

V. Shekar and Others Vs. State of Karnataka

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Court : Karnataka

Decided On : Aug-27-1990

Reported in : 1991CriLJ1100; ILR1990KAR3821

Judge : K. Ramachandriah, J.

Appeal No. : Cr. P. 1074/90

Appellant : V. Shekar and Others

Respondent : State of Karnataka

Advocate for Def. : Mr. K.H.N. Kuranga, State P.P.

Advocate for Pet/Ap. : Mr. A.H. Bhagawan, Adv.

Judgement :

ORDER

1. 'Before parting with this case, we wish to observe that torturing suspects with a view to extorting information from them, is a crude, barbarous and reprehensible method of investigating and detecting crime. Those who are entrusted with the duty of enforcing the law, must learn to obey the law. In police investigation as in other matters, the end does not justify the means; the means are as important as the end'.

These observations made by a Division Bench of the Andhra Pradesh High Court as long back as 26-11-1963 in Public Prosecutor v. Shaik Ibrahim, 1964 (2) Cr. LJ 636 are again more eloquently echoed 25 years later in the following observations of the Supreme Court in the case of Kashmeri Devi v. Delhi Administration, : 1988 CriLJ1800 :

'This is an unfortunate case which tends to shake the credibility of police investigation and undermines the faith of common man in Delhi Police which is supposed to protect life and liberty of citizens and maintain law and order. There have been serious allegations of murder by torture against the police and further about the haphazard manner in which the investigation against the accused police officers was investigated with a view to shield the guilty members of the Delhi Police'.

Again, in the case of Maiku v. State of U.P. : AIR 1989 SC67 the Supreme Court had occasion to consider the conduct of the Police resorting to violence while pursuing investigation. In State of Uttar Pradesh v. Ram Sagar Yadav, : 1986 CriLJ836 , the Supreme Court has observed in para 20 as follows at page 841; Cri LJ 1986 :-

'20. Before we close, we would like to impress upon the Government the need to amend the law appropriately so that policemen who commit atrocities on persons who are in their custody are not allowed escape by reason of paucity or absence of evidence. Police Officers alone, and none else, can give evidence as regards the circumstances in which a person in their custody comes to receive injuries while in their custody. Bound by ties of a kind of brotherhood, they often prefer to remain silent in such situations and when they choose to speak, they put their own gloss upon facts and prevent the truth. The result is that persons, on whom atrocities are perpetrated by the Police in the sanctum sanctorum of the Police station, are left without any evidence to prove who the offenders are. The law as to the burden of proof in such cases may be re-examined by the legislature so that hand-maids of law and order do not use their authority and opportunities for oppressing the innocent citizens who look to them for protection. It is ironical that, in the instant case, a person who complained against a Policeman for bribery, was

done to death by that Policeman, his two companions and his superior officer, the Station House Officer'.

2. If these words of caution and advise given by the Apex Court in State of Uttar Pradesh : 1986 CriLJ836 has been duly taken note of and implemented by the Government, one Sub-Inspector of Police and five police Constables of Karnataka Police Force concerned in these two Criminal Petitions would not have easily ventured to subject 21 year old youth by name Raja alias Narasimha Raja of Tumkur (here-in after referred to as 'deceased Raja') to inhuman and barbaric treatment and physical torture to such an extent that Raja died in the morning of 12-7-1990 while in Police custody at Tilak Park Police Station in Tumkur (hereinafter referred to as 'the Police Station') from the morning of 8-7-90 as alleged by deceased Raja's uncle Kumbaiah in his complaint dated 16-7-90 submitted to the Superintendent of Police of Tumkur and on the basis of which Crime No. 77/90 is registered at North Extension Police Station, (for short 'NEPS') Tumkur, against petitioners (A-1 to A-6) and one Habibulla Khan (A-7) who is a driver of police tempo for offences under section 342, 302 and 201, IPC of which investigation is now taken over by the COD. The said case has received wide publicity in the Press under the heading 'Tumkur Police lock-up death case' and it has become a sensational case in Tumkur Town and surrounding area.

3. First petitioner V. Sekhar was the Police Sub-Inspector, second petitioner Bhadriah and third petitioner Praksh were the Police Constables in-charge of the Police Station during first and second week of July 1990. They are petitioners 1 to 3 respectively in Cr.P. 1074/90. First petitioner T. Narasimhiah, second petitioner G. Kumaraswamy, third petitioner Gopalachari in Cr.P.No. 1075/90 were also Police Constables working at NEPS, Tumkur Town Police Station and the Police Station respectively during the said period. Immediately after registration of Crime No. 77/90 at NEPS Tumkur, petitioners 1 to 3 in Cr.P. 1074/90 filed a petition under section 438, Cr.P.C. before the Sessions Judge, Tumkur in Cr.Misc. Case No. 208/90 praying for the relief of anticipatory bail by contending that they were reasonably apprehending their arrest in connection with Crime No. 77/90 although they are innocent of the offences for which the said case is registered and is being investigated. Since the petitioners 1 to 3 in Cr.P. 1075/90 were arrested by them,

