

J.B. Katariya Vs. State of U.P.

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SooperKanoon Citation : sooperkanoon.com/492050

Court : Allahabad

Decided On : Feb-14-2002

Reported in : 2002CriLJ2220

Judge : J.C. Gupta and ;Imtiyaz Murtaza, JJ.

Acts : Prevention of Corruption Act - Sections 7 and 13; [Indian Penal Code \(IPC\), 1860](#) - Sections 34, 302, 304, 307, 323 and 342; Code of Criminal Procedure (CrPC) - Sections 161

Appeal No. : Cri. Appeal Nos. 2350 of 1997 and 23 and 1315 of 1998

Appellant : J.B. Katariya

Respondent : State of U.P.

Advocate for Def. : Shashi Prakash Sharma, D.G.A.

Advocate for Pet/Ap. : Viresh Misra and ;Vinod Prasad, Advs.

Judgement :

Imtiyaz Murtaza, J.

1. Two appeals have been preferred by three appellants against the judgment and order dated 19-12-97 passed by Special Sessions Judge, Lalitput in S.T.No. 20 of 1993 where by the appellants Ghanshyam Sharma and Ram Narain have been

convicted under Sections 323/34, 342 I.P.C. and sentenced to 6 months R.I. on each count and appellant J.B. Katariya has been convicted under section 302 I.P.C. and sentenced to imprisonment for life and under Section 342 I.P.C. for 6 months rigorous imprisonment. Third appeal is filed by the State against acquittal of J.B. Katariya under Section 7/13 of Prevention of Corruption Act and against acquittal of Ghanashyam Sharma and constable Ram Narain under Section 302 I.P.C. All the appeals arise out of the same judgment, therefore they are decided by this common judgment.

2. The prosecution case in short is that complainant's nephew Virendra Singh was doing medical practice in village Sojna. On 6-3-87 at about 2.30 in the night he had some altercation with Shiv Nayak Singh. Pairokar of police station Sojna in front of Aata Chakki of Purshottam Namdeo. The altercation had taken place when the Pairokar was in a drunken condition and he was accompanied with another constable whose name was subsequently disclosed as Pahalwan. The altercation had started when two constables had started abusing Virendra Singh. After the said occurrence his nephew had run away. The F.I.R. was lodged at police station Sojna by constable on 7-3-87 at 3.05 a.m. under Section 307 I.P.C. against his nephew Virendra Singh and the case was entrusted to S.I.R.K. Tewari for investigation. Virendra Singh was arrested by the police and was brought to the police station by S.O. J.B. Katariya and two constables Ghanshyam Sharma and Ram Narain. On the way to the police station he was beaten and detained at the police station where he was beaten mercilessly by the Station Officer where he succumbed to his injuries. The informant Bhoopat singh maternal uncle of the deceased lodged the first information report at police station Sojna on 9-3-87.

3. Dr. C.N. Shukla (P.W.8) and Sr. S.S. Singhal jointly conducted autopsy on the dead body of Virendra Singh on 9-3-87 at 4.00 p.m. According to Dr. Shukla, deceased had following ante mortem injuries on his person. :-

1. Abraded multiple contusion in an area of 59.0 cm x whole circumference of left leg including overleg and anteromedial aspect of lower part of thigh not possible to measure the size of individual contusion on dissection large amount of blood present in soft tissue underlying the injury.

