

Sham Kant

Vs

State of Maharashtra

Criminal Appeal No.234 of 1987

(S. R. Pandian, K. Jayachandra Reddy JJ)

15.05.1992

JUDGEMENT

S. RATNAVEL PANDIAN, J.:-

1. The appellant, Sham Kant who was aged about 24 years at the relevant period of the occurrence in question i.e. in June, 1980 was acting as Sub-Inspector in Ramtek Police Station in the State of Maharashtra. The facts giving rise to this appeal briefly stated are as follows:
2. For the sake of convenience, we address this appellant as accused No. 1 as arrayed before the trial Court along with six others who were accused Nos. 2 to 7.
3. On the intervening night of 23rd/ 24th June, 1980, there was a house-breaking in the Shantinath Jain Temple, Ramtek. A brass idol and some silver ornaments called Chhatra worth about Rs. 4,500/- were stolen from the temple. The priest of the temple, Bhorumal lodged a complaint in respect of this incident on 24th June, 1980 at Ramtek Police Station. On the basis of this complaint, a case was registered in Crime No. 96/ 1980 under Ss. 452 and 380, I.P.C. As the regular Sub-Inspector of Police, Mr. Bukhari attached to that Police Station was on leave, the accused No. 1 was acting as the Station House Officer. He entrusted the investigation of this case to accused No. 2, a Head Constable. Accused Nos. 3 and 4 were Head Constable of the Station and accused Nos. 5 to 7 were the constables. They were all assisting accused No. 2 in the investigation which was under the supervision and guidance of accused No. 1.
4. One Ratiram Raut (who is since dead) and P.W. 13 (Motiram Bagde) were taken into custody as suspects in connection with theft of the brass idol evidently for interrogation on the night of 25th June. Both of them were taken to the Shantinath Jain Temple. Some more suspects namely one Ramu, Ramesh and Habib were also taken into custody by the police. According to the prosecution, they were all beaten by the police during the interrogation by means of leather belt, tyre belt called Gangaram and canes besides being assaulted with fists and kicks in order to extract a confession of their guilt and to recover the stolen property. In spite of the inhuman treatment meted out by the police, no information could be gathered from any one of them during that night. On the next day morning, the suspects Ratiram and Motiram were taken to the police station and were shown as if they have been apprehended only at 4.00 p.m. on 26th June, 1980. They in fact were taken into custody even on the night of 25th June. At the police station also, they were tortured but there was no fruitful result. On the following day i.e. 27-6-80, they were produced before the Judicial Magistrate, First Class, Ramtek who on a request by the police granted police custody of Ratiram and Motiram till 3-7-80. During the period of police custody, they were intermittently interrogated, taken to the temple and tortured. On 29-6-80, one Hazari and Ismail (P.W. 19) happened to be at the

Ramtek Police Station. Ratiram and Motiram showed their injuries on their person and complained about police torture. On that night, P.W. 19 telephonically contacted the superior police officers including the Superintendent of Police, Nagpur and requested the S. P. to instruct the first accused not to beat Ratiram and Motiram. The S.P. assured to look into the matter personally. It is said that as the first accused was not available, the constable on duty was instructed to inform the first accused not to torture the undertrial prisoners. On the evening of 30-6-80, Ratiram and Motiram were produced before the Medical officer, Primary Health Centre, Parseoni to have them medically examined as the medical officer, Ramtek was not available. By then, the regular Station House Officer, Mr. Bukhari returned from leave. Mr. Bukhari and accused No. 1 met the medical officer, P.W. 7. It is in the evidence of P. W. 7 that he on examination found as many as 8 superficial abrasions with scab formation, one infected superficial ulcer on front of left knee joint and one ulcer on each of the two buttocks on the person of Ratiram. He also found infected intertrigo i.e. an erythematous skin eruption occurring on apposed skin surface, behind right ear. Thus there were in all 10 external visible injuries. According to P.W. 7, all the injuries were 6 to 7 days old. On examination of P.W. 13, P.W. 7 found about 5 minor abrasions of various dimension which injuries, according to him, were about 6 to 7 days old.