they filed a bail petition under section 439, Cr.P.C. before the Sessions Judge, Tumkur, in Cr.Misc. Case No. 212/90. 7th accused Habibulla Khan who was also arrested by then, filed a separate bail petition under section 439, Cr.P.C. before the same Judge in Cr.Misc. Case No. 216/90. By a common order dated 30-7-90 passed on both the bail petitions, the learned Sessions Judge has rejected the petition for anticipatory bail filed by the petitioners in Cr.P. 1074/ 90 and also the petition for bail filed by the petitioners in Cr.P. 1075/90 as he was of the opinion that the petitioners who are the custodians of property and safety of the citizens have taken law into their own hands and had committed brutal acts in assaulting deceased Raja who was detained in the Police custody for the purpose of interrogation are not entitled to be released on bail either under section 438, Cr.P.C. or 439, Cr.P.C. However, he has granted conditional bail to 7th accused Habibulla Khan as he was only a driver of the Police tempo in which the dead body of deceased Raja was carried and stealthily disposed of in order to screen the offence of murder committed by the other six accused.

4. These two Petitions filed under section 438, Cr.P.C. and 439, Cr.P.C. respectively have arisen out of the said order.

5. The relevant facts are as under Deceased Raja was staying with his maternal uncles Kumbaiah and Narasimha Murthy in their house situate in a locality called 'Hanumanthapura' of Tumkur Town for the purpose of prosecuting his studies. However, he was involved in some theft cases of two wheelers for which he was prosecuted in C.C. Nos. 446/89, 455/89, 496/89, 497/89 and 938/89 along with two other fellow students and he was acquitted in all the said cases by the C.J.M. and A.C.J.M. Tumkur, by Judgments in April, 1990. A few days prior to 8-7-90, Police Constables Bhandriah and Prakash (petitioners 2 and 3 in Cr.P. No. 1074/90) had been to the petti Tea-shop of Kumbaiah and Narasimha Murthy in Hanumanthapura of Tumkur Town in search of deceased Raja as they suspected that he was again involved in the theft of a Lana Moped. Both of them again went to that Tea shop at about 10 a.m. on 8-7-90 and found deceased Raja in that shop. They asked him to accompany them to the Police Station and brought him to the Police Station on a Motor bike. In order to find out why Raja was taken to Police Station, one Hanumantharayappa, one Krishnappa, and Kumbaiah present

in the Tea-shop at that time, immediately went to the Police Station and inquired why Raja was brought to the Police Station. They were told by Police Constable Bhadriah that they would release Raja after interrogating him in connection with a Luna Moped theft case. As Raja did not return home till the evening, Hanumantharayappa and Ganga Hanumaiah took food to deceased Raja to the Police Station. Ganga Hanumaiah was asked to stand outside. However, Hanumantharayappa was allowed to taste the food he had taken and then the food was given to deceased Raja and both of them were asked to go back saying that Raja was still required for interrogation. Raja was shifted from Police Station to Crime squad room in Tumkur Town on the morning of 11-7-90. On 11-7-90 four other suspects by name Mruthyanjaya, Khayyum, Nagaraj and Nagaraj alias Judda were also detained in the Crime squad room. According to the statement of Mruthyanjaya, deceased Raja was being tortured by the Police. Statements of the other three suspects-detents are not yet recorded by the COD police as they are since released by the Police and they are said to be hiding being afraid of the petitioners. On the night of 11-7-90 two night duty police constables named Puttakamaiah and Veeranna saw deceased Raja being detained along with the above four suspects. When deceased Raja was asked to go out in the morning of 12-7-90 to answer the calls of nature, he was not in a position to move about. Thereupon, the above mentioned two night-duty Police Constables asked Police Constable Bhadriah to contact the Doctor and to give medical aid to Raja. At that stage, Police Constable Bhandriah telephoned to Sub-Inspector V. Bhaskar and informed him of the condition of Raja. Thereupon, Sub-Inspector V. Shekar came to the Police Station. On the ground that Doctor was not immediately available, Iodex ointment was said to have been rubbed on the back of Raja. However, Raja succumbed in the morning of 12-7-1990. Thereafter, the petitioners having become panicky, put the dead body of Raja into the Police tempo bearing No. CAG 9153 of which A-7 Habibulla Khan was the driver. Dead body of Raja was carried in that tempo to Sira in the first instance and 30 litres of diesel was filled into the diesel tank of that tempo at a petrol bunk at Sira as spoken to by an employee by name Kariyanna of that petrol bunk. As per the voluntary statement of A-7 Habibulla Khan, Police tempo was taken to Kothari Coffee curing petrol bunk at Kandali in Hassan District and another 20 litres of diesel was filled into the