2. Contusion 10.0 cm x 2.5 cm on anterolateral aspect of left thigh lower part.
3. Contusion 11.0 cm x 4.0 cm on back of left thigh lower part.
4. Contusion 4.5 cm x 3.0 cm on middle part back of left thigh.
5. Contusion 11.0 cm x 3.0 cm on lateral aspect of left buttock.
6. Multiple contusion : in an area of 43.0 cms x whole circumference of right leg including knee lower part of thigh not possible to measure the size of individual contusion. On dissection large amount of blood present in soft tissues.
7. Contusion 10.0 cm x 3.0 cm on back of right thigh upper part.
8. Contusion 10.0 cm x 3.0 cm. On back of right thigh, posterolateral aspect.
9. Contusion 18.0 cm x 10.0 cm on posteromedial aspect of middle of right thigh.
10. Contusion 5.0 cm x 4.0 cm on just behind right anterior superior illiac spine.
11. Abraded multiple contusions in an area of 55.0 cm x whole circumference extending from middle part of right upper arm including elbow, forearm and hand not possible to measure size of individual contusion. On dissection large amount of blood present in soft tissues.
12. Contusion 12.0 cm x 6.0 cm on posterolateral aspect of right shoulder and deltoid region.
13. Abraded multiple contusions in an area of 29.0 cm x whole circumference extending from middle of left upper arm including elbow and forearm, not possible to measure size of individual contusion. On dissection, large amount of blood preesent in soft tissues.
14. Multiple abrated contusion in an area of 26.0 cm x whole circumference. 3.0 cm below the injury No. 13. upto fingers not possible to measure size of individual contusion. On dissection large amount of blood present in soft tissues.

15. Multiple abrasions in an area of 7.0 cm x 1.0 cm on right side face, molar and zygomatic region.

16. Multiple abrasion in an area of 3.0 cm x 1.5 cm on left half of chin.

17. Abrasions 4.0 cm x 1.0 cm. Over mucosal surface of upper and lower lips, outer aspect of left side.

18. Abrasions 4.0 cm x 1.0 cm. over mucus surface of upper and lower lips, outer aspect of right side.

4. On internal examination, the doctor had found that there was no blood in left side of the heart but about 200 gms of blood was present in the right side. Semi digested food was present in the small intestine and there were gases and faecal matter in the large intestine.

5. In the opinion of the doctors, death was caused due to shock and haemorrhage resulting from ante mortem injuries.

6. The prosecution in support of its case examined 12 witnesses in all. Jujhar Singh (P.W.1) he was wrongfully arrested by the Investigating Officer and he is also an eye witness of the occurrence. Bhoopat Singh (P.W.2) is maternal uncle of the deceased. He is also an eye witness and complainant of the case. He has proved written report Ext. Ka-1. Pahar Singh (P.W.3) is also an eye witness about the arrest of the deceased. Narain (P.W.4) is Phoopha of the deceased. It is alleged that he had given shelter to the deceased in his house from where police had arrested him. He is also an eye witness of payment of bribe of Rs. 1000/- to the Station Officer by his brother in law Narain Singh. Parvat Singh (P.W.5) is a tractor driver who had brought the deceased, Bhoopat. Singh, two constables and their cycles to the police station. Narain Singh (P.W.6) is said to have given bribe to the Station Officer Uma Vilas Awasthi (P.W.7), S.D.M. Mehroni had prepared the inquest report and other papers for the postmortem report. Dr. C.N.Shukla (P.W.8) who had conducted the post mortem on the dead body of deceased Virendra Singh. G.P.Misra (P.W.9) second Investigating Officer had proved the order passed by Sri A.K. Tyagi, Sector Officer directing him to investigate the case

and prepared the site plan. Constable Mohd. Mustafa (P.W. 10) had brought the dead body for post mortem and he had deposited the sealed bundle of cloth of the deceased and he had filed his affidavit. Constable Parvat Singh (P.W. 11) had proved chick report Ext. Ka-11 and G.D. entry Ext. Ka-12. He had also proved entries of the G.D. dated 7-3-87, 8-3-87 and 9-3-87, which are Exts. Ka-13 to Ka-18. Inspector R.K.Sharma (P.W. 12) had proved the sanction accorded by Sri A.K. Rastogi, the then Home Secretary. Sri C.D.Premi, the then D.I.G. (police), Allahabad Region and Sri Sukhdeo Singh the then Superintendent of Police, Lalitpur and these sanctions were marked as Exts. Ka-19 to Ka-21. He has also proved the charge sheet Ext. Ka-22.