5. As the physical condition of Ratiram deteriorated on the night of 30th June, the accused apprehending imminent danger to the life of Ratiram, cutting short of their police custody, produced both the undertrial prisoners before the Judicial Magistrate, First Class, Ramtek on 1-7-80 who remanded them to judicial custody till 11-7-80. Both the undertrial prisoners were detained in Tahsil Jail where Ratiram and Motiram showed their injuries to P.W. 4 and told him about the torture meted out by them at the hands of the police. On the next day i.e. on 2nd July 1980, all of them were taken to the Central Jail, Nagpur. On the way at Ramtek Bus Stand they saw P.W. 19 and requested him to arrange for their bail. The medical officer attached to the Jail (P.W. 25) and the Jailer (P.W. 2) found injuries on the person of Ratiram and Motiram at the time of their admission in the prison and both the injured told the witnesses that they received these injuries at the hands of the police. P.W. 25 admitted Ratiram in the jail hospital and treated him for the injuries on the buttocks. On 2nd July, P.W. 20, an advocate moved bail for both the injured on the request of their relatives and on 3rd July, 1980 on hearing both sides, the Magistrate (P.W. 5) ordered both the undertrials to be released on bail. On 4th July when the relatives of Ratiram and some others inclusive of P.W. 19 went to Central Jail, Nagpur with the release warrants, P.W. 25, the medical officer noting down the fast deterioration of the physical condition of Ratiram advised the relatives of Ratiram to take him to the Medical College Hospital or Mayo Hospital, Nagpur for immediate treatment. The relatives of the undertrial prisoners took both of them to Ramtek at their request because both of them wanted to make a complaint before the Magistrate about the police torture. Motiram got a complaint (Ext. 34) written by one petition writer which was signed by Motiram and affixed with the thumb impression of Ratiram. Thereafter, both of them were taken before the Magistrate but Ratiram was unable to move about and speak. The Judicial Magistrate, First Class recorded a verification statement from Motiram marked as Ext. 36. Finding the critical condition of both the injured, the Magistrate sent for the Station House Officer, Mr. Bukhari and directed him to take Ratiram to the hospital for examination and treatment. It is shocking to note that when Ratiram was brought out from the court hall, he collapsed and breathed his last.

6. The relatives and other people who accompanied Ratiram on being exacerbated and incensed, instead of taking the dead body to the hospital took it to the police station and expressed their resentment against the police torture and atrocities. Following, a huge mob assembled in front of the police station and started shouting slogans demanding immediate action against the first accused and the other policemen. In their frenzy, the mob pelted stones at the police station, set fire to the

vehicles parked there and ultimately set fire to the police station itself. Number of police officials were injured. Fearing further deterioration of the law and order, additional strength of force was requisitioned from Nagpur and Kanhan for quelling the riot and restoring the normalcy. In the meanwhile, as the situation went out of control, firing was also resorted to. After the mob had dispersed and the situation had eased to a certain extent, an inquest over the dead body was conducted by the Sub-Divisional Magistrate, PW 14 during the night hours and the dead body was sent to the Medical College Hospital, Nagpur for postmortem examination, PW29, the medical officer attached to that hospital conducted autopsy on the dead body of the deceased at about 4.00 p.m. on 5-7-80 on receipt of the requisition from the SDM and found as many as 15 abrasions of varying dimensions on different parts of the body. There were lacerated wounds of various dimensions and 5 marks of compression on the chest, abdomen and shoulders. Thus, there were in all 23 injuries. According to PW 29, all these injuries were 8 to 12 days old. He opined that Ratiram died due to the complications of the injuries. He sent his advanced postmortem examination report Ext. 130 on the same day and later on submitted the detailed report, Ext. 129. The viscera was examined. Ext. 156 is the report of Chemical Analyst, Nagpur as per which there was no recognisable poison in the viscera. PW 31 sent the issues for histopathological examination to rule out the possibility of natural death and gave her opinion that there was no disease in terms of myocardial infarct, congenital heart disease or diseases of liver, brain, tumour or signs of hypertension or atheroma. In short, according to PW 31, it was not a natural death.

