

Supreme Court of India

Bhagwan Singh And Anr. Etc vs State Of Punjab Etc on 8 May, 1992

Equivalent citations: 1992 AIR 1689, 1992 SCR (3) 180

Author: K J Reddy

Bench: Reddy, K. Jayachandra (J)

PETITIONER:

BHAGWAN SINGH AND ANR. ETC.

Vs.

RESPONDENT:

STATE OF PUNJAB ETC.

DATE OF JUDGMENT 08/05/1992

BENCH:

REDDY, K. JAYACHANDRA (J)

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REDDY, K. JAYACHANDRA (J)

PATNAIK, R.C. (J)

CITATION:

1992 AIR 1689                      1992 SCR (3) 180

1992 SCC (3) 249                JT 1992 (3) 216

1992 SCALE (1)1274

ACT:

Indian Penal Code:

Sections 34, 201, 302, 323, 364 and 365-Custodial death-Disappearance of dead body-Whether raises doubt about complicity of accused.

Code of Criminal Procedure :

Sections 160 and 161- Third degree treatment of arrested person-Action of police personnel deprecated-Adoption of scientific methods -Necessity for.

HEADNOTE:

The prosecution alleged that the four accused one Assistant Sub-Inspector, 2 Head Constables and a Constable who were working in the C.I.A Staff of the State Police Department, went in a jeep to a Hotel on 6.8.78 at about 4 P.M. brought the deceased along with P.Ws. 4, 5 and 6 to the C.I.A Staff Room in the Police Station, and interrogated him about smuggled narcotic powder. The A.S.I. and the head Constables were armed with a leather patta. While the deceased was being interrogated a constable was sitting outside. The A.S.I. and the two Head Constables caused injuries to the deceased with their weapons who became unconscious. P.Ws. 4,5 and 6 were kept outside under the

guard of P.W. 7 another Constable, when the deceased was being interrogated and beaten in the room. Thereafter P.Ws. 4,5 and 6 were also taken inside the room and all the accused inflicted injuries on them also while interrogating them and they were detained there till 9th August, 1978. Later they were dropped near a by-pass road. They went to the Hospital and got themselves medically treated by P.W.I Surgeon.

The prosecution further alleged that the deceased was taken in a car but he expired on the way and the dead body was thrown into a river and the same could not be recovered during investigation, P.W. 8 who was in the company of the deceased in the Hotel of P.W. 6 when the deceased was

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taken by the accused was also beaten. P.W. 9 the wife of the deceased made a report which was sent by P.W. 20 the Superintendent of Police to the Police Station for investigation.

The concerned Sub-Inspector registered a crime, took up the investigation, recorded the statement of the witnesses, visited the scene of occurrence, and found the walls of the interrogation room stained with blood. After completion of investigation a charge-sheet was laid.

The accused were put up for trial before the Sessions Court P.Ws. 4 to 7 figured as eye-witnesses. The accused pleaded not guilty and stated that they were all innocent D.Ws. 1 to 4 who belonged to the Police staff were asked to produce certain files.

Three questions arose for determination before the trial court:- (1) whether the injured P.Ws. and the deceased were kidnapped from the Hotel of P.W. 6; (2) whether the accused caused injuries to them, and (3) whether the accused caused the death of the deceased and destroyed the dead body?

The trial court accepted the version of the prosecution only to the extent that the injured P.Ws. and the deceased were kidnapped from the Hotel of P.W. 6 and rejected the rest of the prosecution case and accordingly convicted them only under Section 365, I.P.C.

The High Court in appeal, however, took a different view. It accepted particularly the evidence of PWs 4 to 6 and reached the conclusion that when once it is proved that the injured witnesses along with the deceased were kidnapped, confined and beaten up and later if the dead body was not to be traced the only inference that could be drawn was that the accused also caused the death of the deceased. In the case of the constable who was waiting outside when the deceased was being interrogated and beaten, it held that being a constable he obeyed the orders of his superior the A.S.I. and that therefore he had no common intention to cause the death of the deceased. In that view of the matter he alone was acquitted of the murder charge but convicted for other offences.

