was in charge of the investigation of the dacoity case in which Jagdamba was arrested. It was he who had interrogated Jagdamba and had secured a confessional statement from him. The information divulged by Jagdamba necessitated the arrest of the deceased. It is, therefore, reasonable to infer that A-1 would interrogate the deceased also. Since the arrest was made from village Khajapur, the presence of PW 7, PW 8 and PW 9 at the time of the arrest cannot be doubted. PW 8 and PW 10 deposed that they had followed the deceased to the police station after his arrest. PW 8, the brother-in-law of the deceased and PW 10 have deposed that after the deceased was taken to the police station he was subjected to third degree treatment by A-1 and two policemen whom they have not identified. Both have stated on oath that A-1 and his two unidentified companions beat the deceased with lathi and danda to extract a confession from him and when they entreated A-1 not to beat the deceased, he demanded Rs. 2000 from them. PW 8 then went to village Desarwa of Pure Nilkanth to fetch PW 5, the husband of the elder sister of the deceased. On the arrival of PW 5 at the police station he too requested A-1 not to beat the deceased but A-1 reiterated his demand for Rs. 2000. When the witness expressed his inability to meet the demand, A-1 resumed the ill-treatment to the deceased. It is true that PW 5 and PW 8 were the brothers-in-law of the deceased and PW 10 his neighbor but that by itself, without anything more, was not sufficient to doubt their testimony which receives corroboration from medical evidence. We are, therefore, of the opinion that unless there are sound grounds to reject their evidence it would not be proper to brush aside their evidence on the specious plea that they are interested witnesses.

9. Even though the High Court came to the conclusion that the deceased was beaten after his arrest, the High Court refused to place reliance on the direct testimony of these three witnesses insofar as the involvement of A-1 is concerned. The first reason assigned is that since the village of PW 5 is 11 or 12 miles from Khajapur which in turn is about 10 miles from Kure Bhar, it is not possible that he could have reached the police station by about 4.30 p. m. In the first place, the exact time of arrival of deceased to the police station by about the time factor they merely mentioned the approximate time and not the exact time of PW 8's departure and return to the police station with PW 5. We are, therefore, of the opinion that the evidence of the prosecution witnesses cannot be thrown overboard on such an infirm ground.

10. The High Court has also cast doubts on the evidence of PW 5 on the ground that he told a deliberate lie that there was no sentry at the police station to make his entry in the police station probable. His presence at the police station is established by the telegram that he sent to the superior police station complaining about the beating given to the deceased. We therefore, do not think that the High Court was justified in refusing to act on his evidence on this ground.

11. In the application Ex. Ka 3 the name of A-2 was mentioned as one of the constables who was assisting A-1 in beating the deceased to extract a confession from him. However, in the substantive evidence the witnesses did not name A-2 but merely stated that A-1 and two other constables had beaten the deceased. The High Court, therefore, inferred that he had wrongly named A-2 as one of the assailants in Ex. Ka 3 and was, therefore, not a reliable witness. But both in the telegram, and application Ex. Ka 3 the name of A-1 is mentioned. The omission to name A-2 as one of the constables involved in the beating cannot absolve A-1. We are, therefore, inclined to think that the High Court was not right in refusing to act on the evidence of the witness on such consideration.

12. The High Court rejects the evidence of the three prosecution witnesses on the ground that the telegram was sent by PW 5 as late as October 23, 1971. In our opinion the High Court failed to appreciate that 19th and 20th were lost in trying to secure the release of the deceased from A-1. After the suspect died on the 20th the next day i. e., 21st was lost in post-mortem examination and securing the dead body of the deceased for funeral. His evidence discloses that the dead body was not delivered to him till 4.30 p. m. On that day he went to village Khajapur and broke the news of death to PW 7 and other family members. He has deposed that he sent the telegram only after he received threats from A-1. The trial court has discussed this aspect of the case in detail and has rightly pointed out that it was a difficult decision to take for PW 5 as he may not like to incur he wrath of A-1. But when A-1 threatened him, he was left with no choice but to inform his superiors. The High Court, with respect, has failed to properly appreciate and assess the situation. After all everyone thinks twice before deciding to make so serious a complaint against a police officer. We do not think there was so serious a delay as to throw out the evidence of the three witnesses on that ground.