7. On receipt of the final medical report, a case in Crime No. 103/80 was registered on 6-7-80 for the offence of murder punishable under Section 302, IPC but no person was named as the accused in that crime at that time. The investigation was taken up by the CID Inspector, PW 33 assisted by two Sub-Inspectors of Police, PWs 17 and 32. He stated that all the original records kept in the police station were reduced to ashes as the police station was set ablaze. The identification parades were held by the Executive Magistrate on 25th July and 4th August and thereafter all the accused were arrested between 5th and 12th August. The third identification parade was held on 25th August. After completing the investigation, the chargesheet was filed on 15th October 1980. A case was registered as Criminal Case No. 1010/ 1980.

8. On the basis of the complaint Ext. 34, the Magistrate on 11-7-80 registered a criminal case No. 689/80 against the first accused. An application dated 28-10-80 (Ext. 43) was filed by the complainant, Motiram in Criminal Case No. 689/80 requesting the Court to club criminal case No. 689 / 80 with the charge-sheeted case No. 1010/89 and dispose them together. Under the orders of the Magistrate, both the cases were directed to be tried together.

9. While it was so, regarding the incident of riot, arson etc. which followed Ratiram's death, a case in Crime No. 102/1980 was registered on 5-7-80 which led to the trial as against 66 accused persons (i.e. rioters) for several offences under Sections 147, 148, 307, 332 and 436, IPC etc. etc. This case relating to Crime No. 102/ 80 was tried in Sessions Case No. 18 / 81 simultaneously with Sessions Case No. 214/ 80 relating to Crime No. 103/ 80 (i.e. Criminal Case Nos. 1010/80 and 689/80). The judgments in both the cases were delivered on 24-4-81.

10. The defence of the accused in the present case is one of mere denial and false implication. The appellant herein has filed a written statement Ext. 169 in addition to his oral statement under Section 313, Cr.P.C. The appellant admits the registration of the case in Crime No.96/1980 and also the entrustment of the investigation to the second accused. He denies of having arrested Motiram and Ratiram between 25th and 26th June 1980. According to the first accused (the appellant herein), while he was patrolling the town area along with accused Nos. 4 to 6 on 26-6-1980 he on suspicion

stopped Ratiram and Motiram at about 3.00 p.m. on the road, interrogated them, recorded their statements, sent for the case diary, searched the suspect and found both of them having abrasions and other injuries on their person. The first accused would further state that both the suspects on inquiry told him that they received those injuries during a scuffle that ensued over the distribution of some stolen property and that he arrested both the suspect's after noting down the injuries and other facts in the arrest panchnama and sent them to the dispensary with one constable and thereafter handed over both the statements recorded by him from both the suspects to accused No. 2 and also their custody.

11. He admits of both the suspects having been in police station but would say that both of them were in the police lock-up up to 29th June and they were not taken anywhere much less to the temple and that none of the accused was ever ill-treated or beaten by any of them and that Mr. Bukhari joined duties on 30-6-80 and that since both the suspects complained of ill-health, they were sent with the police staff to Parseoni for medical examination as the local doctor was not available. Thereafter, both the suspects were remanded to judicial custody and that the first accused took investigation of this case on 2nd July as per the orders of Mr. Bukhari. In continuation, he states that both Ratiram and Motiram were treated by the jail doctor and that Ratiram's condition suddenly became serious on the 4th and the doctor of the jail advised Ratiram's relatives to take Ratiram to the Medical College Hospital or Mayo Hospital, Nagpur but those persons callously disregarding the medical advice rushed Ratiram to Ramtek. He has concluded his statement saying that Ratiram was previously convicted several times and that he was alcoholic addict and was suffering from several diseases. Because of the public agitation, the offence was registered against him and others just to satisfy the public sentiments and the CID officers have fabricated evidence against him. No defence witness was examined on the side of the accused.