7.A11 the three accused had totally denied the prosecution case. Constables Ghanshyam Sharma and Ram Narain stated that they had accompanied the Station House Officer Sri J.B.Katariya in the search and for the arrest of the deceased who was wanted as an accused. It was also stated by them that some altercation took place between the deceased and constable Shiv Nayak Chauhan on 7-3-87 and case was registered at the police station under Section 307 I.P.C. against the deceased. In pursuance thereof they along with the Station Officer had searched and arrested the deceased from the house of Narain Singh in village Khatka Tikam Garh and from there he was brought to the police station and kept in lock up and they had not assaulted him. They had also stated that they had not detained Bhoopat Singh. The accused had examined Dr. Kusumakar Srivastava (D.W.I). He had stated that he was called at police station on 8-7-87 and he had examined the patient at the police station. His condition was not good and he had referred him to Mehroni district hospital. He has also stated that there was no one except police personnel at the police station.

8.The learned Sessions Judge on appraisal of evidence and consideration of facts and circumstances came to the conclusion that Sri J.T3. Katariya is guilty and convicted him for the offence punishable under Sections 302/342 I.P.C. Accused Ghanshyam Sharma and Ram Narain are also found guilty for the offences, under Sections 323/34 and 342 I.P.C. and convicted them for the same. Sri J.B.Katariya was not found guilty under Sections 7/13 of the Prevention of Corruption Act.

9. P.W. 1, Jujhar Singh stated that about 8 years back Inspector J.B.Katariya had come to his house and enquired about Virendra Singh and he told him that Virendra Singh had some altercation with Shiv Nayak a Pairokar of the police station. Virendra Singh and Bhoopat Singh were brought to the police station by Inspector J.B.Katariya along with two constables Ghanshyam Sharma and Ram Narain. ' Virendra Singh was limping and his hands were tied on the back. He had seen that Sri J.B.Katariya had assaulted Virendra Singh with lathi and constables were catching hold of his handstand giving him fist blows. Sri J.B.Katariya had given 8-10 lathi blows to Virendra Singh in the Court yard of the police station and all the three accused had kept him in the lock up of the police station. Bhoopat Singh was kept standing in the police station and Inspector told the constables to keep him on standing position. The Inspector had detained one Tractor driver Parvat. He was hearing the moaning of Virendra Singh about two hours and after that he had stopped and he thought that Virendra Singh has succumbed to his injuries. It is alleged that Pahalwan and Shiv Nayak came there and abused Virendra Singh. On the next day at about 5.00 a.m. Inspector came and released him and told him that whenever he will be required he will call him but Virendra Singh and Bhoopat Singh had not left the police station and insisted for meeting Virendra Singh. There was silence in the police station and he came to know that Virendra Singh succumbed to his injuries. In the cross-examination he has stated that he was interrogated by the officers of C.I.D. and he had given statement that both the constables had caught hold the hands of Virendra Singh and beating him with feast. It was not mentioned in his statement and he cannot give its reason and he could not tell the reason why the names of the persons who assaulted Virendra Singh is not mentioned. He has also not given any reason that why in his statement that all the accused had threatened, dragged and kept him in the lock up is not mentioned. He has also stated that he had informed the Investigating Officer that Pahalwan and constable Shiv Nayak had abused Virendra Singh at the police station but he cannot give any reason why in this statement it was not mentioned. He had not made any complaint about illegal detention to higher authorities.

10. Bhoopat Singh (P.W.2) has stated that Shiv Nayak and Pahalwan had came to his house enquiring about Virendra Singh. He had also stated that Inspector

J.B.Katariya along with constables Ghanshyam Sharma and one Ram Narain came to his house and later on he was arrested and brought to the police station. Narain Singh was released by the police officer. Subsequently he has stated that Virendra Singh was assaulted by Inspector on the leg and both the constables had given him fist blows. On the way to the police station Inspector had detained one Parvat, Tractor driver and they were brought to the police station. Bhoopat Singh has also stated that Virendra Singh was assaulted near the Chakki of Namdeo. In the police station the Inspector had given several lathi blows to Virendra Singh. Next day he was released from the police station and subsequently he came to know that Virendra Singh had succumbed to his injuries and he informed the father of Virendra Singh and he has also lodged the report. Ext. Ka-1. He has stated that he had informed the CO. that his hands and Virendra Singh's hands were tied but it was not mentioned in his statement and he cannot tell any reason why it is not mentioned. He has also stated that he had informed the Investigating Officer that constables had given fist blows but why it is not mentioned in his statement he cannot tell any reason. He could not give the reason why 'Dono Sipahiyon ne Daroga ko yah kahkar Uksaya ki Virendra ko wahan le chaliye jahan isne sipahi-ko mara tha.' is not mentioned in his statement. He has further stated that he had given this statement to the Investigating Officer.' Sipahiyon ne Darogaji se kaha tha ki Virendra ko itna maro ki isko pata chal jay aur sab gaon wale dekhate rahen' why this statement was not written he cannot tell the reason.