Dismissing the appeals, this Court,

HELD :1 Both the courts below have accepted the evidence of P.Ws 4 to 6 and 7 and that the four accused forcibly took away the deceased and P.Ws. 4 to 6 in a jeep to the C.I.A Staff Room. There are no cogent

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and convincing reasons as to why the Sessions Judge did not accept the rest of the prosecution case. The evidence of P.Ws. 4 to 6 who are the injured witnesses is trustworthy. Their evidence establishes that after forcibly taking them to the Staff room, the A.S.I. and the two Head Constables took the deceased inside for interrogation and inflicted injuries on him and that later they were also taken inside and beaten up by all the accused. When the deceased became unconscious the A.S.I. and the two head constables, put the deceased on a cot with a view to take him somewhere. Thereafter the whereabouts of the deceased was not known. The accused have no explanation whatsoever. They simply pleaded innocence. [187H- 188C]

2. The only inference that can be drawn is that the deceased expired because of the injuries caused by the accused and they must have caused the disappearance of his dead body. There is absolutely no ground what soever to come to a different conclusion. [189 C]

3. If a person is in police custody then what has happened to him is peculiarly within the knowledge of the police officials who have taken him into custody. [188 D]

4. When the other evidence is convincing enough to establish that the deceased died because of the injuries inflicted by the accused the circumstances would only lead to an irresistible inference that the police personnel who caused his death must also have caused the disappearance of the body. [188 E]

5. A case cannot be thrown out merely on the ground that the dead body is not traced when the other evidence clinchingly establishes that the deceased met his death at the hands of the accused. [188 E]

6. It may be a legitimate right of any police officer to interrogate or arrest any suspect on some credible material but it is needless to say that such an arrest must be in accordance with the law and the interrogation does not mean inflicting injuries. It should be in its true sense and purposeful namely to make the investigation effective. [188 F]

7. Torturing a person and using third degree methods are of medieval nature and they are barbaric and contrary to law. The police would be accomplishing behind their closed doors precisely what the

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demands of our legal order forbid. [188 G]

Dagdu and others v. State of Maharashtra, [1977] 3 SCC 68, referred to.

8. Police officers must adopt some scientific methods

than resorting to physical torture. If the custodians of law themselves indulge in committing crimes, then no member of the society is safe and secure. [189 B]

9. If police officers who have to provide security and protection to the citizens indulge in such methods they are creating a sense of insecurity in the minds of the citizens. It is more heinous than a game-keeper becoming a poacher. [189 B]

#### JUDGMENT :

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal Nos. 388 and 666 of 1981.

From the Judgment and Order dated 17.2.1981 of the Punjab & Haryana High Court in Crl. A. Nos. 1392 and 956 of 1979.

R.L. Kohli, R.C. Kohli and M.C. Dhingra (N.P.) for the Appellants.

H.M. Singh and R.S. Suri for the Respondent. The Judgment of the Court was delivered by, K. JAYACHANDRA REDDY, J. These two appeals are filed against a common judgment of the Punjab & Haryana High Court in Criminal Appeal Nos. 956/79, 1392/79 and 1310/79. There were four appellants in Criminal Appeal No. 956/79 before the High Court namely Joginder Singh, Bhagwan Singh, Mukhtiar Singh and Uttam Chand. Originally they were tried by the Sessions Judge, Amritsar for offences punishable under Sections 364, 302/34, 201, 365, 325/34 & 323/34 I.P.C. The trial court, however, convicted them only under Section 365 I.P.C and sentenced each of them to undergo R.I. for two years and to pay a fine of Rs. 500 each in default of which to undergo further R.I. for six months. Challenging the said convictions and sentences they filed the said appeal i.e. Criminal Appeal No. 956/79. The State of Punjab filed Criminal Appeal No. 1392/74 against their acquittal under Section 364, 302/34, 201, 323/34 and 325/34. The State also filed Criminal Appeal No. 1310/79 for enhancement of the sentence under Section 365 I.P.C. The High Court disposed of all the appeals by a common judgment. The High Court allowed State Criminal Appeal No. 1392/79 and convicted Joginder Singh, A.S.I. of Police and Bhagwan Singh and Mukhtiar Singh, two Head-constables under Section 302/34 I.P.C. and sentenced each of them to imprisonment for life and to pay a fine of Rs. 2,000 each in default of which to undergo further R.I. for one year. The fine, if realised, was directed to be paid to the widow of the deceased in the case. The High Court, however, held that an offence under Section 302 is not made out as against Uttam Chand. The High Court further convicted all the four accused under Section 201 I.P.C and sentenced each of them to undergo four years' R.I. and also sentenced to two years R.I. under Section 325/34 I.P.C. and further sentenced them to one year's R.I. under Section 323/34. The High Court also accepted the State Criminal Appeal No. 1310/79 and enhanced the sentence under Section 365 I.P.C. to five years' R.I. The sentences were directed to run concurrently. Accused Bhagwan Singh and Mukhtiar Singh have filed Criminal Appeal No. 388/81 in this Court under Section 379 Cr.P.C. Joginder Singh, A.S.I. filed Criminal Appeal No. 535/81 under Section 379 Cr. P.C. but as he died during the pendency of the appeal we have already dismissed the appeal as abated. Uttam Chand filed a special leave petition