13. PW 10's evidence has been rejected on a very flimsy ground. He is the neighbour of the deceased. He was at the police station up to 7.00 or 8.00 p. m. and claims to have seen A-1 beating the deceased. His evidence is rejected on the ground that he was interested in getting the policemen punished because the deceased was beaten to death while in police custody. It is further stated that all others associated with him are keen to see that somebody gets punished for the assault on the deceased. We find it difficult to comprehend why this injuries caused to the deceased. The conduct of this witness is branded as unnatural because he did not go to inform PW 7 and others about the death of the suspect. Since PW 5 and PW 8 must have informed them. We are, therefore, of the view that the High Court had rejected the evidence of PW 10 on thoroughly untenable grounds.

14. That brings us to the question whether the alibi set up by A-1 can come to his rescue. In this connection reliance is placed on the evidence of DW 1, Jaswant Singh, Station Officer, Machlishahr Police Station. He claims to have come to Kure Bhar on October 19, 1971 for investigation of an offence under Section 363/366 IPC of his police station from 5.00 p. m. to 9.30 p. m. According to him A-1 was not at the police station till about 7.30 p. m. Reliance is placed on the general diary entry dated October 19, 1971 to show that A-1 had returned to the police station at about 10.30 a. m. for Tikar and had returned to the police station at 7.30 p. m. This entry is proved through DW 2. Now according to DW 1 even though he had come to Kure Bhar for investigation, he himself remained at the police station throughout and sent his men with ASI (II) of Kure Bhar to Dilwar-Ka-Purwa for investigation. He wants us to believe that he came from his police station to investigate a crime but kept sitting at Kure Bhar police station throughout from 5.00 p. m. to 9.30 p. m. Is this natural conduct? The obvious reason for so stating is to discredit PW 5, PW 8 and PW 10 who have in unmistakable terms stated that A-1 was at the police station and had beaten the deceased. DW 1 stands belied by the general diary entry made at his police station on October 20, 1971 to the effect that on reaching Kure Bhar he took ASI (II) of the police station and went to village Dilwar-Ka-Purwa for investigation and returned to his police station at 4.00 p. m. According to the said entry from Dilwar-Ka-Purwa he went to Sultanpur where he passed the night, left for Ramnagar next morning and returned to his police station via Durgaganj. The learned trial Judge dealt with this part of the defence evidence thus :

"It is also improbable of belief that once station officer Jaswant Singh had taken care to come to Kure Bhar in order to make the investigation of the crime of his police station, he had leisurely lingered on at PS Kure Bhar and not personally proceeded to make the investigation of the said case."

The learned trial Judge observes that he appears to have come forward to help a member of his own fraternity. The learned trial Judge, therefore, came to the conclusion :

"If general diary entries Nos. 15 and 21 may have been falsely incorporated, where is the guarantee that the general diary entry No. 17 which falls in between these, may not have been falsely incorporated."

The learned trial Judge also felt that it was not possible to believe that an important police officer like A-1 would spend the whole day from 10.30 a. m. to 7.30 p. m. inquiring about an application at village Tiker.

15. The learned Judge in the High Court considers the approach of the learned trial Judge unacceptable because :

"Sub-Inspector Jaswant Singh has stated that he himself had stayed at Police Station Kure Bhar and had sent other members of his party and an ASI of Police Station Kure Bhar to Dilwar-Ka-Purwa. The mere fact that SI Jaswant Singh happens to be a Sub-Inspector of Police is no ground to reject his testimony. After all there should be some reason for a police officer posted at police station Machlishahr at Jaunpur to falsely depose for defending Rafiuddin Khan appellant. If SI Jaswant Singh's evidence is disbelieved in the present case, he himself incurs the risk of losing his job."