11. Pahar Singh (P.W.3) has stated that he was standing on the Tigadda and he saw that J.B.Katariya standing there and after two minutes one Tractor came from which Ram Narain, Ghanshyam Sharma, Bhoopat .Singh and Virendra Singh got down. Parvat was the tractor driver and when the tractor reaching towards the police station J.B. Katariya had given two lathi blows to Virendra Singh and took him towards market. In the cross-examination he has stated that he had given the statement regarding lathi blow given by Inspector to Virendra Singh but why it is not mentioned in his statement he cannot tell any reason. He has stated that Narain Singh is his uncle. He has admitted that he had not informed the family members of Virendra Singh, Bhoopat Singh that they were taken to the police station.

12. Narain Singh (P.W.4) has stated that about 8 1/2 years back Virendra Singh (deceased), had come to his house and informed him that he had some altercation with police personnel. Next morning when he was in his field Inspector J.B.Katariya and two constables came and enquired about Virendra Singh. The inspector brought him to his house where Virendra Singh and his uncle Bhoopat Singh met the inspector and he had ordered their arrest and both were arrested by the constables and their hands were tied with the rope. The inspector had threatened him for sheltering a criminal and took all the three to the house of Jai Pal Singh. Jai Pal Singh had asked the inspector to release him and he had demanded Rs.5000/- for releasing him but ultimately the matter was settled for Rs. 1000/-. At the house of Jai Pal Singh his brother-in-law Narain Singh and Mulayam Singh reached there and Narain Singh arranged for money which was given to the inspector and inspector released him. The inspector took the accused to Sojna and gave lathi blows to Virendra Singh on his leg and chest. In the cross-examination he has stated that his statement was recorded by the inspector after about one month. He has admitted that he has not lodged any report for giving Rs. 1000/- to inspector nor he had made any complaint to the higher authorities.

13. Parvat (P.W.5) who is tractor driver, has stated that in village Sojna inspector Katariya and two constables Ghanshyam Sharma and Ram Narain came along with Virendra Singh and Bhoopat Singh. The hands of Virendra Singh and Bhoopat Singh were tied with the rope. The inspector asked him to take them to the police station and told him that he had to carry stones. The inspector had given a slap and took the arrested persons to the police station. He took them to the house of Narain Singh and asked him to take the tractor to the police station. After some time the inspector, constables, Bhoopat Singh and Virendra Singh reached there and inspector had started assaulting Virendra Singh with lathi and after assaulting him he was kept in the ladies lock up. He had heard the cries of Virendra Singh at about 3.00 p.m. in the cross-examination he had admitted that he knows Dr. Virendra Singh for about 2 years and he also knows Bhoopat Singh and Jujhar Singh and he has good relation with them. He has admitted that he was detained at the police station from 1.00 p.m. to 4.00 p.m.

14. Narain Singh (P.W.6) has stated that in the village he had received information that Virendra Singh and Bhoopat Singh were taken to the police station by inspector J.B. Katariya and constables. He reached at the house of Jai Pal Singh and found there inspector Katariya and two constables, his brother-in-law Narain Singh, Virendra Singh, Bhoopat Singh and Jai Pal Singh. He came to know that inspector demanded Rupees four five thousands for releasing Narain Singh and the matter was settled for Rs. 1000/- He has given Rs. 1000/- to the inspector Katariya. After getting the money the inspector had released Narain Singh and he along with two constables had taken Bhoopat Singh and Virendra Singh to the police station and there he gave lathi blows to Virendra Singh. In the cross-examination he has stated that his statement was recorded after about 8 months. He has admitted that Kishori had informed him about the arrest of the accused persons. He has denied that inspector had demanded money. He has further stated that two lathi blows were given to Virendra Singh by the inspector.