12. The trial of all the accused was held for offences under Sections 304, Part 11 and 330, IPC. The trial Court posed several points for its consideration and for the reasons assigned in its judgment concluded as follows: -

"However, the evidence, direct and circumstantial, on record, considered dispassionately, is quite insufficient to prove the allegations against the accused that any of them assaulted or used force or caused hurt to Ratiram or Motiram much less for extorting any confession from him or Motirani or that they caused Ratiram's death. It is, therefore, redundant now to deal with identification parade evidence. Briefly, it may be said that it is unworthy of credit. The learned prosecutor also fairly does not dispute it."

13. Consequent upon the above conclusion he trial Court acquitted all the accused persons inclusive of this appellant of both the offences.

14. The State not being satisfied with the order of acquittal preferred an appeal against the udgment of the trial Court as against accused Nos. 1 to 7 which appeal was heard by the High Court of Bombay, Nagpur Bench in Criminal Appeal No. 93 of 1982.

15. The High Court after extracting some of the observations made by the learned Sessions Judge in his judgment, held that the entire purport and thrust of the discussion made by the trial Court were only in respect of the offence punishable under Section 304, Part 11, IPC but not with reference to the evidence as regards the charge under Section 330, IPC. Thereafter, it observed, "In fact, on the basis of the facts of this case, we are of the clear view that there is no question of either framing a

charge or giving a finding for an offence under Section 304, Part 11, IPC. The complaint made by the deceased Ratiram and Motiram was precisely for an offence falling under Section 330, IPC..... We are, therefore, clearly of the view that the acquittal of accused persons for the offence under Section 304-11, IPC need not be considered."

16. The High Court on the basis of the above observation has examined the case only as regards the charge under Section 330, IPC.

17. Mainly relying on the evidence of PW 13 (who was taken into custody along with Ratiram in connection with the idol theft case and who must have got the opportunity to witness the beating on Ratiram and also the opportunity to get the further information from Ratiram) and on the evidence of PWs 2, 4, 19 and 25 as corroborating evidence to that of PW 13, the High Court for the discussion made in its judgment concluded thus:

"In view of the aforesaid discussion, we are of the clear view that the prosecution evidence clearly points out the guilt of respondent No. 1 and therefore, we have no other option but to hold him guilty for the offence punishable under Section 330, IPC. In the result, the appeal of the State is allowed so far as the acquittal of respondent No. 1 is concerned and dismissed against respondents 2 to 7. The acquittal of respondent No. 1 is set aside and he is convicted for the offence punishable under Section 330, IPC., while the acquittal of respondents 2 to 7 is maintained."

18. Coming to the question of sentence, the High Court sentenced the appellant, Sham Kant (accused No. 1) to undergo rigorous imprisonment for a period of 9 months and to pay a fine of Rs. 2000/- in default to suffer rigorous imprisonment for 4 months.

19. It is regrettable to note that the State has not preferred any appeal against the findings of the High Court that the facts do not make out an offence punishable under Section 364, Part II, IPC. The present appeal is preferred only by the convicted first accused challenging the correctness, propriety and legality of the judgment of the High Court, convicting him under Section 330, IPC.

20. Mr. V. A. Bobde, learned senior counsel appearing on behalf of the appellant after taking us very meticulously through the judgments of the Courts below and the other records inclusive of the report of the commission of Inquiry on the incident of firing and other incidents which occurred at Ramtek in the months of June/July 1980, strenuously contended that the High Court has grossly erred in convicting the appellant under Section 330, IPC contrary to the numerous pronouncements made by this Court laying down the guidelines in respect of the scope and powers of the High Court in appeals against acquittal; that the observation of the High Court that the trial Court has completely lost sight of evidence relating to evidence under Section 330, IPC is erroneous; that in fact the trial Court has enumerated various points for consideration as regards both the charges namely under Sections 304, Part 11 and 330, IPC which points are so integrated with each other; that the evidence of PW 13 which is not only highly tainted with interestedness and biased but also with embellishment and deliberate exaggeration at every stage ought not have been accepted and relied upon by the High Court; that the evidence of PW 13 is not satisfactorily corroborated by other independent witnesses; that the medical evidence is not sufficient to support the case of the prosecution as against the present appellant and that the High Court has failed to consider the exoneration of the appellant of all the allegations by the Commission of Inquiry held by Justice M.R. Waikar in its report dated 22nd July 1982 which Commission was appointed relating to the