diesel tank of the tempo as spoken to by one G. B. Lakshmi Singh, an employee working in that petrol bunk. Thereafter, dead body of deceased Raja was taken to a lonely place near Gonakal in Chickmagalur District and thrown on a road situate within the Lingadahalli Police Station in Tarikere taluk as per the statement of one Sheriff in order to make it appear that Raja had died in a road accident. After tracing the dead body of Raja, it was subjected to autopsy by a Doctor. As per Post-mortem report of that Doctor, deceased Raja had sustained 18 external injuries of which injury Nos. 17 and 18 are fractures of the mandible at the angle of the right side and in the middle. The said Doctor has opined that the death is due to shock as a result of multiple injuries. As per the statement of Mruthyanjaya alias Muthu who is one of the 4 suspected detenus referred to above, recorded on 21-7-90 Raja was subjected to inhuman physical torture by indiscriminately beating on his legs with sticks from 10 a.m. to 1 p.m. and 4 p.m. to 6 p.m. on 11-7-1990 and iron pipe was also rolled on his legs apart from assaulting him with clubs. Further, when Raja asked for water, Police Constables made the suspected detenu by name Khayyum to pass urine into a vessel and forced Raja to drink the said urine. It is as a result of the said physical torture and inhuman treatment meted out to Raja by the concerned Police while he was in Police custody that he eventually died in the morning of 12-7-90 according to the prosecution version.

6. It was argued on behalf of the petitioners by their learned counsel Sri A. H. Bhagawan that even if the above mentioned version of the prosecution is to be believed for a moment, the offence said to have been committed by the petitioners would at the worst may fall under Section 331 or 330 IPC for which the punishment provided is imprisonment for 10 years and 7 years respectively and, therefore, it cannot be said that the petitioners have committed the offence of murder. He, therefore, argued that the petitioners who are all responsible Police officials, are entitled to be released on bail by imposing suitable conditions on them. In support of the said submission, Sri. A. H. Bhagawan placed reliance on the following decisions :

- 1) Chanda Earappa v. State of Karnataka ILR 1989 Kar 2882 : 1989 Cri LJ 2405;
- 2) R. L. Jalappa v. Delhi Police Establishment, ILR 1988 (3) Kar. 115;

- 3) State of Andhra Pradesh v. N. Venugopal, 1964 (1) Cri LJ 16;
- 4) Public Prosecutor v. Shaik Ibrahim 1964 (2) Cri LJ 636;
- 5) Sarju Singh v. The State, 1978 Cr LJ NOC 286;
- 6) Kashmeri Devi v. Delhi Administration 1988 SCC (Cri) 864; and
- 7) Maiku v. State of U.P., 1989 Cr LJ 860;
- 8) State of M.P. v. Ranjit Singh 1979 Cr LJ NOC 212 (MP).

7. On the other hand, Sri K. H. N. Kuranga, learned State Public Prosecutor, argued that it is too premature to say at this stage that the main offence alleged against the petitioners does not amount to the offence of murder. According to him, it is held in the decisions relied upon by Sri. A. H. Bhagawan after the conclusion of the trial that the offences alleged against the accused concerned in those cases fell within the ambit of S. 331 or 330 I.P.C. He further submitted that the COD Police have been able to record the statement of Mruthyanjaya only so far as the other three material witnesses, namely, Khayyum, Nagaraj and Nagaraj alias Judda are physically hiding being afraid of the petitioners and the COD police are not able to record their statements because of the threat of these petitioners. He further submitted that Sub-Inspector of Police Shekhar and Police Constables Bhadriah and Prakash (Petitioners in Cr.P 1074/90) are keeping themselves out of the reach of the COD Police and they have not even drawn their subsistence allowances to which they are entitled as they are placed under suspension. He also submitted that the COD Police assumed investigation on 19-7-90 and since then the Officers of the COD are unable to apprehend these petitioners although they are going in search of them in three groups. He, therefore, submitted that further progress of investigation in this sensational and sensitive case would be hampered if any of these petitioners are released on bail at this crucial stage of investigation. He also placed reliance on two decisions of the Supreme Court in (1) State of Andhra Pradesh v. Raya Varappu Punnayya, : 1977 CriLJ1 and (2) State of U.P. v. Ram Sagar Yadav, : 1986 CriLJ836 and also a Division Bench decision of the Himachal Pradesh High Court in Mohammad Sardar v. State of H.P. 1988

Cri LJ NOC 80 in support of his argument that having regard to the nature of the physical torture to which deceased Raja had been subjected by the accused Police Officers it can reasonably be assumed at this stage that the main offence alleged against them amounts to murder punishable with death or imprisonment for life under section 302, IPC and, therefore, the petitioners are not entitled to be released on bail or to the relief of anticipatory bail under Section 438 Cr.P.C.

