

**State Vs. R.P. Tyagi**

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**Court :** Delhi

**Decided On :** Mar-05-2008

**Reported in :** 153(2008)DLT693

**Judge :** Mukul Mudgal and; P.K. Bhasin, JJ.

**Acts :** [Constitution of India](#) - Article 21; Indian Penal Code (IPC) - Sections 19, 34, 109, 114, 114B, 114B(1), 119, 120, 120B, 161, 167, 186, 201, 211, 217, 218, 219, 300, 302, 304, 304(II), 307, 323, 325, 323, 330, 331, 342, 343, 353, 365 and 420; Delhi Police Act - Sections 120 and 124; [Evidence Act, 1872](#) - Sections 33, 45 and 80; [Government of India Act, 1935](#) - Sections 270; Prevention of Corruption Act; [Code of Criminal Procedure \(CrPC\) , 1973](#) - Sections 156(3), 176, 197, 197(1), 200, 202, 210, 313, 319, 357, 357(1) and 357(3); [Code of Criminal Procedure \(CrPC\) , 1898](#) - Sections 197

**Appeal No. :** Death Sentence Reference No. 01/2007 and Crl. Appeal No. 38/2007

**Appellant :** State;r.P. Tyagi

**Respondent :** R.P. Tyagi;state and anr.

**Advocate for Def. :** R.N. Sharma, Adv. in Death Sentence Reference No. 01/2007 and ; Sunil Sharma, APP in Crl. Appeal No. 38

**Advocate for Pet/Ap. :** J.P. Dhanda, Adv. in Death Sentence Reference No. 01/2007 and; R.N. Sharma and;

## **Judgement :**

### **Mukul Mudgal, J.**

1. Death Reference 01/2007 arises out of the impugned judgment dated 13th December, 2006 delivered by the learned Additional Sessions Judge, Karkardooma Courts, Delhi, by which the accused R.P. Tyagi posted as the SHO at the relevant time, was convicted under Sections 302/342/120-B IPC. Further, by his order dated 15th December, 2006 accused R.P. Tyagi was sentenced to death.

2. The Death Reference and the Appeal of the convicted accused R.P. Tyagi were taken up together for hearing and after hearing Mr. Sunil Sharma, Additional Public Prosecutor for the State and Mr. R. N. Sharma, the learned Counsel for the accused, both the matters are now to be governed by this common judgment.

3. In order to appreciate the arguments advanced by the learned Counsel for the appellant and the learned Counsel for the State, it is necessary to notice at the outset the main evidence relied upon by the prosecution and accepted by the learned trial court for convicting the appellant. Then we would ourselves analyze and assess the worth of that evidence for satisfying ourselves whether the prosecution has been able to prove its case beyond reasonable doubt or not, since it was held by the Hon'ble Supreme Court in State of Tamil Nadu v. Rajendran : 1999 CriLJ4552 that when a Death Reference is made by a court to the High Court for confirmation the High Court has to satisfy itself whether a case beyond reasonable doubt has been made out against the accused for imposition of the extreme penalty of death and for that the proceedings require a re-appraisal and reassessment of the entire facts and law so as to arrive at its independent conclusion.

In an earlier case also reported as Jumman and Ors. v. State of U.P. : 1991 CriLJ439 , it was held by Hon'ble Supreme Court while dealing with a death penalty case as under:

12. In fact the proceedings before the High Court are a reappraisal and the reassessment of the entire facts and law in order that the High Court should be satisfied on the materials about the guilt or innocence of the accused persons. Such being the case, it is the duty of the High Court to consider the proceedings in all their aspects and come to an independent conclusion on the materials apart from the view expressed by the Sessions Judge. In so doing, the High Court will be assisted by the opinion expressed by the Sessions Judge, but under the provisions of the law above-mentioned it is for the High Court to come to an independent conclusion of its own.

4. The brief facts of the case as per the prosecution sans unnecessary details are as follows:

a) On 16th August 1987, it was the Janmashmi festival, when constable Rishi Pal, posted at police station Vivek Vihar, was deputed at Police post Chota Bazar, Shahdara Delhi.

b) At about 9.20 pm someone told Rishi Pal about two anti-social persons who were extorting money at the point of knife at Circular Road, Shahdara, Delhi, who thereafter went to the spot.

c) Subsequently, information was received in the police station Vivek Vihar that constable Rishi Pal had been stabbed by two persons and, consequently, the police rushed to the spot.

d) The police recorded the statement of constable Narender and on the basis of his statement, FIR No. 294/87 under Sections 307/353/186 IPC was recorded at Police Station Vivek Vihar. It was revealed that constable Rishi Pal was stabbed by Mahender Kumar and Ram Kumar, both of whom had fled from the spot and were absconding.

e) The Police launched a manhunt to trace the culprits but they did not find them in and around the locality. The police officers, in the rage of anger, picked up family members and neighbours of Mahender Kumar and Ram Kumar and confined them at the Police Station Vivek Vihar. The family members and neighbours were

harassed and beaten and were asked to produce the absconding duo Mahender Kumar and Ram Kumar.

f) Ultimately on 24th August 1987 at 7.45 am (approximately), both Ram Kumar and Mahender Kumar were produced in the Police Station Vivek Vihar and, consequently, their family members and neighbours were let off.

g) The Police subjected Mahender and Ram Kumar to severe beatings and showed their arrest at 2.00 pm though they were produced in the Police station at 7.45 am on 24th August 1987.

h) On account of the beatings, Ram Kumar and Mahender sustained grievous injuries and were taken to Swami Dayanand Hospital, Shahdara, where they were examined by Dr. A. K. Verma, and seeing the serious condition of Mahender, he was referred to Lok Nayak Jai Prakash Narain Hospital (hereinafter referred to as the 'LNJPN Hospital').

i) On 25th August 1987, Mahender died in LNJPN Hospital on account of injuries sustained by him due to the beatings given by the police.

j) Shri S.S. Rathore SDM conducted inquest proceedings and after recording the statement of witnesses, recommended registration of a case against police officials of police station Vivek Vihar for offence under Section 304 IPC. Despite this order, no case was registered. Shri S.S. Rathore was then subsequently transferred from the post of SDM.

k) Another SDM, namely, Shri Parimal Rai then conducted further inquest proceedings and submitted his report, in which he gave a finding that Ram Kumar and Mahender were subjected to beatings by members of public which resulted in the death of Mahender.

l) Ultimately, due to pressure and upon an order of the Lieutenant Governor of Delhi, a case bearing No. 59/1988 for an offence punishable under Section 304/34 IPC was registered on 11th February 1988.

m) This case after investigation was sent to the concerned Metropolitan Magistrate, Karkardooma Court, as 'Untraced'. The request of ACP, Gandhi Nagar, to close the investigation in this regard was accepted by the then Metropolitan Magistrate Shri Z.S. Lohat by his order dated 7th July 1989. He further affirmed his order on an application moved by Ram Kumar on 8th July 1989.

n) Finding no alternative, Shri Tika Ram, father of the deceased Mahender, preferred to file a complaint case in the court of learned Metropolitan Magistrate and the present appeal is occasioned by the order of conviction recorded subsequently.

o) The Metropolitan Magistrate, Karkardooma Court, Delhi, found a prima facie case against the accused R.P. Tyagi under Sections 302/34/120B/325/323/342/343/167/201/217/218 IPC and Section 124 of the Delhi Police Act, Sub Inspector Tej Singh under Sections 323/342/343/167/201/218/219/120/211/109/114/120B/IPC, Inspector K.P. Singh under Sections 167/201/217/218/119/120/211/109/120-B IPC and Section 120 of the Delhi Police Act.

p) The learned Additional Sessions Judge convicted the accused R.P. Tyagi under Sections 302/342/120-B IPC, K.P. Singh under Section 217 IPC and Tej Singh under Sections 218/201 IPC.

q) The convict R. P. Tyagi was awarded death sentence as per the judgment and order dated 13th December, 2006 passed by the learned Additional Sessions Judge in the trial court.