which was granted by this Court and it is numbered as Criminal Appeal No. 666/81.

The High Court has interfered in an appeal against acquittal and convicted two of the appellants and sentenced them to imprisonment for life. Therefore we have heard the counsel for the appellant at length and he has taken us through the entire record in an elaborate manner. The prosecution case is as follows:

Joginder Singh, A.S.I. and the other three accused namely two Head Constables and a Constable were working in the C.I.A. Staff, Amritsar. On 6.8.78 at about 4 P.M. Joginder Singh A.S.I. along with three other went in a jeep to the Hotel of Virsa Singh, P.W. 6 and brought Joginder Singh deceased along with P.Ws. 4,5 and 6 to the C.I.A. Staff Room in Rambagh Police Station and interrogated them about the smuggled narcotic powder. Joginder Singh, A.S.I. and Bhagwan Singh Head Constable were armed with sotas and Mukhtiar Singh, Head Constable was armed with a leather patta. While the deceased was being interrogated by the first three accused, Uttam Chand Constable was sitting outside. A.S.I. and the two Head Constables caused injuries to the deceased with their weapons who became unconscious. P.Ws 4,5 and 6 were kept outside under the guard of Uttam Chand and P.W. 7 another Constable when the deceased was being interrogated and beaten in the room. Thereafter P.W.S. 4, 5 and 6 were also taken inside the room and it is alleged that all the accused inflicted injuries on them also while interrogating them about the smuggled powder. P.Ws. 4,5 and 6 were taken to the main building of the C.I.A Staff and they were detained till 9th August, 1978. Later they were dropped near a by-pass road. They went to the Hospital and got themselves medically treated by P.W.1, Civil Surgeon, Amritsar at about 9.05 P.M. Further case of the prosecution is that the unconscious deceased was taken in a car but he expired on the way and the dead body was thrown into a river and the same could not be recovered during investigation. P.W.8 who was in the company of the deceased in the Hotel of P.W.6 when the deceased was taken by the accused, went to the C.I.A. Staff room on 7th August, 1978 and happened to meet P.W. 5 there. He told him that the deceased became unconscious when being beaten and he was taken away from there. There upon P.W.8 went to the village of the deceased and informed his wife P.W. 9 on that very day. P.W. 9 along with mother of the deceased came to Amritsar and met Joginder Singh, A.S.I. who told them that the deceased was not with them. She then met Senior Superintendent of Police and gave a report who forwarded the same to P.W. 20 Superintendent of Police City Amritsar who in turn sent it to the Police Station with the necessary endorsement. The Concerned Sub Inspector registered a crime. As per the Punjab Police Rules, superintendent of Police, P.W. 20 took up the investigation and recorded the statement of the witnesses. He visited the scene of occurrence and found the walls of interrogation room stained with blood. After completion of the investigation a charge-sheet was laid. The prosecution examined P.Ws. 1 to 22. P.W. 1. the Doctor examined P.W.5 for his injuries and he found 15 injuries. Injuries Nos. 6,9 and 13 were declared to be grievous. He opined that all the injuries must have been caused by blunt weapons. P.W.1 also examined P.W. 6 on the same day found 8 injuries. They were all found to be simple. He also examined P.W. 4 and found 4 injuries which were simple. P.Ws. 4 to 7 figured as eye-witnesses. The accused pleaded not guilty and stated that they were all innocent. They examined D.Ws 1 to 4 all belonging to Police staff and were asked to produce certain files. Their evidence is not material. Three questions arose for determination before the court below; (1) whether the injured P.Ws. and the deceased were kidnapped from the Hotel of P.W. 6; (2) whether the accused caused injuries to them and (3)