8. The points that arise for determination in these two petitions in the light of the arguments submitted by both sides are :

(i) Whether the major offence besides the other offences alleged against the petitioners by the prosecution on the materials so far collected would fall under section 302, IPC as contended by the prosecution or under Section 330 or 331, IPC as contended by the petitioners and

ii) Whether the petitioners are entitled to the relief of anticipatory bail under section 438 or regular bail under section 439, IPC

9. As Crime No. 77/90 is still in the investigation stage, this Court has to proceed very guardedly in order to avoid any of the parties getting an impression that their case has been pre-judged and thereby prejudice has been caused to them as has been cautioned by the Supreme Court in the case of *Niranjan Singh v. Prabhakar Rajaram Karote*, : 1980 CriLJ426 . Nevertheless, some tentative observations will have to be necessarily made in the course of this order in the light of the above contentions strenuously canvassed by the learned counsel for the petitioners, in particular. So, I would like to make it clear at the outset that the observations made in the course of the order are intended only for the limited purpose of deciding these bail petitions and they shall not be construed by either of the parties or the Committal Court or the Sessions Court, as the case may be, as expression of any opinion on the merits of the case which is still in the nebulous stage of investigation.

10. Sri A. H. Bhagawan repeatedly submitted that deceased Raja was subjected to the barest minimum physical pressure in order to extort the information within his knowledge regarding theft of Luna Moped in the background of his complicity in

similar offences in the recent past and there was absolutely no intention on the part of any of the petitioners to cause any physical harm to deceased Raja much less to cause his death and, therefore, the offence, if any, committed by the petitioners would squarely fall under section 330 or 331, IPC and not even under section 304 IPC much less under section 302, IPC. He tried to get sustenance to his submission from the views expressed in some of the above mentioned decisions cited by him.

11. In the case of the State of Andhra Pradesh v. N. Venugopal, the three respondents Venugopal (PSI), Rangaswamy (HC) and Subbaiah (PC) of Vempalli Police Station in Andhra Pradesh were tried and convicted under Section 348, 331 and 201 read with S. 109 IPC by the Sessions Judge, Ananthapur, for having taken one Arige Ramanna into custody on the night of 6-1-1957 and wrongly detained him in Kadiri Police Station for about three days and subjected him to physical torture resulting in number of injuries on his body for the purpose of extorting from him the information which may lead to detection of an offence and restitution of stolen property and removing him from the Police Station when he appeared to be in bad state and throwing him at a place where he was found lying dead with the intention of screening themselves from punishment. The prosecution case that Arige Ramanna was taken into custody and brought to Kadiri Police Station by the respondents was not disputed by them. Their defence was that they had nothing to do with the injuries found on Arige Ramanna's body. The Sessions Judge, on a consideration of the evidence, believed the prosecution case about the confinement and beating up of Arige Ramanna by the three policemen and that when he was in a bad state due to the injuries inflicted on him they got him removed from the Police Station. He also rejected the defence contention that the investigation in the case had not been made in accordance with law and eventually convicted the three Policemen under sections 348, 331 and 201 read with S. 109, IPC. In the appeal filed by the three convicted policemen, the High Court of Andhra Pradesh held that there was room to doubt the guilt of the Police officers on the charges and acquitted them. In appeal by the State of Andhra Pradesh, the Supreme Court held that the High Court was wholly unjustified in doubting the prosecution case that the three Policemen beat up Arige Ramanna and caused him injuries and convicted them under section 330, IPC only as the

State counsel did not press the appeal against the acquittal of the respondents in respect of the other offences under sections 348, 331 and 201 read with S. 109, IPC and maintained the sentence of rigorous imprisonment for five years imposed on the convicted Policemen by the Sessions Judge for the offence under section 331, IPC although the conviction was altered to one under section 330, IPC by observing that 'serious view cannot but be taken of such a barbarous method of dealing with the persons suspected of a crime as was committed by these respondents in this case. It is necessary that deterrent sentences should be inflicted for such an offence when established.'

12. In Sarju Singh's case 1978 Cr LJ NOC 286 the prosecution story was that one Sub-Inspector of Police and his fellow companions in order to extort information about certain 'S' missing and suspected to have been done to death, caught hold of two male persons Z and B and a lady R. In order to extract confession from these three persons, the policemen tortured them in different ways, wrongly confined and assaulted them resulting in the death of B. They placed powdered chillies in the vagina of R and hung her upside down. Eventually, the said Policemen were prosecuted. Learned Sessions Judge and the learned single Judge of the Allahabad High Court convicted them under Ss. 147, 330, 354, 342 and 220 read with S. 149, IPC, for torturing the lady R in the above manner. As the injuries caused to deceased B were on non-vital lower parts of his body and he was beaten only by 'Dandas' and cane with the object of extorting confession from him, it was held that only common object which could be attributed to them was that of causing hurt and not of murdering him. Hence, the accused were convicted under sections 325/149 and not under section 304/149, IPC.