5. The prosecution in order to establish its case examined the following 48 witnesses-:

1A. PW1 S.S. Rathore deposed that he was assigned with the inquest proceedings by a letter on 25th August 1982. He went to LNJP hospital the same day but did not conduct the proceedings as the relatives of the deceased were not available. He further deposed that on the morning of 26th August 1987, he

recorded the statements of Raj Kali, Manohar Lal, Kishan Chand, Rajinder Prasad, Prem Wati, Ram Kumar, Tika Ram and Rakesh. After recording the statements he examined the dead body of Mahender Kumar and prepared the death report which is marked as Ex.PW1/K. Thereafter, he ordered for the registration of the case. He allowed the photographs of the dead body to be taken in his presence. He further deposed that there were signs and marks of beatings over the entire body including soles of feet. He deposed that he was thereafter transferred for a new posting.

On being cross examined by the counsel for the accused K.P. Singh, he confirmed that he had made the order of registration of the case without going through the post mortem report because the case was prima facie made on the basis of the death report prepared by him.

(i) He said that it was wrong to suggest that he had deliberately not collected the post mortem report before sending his order for the registration of the case.

(ii) He further stated that while making an order of the registration of the case after conducting enquiry under Section 176 Cr.P.C. at the preliminary stage, the complaint of the aggrieved person and the prima facie facts are looked into and the police is directed to register the case and further investigate the matter.

(iii) He stated that the endorsement of ADM Headquarter, which is marked as Ex.PW1/M, was not completely visible and it was partly torn, and a document marked as Ex.PW1/A is supported by pasting a paper on its back side. The SHO, Shahdara, Mr. Qamar Ahmed, DCP(East) and DCP (Crime and Railways) did not approach him before his transfer on 28th August 1987 for handing over of the inquest papers.

On being cross examined by the learned Counsel for the accused R.P.Tyagi:

(i) He said that the request which is marked as EX.PW1/D.B for the post mortem was in his hand writing.

(ii) He further said that Ex.PW1/D-A was his interim report on the basis of which the order for registration of the case was made by him.

(iii) He stated that it was wrong to suggest that he conducted a one sided enquiry in this case and that he was not competent to order for the registration of the case.

(iv) He said that it was further wrong to suggest that Ex.PW1/M was made by him in a haste and at the instance of local politicians. He said that he did not notice any mental or physical abnormalities in the witnesses whose statements were recorded by him.

2A. PW2 Satish Aggarwal deposed that he was a member of MCD from Shahdara in 1987. In August 1987, he made a telephone call to the SHO of PS Vivek Vihar Chowki, Farsh Bazar in the morning hours. He could not recollect as to what had he said to the SHO or what was the response of the SHO. However, he deposed that the SHO had told him at that time that a compromise had been arrived at.

On being cross examined by the counsel for the accused Shri. K. P. Singh:

(i) He admitted that initially he had a very good memory but for the last 5-6 years he was suffering from 'Sugar' and as such his memory had gone down.

(ii) He further said that he had spoken with the SHO, Police Station Vivek Vihar, and that it was possible that Ram Kumar and Mahender might have been in the police post, Farsh Bazar, when he had spoken with the SHO.

On being cross examined by the counsel for accused R. P. Tyagi, he said that:

(i) It was wrong to suggest that he had not spoken with the SHO on that particular day at any point of time or that phone call was made by him to the police station on being asked to do so by Chiranji Lal.3A. PW3 Jaswant deposed that about 17 to 18 years back at about 7:30 am when he was returning after answering the call of nature from the side of the railway station, he saw Mahender, Manohar and Kishan. He could not overhear what they were talking. Thereafter, he came back home and went on his duty.

On being cross examined by the learned Additional Public Prosecutor, PW 3 said that:

(i) It was correct that on 24th August 1987 at about 7:30 am, when he was coming after answering the call of nature along with Rajender he saw Manohar, Rajender, Kishan all brothers of Mahender and Mahender standing near the railway line. On being cross examined by the counsel for accused R.P. Tyagi, he said that:

(i) It was incorrect to suggest that he had not seen Rajender, Manohar, Kishan and Mahender talking to each other at any point of time anywhere as deposed.4A. PW 4 Chiranji Lal stated that he knew Tika Ram who was resident of his mohalla. On 24th August 1987 at about 8-8:15 am 4-5 mohalla people came to his residence and told him that Tika Ram and others who had been detained had been released from the police station. He stated that on hearing this he went to Satish Aggarwal who was a Nigam Parshad and asked him to make a telephone call in police station Vivek Vihar. On his asking, Satish Aggarwal made the telephone call and told him that he had called the police officer and the boys apprehended would be released after 1-1 1/2 hours. He further stated that thereafter he came to know that Ram Kumar and Mahender have been taken to the General Hospital, and from that hospital, they were further sent to Irwin hospital. He stated that he did not know anything more about the case and admitted that statement which is marked as Ex.PW4/A bore his signatures at Point 1. However, he did not recollect as to where this statement was made by him.

On being cross examined by the learned Additional Public Prosecutor he said that:

(i) On 24th August 1987 at about 8:30 am, a lot of people were coming to the house of the complainant Tika Ram after he was released from the police station to see his condition as he had been beaten up by the police in the police station.5A. PW 5 Amit Kumar stated that in the year 1987 he was working as a photographer in the shop of Gulshan which was being run in the name and style of M/s Gulshan Studio, Shop No. 15, Gandhi Market, Minto Road, Delhi. He recognized the Cash Memo which is marked as Ex.PW5/A as to have been prepared by him. He stated that he had seen the photograph which is marked as Ex.PW5/B-1 to B-14 as been taken by him in LNJP Hospital. He further stated that he had also seen photographs which is marked as Ex.PW 5/B-15 to B-27 and admitted as having been taken by him only.

6A. PW 6 Dr. S. Patnaik Director of Hospital Administration, MCD, Delhi, stated that where a Medico Legal Case (hereinafter referred to as MLC) comes, the history of the case is given by the patient himself or by the person accompanying him and if the patient is not able to speak the history it is then written in the MLC by the doctor who prepares the MLC. He stated that he had seen the MLC of Mahender, son of Tika Ram, which could be in the hand writing of Dr. A. K. Verma by whom it was signed and who was the Casualty Medical Officer, in SDN Hospital, Shahdara, Delhi. He stated that the signatures at Point A-1 could be that of Dr. A.K. Verma on MLC which is marked as Ex.PW5/A but he could not say that definitely. He further stated that he was a Medical Superintendent in SDN hospital in 1987 and the Dr. A. K. Verma was junior to him.

On being cross-examined by the learned APP, he said that:

(i) The Certificate of the doctor's handwriting cannot be certified by him but it is only presumed that 10 years back when he had given the statement, he had given it on the basis of his knowledge and of the record available at that time.

(ii) He further stated that it was wrong to suggest that he was deliberately not giving specific reply pertaining to aforesaid questions in order to save the accused.

(iii) He stated that Dr. A.K. Verma had worked with him for about nine years and said that it was correct that he had told before the learned MM in his statement Ex. PW6/B that he had brought the office record of MLC No. 9879 dated 24th August 1987 which was in respect of Mahender Kumar, s/o Tika Ram, aged 25 years and which was brought by Constable Rattan Lal on the same day at 4.35 PM.

(iv) He stated that in the MLC, Dr. A.K. Verma had mentioned as many as 13 injuries which were blunt and the doctor had also mentioned 'patient under sedation, and not fit for statement'. He further states that treatment had been mentioned in the MLC.

(v) He further said that he had stated before the learned MM in his statement that the reason of causing the injuries in MLC and application were one and the same. 43 injuries had been recorded in post-mortem report which is marked as Ex.

CW21/A whereas 13 injuries had been mentioned in the MLC.

(vi) He further stated that he had seen the photocopy of CMO Register which is marked as Ex. CW-18/B, of SDN Hospital in which serial No. 2200 of Mahender, 25 years pertaining to MLC No. 9879 was mentioned.

(i) It is correct that when a patient is sent by police, a statement of injuries is sent along with the patient and that the said injury statement is shown to the examining doctor who signs or initials it as a token of having seen the same.

(ii) He stated that the injury statement marked as Exh. 6/A-3 did not bear the signatures of Dr. A.K. Verma or of any other doctor.

(iii) He further stated that by transferring the patient to LNJP Hospital, Dr. Verma had certainly subjected his examination of injuries as shown in the MLC which is marked as Ex. PW6/A to the opinion and examination of other doctors in LNJP Hospital. In such circumstances, Dr. A.K. Verma had absolutely no chance to conceal injuries on the patient at the time of his examination.