15. Sri Uma Vilash Awasthi (P.W.7), S.D.M. has stated that he had received information for conducting the inquest of the deceased. He had prepared the inquest report and send the dead body for post mortem in sealed cover through constables. He had also conducted the enquiry and submitted his report to the District Magistrate. He has further stated that during the enquiry it was found that deceased had died due to the injuries of lathi blows caused by inspector J.B. Katariya.

16. Sri C.N.Shukla (P.W.8) is the doctor who had conducted the post mortem. He had received all the papers through the constables and found the injuries on the dead body of deceased Virendra Singh as mentioned above. He has further stated that the injuries were caused by lathi and he had died on 8-3-87 between 2.00 p.m. to 2.30 p.m. The injuries were sufficient in the ordinary course of nature to cause death. In the cross-examination he had admitted that injuries No. 1 to 14 were not on vital part and he had not found any fracture.

17. Sri J.R.Misra (P.W.9) is the Investigating Officer. He was posted in C.B., C.I.D. Kanpur. On 5-4-87 he had recorded the statements of Bhoopat Singh, Jujhar Singh, Raghvendra Singh, Pahar Singh, Roshan Singh, Raja Bhैया and Natthu

Singh and after that he had recorded the statement of village Pradhan Maigua, Jai Pal Singh, Kundi, Nandu, Narendra Singh, Pratipal Singh, Tulsi Ram, Narain Singh, Jagat Narain and Bhagirath. On 9-4-87 he had interrogated the accused J.B.Katariya, Constables Ghanshyam Sharma and Ram Narain and also recorded the statements of Shiv Narain and Pahalwan. On 22-4-87 he had recorded statement of Dr. S.S. Singhal, Dr. C.N.Shukla, Constable Brahma Singh and Head Moharrir Parvat Singh. On 23-4-87 he had recorded the statements of Chhatrapal Singh, Ram Singh, Mahendra Singh, Lal Singh, Gaya Prasad, Bhanu Pratap, Bal Chand and Namdeo. On 22-8-87 he had recorded the statement of tractor driver Parvat Singh. On 20-11-87 he had recorded the statements of Narain son of Takat Singh and Uma Vilash Awasthi, S:D.M. On 9-12-87 he had recorded the statement of CO. Udai Singh. He had investigated the case uptill 11-12-87 and after that the case was investigated by Ram Kishore Sharma. In the cross-examination he had stated that Jujhar Singh had not given statement 'Do teen sipahiyon ne use (Mritak) Khinchkar hawalat main dal diya tha.' He has further stated that Bhoopat had not given the statement that 'Darogaji va constable ne aakar kaha ki tumhe band kar denge aur Virendra Ko jan se mar denge.' He has further stated that he had not stated 'Simpahiyon ne darogaji se kaha tha ki Virendra ko itna maro ki ise pata chal jay aur sab gaon wale dekhate rah jaye.' He has further stated that Pahar Singh had not informed him that on Tigadda inspector was standing with a lathi and tractor had reached there.

18. Constable Mohd. Mustafa (P.W.10) has filed an affidavit in which he has stated that S.D.M. prepared the inquest report of Virendra Singh and sealed the dead body. He had taken the dead body and relevant papers for the post mortem along with constable Brahma Singh, Deen Dayal, Balveer and Dhani Ram. He had handed over the dead body and papers to the doctor for the post mortem on 9-3-87 at 3.30 p.m. and after the post mortem he had deposited the sealed envelop and cloth at the police station.

19. Constable Pahar Singh (P.W. 11) was posted as Head Moharrir at police station Sojna. He has written F.I.R. on 9-3-87 lodged by Bhoopat Singh which is Ext. Ka-1. He had prepared the chick on 9-3-87 at 12.30 p.m. which is Ext. Ka-11 and he had prepared the report No. 40 which is Ext. Ka- 12. He has further stated