whether the accused caused the death of the deceased and destroyed the dead body? The trial court accepted the version of the prosecution only to the extent that injured P.Ws and the deceased were kidnapped from the Hotel of P.W.6 and rejected the rest of the prosecution case and accordingly convicted them only under Section 365 I.P.C. The High Court, however, took a different view. The learned Judges accepted the evidence of P.Ws 4 to 10 particularly that of the injured witnesses P.Ws 4 to 6. The High Court also reached the conclusion that when once it is proved that injured witnesses along with the deceased were kidnapped, confined and beaten up and later if the dead body was not to be traced the only inference that can be drawn is that the accused also caused the death of the deceased. So far Uttam Chand, Constable is concerned the High Court took the view that he was only waiting outside when the deceased was being interrogated and beaten. He being a Constable, obeyed the orders of his superior namely the A.S.I. and kept guard outside. Therefore he had no common intention to cause the death of the deceased. In that view of the matter he was acquitted of the murder charge but convicted for other offences.

We have gone through the evidence of P.Ws. 4,5 and 6 carefully. Their presence at the scene of occurrence cannot be doubted. The Doctor, P.W. 1 who examined them found a number of injuries and some of them were grievous. All of them have categorically stated that the accused caused the injuries to them while interrogating.

P.W.4 deposed that he was in the Hotel of P.W. 6 for taking meals. The deceased and P.Ws were also present and were taking meals. At about 4 P.M. all the four accused came into the Hotel in their uniforms. They came in a jeep and the accused caught hold of them including the deceased, tied their arms with the turbans and all of them were put in the jeep and were taken to the C.I.A Staff room. First the deceased was taken inside the Room by the A.S.I. and the two Head Constables while Uttam Chand the fourth accused and P.W. 7 another Constable remained with P.Ws. 4 to 6 outside the room. P.W. 4 also deposed that the accused were armed with sotas and leather patta and the three accused who took the deceased inside the room inflicted injuries with their weapons on the deceased who became unconscious. Later the three witnesses were taken inside. P.W. 4 further deposed that the deceased who was unconscious was put on a cot. It is in his evidence that all the three were kept in that room till 9th August, 1978 and that on 7th August, 1978 P.W.8 came and enquired P.W. 5 about the deceased who told him that the deceased became unconscious and was put on a cot. P.W.4 further deposed that he and P.Ws 5 and 6 were left on a by- pass road on 9th August. All of them went to the Hospital and they were treated by P.W. 1 the Doctor. P.W. 4 is cross-examined at length but nothing significant had been elicited. The omissions and discrepancies pointed out in his evidence are not at all material. Only a bald suggestion is made that injuries on P.Ws. 4 to 6 were self- inflicted and the accused were involved falsely at the instance of one Atma Ram. To the same effect is the evidence of P.Ws. 5 and 6. Their evidence is further corroborated by the evidence of P.Ws 7 to 11. P.W.7 is a Constable in the C.I.A. Staff where the four accused also were working. He deposed that on 6.8.78 at about 4.30 P.M. He also went along with the accused in a jeep and that before accused brought the deceased and the three witnesses and put them in the jeep and were taken to the C.I.A. Staff room Rambagh Police Station, he remained outside. He however did not see the injuries being inflicted on them. P.W. 8 is another witness who was in the Hotel of P.W.6. He deposed that he alongwith the deceased went to the Hotel. He also deposed that the four accused came to the Hotel and took away the deceased and P.Ws 4 to 6 in a jeep. The next day P.W.