(iv) He stated that Mark 6/A-1 was the casualty card which had been prepared by Dr. A.K. Verma when he had transferred the patient to LNJP Hospital. This card mention the treatment and the medicines given to the patient and this prescription of the treatment fulfilled the requirement of mentioning treatment and medicines at the time of his examination in the casualty of SDN Hospital.

(v) He further stated that it was possible that when a patient came with multiple injuries and was crying in pain, then some injuries might escape the notice of the doctor. The examination of the dead body at the time of post-mortem would be easier than a clinical examination of the patient when he is alive. In-depth injuries can be found and noted in the dead body more easily than in the live patient.

(vi) He further stated that the possibility could not be ruled out that the patient had suffered further abrasions after examination by Dr. A.K. Verma if he was transported or made to travel in a jeep for 1 1/2 hour.

(vii) He further stated that the post-mortem report Mark 6/A showed that most of the injuries were bruises. At the time of examination, that may have been generalized swellings of a part of the body because of freshness of the injuries. Subsequently, there may be more number of bruises due to internal oozing of blood. In order to find out the correct position of bruises, it is desirable to have a second examination or a day to day examination after initial examination. He further stated that it is correct that there may be bruises which may show up externally even after death due to extra vacation of blood fluid.

(viii) He also stated that after seeing MLC which is marked as Ex.PW6/A and post-mortem which is marked as Ex.PW6/A2 injury No. 1 of MLC almost covered injury numbers 24, 25, 26 and 27 of the post-mortem report and that injury No. 6 almost covers injury numbers 37, 38 and 39 of the post-mortem report.

7A. PW 7 Rajinder, son of Tika Ram, the complainant, had initially supported the prosecution case in his testimony. However, he was later declared hostile.

8A. PW 8 HC Narender Singh stated that he was posted as beat constable in Police Post Anaj Mandi, of the police station Vivek Vihar on 24th August 1987 and he had gone to the Police Station at 8:00 AM to attend a meeting. He found all the officers including SHO R.P. Tyagi, SI Tej Singh, SI Mukesh Kumar, Constable Rattan Lal and Constable Kunwar Pal, Constable Vijender, present there. He further stated that on 24th August 1987, SHO R.P. Tyagi had directed him to take the summons of SI Tej Singh to the Court of Mrs. Anu Prem Shankar Kapoor, Tis Hazari Court. Accordingly, he went to Tiz Hazari court after making his departure entry in the Roznamcha in Police Post Anaj Mandi he submitted the request on summons in the aforesaid court. Thereafter, he went back to Police Police Anaj Mandi at 2:00 pm. He stated that he did not go along with the raiding party and that no one was arrested in his presence.

On being cross examined by the learned Counsel for the accused Tej Singh, PW 8 stated that it was wrong to suggest that he was a member of a Raiding Party or that he has deliberately changed his stand in order to avoid the prosecution in the complaint lodged by the complainant.

On being cross examined by the learned Counsel for the accused Constables Narender and Jagdish, PW 8 said that his old Belt No. was 675(East) and that he was under suspension in this very case. However, it was wrong to suggest that he was put under suspension after the enquiry. He stated that there was an endorsement by the SHO, the summons of which he had taken to Tis Hazari. These summons which expressed inability to attend Court on 24th August 1987 were not written by him. He further stated that he came back from the court at 2:00 pm and made his arrival entry in Police Post, Anaj Mandi. He was not a witness in the case in which Ram Kumar and Mahender were made accused. He had gone to Tis Hazari, by bus and had also come back by bus. He had not claimed any amount for the same.

9A. PW 9 Rajkali In her statement dated 26th August 1987 recorded by the SDM Shri S.S. Rathore, Smt. Raj Kali stated that she was the mother of the deceased Mahender Kumar. She stated that on 16th August 1987 a police informer Dal Chand brought the police to her house. At that time, Mahender who was present in the Mohalla fled from there when someone informed him that police had come to his house. She further stated that the police gave her severe beatings at the house as well as at the police station after having taken them there. She stated that they locked her inside the room in the police station and asked her to give birth to some other Mahender. She asked them if anyone had conceived a child in the old age and asked how could she give birth to a child in this old age. The SHO, then said that he had already committed three murders. She further stated that the SHO, Vivek Vihar, SI Laxmi Chand and SI Mukesh took her in a room and misbehaved with her. They told her that they had ordered for wood for her cremations and all engagements for her funeral had been completed. She further stated that on 25th August 1987 morning when she went to LNJPN Hospital the SHO was present there who did not allow her to see Mahender Kumar. On 25th August 1987 at 4:00 PM she learnt that Mahender had expired. She further stated that she had strong apprehension that the police had killed her son Mahender Kumar and that she wanted legal action to be taken.

In her statement before the learned Metropolitan Magistrate, PW 9 Smt. Raj Kali deposed that on the day of Janmashtmi, i.e., 16th August 1987 she along with her

children and husband was sleeping in her house. On the same night at about 9:00 PM, police officials went to her house and started enquiring about her son Mahender and his friend Ram Kumar. Her family reported that both Ram Kumar and Mahender were not at home and the police officials took them to police station, Vivek Vihar. She stated that while she was kept in the police station, her husband and her other sons Manohar Lal, Rajinder, etc. were kept in Police Post Anaz Mandi. She further deposed that after about a week on 24th August 1987 at about 7:30 or 8:00 a.m. she along with Yamuna etc. was released from the police station. When they were coming out of the police station she noticed Mahender Kumar and Ram Kumar present in the police station as well in the presence of her three sons Manohar Lal, Rajinder, and Kishan Chand. She stated that Jassu and Rajinder were also present there and policemen shouting out that Ram Kumar and Mahender have been produced in the police station by their relatives. In the meanwhile, when they tried to talk to Mahender Kumar the police officer present there directed them not to talk with them and further asked to them to leave the police station. Police officials pushed them as well as gave beatings to them and also asked her three sons along with the other two boys to leave the police station as there was no need of them anymore. She stated that they went out of the police station and kept standing outside the boundary of the police station. While they were standing outside the police station they heard beating noises of Mahender Kumar and Ram Kumar. She stated that they tried to enter the police station again just to see what had happened to Mahender Kumar and Ram Kumar but the police did not allow them to enter the police station to see her son Mahender. They also called her by bad names and again asked her to leave the police station otherwise serious view would be taken against them. She further stated that some neighbours told her that Mahender and Ram Kumar had been admitted in the SDN Hospital and as they reached the SDN hospital they came to know that Mahender and Ram Kumar had been referred to LNJPN Hospital. On the next morning she went along with her daughter in law Prem Wati to LNJPN Hospital and found that there were many police officials surrounding Mahender and that they did not allow her to see Mahender. At about 2:00 pm on 25th August 1987 she came to know about the death of Mahender Kumar. She stated that the SDM recorded her statement at the mortuary of LNJPN Hospital on 28th August 1987 along with the

statements of other persons. She stated that the dead body Mahender was not handed over to them and they were only allowed to perform last ceremony at the Nigam Bodh Ghat in the presence of the police.

PW 9 Smt. Raj Kali in her testimony before the court, stated that the deceased Mahender Kumar was her son and that she did not know any Dal Chand. She stated that about 18 years back on the day of Janmastmi, four police officials of police station Vivek Vihar, whose names were SHO, R.P. Tyagi, Surender, Narender, and Mukesh had gone to her house. She said that the aforesaid accused persons enquired about the whereabouts of Ram Kumar and Mahender Kumar on which she showed her ignorance. She stated that the above mentioned accused persons had hurled abuses at her and directed her to search Mahender and Ram Kumar and send them to the police station. She further stated that at about 7:00 am her sons Manohar and Kishan along with neighbours Jassu and Rajinder and one other person whose name she could not recollect were taken to the police station. She said that she did not know how were they taken and that no other person had gone to the police station. Thereafter the aforementioned accused persons took her and her daughter in law Prem Wati to the police station and put them up in the lock-up. They also lifted Ram Kumar's brother and sister from their house and brought them to police station Vivek Vihar. However, they could not recollect on which date they were lifted and put in the police lock-up. She further stated that R.P. Tyagi told them in the police station that unless and until Ram Kumar and Mahender were produced he shall keep them in the police lock-up. She stated that R.P. Tyagi had also said to her that he would kill her son Mahender Kumar and had also beaten her up with lathi, as a result of which she sustained severe injury on her fingers. She stated that while R.P. Tyagi used filthy language for her and her daughter-in-law Prem Wati, nephew of Ram Kumar aged only 15 days was also not spared by SHO R.P. Tyagi. She stated that when her son Kishan Chand produced Mahender Kumar and Ram Kumar in the police station the accused R.P. Tyagi asked police constable Jagdish to release her along with others from the police station. When they came down to the ground floor the police officials took Ram Kumar and Mahender inside the police station. Thereafter, the accused R.P. Tyagi asked them to leave the police station stating that Mahender and Ram Kumar were with him. She stated that they kept standing

outside the police station coupled with the request to allow them to see Mahender and Ram Kumar because when both of them were taken by the police officials inside the police station they were given beatings by the police on account of which Mahender and Ram Kumar were crying. She said that she did not want say anything more and that she did not recollect if she had given any statement to anybody. She again stated that she had given statement before the SDM which is marked as ExPW1/B, but she could not say whether the signatures thereon at Point-B2 was hers or not as she used to put thumb impression, being an illiterate. She stated that she had not given any other statement besides that to the SDM.