13. In the appeals by Special Leave filed by the said convicted police, the Supreme Court in Maiku, : AIR 1989 SC67 , has held that :

(a) S. 147 or 149, IPC could not be attracted as the Sub-Inspector was only pursuing the investigation with the assistance of his companions and not in pursuance of any unlawful object;

(b) Injuries found on deceased B had been caused by hard and blunt object that too on non-vital Part and the medical evidence was that none of the injuries could

be said to be sufficient in the ordinary course of nature to cause death and above all, the prosecution case was not clear as to who was responsible for the offence of killing B inasmuch as it was very difficult to come to a definite conclusion even after going through the evidence of the witnesses about the individual acts of the accused in respect of B who had lost his life;

(c) Regarding the lady R, she had not told about the incident of inserting chillies powder in her vagina to anybody for about 1 1/2 or 2 years after the incident and she had no injury mark and she was also not medically examined; and

(d) The case had been registered on 14-5-68 on the complaint of B's brother Indal dt. 15-3-67 and charge-sheet was filed on 16-6-71.

It is for those reasons that the Supreme Court held that these circumstances go a long way to discredit the prosecution version and the investigation conducted was perfunctory and casual. Consequently, the Supreme Court allowed the appeals and set aside the conviction and sentence passed on all the appellants-policemen.

14. In the case of State of M.P. and Ranjit Singh, 1979 Cr LJ NOC 212 (MP) even relevant facts of the case are not available. What amounts to the offence under section 330, IPC is stated to be made out if it is proved that the accused voluntarily caused hurt for the purpose of extorting of confession or any information leading to detection of an offence or restoration of any property. It is held that if the victim died it is not necessary to further prove that the death was a result of that hurt.

15. Public Prosecutor v. Shaik Ibrahim, 1964 (2) Cri LJ 636 was a case of alleged use by the accused Police Officers of third degree methods to extract information regarding an offence of dacoity on the night of 24-4-61 at Warangal from a suspect resulting in his death. Suspecting that it must be a work of professional criminals, Circle Inspector Shaik Ibrahim (A1) instructed his subordinates to cheek up all suspects and ex-convicts in Warrangal and round about. A police constable (P.W. 8) was instructed to bring exconvict Chandriga and two others (P.Ws 1 and 2). Accordingly, Chandriga was brought to Mathwada Police Station at 8 a.m. on 24-4-61 and handed over to a PSI (A-3). A-2 to A-7, took Chandriga inside the police station, tied up his wrists with a cloth, hung him by the wrists to a peg driven into

the wall and tortured him whilst so suspended, by placing a pestle on his neck and pressing it down with a view to extort a confession or information from him regarding the aforesaid property offence. These processes were carried on between 10 p.m. and 11 p.m. to such a pitch that Chandriga died, presumably due to the fracture of the vertebrae. Thereupon, in the course of the same night, A-2 and A-4 contacted A-1 and in accordance with his instructions, A-2 to 7 first threw the body of Chandriga into a well situated near the police station and subsequently removed the dead body from the well, took it to a distant spot some thirty miles away from Warrangal and buried it in the bed of a river. It was made out by the Police on the morning of 25th that Chandriga had escaped from custody in the night and his whereabouts were not known, and entries were even made to that effect in the General Diary of the Central Crime station. 7 policemen in all including the CPI and PSI were tried and acquitted by the Sessions Judge of the charges under section 302 read with S. 109 IPC and 201 read with 32 IPC. In appeal by the State, a Division Bench of the Andhra Pradesh High Court found that the evidence clearly and unclinchingly established that accused 2, 3 and 5 to 7 had subjected Chandriga to torture with a view to extort confession or information from him and A-2 and A-3 had actually abetted them but they had no intention or knowledge of even causing grievous hurt to Chandriga, much less, causing his death. Therefore, accused 5 to 7 were convicted under section 330 IPC and accused 2 and 3 were convicted under section 330 read with S. 109 IPC and A-2 was further convicted under section 201, IPC and upheld the acquittal of A-1 and A-4 for want of evidence regarding their complicity in subjecting Chandriga to torture. It is in paragraphs-113 of this decision that the observations extracted in the beginning of this order are made.

16. It is thus seen that the 'intention' aspect strongly highlighted by Sri. A. H. Bhagawan is not adverted to in any of the above referred decisions relied on by him. Further, number and nature of injuries noticed on the body of the tortured persons concerned in those cases are not mentioned.

17. On the other hand, the said aspect is specifically considered in all the three decisions relied on by the learned State Public Prosecutor.

18. In the leading case of State of Andhra Pradesh v. Raja Varappu Punneya, : 1977 CriLJ1 , the academic distinction between 'murder' and 'culpable homicide not amounting to murder' which has vexed the Courts for more than a century has been adverted to in para 13 and it is observed in para 14 at page 5 as under :

'Clause (b) of S. 299 corresponds with Cls. (2) and (3) of S. 300. The distinguishing feature of the mens rea requisite under Clause (2) is the knowledge possessed by the offender regarding the particular victim being in such a peculiar condition or state of health that the intentional harm caused to him is likely to be fatal, notwithstanding the fact that such harm would not in the ordinary way of nature be sufficient to cause death of a person in normal health or condition. It is noteworthy that the 'intention to cause death' is not an essential requirement of Clause (2). Only the intention of causing the bodily injury coupled with the offender's knowledge of the likelihood of such injury causing the death of the particular victim, is sufficient to bring the killing within the ambit of this clause. This aspect of Clause (2) is borne out by Illustration (b) appended to S. 300'.