8 went to the Staff Room and met P.W. 5 and enquired about the deceased and on getting necessary information namely that the deceased was unconscious and was put on a cot and taken away, he went and informed the wife of the deceased. P.W. 9 who is the wife of the deceased deposed that on being informed by P.W. 8 she went to the C.I.A. Staff room and enquired from the accused A.S.I. who told her that her husband was not there and that he has run away. Thereupon she went to the house of the brother of the deceased and she did not find him there. Next day he came to Amritsar and gave an application to the Senior Superintendent of Police. Then we have the evidence of P.Ws. 10 and 11. P.W. 10 deposed that it was 1.30 A.M. he and P.W. 11 were going on a tractor after seeing a picture and on the way he saw the four accused carrying a person and lifting him into the car. The prosecution also examined the driver of the jeep and other constables who were present in the Staff room but they turned hostile. It may not be necessary to refer to the other evidence.

Both the courts below have accepted the evidence of P.Ws 4 to 6 and 7 and held that the four accused forcibly took away the deceased and P.Ws. 4 to 6 in a jeep to the C.I.A. Staff room. There are no cogent and convincing reasons as to why the learned Sessions Judge did not accept the rest of the prosecution case. The evidence of P.Ws 4 to 6 who are the injured witnesses is trustworthy. Their evidence establishes that after forcibly taking them to the Staff room, A.S.I. and the two Head Constables took the deceased inside for interrogation and inflicted injuries on him and that later they were also taken inside and beaten up by all the accused. We have no hesitation in accepting their version. Then what follows is that A.S.I. and the two Head Constables inflicted serious injuries on the deceased and when he became unconscious they put the deceased on a cot with a view to take him away somewhere. Thereafter the whereabouts of the deceased are not known. The accused have no explanation whatsoever. They simply pleaded innocence. Learned counsel, however, submitted that since the dead body is not traced a doubt arises whether the accused were responsible for causing his death and disappearance of his body. It depends upon the facts and circumstances of each case. The injured witness have categorically stated that the deceased became unconscious on receipt of the injuries. If a person is in police custody then what has happened to him is peculiarly within the knowledge of the police officials who have taken him into custody. When the other evidence is convincing enough to establish that the deceased died because of the injuries inflicted by the accused the circumstances would only lead to an irresistible inference that the police personnel who cause his death must also have caused the disappearance of body.

A case cannot be thrown out merely on the ground that the dead body is not traced when the other evidence clinchingly establishes that the deceased met his death at the hands of the accused. It may be legitimate right of any police officer to interrogate or arrest any suspect on some credible material but it is needless to say that such an arrest must be in accordance with the law and the interrogation does not mean inflicting injuries. It should be in its true sense and purposeful namely to make the investigation effective. Torturing a person and using third degree methods are of medieval nature and they are barbaric and contrary to law. The police would be accomplishing behind their closed doors precisely what the demands of our legal order forbid. In *Dagdu and others v. State of Maharashtra*, [1973] 3 SCC 68 this Court observed as under: "The police with their wide powers are apt to overstep their zeal to detect crimes and are tempted to use the strong arm against those who happen to fall under their secluded jurisdiction."

that tendency and that temptation must in the larger interest of justice be nipped in the bud." It is a pity that some of the police officers, as it has happened in this case, have not shed such methods even in the modern age. They must adopt some scientific methods than resorting to physical torture. If the custodians of law themselves indulge in committing crimes then no member of the society is safe and secure. If police officers who have to provide security and protection to the citizens indulge in such methods they are creating a sense of insecurity in the minds of the citizens. It is more heinous than a game-keeper becoming a poacher.

Under these circumstances, the one and the only inference that can be drawn is that the deceased expired because of the injuries caused by the accused and they must have caused the disappearance of his dead body. We see absolutely no ground whatsoever to come at a different conclusion and we are in full agreement with the High Court in this regard. In the result both the Criminal Appeal Nos. 388/81 and 666/81 are dismissed.

N.V.K.

Appeals dismissed.