On being cross examined by the learned Additional Public Prosecutor she said that she cannot admit or deny that on 16th August 1987 Dal Chand who was the Secret Informer of the police had gone along with the police to her house and that when she had asked to Dal Chand that as to why he had brought police to her house, deceased Mahender who was sitting in the locality went away from there. She confirmed that she was beaten up by the police at the residence as well as at the police station and volunteered that she was beaten in the police station only by Mukesh. She further confirmed that when she was detained in the police station Vivek Vihar, she was asked to give birth to another Mahender and that she replied it was not her age to give birth to a child because of old age. She confirmed that the concerned SHO had also stated to her that he had committed three murders and he took her in a room where he misbehaved with her and insulted her.

On being recalled for further cross examination by the learned Additional Public Prosecutor PW 9 stated that it was correct that after a week, i.e., on 24th August 1987 at about 7:30 or 8:00 am she along with Yamuna etc. were released from the police station. She noticed that Ram Kumar and Mahender were present in the police station and that her three sons, namely, Rajinder, Manohar and Kishan Chand along with Jassu and another Rajender were also present in the police station. She further stated that it was correct that the police officials were shouting that Ram Kumar and Mahender have been produced in the police station by their relatives referred to above and that, in the meantime, when they tried to talk to Mahender and Ram Kumar, the police officials present there directed them not to speak with them and further asked them to leave the police station. She voluntarily

added that it was so directed by SHO R.P. Tyagi. She further said that it was correct that the police officials present there pushed them and also gave beatings to them and asked her three sons as well as the other two boys to leave the police station saying that there was no need of them now. She said that while they were standing outside the police station they heard the noise of beating being given to Mahender and Ram Kumar and when they tried to enter the police station again, they were not allowed to do so and were called by bad names. She further stated that she learnt from the neighbours that Mahender and Ram Kumar were admitted in Shahdara hospital and when she reached there she learnt that they had been referred to LNJPN Hospital. In the morning when she went to LNJPN Hospital along with her daughter-in-law PremWati, she found that many police officials had surrounded Mahender and did not allow them to see him. They came to know about the death of Mahender Kumar at about 2:00 pm on 25th August 1987. She further stated that an SDM had recorded her statement along with others' at LNJPN Hospital at the mortuary on 26th August 1987. The dead body of Mahender was not handed over to them and they were allowed to perform his last ceremony in Nigam Bodh Ghat in the presence of the police.

On being cross examined by counsel for the accused R.P. Tyagi, PW 9 reiterated the same sequence of events. However, she made an improvement to the earlier statement by stating that as a result of having been given beatings with a lathi by accused R.P. Tyagi, she had sustained severe injuries on her fingers. Further, there was a contradiction in her statement when she stated that in her statement before the SDM, which is marked as Ex.PW1/B and her statement before learned Metropolitan Magistrate which is marked as Ex.PW2/A that when Mahender and Ram Kumar were taken by the police officials inside the police station they had started giving beatings to them.

On being cross examined by the learned Counsel for the accused Jagdish and Narender, PW 9 stated that she could not recollect as to the names of the police officers she had taken before the SDM in her statement. Further, she did not know any of the police officers who had gone to her house on 16th August 1987. She further said that she could not get the opportunity to tell the SDM that she could identify the police officials who had lifted her and detained her in the police station.

She had not told the concerned IO that she could identify the police officials who had lifted her from her house and detained her in the police station.

10A. PW 10 Rakesh Kumar, son of Ganga Ram, stated that police had taken him from his shop along with his brother Govind Ram on 17th August 1987 to the police station and had given severe beatings to them. He stated that they were given further beatings by the police persons in presence of their father and MCD Councilor Satish Aggarwal. They were kept at the police post Farsh Bazar for about 4 days and were crying in pain at night due to the beatings given to them by the police persons. He further stated that his head was tonsured and they were let off on the fourth day. On being cross examined by the counsel for the accused R.P. Tyagi he stated that he did not lodge any complaint to any higher officer in writing against the accused R.P. Tyagi for getting his hair cut. He had also not filed any separate complaint case in that regard. He did not take any photographs when his hair were cut and that it was wrong to suggest that no incident had taken place.

11A. PW 11 Govind Ram, son of Ganga Ram, stated in a manner similar to the statement of PW10 that he was taken by the police on 17th August 1987 to police station Vivek Vihar, given severe beatings and that his head was tonsured on directions of SHO R.P. Tyagi.

12A. PW 12 Rajender Prashad , son of Sh. Tika Ram, stated that the police lifted him from his house and enquired about the whereabouts of Mahender, his brother on 16th August 1987. The police let him off asking him to search for Mahender. He met Mahender and told him that the police had visited their house, and lifted their father and brother. On hearing this, Mahender was perplexed and he left.

On being cross examined by the learned Additional Public Prosecutor, Rajinder stated that he did not remember if on 17th August 1987, four policemen including SI Mukesh Kumar and Constable Jagdish had gone to him and had made enquiries regarding Mahender and Ram Kumar at about 1:00 pm. He further stated that it was incorrect to suggest that he was given beatings by them at that time. He further did not remember if he along with Manohar Lal, Kishan Chand and Jassu had produced Mahender and Ram Kumar at police station Vivek Vihar on 24th August 1987 at about 7:45 pm before SHO, R.P. Tyagi. He further stated that

he had narrated that facts which were known to him and the same was stated by him to the SDM.

13A. PW 13 Manohar Lal, son of Tika Ram, stated that the police had lifted him from his house on the occasion of Janmashtmi and took him to police station where he was kept for about 4-5 days. He stated that he was let off along with his father after 4-5 days but he did not know what happened thereafter.

On being cross examined by the learned Additional Public Prosecutor, he stated that the SDM had recorded his statement in this case and which is marked as Ex.PW1/C bore his signature at point C-2. He also stated that his statement was recorded in this case before the learned Metropolitan Magistrate on 24th September, 1993 as CW 26. He did not remember if on 17th August 1987, four policemen including SI Mukesh Kumar and constable Jagdish had come to him and made enquiries regarding Mahender and Ram Kumar at about 1:00 pm and that he was given beatings by them at that time. He further stated that he did not remember if he, Rajinder, Kishan, Jassu and another Rajinder had produced Mahender and Ram Kumar at police station Vivek Vihar on 24th August 1987 at about 7:45 pm before the SHO, R.P. Tyagi. He volunteered that he had narrated the facts which were known to him to the SDM. Further, on being cross examined by the counsel for the accused R.P. Tyagi, he stated that it was incorrect to suggest that they were never lifted or detained by the police officials.

14A. PW 14 Prem Wati, wife of Manohar Lal, stated that her father-in-law Tika Ram and her husband were lifted by the police on the day of Janmashtmi. When her mother-in-law returned she told her that the police had taken her father-in-law and husband and on being enquired as to why had they taken them, she did not disclose anything.

On being cross examined by Learned Additional Public Prosecutor , she stated that it was incorrect that in the affidavit she had stated that the police had lifted her and her mother-in-law after giving beatings to them and taken them to the police station. She further stated that it was incorrect to suggest that she had stated in her affidavit that the police released her on 24th August 1987 stating that the persons who they were searching for, have been produced.