Again, it is held in para 19 at page 7 as under :

'19. Thus, according to the rule laid down in Virsa Singh's case : 1958 CriLJ818 (supra) even if the intention of accused was limited to the infliction of a bodily injury sufficient to cause death in the ordinary course of nature and did not extend to the intention of causing death, the offence would be murder. Illustration (c) appended to S. 300 clearly brings out this point'.

The findings recorded by the High Court on the basis of which A-1 and A-2 were convicted by it under section 304-II, IPC By altering the conviction from S. 302, IPC read with S. 34, IPC are set out in para 27 at page-8. Their Lordships of the Supreme Court have disagreed with the said conclusion of the High Court and have restored the order of conviction made by the Sessions Judge under section 302 IPC read with S. 34, IPC by allowing the State appeal. The reasons assigned for doing so, are set out in para 39 at page 11 as under :

'39. The ratio of Andra v. State of Rajasthan : 1966 CriLJ171 (supra) applies in full force to the facts of the present case. Here, a direct casual connection between

the act of the accused and the death was established. The injuries were the direct cause of the death. No secondary factor such as gangrene, tetanus etc., supervened. There was no doubt whatever that the beating was premeditated and calculated. Just as in Anda's case, here also the aim of the assailants was to smash the arms and legs of the deceased, and they succeeded in that design, causing no less than 19 injuries, including fractures of most of the bones of the legs and the arms. While in Anda's case, the sticks used by the assailants were not specifically dangerous, in the instant case they were unusually heavy, lethal weapons. All these acts of the accused were pre-planned and intentional, which, considered objectively in the light of the medical evidence were sufficient in the ordinary course of nature to cause death. The mere fact that the beating was designedly confined by the assailants to the legs and arms, or that none of the multiple injuries inflicted was individually sufficient in the ordinary course of nature to cause death, will not exclude the application of clause 3rdly of S. 300. The expression 'bodily injury' in clause 3rdly includes also its plural, so that the clause would cover a case here all the injuries intentionally caused by the accused are cumulatively sufficient to cause the death in the ordinary course of nature even if none of those injuries individually measures upto such sufficiency. The 'sufficiency' spoken of in this clause, as already noticed is the high probability of death in the ordinary course of nature and if such sufficiency exists and death is caused and the injury causing it is intentional the case would fall under clause 3rdly of S. 300. All the conditions which are a prerequisite for the applicability of this clause have been established and the offence committed by the accused in the instant case was 'murder'.

19. In State of U.P. v. Ram Sagar Yadav the accused police officers brought one B to the Police Station in order to extort illegal gratification from him and partly succeeded in one of them (R-2) obtaining from him Rs. 100/-. After B was released, he sent a complaint to the Superintendent of Police complaining that bribe was demanded from him by a Police constable. The complaint was sent by the Superintendent of Police to the SHO (R-1) of the concerned police station for enquiry. Being incensed by the 'audacity' of B in complaining against the Policemen under his charge, R-1 secured B to his Police Station by sending R-3 and R-4 in order to teach him a proper lesson. B was quite hale and healthy and

actually was engaged in ploughing his field when he was arrested by R-3 and R-4 on 29-8-69 and brought to the police station at 10 a.m. But when he was sent to District Magistrate's Court in a van two hours later for obtaining remand, he was found by the District Magistrate lying in verandah in such a badly injured condition that he could not be produced in Court. When questioned by the District Magistrate how he came to receive the injuries, B replied that 'the Darogah of Hussainganj and the Constables had beaten him very badly'. District Magistrate made a note of the said statement of B on the remand application and obtained the thumb mark's of B on it. B who was remanded, died some time after 5-20 p.m. on the same day. He had 19 injuries on the various parts of his person when he was seen by Dr. S. C. Mishra in the District Jail at about 5-20 p.m. In that context their Lordships of the Supreme Court have observed in para 19 at pages 420 and 421 as under :

'The distinction between murder and culpable homicide not amounting to murder is often lost sight of, resulting in undue liberality in favour of undeserving culprits like the respondent-police officers. Except in cases covered by the five exceptions mentioned in S. 300 of the Penal Code, culpable homicide is murder if the act by which the death is caused is done with the intention of causing death, or if the act falls within any of the three clauses of S. 300, namely, 2nd, 3rdly and 4thly. In this case, the injuries suffered by Brijlal would appear to fall under the clause '2ndly' of S. 300, since the act by which his death was caused was done with the intention of causing such bodily injury as the respondents knew to be likely to cause his death'.

With these observations, their Lordships have lamented that no useful purpose would be served by pursuing the matter any further since the State did not file any appeal against the judgment of the learned single Judge asking that the respondents should be convicted under section 302, IPC and since the prosecution did not lead sufficient evidence through the Medical Officer in order to bring out the true nature of the injuries suffered by B. It is thereafter that the observations already extracted above in the beginning of the order are made in para 20.