chaotic turbulent scenes of violence and arson by the infuriated mob in front of the police station and that the observation made by the Court in paragraph 14 of its judgment that the appellant has produced the deceased PW 13 on 1-7-80 before the Judicial Magistrate is an erroneous finding since the appellant was at Nagpur on the day to collect salary and returned only in the night.

21. The learned counsel for the respondent/ State of Maharashtra refuted the submissions made by Mr. V.A. Bobde and urged that the High Court was correct both in law and facts in arriving at a conclusion that the appellant has committed an offence under Section 330, IPC and as such the impugned judgment does not call for any interference.

22. Before advertng to the arguments advanced by the learned counsel, we feel it worthwhile to take note of certain admitted facts.

23. The fact that Ratiram and Motiram were arrested in connection with the theft of brass idol is not disputed. But what is disputed is the date of arrest, in that while it is the case of the prosecution that both Ratiram and Motiram were taken by the police even on 25th June but were shown to have been apprehended only at 4.00 p.m. on 26th June 1980, the case of the appellant is that he while patrolling the town area along with accused Nos. 4 to 6 arrested both the suspects at 4.00 p.m. on 26th June after interrogation.

24. Both the suspects were produced on 27-6-80 on which day itself the police obtained the custody of the suspects till 3-7-80 but reproduced them before the Magistrate on 1-7-80 on which day they were remanded to judicial custody till 1 1-7-80. Therefore. the suspects were in police custody from 27th June to 1st July 1980. On 2nd July 1980, they were sent to Central Jail at Nagpur where they were detained till released on bail on 4th July. The appellant (first accused) has admitted the fact that on the evening of 30th June, both Ratiram and Motiram were produced before the Medical Officer, Primary Health Centre, Parseoni to have them medically examined as the medical officer of Ramtek was not available. PW 7, the medical officer examined both these undertrial prisoners and found multiple injuries on their person. It is also admitted by the first accused that a telephonic message was received at Ramtek Police Station from Police Inspector. Mr. Malik conveying the message not to torture both these persons in connection with the theft of idol. After both of them were released on bail on 4th July, they all came to Ramtek and appeared before the Magistrate and lodged a complaint Ext. 34. The Magistrate finding that Ratiram was in serious condition sent for Mr. Bukhari, SHO and directed him to take Ratiram to the hospital but on the way Ratiram died. Therefore, his relatives and others instead of taking the dead body, brought it to the police station. The death of Ratiram triggered violence and acrimonious scenes during the course of which the police station was set ablaze. The medical officer who conducted autopsy on the dead body of the deceased found multiple injuries totaling up to 23 visible injuries as described in the postmortem report Ext. 129 besides the internal injuries. The medical officer has opined that all the external injuries would have been caused about 8 to 12 days before and they were all ante mortem injuries. The crucial fact that Motiram PW 13 was also apprehended with the deceased Ratiram and thereafter taken to police custody is admitted. Now we shall scrutinise the intrinsic value of the evidence in the backdrop of the above admitted facts.