15A. PW 15 Anil Kumar stated that about 10-11 years back, 4-5 policemen went to his house enquiring about Ram Kumar. He stated that he was not taken to the Police Station and that he had not filed affidavit which is marked as Ex.PW 15/A.

16A. PW 16 Neetu stated that about 17-18 years back, 3-4 police persons enquired from him about Mahender and Ram Kumar. On expressing his ignorance, they threatened him and asked him to inform them at the police station as and when Mahender and Ram Kumar came.

17A. PW 17 Alah Ram stated that he knew the complainant party and they resided in his neighbourhood and that on the occasion of Janmashtmi, 4-5 police persons had gone to his house at about 12.00 to 1:00 am at night and enquired about Mahender. He told them that he was not aware as to where Mahender was.

18A. PW 18 Pappu stated that about 20 years back 4-5 police officers went to his house and he was taken by them for the purpose of enquiry and left after about 1 hour. He stated that he did not know anything else.

19A. PW 19, Krishna, wife of Jai Prakash, stated that around 8-10 police persons had come to her long back and enquired about her brother Ram Kumar and about Mahender. She stated that they had asked her to either produce them or they would lift her. She further stated that the police had not taken her to the police station and that she did not know anything else. On being cross examined by the learned Additional Public Prosecutor she stated that it was correct that the police had taken her to the police station and then volunteered that they had let her off there only. On being cross-examined by the learned Counsel for the accused R.P. Tyagi, PW 19 stated that it was incorrect to suggest that she was never taken to the police station or that her thumb impression was taken there.

20A. PW 20 Sondai wife of Nathu Ram, stated that some police persons had gone to her home many years ago to enquire about Mahender and Ram Kumar. She expressed her ignorance regarding the whereabouts of both, on which the police took her husband along with her to the police station. The police had also made enquiries about her son Suresh who was also taken to the police station at about 4: 00 pm and was let off in the evening. On being cross-examined she stated that

it was incorrect to suggest that she was never taken to the police station

21A. PW 21 Subhash, son of Bal Kishan, stated that after four days of Janmasthanmi in the year 1987 he was taken by the police officials of Police station Vivek Vihar, kept in confinement and was given beatings by the police officials. He stated that the police enquired about Ram Kumar and Mahender from him and he was directed by the police to produce them as and when they were traceable.

On being cross examined by the learned Counsel for the accused R.P. Tyagi he stated that it was incorrect to suggest that he was never lifted by the police of Police Station Vivek Vihar, nor were any beatings given to him. It was further incorrect to suggest that no enquiry regarding Mahender and Ram Kumar was made from him by the police and it was correct that he had not lodged any complaint independently against those police officials.

22A. PW 22 Harpal Singh stated that he had appeared as a witness in this case before the Court of Shri. Ashwini Kumar Sarpal, the then Metropolitan Magistrate, Delhi. He stated that he had produced the externment proceedings of Ram Kumar passed by DCP Qamar Ahmed and the court had retained the record.

23A. PW 23 Jamna Devi stated that Ram Kumar was her son and three days after Janmashtmi, the police had come to call Ram Kumar. She did not know that if the said police was from P.S. Vivek Vihar or somewhere else. She stated that the police enquired from her as to where Ram Kumar was and she expressed her ignorance. She told the police that as and when Ram Kumar came she would inform the police after which the police left. She further stated that Ram Kumar never came to her thereafter. Later on, the police informed her that his dead body was lying at Hindon River. The police had asked them to identify his dead body and the mohalla people had gone to identify his dead body. She had not gone there herself. She did not know under what circumstances Ram Kumar died. She had given her statement after the death of Ram Kumar to the learned Metropolitan Magistrate.

On being cross examined by the learned APP, she stated that after Ram Kumar's death she had filed an affidavit in the Court. She further stated that it is correct that

Pramod and Anil @ Neetu had come to call Ram Kumar and had told that Ram Kumar was called by SHO Tyagi.

24A. PW 24 Jagjit Singh stated that he had appeared as CW 11 on 21st December, 1991. He was working in Delhi Police as Head Constable and was Incharge, VRK, East District. He stated that on the directions of the court he had produced the file of Case FIR No. 59/88 and 294/87 of P.S. Vivek Vihar. He further stated that as per record while Case Diary No. 8 to 11 were submitted in the office of VRK from the office of ACP, Case Diary No. 1 to 7 were not submitted. The said record marked as Ex.PW11/A bore his signatures at point A and he had seen Case Diary No. 37 of case FIR No. 59/88 having stamp of the office of ACP.

25A. PW 25 Constable Nuzumudeen stated that he had appeared as Court witness CW 12 on 21st December, 1991 when he was working as constable in the office of ACP, Vivek Vihar. He stated that he had produced Crime Register of ACP, Vivek Vihar at the time of evidence. On that day, the record of Case FIR No. 294/87 was produced by him before the court and as per the record, case Diary No. 1 to 7 of case FIR No. 294/87 was not submitted in the office of ACP and that is why the said column of the Crime Register was left blank.

On being cross examined by the learned Counsel for the accused R.P. Tyagi, he stated that he had not brought the original register and that it was correct that on the photocopy of the arrival register which is marked as Ex.CW12/A, in which the FIR No. 294/87 was visible. He volunteered that the document in question was in torn condition. He stated that this document was filled up by him and he had no personal knowledge about the entries of this document. He further stated that it was incorrect to suggest that this document was a fabricated document.

26A. PW26 SI Ram Avtar stated that he was summoned by the court with the record, i.e., order No. 30387/CNT/AC-1/dated 9th August 1987 and also letter dated 29th September 1987 marked as Ex.CW17/A (inadvertently mentioned as Ex PW17/A in original testimony) and letter dated 9th October, 1987 marked as Ex.CW 17/B. He stated that all this record had been destroyed by the order of DCP, (East). DD No. 61 dated 2nd May 1997 which was recorded, a copy of which is marked as Ex.PW 26/A and a letter No. 82-112 RB.East, dated 4th January

1997 is on the file marked as Ex.PW26/B.

27A. PW 27 retired Inspector Baleshwar Singh stated that he was examined in this case before the Court of MM Sh. Ashwini Sarpal, M.M. as CW 17. On the day of examination, i.e., 3rd June 1993 he had brought the originals of documents marked as Ex.CW 17/A and Ex.CW 17/B which are stated to have been weeded out.

28A. PW 28 Shri Dheer Singh, Medical Report Clerk, SDN Hospital, stated that he had brought the summons record, i.e., MLC No. 9878 dated 24th August 1987 of Mahender, the copy of which is marked as Ex.PW 6/A and is signed by Dr. A. K. Verma. He stated that he identified his signatures as some signatures appeared on this document in his name.

29A. PW 29 Shri Z.S. Lohat stated that he was working as M.M. in Shahdara Court from December, 1983 to 1st week of March 1991 and that he had passed order in case FIR No. 59/88 under Section 304/34 IPC on 7th July 1989. He stated that the original order is marked as Ex.PW29/A. He further stated that on 8th July 1989 one Ram Kumar had filed an application before him which was addressed to DCP, Vigilance, and that none appeared on behalf of the applicant, although, he passed an order on this application marked as Ex.PW 29/A.

30A. PW 30 Inspector Pawan Kapoor stated that he had brought the Diary of correspondence dated 15th November, 1993 and an entry dated 15th November, 1994 shows that the file in question was appended with file 108/94 titled as Tika Ram v. Inspector R.P. Singh (AC-V) pertained to file No. 23/39/87 the photocopy of which is marked as Ex.PW 30/A.

31A. PW 31 Om Wati stated that she was examined in the court of learned Metropolitan Magistrate several years back and this document was marked as Ex.CW 29/9 at that time and that she had given the affidavit voluntarily.

On being cross examined by the learned Counsel for the accused R.P. Tyagi she stated that it was wrong to suggest that the said document did not bear her thumb marks or that no such incident had taken place as mentioned in the said affidavit

or that nobody was taken to the police station at any point of time by any police officials.

32A. PW 32 HC Ramesh stated that he was examined earlier as CW 32 and had brought register of FIR Nos. 294/87 and 59/88 of P.S. Vivek Vihar. He stated that the same were registered on the complaint of Inspector K.P. Singh, the then SHO, by HC Suresh Prasad. (The FIR had been registered on the order of the Lt. Governor.)