This line of reasoning does not commend to us. We fail to understand how the learned Judge could

persuade himself to accept the evidence of DW 1 on the specious plea that if he did not tell the truth he ran the risk of losing his job. The learned trial Judge gave sound reasons for disbelieving the evidence of DW 1 that he did not stir out of Kure Bhar police station from 5.00 p. m. to 9.30 p. m. The High Court failed to appreciate that on realising that the condition of the deceased had deteriorated, a false entry was made by A-3 at the behest of A-1 to show that (i) the deceased was not arrested on October 19, 1971 nor was he brought to the police station Kure Bhar by about 4.00 p. m., and (ii) that he was actually arrested by A-2 from near the culvert of village Hanna-Harora on October 20, 1971 and was given a beating before actual arrest, a fact which is denied by A-2 in his statement under Section 313 of the Code. Thus the foundation for absolving himself from the responsibility of having ill-treated the deceased was laid. The trial court rightly holds that there is no guarantee that entry No. 17 is accurate when entries Nos. 15 and 21 are found to be false. The entry in the case diary regarding Crime No. 28 of Machlishahr recorded by ASI Bankey Bihari who had accompanied DW 1 clearly mentions that when they reached Kure Bhar they met the Thana Adhiyakshakh (i. e. A-1) at about 5.00 p. m. which negatives the theory that A-1 had left the police station at 10.30 a. m. and had not returned till 7.30 p. m. of October 19, 1971. Without coming to grips with the circumstances pointed out by the trial court for disbelieving DW 1, the High Court surprisingly accepted his evidence as gospel truth only because he ran the risk of losing his job. The High Court should have realised that cases are not unknown where police officers have given inaccurate accounts to secure a conviction or to help out a colleague from a tight situation of his creation. The High Court should also have realised that cases are not unknown where police officers have given inaccurate accounts to secure a conviction or to help out a colleague from a tight situation of his creation. The High Court should also have realised that it is generally difficult in cases of deaths in police custody to secure evidence against the policemen responsible for resorting to third degree methods since they are in charge of police station records which they do not find difficult to manipulate as in this case. It is only in a few cases, such as the present one, that some direct evidence is available. In our view the reasons assigned by the High Court are too weak to stand judicial scrutiny.

16. We are aware that so far as A-1 is concerned, we are called upon to interfere in an acquittal appeal. Since it is said that an acquittal reinforces the presumption of innocence we have carefully considered the reasons given by the High Court for setting aside the conviction of A-1. We are satisfied beyond any manner of doubt that the High Court completely misdirected itself. We have dealt with the facts at some length to justify our interference under Article 136 of the Constitution. Had we not been fully satisfied that gross injustice was done because the High Court misdirected itself we would not have interfered in exercise of our powers under Article 136 of the Constitution.

17. For the above reasons we dismiss Appeal No. 111 of 1979 preferred by A-3 as we are satisfied that his conviction is correctly recorded. We allow the State's Appeal No. 477 of 1979 and restore the conviction of A-1 recorded by the trial court by setting aside his acquittal by the High Court. On the question of sentence a fervent appeal was made by his counsel that having regard to the passage of time and the changed circumstances A-1 should not be sent to jail and the sentence of fine should suffice. We are unable to accede to this request. The offence is of a serious nature aggravated by the fact that it was committed by a person who is supposed to protect the citizens and not misuse his uniform and authority to brutally assault them while in his custody. Death in police custody must be seriously viewed for otherwise we will help take a stride in the direction of police raj. It must be curbed with a heavy hand. The punishment should be such as would deter others from indulging in such behaviour. There can be no room for leniency. We, therefore, do not think we would be justified in reducing the punishment imposed by the trial court.

18. A-1 is on bail. Since the trial court's order of his conviction and sentence is restored he will surrender to his bail within a week's time to serve his sentence.

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