25. PW 13, Motiram is a star witness in this case who gives the detailed version as to what had happened after his arrest along with Ratiram till they were produced before the Magistrate on 4th July. PW 13 has deposed that he was taken from his house by accused No. 1 (appellant herein) and some other police men on 25th June to the temple and was interrogated with reference to the theft of the idol. When he expressed his innocence, the first and the third accused beat him indiscriminately

with a tyre belt and waist belt respectively. In his presence, Ratiram was also interrogated. Then Ratiram denied of any complicity with the offence of theft, the accused Nos. 1 and 3 and other police men stripped him off and beat him mercilessly by belts and hit on his buttocks. In the above manner, Motiram (PW 13) and Ratiram were beaten alternatively when they denied the charge of theft. He identified accused Nos. 1 to 3 by their names and others whose names he did not know, by their identifying features. According to him, both were beaten in the verandah of the temple and thereafter in the adjoining room after making them naked. At one point of time, apprehending imminent danger to their lives they made a false statement that they had kept the property buried near the Bahirambuwa Temple. They were taken to that temple but the property was not found. Thereupon, accused Nos. 1 and 3 took them again to Shantinath Temple and beat them. When their condition became bad, they were kept in the police lock-up till 10.00 a.m. on 27th June and then produced before the Magistrate with a severe warning not to make any complaint to the Magistrate. He has further deposed that after they were taken to the police custody, they were again inhumanly treated and tortured continuously on all days while they were in the police custody. According to him, one wooden rod was placed across the chest of Ratiram by the first accused over which he stood by placing his feet at both the ends of the rod and rolled it on the chest of Ratiram under his weight. When Ratiram denied knowledge of the theft, the appellant directed his men to introduce a rod into the anus of Ratiram. He claims to have seen the first accused thrusting an iron rod into the anus of Ratiram and while doing so, the rod was pricked on the buttocks of Ratiram. All the while, the helpless Ratiram was making a hell of noise due to untold agony but within a few minutes, he became unable even to make any noise. PW 13 has identified accused Nos. 4 to 6 as the police men who had helped the first and the third accused to commit all these atrocities. While PW 13 and Ratiram were in the police lockup, one Hazari came to the police station. PW 13 complained of the ill-treatment meted out to them. On the evening of 29-6-80, one Shankar, Sawarkar, Ismail (PW 19) and Madhu came to the Police Station. PW 13 narrated the ill-treatment perpetrated by the police and showed the injuries to them. They also requested those persons to arrange for their bail. On Monday, 30th June, both the undertrial prisoners told one Eagu who was kept in the lock-up, about the beating by police and also showed their injuries. On the same night, they were taken to the hospital for treatment. According to this witness, both the injured were examined by PW 7 who cleaned and bandaged the injuries on the buttocks of Ratiram. While they were in the police custody, they were again taken to Shantinath temple where they were again subjected to ill-treatment. When they were reproduced before the Magistrate on 1 st July, they were threatened not to disclose about the ill-treatment meted out to them before the Magistrate, lest would be taken again to the police custody and subjected to the same treatment. On 2nd July, both of them were taken to the Nagpur Central Prison by bus where the jail authorities took their statements under Exts. 21 and 22 respectively. After they were released on bail, they were straightway brought to the Magistrate's Court on their request where they gave their complaint Ext. 34. As the condition of Ratiram was very precarious, the magistrate immediately ordered Ratiram to be taken to the hospital. But Ratiram died when he was taken out of the Court hall.

26. Though PW 13 has been subjected to incisive and searching cross-examination, nothing tangible has been brought out to discredit his testimony. But after going through the evidence of this witness, we do not find any reason muchless any compelling reason to reject his evidence which receives corroboration on its material particulars.

27. In a case of this nature, one cannot expect direct evidence from independent witnesses as the most unfortunate and shameful incident took place both in the police station and the temple in secrecy while the undertrial prisoners were under the custody of the police. However, in the present case, Motiram, the co-prisoner has survived to speak about the entire incident. The medical officer,