On being cross examined by the learned Counsel for the accused R.P.Tyagi he stated that CD entries are made immediately on their receipt and are sent to ACP office in original.

On being cross examined by the learned Counsel for the accused K.P. Singh and Gurdas he stated that it was true that no acknowledgment was received from the office of ACP and from the VRK Branch.

33A. PW 33 Sukhbiri, W/o Jaman Lal stated that about 20 years back, the police of P.S. Farsh Bazar called her and her daughter along with two or three other persons to the police station and released her in the evening after making inquiry. She stated that she did not know the reason why the police called her

34A. PW 34 Jamman Lal stated that about 17-18 years back on the day of Janmashatami, at about 1.00/1.30 a.m., when he was not at home his family members were picked up by the police. His wife Sukhbiri Devi, daughter Omwati, sons Rampal and Dharampal and one of his relatives, Mormukut and his cousin Narain Dass were all taken by the police. They returned to the house by 7.00-8.00 am, and were directed by the police to come again the next day. He stated that he was called in the police station and all this continued for 4-5 days. He further stated that he heard from somebody that Ram Kumar and Mahender were handed over to the police and he filed an application before the Court but his statement was not recorded.

On being cross-examined by learned APP, he stated that it was true that when he went to GRP police station, Ghaziabad and identified the dead body of Ram

Kumar which was lying on the railway track near the shed, there was no blood on his body. He met SHO, PS VijayNagar Ghaziabad. He stated that he did not tell the court that accused R.P.Tyagi had gone there or requested the SHO, P.S. Vijay Nagar not to take any actions against the culprits or that the SHO had refused to do so.

On being cross-examined by the learned Counsel for the accused R.P. Tyagi he stated that it was wrong to suggest that his family members never visited the police station in connection with the inquiry.

35A. PW 35 Shri P.S. Gosai stated that he was a dealing clerk in the office of Deputy Secretary, Govt. of NCT of Delhi and he was trying to trace out the complaint case file No. F-3/78/87 Home/P1 dated 29th July, 1987 but the file could not be traced out. He stated that a circular was also issued in the branch for tracing out the file but the same could not be traced out and that it might have been weeded out being an old record.

36A. PW 36 Dr. Vinod Kumar Rimtek, MS, LNJP Hospital stated that he had seen the post mortem report No. 393/87 dated 26th August, 1987 of deceased Mahender prepared and signed by Dr. Vishnu Kumar. He stated that he had not brought the office record about this report as the same had already been weeded out. He stated that he could identify the signatures of Dr. Vishnu Kumar as he had seen him writing and signing before him as a colleague for about two years. On being cross-examined by the learned Counsel for the accused Dr. A.K. Verma, he stated that he had never seen Dr. Vishnu Kumar preparing any medical report or post mortem report or any other office note etc. He could not identify the signature on the document put on the file marked as Ex.CW19/B on which three injuries had been shown and the document was dated 24th August, 1987. He stated that in his opinion it would have been prepared after 6.20 p.m. as the patient was shown to have been received in the hospital at 6.20 p.m. He further stated that most of the injuries in the post mortem report which is marked as Ex. PW 36/A were bruises and abrasions and that bruises are injuries caused by blunt weapons according to medical jurisprudence by Dr. Modi which is acceptable and authentic textbook on medical jurisprudence. He further stated that ecchymosis depends upon the

duration of the injury caused by bruises when accompanied by swelling and crushing or tearing of the sub-cutaneous tissues without solution of continuity of skin. He stated that he did not agree with Dr. Modi in saying that ecchymosis may not appear until after death and the same is due to more rapid haemolysis of stagnant blood as a part of post mortem changes. He further did not agree with Dr. Modi in saying that there may not be any trace of external bruising even after receipt of substantial violence. He stated that at times bruises may not show up externally at all and the extent and time of appearance of bruising will depend upon the following:

- (1) Nature and severity of the force applied.
- (2) Vasculature of the affected body part.
- (3) Number and size of the blood vessels injured.
- (4) Condition and type of tissue affected.

He stated that it was correct that at times bruises of the chest wall may not show up readily even in the presence of severe internal injury though on dissection their presence will be demonstrable. He further stated that it is easy to examine injuries on a dead body in spite of examining the person of a living patient. He stated that it is true that a medical officer who is examining an injured patient in severe pain may not be able to note all the external injuries as compared to the doctor who is performing post mortem on the dead body.

37A. PW 37 H C Mange Chand stated that he had brought the summoned record i.e. Malkhana Register of the year 1990 and as per entry No. 49 of 19th November 1990, the personal search articles of the deceased Ram Kumar along with other articles were deposited in the Malkhana by the IO of the case, Crime No. 308.90 under Section 365/302/34 IPC. He stated that he had brought the personal search articles of the deceased Ram Kumar and produced an unsealed purse containing various visiting cards and papers. One of these cards belonged to the accused R.P. Tyagi and showed his office and residential telephone numbers.

38A. PW 38 HC Manoj Kumar stated that he had not brought the summons log book as the same had been destroyed. He said that he was examined in this case earlier before the court of Learned Metropolitan Magistrate, Karkar Dooma Court, Delhi and the said log-book was produced in the court at the time of his earlier statement. He contradicted himself by first saying that the log-book was shown to him in the court on the said date and later saying that he was not shown that log-book. He stated that no accused in this case was arrested before him.

He stated that on 24th August 1987 at about 8:30 am when he had gone to police station and set his vehicle in order by cleaning it he saw two persons sitting in the police station in the room of SHO along with 4-5 persons. He did not know the name of those persons. He also did not know in context of which case were they sitting there. He said that R.P. Tyagi was posted as SHO at that time. He said that he could not say whether R.P. Tyagi was present in the court or not even after seeing all the persons present in the court.

On being questioned as to whether he had seen anyone being beaten in the police station on that day, i.e., on 24th August 1987 he replied that SI Mukesh had given two/three slaps on the mouth of those two persons mentioned by him above. He further stated that he could not see that and hence he returned to his room. He did not remember whether any other police officer posted in the said police station was present there or not. He further stated that he came to know of the names of those two boys on the next day which he did not remember now. In the evening on the same day, he took two-three police officials of their police station along with those two boys who were beaten by SI Mukesh to the hospital in his jeep.

On being cross examined by the learned Additional Public Prosecutor he said that on 24th August 1987 he took police officials on Ilaka Gasht. They started from police Station Vivek Vihar, to SDN Hospital through Anaaj Mandi and returned to the police station thereafter. He did not remember whether SHO had travelled in his jeep on that day between 2:05 pm and 4:30 pm. He did not know whether DD No. 7 was recorded in this regard and no copy of such DD was referred by him in his statement given in the court of learned Metropolitan Magistrate, Karkar Dooma courts, Delhi. He further stated that it was wrong to suggest that on the same

day, i.e., 24th August 1987 he had taken SI Mukesh Kumar, Constable Madan Lal, Constable Kavar Pal, Constable Vijender and HC Narender along with SI Tej Singh to the spot, i.e., Road No. 58, Suraj Mal Park, at about 2:05 pm in that jeep. He did not know whether any information was received in the police station about the fact that two boys were threatening the public. He further stated that it was true that the name of the those two boys were Ram Kumar and Mahender who were sitting in the police station in the SHO's room. He said that he had taken the two boys to the hospital and that it was wrong to suggest that he had seen both the said boys being beaten by the police. He stated that the he had seen one of them being beaten by SI Mukesh. He stated that he did not identify SI Mukesh and could not say whether he was present in the court or not. He further stated that he did not remember whether the SHO had directed him to take the said two boys to the hospital. He said that it was wrong to suggest that SHO RP Tyagi had returned to police station at 4:30 pm in his jeep from the spot. He did not remember whether he had told about any DD recorded in this regard in his statement in the court of learned metropolitan Magistrate, Karkar Dooma Court, Delhi. He further stated that he had done his duty in the said police station for 22-23 days under the SHO R P Tyagi.

On being cross examined by the counsel for accused A.K. Verma, PW 38 stated that 2-3 persons had accompanied him while he took those two boys to the SDN hospital. He did not remember the name and designation of those police officials. He said that it was true that a DD entry was recorded whenever he left the police station along with the vehicle. He stated that no document was given to him while he left the police station to be handed over to the doctor concerned. He further stated that they reached the said hospital in the evening after 2:30 pm.