that on 7-3-87 report No. 4 at 3.05 p.m. the case under Section 307 I.P.C. was registered against deceased Virendra Singh. True copy of the G.D. is Ext. Ka-13. He has further stated that on 8-3-87 S.O., J.B.Katariya, Constables Ghanshyam Sharma and Ram Narain had left police station vide report No.3 at 3.05 p.m. which is entered in the G.D. Ext. Ka-14. On 8-3-87 at 11.45 a.m. report No. 9 S.O., J.B.Katariya, constables Ghanshyam Sharma and Ram Narain brought Virendra Singh which is entered in the G.D. Ext. Ka-15. On 8-3-87 at 2.35 p.m. constable Ghanshyam Sharma reported about the death of Virendra Singh to the police station which is entered at G.D.No. 13, Ext. Ka-16. On 9-3-87 at 7.15 a.m. information was sent to S.P. C.J.M. S.D.M. vide G.D.No. 14 Ext. Ka-17. On 9-3-87 inspector J.B.Katariya, constables Ghanshyam Sharma and Ram Narain were suspended by S.P. Deo Dutt which is entered in the G.D. Ext. Ka-18. In the cross-examination he has stated that J.B.Katariya had brought Virendra Singh (deceased) at the police station in his presence. He has further stated that J.B.Katariya alone had brought Virendra Singh. He has further stated that S.O. had directed him to get the injuries of Virendra Singh treated and the Doctor was called and when he was taken to the hospital he had succumbed to his injuries. He was not sent to Mehrauli for the treatment. He has denied about the presence of any other witness at the police station. He has denied that Virendra Singh was assaulted at the police station.

20. Ram Kishore Sharma (P.W. 12) C.B.C.I.D. inspector is the Second Investigating Officer had started the investigation on 27-8-90. He had obtained the sanction for the prosecution Ext. Ka-19. On 2-1-91 he had received the departmental sanction for prosecution against J.B. Katariya which is Ext. Ka-20. On 14-10-91 he had received departmental sanction for prosecution of constables Ghanshyam Sharma and Ram Narain which is Ext. Ka-21. On 30-12-91 he had submitted charge sheet against the accused persons.

21. The learned Sessions Judge had convicted and sentenced J.B.Katariya under Section 302 I.P.C. for life imprisonment and under Section 342 I.P.C. for six months and the appellants Ghanshayam Sharma and Ram Narain were convicted and sentenced to undergo R.I. for a period of 6 months on each count of under Section 323/34, 342 I P.C.

22. We have heard learned counsel for the parties and have perused the record.

23. We shall first deal with the case of Constable Ghanshyam Sharma and Constable Ram Narain, who have been found guilty by the learned Sessions Judge under Section 323 and Section 342 I.P.C. It could not be disputed from prosecution side that when deceased Virendra Singh was arrested, F.I.R. at case crime No. 10 of 1987 under Section 307 I.P.C. had already been registered through G.D.No 4 at 3.05 a.m. on 7-3-1987, as is apparent from Ext. Ka-13. Therefore, when accused Virendra Singh was arrested he was wanted as an accused in a cognizable offence. These constables therefore, cannot be held guilty of the offence of wrongful assignment (consignment) punishable under Section 342 I.P.C. Their conviction under this count is, therefore, not sustainable. As far as their conviction under Section 323 read with Section 34 I.P.C. is concerned it has come in evidence of the witnesses that only the Sub- Inspector Katariya alone had given Danda beating to the deceased. No specific allegation of assault made by these, accused constables upon Virendra Singh was made in the F.I.R. nor such an allegation could be made by the witnesses in their statements recorded during investigation. Realizing this infirmity in the prosecution case, P.W. 1 Jujhar Singh and P.W.2 Bhoopat Singh tried to embellish for the first time in their deposition before the Court that these constables also participated in the assault made on the deceased Virendra Singh soon after the later was arrested. P.W.2 stated that both these constables has given fists blows to Virendra Singh when he was brought to police station after his arrest but again even this allegation is not found to be contained in his statement recorded under Section 161 Cr.P.C. as admitted by the Investigating officer. It may be relevant to mention here that Pahar Singh, P.W.3, Narain, P.W.4, Parvat P.W.5 and Narain Singh P.W.6 have not stated of any beating on deceased at the hands of these accused constables. It would be too risky to place implicit reliance on this improved version put. forward by these witnesses for the first time in Court. We, therefore, reject the testimony of P.W. 1 and P.W.2 to this extent and extend the benefit of doubt to these appellants who had merely accompanied the Station Officer, Sri Katariya to cause the arrest of deceased, who was wanted as an accused in a cognizable case already registered at the police station. Accordingly benefit of doubt has to be extended to these appellants and they are entitled to be acquitted.