PW 7 who medically examined PW 13 and Ratiram found number of injuries on their person. PW 7 has noted all the injuries found on Ratiram under Exts. 47 and 47(A). According to him, injuries Nos. 1 and 2 noted in the wound certificates might have been caused due to rubbing, bursting and merging of boils on the buttocks, whilst the injury Nos. 3 to 7 and 9 to 12 might have been caused due to rubbing with hard and rough surface. He has noted the injuries found on Motiram under Exts. 48 and 48(A). In his opinion, the injuries found on both the persons were about 6 to 7 days old. On 2nd July 1980, PW 2, the Jailer working in the Central Prison, Nagpur found number of injuries on PW 13 and Ratiram. The injured persons were examined by PW24, the jail doctor who also found injuries on their person. Added to that, PW 14 who conducted inquest over the dead body of Ratiram also found number of injuries which he has noted in the inquest report Ext. 17. The evidence of PW 19, Mohammed Ismail also corroborates the evidence of PW 13. The statements recorded by the jailer under Exts. 21 and 21 from Ratiram and Motiram were also vital documents supporting the evidence of PW 13. In fact, the High Court has examined the evidence of PW 19 in extenso and found it to be true observing:

"In view of the fact that he had taken trouble for intimating to the higher offices on telephone and also to go to the Central Jail, Nagpur and to bring Ratiram and Motiram to Kamptee, the evidence of PW 19 Ismail cannot be doubted."

28. PW23 who was arrested along with Ratiram and PW 13 in connection with the same idol theft case has also testified to the fact that both Ratiram and Motiram were beaten by the first accused with a belt.

29. After carefully scanning through the evidence of PWs 2, 7, 13, 19, 20, 23, 25, 29 and the various documents Exts. 21, 22 and 34, we have no reservation in coming to the conclusion that Ratiram and Motiram were subjected to ill-treatment by the appellant in order to extort a confession or any information leading to the detection of the stolen properties.

30. The findings of the Commission of Inquiry that there is no reliable and independent material to hold that Ratiram was ill treated in police custody and the injuries found on him possibly might have been sustained by him prior to his arrest is not binding on this Court when the Court has arrived to its own conclusion on the independent assessment, of the persuasive evidence that Ratiram was subjected to ill-treatment by the appellant for extorting a confession or any information leading to the detection of the brass idol and other stolen articles. In fact, the circumstances veering the case and the numerous injuries found on the deceased .Ratiram and PW 13, bearing mute and chilling testimony to the police brutality demonstrably establish the prosecution case as against the appellant.

31. The submission of the learned counsel, Mr. V.A. Bobde that the High Court has grossly erred in convicting the appellant contrary to the numerous pronouncements made by this Court laying down the guidelines in respect of the scope and powers of the high Court in interfering with the appeals against acquittal is absolutely untenable. It is now well settled by the long course of decisions of this Court that where the view taken by the trial Court in acquitting the accused is extremely perverse and is not reasonably sustainable on the evidence on record, then the appellate Court can interfere with such an order of acquittal and set at naught the injustice done to the parties. This Court has examined the principle of law in interfering with an order of acquittal in Chandra Mohan Tiwari v. State of Madhya Pradesh (1992) JT (SC) 258 : (AIR 1992 SC891). We think it not necessary to refer all those decisions on this principle of law.

32. In our opinion, when the facts of the present case are examined in the light of the principle of law laid down by this Court in dealing with the scope and power of the High Court in interfering with an order of acquittal, the High Court in the present case cannot be said to have committed any illegality but on the other hand it has arrived at a proper and just conclusion that the prosecution has made out the case punishable u/S.330, IPC.

33. The first accused and the party were groping in darkness without getting any reliable information about the offence of theft and proceeded on wrong track entertaining a suspicion against Ratiram and PW 13. In fact, inspite of the third degree methods adopted by the police, the appellant was not able to get any clue relating to the offence of theft to recover the stolen property. However, both Ratiram and PW 13, as observed by the High Court "had to suffer the horrible experience during their police custody in which Ratiram had to lose his life."

34. For all the above discussion, we do not find any merit in the contentions raised on behalf of the appellant warranting our interference with the finding of facts of the High Court or the quantum of sentence which, in our view, is very lenient.

35. In the result, we confirm the judgment of the High Court and dismiss the appeal as devoid of any merit. Appeal dismissed.

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