On being cross examined by the counsel for the accused R P Tyagi, he said that he was in the police job since 1986 and had never signed blank papers during his duty. He stated that he would read any document before signing it. He further stated that it was wrong to suggest that on 24th August 1987 he went to Surajmal Vihar in his jeep as 'Driver' along with the police party. Further, it was wrong to suggest that he had seen those two boys severally beaten by the public or that he had taken them to the hospital from Surajmal Vihar. He stated that it was true that

Ex.PW38/D-A was written and signed by him and that it was written by him on being compelled by the accused R.P.Tyagi. He did not lodge any complaint against R. P. Tyagi for compelling him to write the said document to any higher police officer as he saw no such need. He further stated that it was wrong to suggest that he had written the said document voluntarily. Further he stated that it was true that a log-book was written on the prescribed performa and that he had filled that log book during his tenure as was prescribed.

On being cross examined by advocate for accused Surender and Kanwar Pal, he stated that he did not make any false entry in the log-book or prepared any false document. He stated that it was true that whenever the jeep was taken outside the police station by him he made the entry as Ilaka Gasht. He had not received summons to depose before the court of Metropolitan Magistrate, Karkar Dooma Court Delhi and had attended the court on being requested by SI Ram Kishan. He further stated that he was asked by the latter to speak truly and was also told that if he did not depose in the court something will happen against him. The latter was the IO of the case. PW 38 stated that he did not know whether he was SI Ram Kishan or Kishan Singh. He further stated that they used to write the log book daily and not in 3-4 days. He came to know the names of those two injured persons from the newspapers the next day.

39A. PW 39 Statement of Anita, Stenographer in Planning Commission

She stated that she gave the copy of some official documents i.e. letter No. 23198/SO/DCP (east) dated 3rd November 1987 along with copy of the order of Lt. Governor to one Sub inspector of the Delhi Police.

40A. PW 40 Statement of Vinod Kumar, Reader

He stated that he had bought the file relating to case No. 294/87 PS Vivek Vihar in the court of Shri Ashwini Sarpal the then MM , Karkardooma Delhi.

41A. PW 41 Constable Sat Pal Singh stated that on 10th October, 1993 he was posted as Naib Court in the Court of Sh. Om Prakash, the then MM, Karkardooma, Delhi and had produced police file FIR No. 294/1987, P.S. Vivek Vihar in the court,

the detail of which he did not remember.

42A. PW 42 SI Dharamvir Singh stated that he could not bring the summoned record/log book of DED 1762 for the year 1987 and the said log book could not be found as the same was never consigned to their office.

43A. PW 43 ASI Amar Jeet, Incharge VRK East, stated that he was asked to bring case file of case FIR 294/87, P.S. Vivek Vihar. He stated that he had checked the records and had come across an order passed by Sh. Pradeep Chadha, the then MM, Shahdara, Delhi dated 10th April 1991, a copy of which was marked PW 43/A. He further stated that in compliance with this order all the documents of this case were handed over to inspector Kishan Singh by the then VRK incharge and hence the case file was not available with them.

44A. PW 44 Constable Sat Pal Singh stated that on 8th October, 1993 he was posted as Naib Court in the court of Sh. Om Prakash, MM, Karkardooma Courts and he produced the police case file in Case FIR No. 294/87 PS Vivek Vihar before the court of Sh. Ashwini Sarpal, Ld. MM, Karkardooma Court. He stated that on the direction of the court he read over the case diary and did not give any statement in the court on that day. On being cross-examined by the learned APP he stated that it was wrong to suggest that he gave a statement in the court of Sh. Ashwini Sarpal, MM Karkardooma Court on 8th October, 1993 and that his statement was recorded as directed by him. He stated that it was true that exhibit PW 44/A bore his signatures at point X. On being cross-examined by learned Counsel for the accused Tej Singh he stated that he had taken the case diary to the court and since it was his first effort to read any case diary in the court and because of some difficulty in reading urdu words there, the same was read over by IO Inspector Kishan Singh in the Court. He stated that he had signed his statement on the direction of the court and that he had knowledge about the case.

45A. PW45 ASI Dinesh Bhargav stated that he was posted as Malkhana Moharrar in PS Vivek Vihar in the year 1993-94 and had brought summoned record i.e Register No. 19 pertaining to the said period. He stated that he had also produced this register in the court of Sh. Ashwini Kumar, the then MM, Karkardooma, Delhi. He stated that as per record on 16th August, 1987, SI Tej Singh was shown to

have deposited one Pulinda which was recorded at serial No. 1853/87 and as per the same record, one knife sealed in the pulinda was entered at serial No. 1856/87. He stated that he did not identify the handwriting of the Malkhana Moharrar concerned who had written the aforesaid entries and the copies of the said entries are marked as Ex.PW45/A and Ex.PW45/B.

46A. PW 46 Mohd. Kunwar Siddiqui, Advocate, stated that he had attested affidavits putting his signatures at points X and Y.

He further stated that all these executants mentioned above came to him with the affidavits in person and put their signatures on their respective affidavits before him.

47A. PW 47 Retired HC Daya Ram stated that on 24th August, 1987 he was posted as DD Writer from 8.00 am to 8.00 pm in PS Vivek Vihar and he had seen DD No. 7 dated 24th August, 1987 recorded by SI Surender at 2.05 pm. He stated that he could identify the handwriting of SI Surender having worked with him and seen him writing and signing. He further stated that on 24th August, 1987 he had recorded DD No. 9 which was about the return of the SHO R.P.Tyagi to the police station as constable Manoj had come to him and asked him to make an entry about the return of the SHO and also the official vehicle No. DED-1762. He stated that he had seen the original register in which there appeared to be cutting in the name of Constable Manoj.

On being cross examined by the learned Counsel for the accused R.P. tyagi he stated that there was no pressure upon him when his statement was recorded before the court of MM Delhi. He stated that it was true that whenever a DD entry was made about the arrival of a police officer, reference of departure entry number was also recorded in the arrival entry. He stated that he could not say that the vehicle Jeep DED 1762 was driven to the police station by SI Mukesh. He stated that it was true that as per the record brought to him there was no entry about the departure of Inspector R.P. Tyagi before entry DD 9A. He stated that no departmental or penal action was taken against him about the entry in this case.

On being cross examined by learned Counsel for the accused Tej Singh he stated that it was wrong to suggest that overwriting in DD entry No. 9A Ex.PW14/B was in his handwriting. He stated that it is true that Ex.PW47/DB pertained to registration of case FIR No. 301/1987 bearing the time as 4.20pm. He further stated that DD 7 was recorded in his presence and it was wrong to say that Constable Manoj did not ask him to make an entry about arrival of SHO Tyagi in the police station in official jeep or that he was deliberately making an improvement in his statement. He stated that he did not remember whether this fact was told by him in his statement recorded in the court of Metropolitan Magistrate, Delhi or whether the fact that constable Manoj had asked him to make such an entry was disclosed by him in his statement in the court of learned MM Delhi. He further stated that he had not stated in the statement recorded in the Court of MM Delhi that DD No. 9A was recorded on instructions of SI Surender.

48A. PW 48 SI Ram Kumar stated that on 25th August, 1987 he was posted in PP Anaaj Mandi PS Vivek Vihar as HC and that on that day he was deputed to guard the injured who were the accused in that case in JPN Hospital. The said accused were Mahender and Ram Kumar. He stated that he went there along with two constables and relieved HC Ghanshyam who was on night duty. He stated that he saw that the general condition of the said injured was very critical and that the treating doctor was insisting to discharge the injured which he opposed to in view of their critical conditions. He called the duty officer and asked him to appraise the facts to the SHO. He stated that on his opposition the doctors recalled their opinion and altered the discharge slip. He stated that the condition of Mahender further deteriorated and he again telephoned the duty officer and told him about the facts. He stated that he went to the injured Mahender who breathed his last in his presence and further conveyed the message in the PS. He stated that the SHO, Area SDM and public persons including the relatives of the deceased also gathered at the spot.

On being cross examined by counsel for the accused K.P.Singh, he stated that the SHO who reached the hospital was inspector R.P. Tyagi.