20. In Mohammed Sardar and etc. v. State of H.P., 1988 Cr. LJ NOC 80. it is held following the ruling of the Supreme Court in 1977 Cr. LJ 1, that although the accused Police Officer and his accomplices had no intention to cause the death of victim as they had while detecting the theft case which they were investigating, illegally detained and beat him which resulted in his death and such type of behaviour on the part of the Police is generally covered, inter alia, by the provisions of S. 330 and 331 IPC, their acts assume greater dimensions and fall within the ambit of S. 302 IPC when suspect is illegally, detained in the Police Station for days together and is constantly tortured and beaten during day and night which resulted in his death,

21. I have referred to the above decisions at some length in view of the repeated argument of Sri A. H. Bhagawan that the acts attributed to the petitioners-police officers in these two cases do not take them even to the fringe of S. 325 or 304, IPC much less, S. 302 IPC although the post-mortem report says that the deceased Raja concerned in this case had sustained 18 injuries of which injuries 1, 2 and 7 are lacerated injuries on the lobule of the left ear with blood clots from the head and an anterio medial aspect of the lower left arm with blood clots; injuries 3 to 6 and 8 to 16 are contusions abrasions on the right and left cheek, middle of left and right sides of neck, anterior surface of left forearm, upper surface of the right shoulder extending upto muscles, bones and bone joints; anterior surface of both thighs, upper end of left leg; anterio medical aspect of left arm, upper part of left side chest, lateral surface of right arm, right hip below iliac crest and injury Nos. 17 and 18 are the two fractures already noticed above. The opinion of the Doctor is that death is due to shock as a result of injuries.

22. Sri. A. H. Bhagawan wanted this Court to accept his say that these injuries were Post-mortem injuries as has been observed by the learned Sessions Judge in his order. But, when asked whether the Post-mortem report supports such a conclusion, Sri. A. H. Bhagawan looked into the post-mortem report produced by the learned State Public Prosecutor for reference and stated that it is not stated so in the post-mortem report. Therefore, it can be reasonably concluded at this stage that it was not necessary for the police to torture deceased Raja to the extent of causing as many as 18 injuries on various parts of his body for the purpose of

extorting information from him regarding theft of a Moped and not any other serious crime.

23. Statements of Puttakamiah (PC 674) and Veeranna (PC 632) recorded by the COD Police would reveal that they were on night duty in Crime squad room Tumkur from about 10 p.m. on the night of 11-7-90 and Raja who was detained in that room was incharge of Bhadriah and prakash (Petitioners 2 and 3 in Cr.P.No. 1074/90) and he was found by them in a very bad state when he was brought out at about 6-30 a.m. on 12-7-90 to answer the calls of nature. But, no Doctor was secured to treat that Raja. Sub-Inspector Shekhar (first petitioner in Cr.P. 1074/90) being informed of Raja's condition on the Phone, came there and asked Raja to get up to go home. But, Raja did not even speak and both his eye balls had gone upwards by then and both of them noticed black stripes of beating with lathi on Raja's shoulder, back, thigh, and palms and Raja succumbed to the injuries by about 8-15 a.m. and later, Raja's dead body was rolled into a rug and then put into Tempo No. CAG/9153 and Sub-inspector Shekhar and Police constables Bhadriah and Prakash sat in that Tempo which was driven away by driver Habeebulla Khan at about 10 a.m.

24. According to the objection-statement filed by the State in both the cases, the COD Police are able to record the statement of only Mruthyanjaya out of the above mentioned four detenus detained in the same room along with deceased Raja. Mruthyanjaya has in his statement given a vivid account of the manner in which Raja was subjected to torture in the presence of Sub-Inspector Shekbar. His statement would reveal that all the petitioners assaulted Raja with lathi and rolled an iron pipe on his thighs and he was beaten from 10 a.m. to 1 p.m. and again from 4 p.m. to 6 p.m. on 11-7-90 in Crime squad room and that when Raja was shouting and crying for water, he was given urine to drink by the petitioners. Therefore, it can be tentatively concluded at this stage that Raja eventually succumbed to the injuries inflicted on him and mental torture caused to him by the petitioners by about 8-30 a.m. on 12-7-90. Therefore, I am of the view that it can be reasonably concluded of course tentatively, on the material produced by the prosecution that the major offence alleged against the petitioners would fall under section 302 and not under section 330 or 331 IPC as canvassed by Sri. A. H.

Bhagawan. Point No. (i) is answered accordingly.

25. Point No. (ii) In view of my above conclusion on Point No. (i), all the three petitioners in Cr.P.No. 1075/90 who are all police constables and who are in custody and whose presence is required for further investigation are not entitled to be released on bail under section 439, IPC.