24. Now the case of J.B.Katariya is that he had arrested the deceased Virendra Singh and he had died while he was in custody. A perusal of the F.I.R. indicates that specific allegations are made against the Station House Officer, J.B. Katariya. All the prosecution witnesses are consistent with regard to the role of J.B.Katariya. He had arrested Virendra Singh and assaulted while he was brought to the police station. Jujhar Singh (P.W.1) has stated that J.B.Katariya had given 8-10 lathi blows to Virendra Singh and then he was kept in the lock up. Bhoopat Singh (P.W. 2) has also stated that in the Court yard of the police station the inspector J.B.Katariya had given lathi blow to Virendra Singh. Pahar Singh (P.W.3) has also specifically stated that J.B.Katariya had given lathi blow to Virendra Singh. Narain (P.W.4) has also stated that after the arrest of Virendra Singh inspector had given lathi blow to him. Parvat (P.W.5) has also stated about the role of the inspector. Narain Singh (P.W.6) has also supported the prosecution case as regard the assault by the Inspector is concerned. Thus prosecution witnesses examined clearly stated that J.B.Katariya had assaulted Virendra Singh at Sojna Tigadda as well as inside the police station. The witnesses who are eye witnesses of the incident in question fully supported the prosecution version in unequivocal term that J.B.Katariya gave number of lathi blows to the deceased Virendra Singh. The post mortem report also supports the eye witness account. The doctor who had conducted the post mortem examination had found lathi injuries all over the body of Virendra Singh deceased, Thus prosecution has fully proved its case against J.B.Katariya,

25. Learned Counsel for the appellant, J.B.Katariya submitted before the Court that the post mortem report indicates that all the antemortem injuries were on non-vital part. There was no oozing of blood from any injury nor any fracture was found underneath any ante mortem injury. Each one of the ante mortem injury is a simple injury. Deceased was wearing a full pant when he was assaulted no part thereof was found torn. No blood came out to be visible from outside. Accused, therefore, could not be presumed to be having knowledge of the injuries, which in fact had been sustained by the deceased when he was assaulted with Danda. It was strenuously urged that in these circumstances no case under Section 302 I.P.C. can be said to have been made out and the offence would not travel beyond the ambit of Section 323 I.P.C. We find ourselves unable to accept this submission

of learned counsel for the appellant.

26. From the evidence available on record both documentary and oral we are satisfied that J.B.Katariya had caused injuries to deceased Virendra Singh while he was in police custody and even if it is not possible to say that he intended to cause the death of Virendra Singh, but he can certainly be clothed with the knowledge that the injuries which were being caused to the deceased at the police station were likely to cause his death though probably without any intention to cause his death, or even to cause such bodily injuries to him as were likely to cause death. The offence would fall under Section 304- Part II I.P.C. So far offence under Section 342 I.P.C. is concerned it is admitted that deceased was not wrongfully confined. He was arrested in a case under Section 307 I.P.C. His arrest and detention was not illegal. His conviction under Section 342 I.P.C. is set aside.

27. In the result criminal appeal No. 22 of 1998 is allowed. The appellants Ghanshyam Sharma and Ram Narain are acquitted for the offences charged for. They are on bail. They need not surrender. Their bail bonds are cancelled and sureties discharged. Criminal appeal No. 2350 of 1997 is partly allowed. The appellant J.B.Katariya is convicted under Section 304 Part II I.P.C. in place of Section 302 I.P.C. He is sentenced to undergo rigorous imprisonment for two years and a fine of Rs. 25,000/- and in default of payment of fine he shall undergo further imprisonment for six months. He is on bail. He shall be taken into custody forthwith to serve out the sentence as modified by this Court. After his arrest or surrender as the case may be his bonds shall be cancelled and sureties discharged. Out of the amount of fine if so realized Rs. 15,000/- shall be paid to the next of the kin of the deceased. State appeal No. 1315 of 1998 is dismissed.