26. The next aspect to be examined is whether the three petitioners in Cr.P. No. 1074/90 who are still at large are entitled to the relief of anticipatory bail under section 438, Cr.P.C. Sri. A. H. Bhagawan placed strong reliance on the Division Bench decision of this Court in Chanda Earappa v. State of Karnataka, ILR 1989 Kar 2882 : 1989 Cri LJ 2405 in support of his contention that these three Police officials are entitled to the relief of anticipatory bail. It is no doubt held by the Division Bench of this Court in that decision that in a petitioner presented under section 438 Cr.P.C. to the High Court or the Court of Session, the Court has the power to direct the grant of bail, if the petitioner apprehends his arrest by the Police on the allegation that he had committed an offence of murder. In that case it was submitted by the then Advocate-General that the only indication available from the judgment of the Supreme Court in Kiran Devi's 1988 SCC (Cr) 106 is that the Court should be circumspect in granting anticipatory bail in a murder case. The said submission of the learned Advocate General is not either impliedly or expressly rejected as untenable. On the other hand, it is observed towards the end of para 15 at page 2902 of the said decision as under :

'If the Court considers that anticipatory bail should be granted having due regard to the material before the Court and further if on the facts and circumstances of the case the Court considers that the question as to whether the case is a fit one in which the accused should be on bail through trial or not, should be examined in the light of the material placed before the Court after filing of the FIR or the charge-sheet, it would be a wise exercise of jurisdiction to limit the anticipatory bail in point of time, in that, the accused should be asked that after his arrest and release he should apply for bail under section 437 of the Code or under section 439 of the Code and that the anticipatory bail granted under section 438 of the Code would come to an end on the passing of the order on such application'.

Therefore, I am of the opinion that in highly sensitive case of this nature, the persons seeking anticipatory bail under section 438, Cr.P.C. are not entitled to that relief as a matter of course. Submission of Sri K. H. N. Kuranga, learned State Public Prosecutor, that Sub-Inspector Shekhar and Police constables Bhadriah and Prakash have made themselves scarce by absconding and they have not even appeared to draw their subsistence allowance as they are placed under suspension is not disputed by Sri. A. H. Bhagawan. In my opinion, the attitude of the Sub-Inspector of Police and the two Police constable in keeping themselves out of the reach of the COD Police for nearly 4 weeks without appearing before the COD Police and co-operating with the investigation of a crime should not be encouraged as they are expected to enforce law and order and assist in the investigation of the crime. Sri K. H. N. Kuranga, learned State Prosecutor, strenuously submitted that on account of the abscondence of these three Police officials, the COD police are not in a position to contact the three other detenus and record their statements so far as they are damn afraid of these Police officials as they are terrorising them by remaining themselves behind the screen. In my opinion, the said contention cannot be brushed aside as altogether unfounded. It is no doubt true that this Court has observed in the case of *R. L. Jalappa v. Delhi Police Establishment* ILR 1988 (3) Kant 115 in para 23 and 24 that the submission that it is a case of extreme sensitive nature with wide social and political repercussions is not sound, as Courts are expected to deal with cases as they come before them, mindful of the need to keep passions, prejudices, and sensitiveness, out of their decisions and the finding of the learned Sessions Judge that the filing of application under section 438, Cr.P.C. itself amounts to 'tacit declaration of non-co-operative attitude' is an erroneous assumption. But, in the instant case, the applicants, who are seeking anticipatory bail are not illiterate, ignorant and timid citizens inasmuch as, the first petitioner is a Sub-Inspector of Police and the other two are police constables who can by their very status wield their influence over the material witnesses required for interrogation and thereby hamper the investigation.

27. Taking all the above mentioned aspects into consideration, I am of the opinion that all the three petitioners in Criminal Petition No. 1074/90 are not entitled to the relief of anticipatory bail at least till the material witnesses concerned in Crime No.

77/90 are secured and examined and the other material information regarding recovery of articles, if any, is collected by the COD Police.

28. In the result, for the foregoing reasons, both the petitions are dismissed with liberty to the petitioners to renew their prayers either for anticipatory bail or regular bail, as the case may be, after substantial progress in the investigation of Crime No. 77/90 is made.

NOTE

Soon after I pronounced this order, Sri K. H. N. Kuranga, learned State Public Prosecutor, filed a memo entitled 'Intimation regarding arrest of petitioners 1, 2 and 3'. It is stated in that memo that V. Shekar (Petitioner No. 1) and U. R. Prakash (Petitioner No. 3) in Cr.P.C. No. 1074/90 surrendered before the Investigating Officer, COD, Bangalore, at 11 a.m. on 25-8-90 and they have been arrested in Crime No. 77/90 of NEPS, Tumkur and produced before the A.C.J.M. Tumkur on 25-8-90 at 8-45 p.m. and they are remanded to judicial custody till 8-9-1990.

It is further stated in that memo that second petitioner Police Constable Bhadriah surrendered before the Investigating Officer, COD, Bangalore on 27-8-90 at 13-30 hours and he has been arrested in Crime No. 77/90 and he will be produced before the ACJM, Tumkur.

The said memo is filed in the record as no further order is needed in the light of the order just now pronounced.

29. Petitions dismissed.