On being cross examined by counsel for accused R.P. Tyagi, he stated that it was wrong to suggest that he did not oppose the discharge of the injured, Mahender. He stated that he was not informed from the PS through DD or in any other manner that the injured persons were to be produced before the DCP for the externment proceedings. He stated that the discharge slip was handed over to him at about 12 noon and that it was wrong to suggest that he had taken out both the said injured outside the hospital after getting them discharged. He stated that it was true that he had contacted PS seeking a vehicle to carry the injured but he received no reply according to which no vehicle was ready or available in PS and he was asked to hire an autorickshaw. He further volunteered that he had sought a vehicle in case the injured were discharged from the hospital despite his opposition. He further stated that the injured, Mahender died within 10-15 minutes after the discharge slip was taken back by the doctor concerned. He further stated that it was wrong to suggest that he got injured, Mahender readmitted in Orthopedics Department with a fresh registration number. He had no knowledge about the admission slip Ex.PW 48/DE. He stated that it was wrong to suggest that he had abused injured Mahender. He stated that he did not get the matter recorded with the duty constable deputed in that hospital and volunteered that the same had no roznamcha registered with him. He further stated that it was true that there was police post in that hospital and he did not report in that police post about the conduct of the treating doctor. He further stated that he remained posted in the same PS for about one year of that incident and from 25th August, 1987 till date he did not report the facts of this case to any senior police officer. He stated that it was wrong to suggest that the injured Mahender and Ram Kumar were actually discharged from the hospital or remained in his custody for more than two hours before their readmission.

6. The following witnesses were examined as defence witnesses in the Trial court:

1B. DW1 ASI Rishi Pal stated that when he was posted in PP Anaj Mandi, PS Vivek Vihar, there was a police arrangement on the occasion of Janmashatami on 16th August, 1987 and he was deputed at Chhota Bazar, Shahdara from 2.00 pm till the completion of celebrations of Janmashatami. He deposed that at about 9.20 p.m. two unknown persons came to him and told him that two anti social elements

were extorting money from people passing by at Circular Road at the point of knife. He stated that he went along with those persons to Circular Road near a paan shop and when he asked the two anti-social elements to accompany him to the police station they started quarelling with him. He deposed that the aforementioned were Mahender and Ram Kumar who were previously known to him as having been booked earlier for several offences and were known as 'Ruffians'. He stated that someone had informed Constable Narender and Constable Jagdish and they had also reached there. He further stated that Ram Kumar stabbed a knife in his chest on the right side and Mahender snatched his Danda and hit him on his left arm. After that both of them fled away from the spot. Although Constable Narender and Constable Jagdish chased them but they could not overpower the said accused persons and returned to see his condition. They took him to SDN hospital on their scooter and got him admitted there and remained with him till next morning.

2B. DW 2 ASI Ghanshyam stated that on 16th August 1987, when he was posted in PP Anaaj Mandi, PS Vivek Vihar, he was informed that Constable Rishi Pal was stabbed. In the intervening night of 24th August 1987 and 25th August, 1987, he was on duty in LNJP hospital where the two accused persons namely Mahender and Ram Kumar were admitted. He stated that his duty was till 8 a.m. and while handing over the charge to HC Ram Kumar he asked him to produce the accused persons before the area ACP after their discharge. They were due to be discharged from the hospital in the morning. He stated that both Mahender and Ram Kumar were all right and responding well when he left the hospital after handing over the charge to HC Ram Kumar. On being cross examined by the Learned APP he stated that he had a talk with the two accused/injured persons and during his duty he served them water etc. on their request. He stated that he told their condition to the parents and relatives of both of them who were present in the hospital.

3B. DW 3 HC Rajender Kumar stated that he had brought the summoned record i.e. FIR registers pertaining to FIR Nos. 155/87, 294/87, 399/86 and 400/87, PS Vivek Vihar.

4B. DW 4 Inspector Ramesh Chand stated that on 22nd August, 1987 he was posted in PS Vivek Vihar as a Duty Officer and on the next day i.e. 23rd August, 1987 SI Surender had worked as Duty Officer in the same PS. He stated that he did not know about his duty hours and after consulting the Roznamcha, Register B, he stated that as per record, SI Surender had joined PS Vivek Vihar on 21st August, 1987 at 7.30 p.m. and that 23rd August, 1987 was his first day of duty as Duty Officer. He stated that as per the records, SI Surender Kumar had worked as Duty Officer on 24th August, 1987 from 8 a.m. to 8 p.m. He admitted that whatever information is received by a Duty Officer during his duty, the same is bound to record the information in the DD Register, after which the information is recorded in the form of DD and the same is marked to competent officer for enquiry. He stated that entries about detainees in the PS were made in Roznamcha Registers. Both the said registers were in Court but he could not tell after going through the said registers as to whether any 'suspects' were detained in the PS Vivek Vihar on 22nd August, 1987 during his duty hours. On being cross examined by the learned APP he stated that whatever had been deposed by him was stated by him after going through the record.

5B. DW 5 HC Meer Singh stated that on 23rd August, 1987 he was posted in PS Vivek Vihar as a driver. He stated that he identified his handwriting on Ex.DW 5/A i.e. entry in the log book on 23rd August, 1987. He stated that he was driving vehicle jeep DED 1762 on that day and handed over the charge of the said vehicle along with the log book after his duty at 8 a.m. on 24th August, 1987 to Constable Manoj Kumar. He identified the handwriting of Constable Manoj Kumar on portion 'B to B' on Ex.DW5/A. He admitted that whenever they went along with the vehicle in their area of jurisdiction they used to write 'illaaca gasht' as purpose and if they happened to go outside their jurisdiction, they used to write the name of the place in the said column. He identified the handwriting of Constable Manoj Kumar at the point 'A to A' on entry in log book dated 26th August, 1987 marked as Ex.DW5/B.

6B. DW 6 Shri Jagmohan Jain, Medical Record Technician, SDN Hospital stated that he had brought the summoned records i.e. MLC of Constable Rishi Pal bearing No. 40911/87 dt.16th August, 1987, the true copy of which was DW6/A. He stated that he had seen signatures of Dr. A.K. Verma (inadvertently mentioned

Kulkreshtha in the original testimony) and that he identified his signatures on the said MLC at point A.

7B. DW 7 Sh. Parimal Rai stated that on 3rd November, 1987 he was posted as SDM Shahdara and the inquest about the death of Mahender was done by him in the same capacity. He stated that after the inquest proceedings he submitted the report marked as Ex.DW7/A which was signed by him at point A and comprised of 10 pages. He stated that 25 witnesses were mentioned by him in his report who had been examined during these proceedings. The report assigned the cause of death of Mahender Kumar as a result of beatings by members of the public.

8B. DW 8 HC Nand Kishore stated that he was posted as Malkhana Moharrar in PS RND and that he brought the summoned record i.e. original FIR No. 273/1987 registered in PS RND, the copy of which is marked as Ex.DW8/A.

9B. DW 9 HC Jitender Singh stated that he was posted as Malkhana Moharrar in PS Vivek Vihar and had brought the summoned record i.e. original FIR No. 294/87 registered in PS Vivek Vihar, the copy of which is marked as Ex.DW9/A.

10B. DW 10 ASI Shiv Lal stated that the summoned record of Office Order No. 1791-4810/HAP East dated 26th August, 1987 required to be produced had already been destroyed by order of DCP dated 16th February, 2001. The copy of this order was marked as Ex.DW10/A. He stated that he could not identify the signatures done in the name of Sh. Qamar Ahmed on this document at point A.

11B. DW 11 Dr. A.K. Verma stated that he was working as Medical Officer in SDN Hospital and on 24th August, 1987 he was posted as CMO, Casualty Ward from 2 p.m. to 9 p.m. He stated that a total of 3 registers were maintained in the Casualty Ward to make entry about the patients i.e. Casualty Register, MLC Register and the Admission Register. He deposed that he had seen the MLC marked as Ex.PW6/A about patient Mahender who he had examined in casualty on the said date at 4.35 p.m. He identified his signatures and handwriting on the document. He stated that as per the record, the patient Mahender was brought to the casualty by Const. Rattan Lal No. 576E. He further stated that the alleged history of the patient was 'beating by public persons' and that the history of the patient was

given by Constable Rattan Lal. He stated that no police officer had met him before the aforesaid patient was brought to him for medical examination. No injury statement was given to him by the police before the examination of the said patient. He stated that he had seen the document marked as Ex.CW21/B which was not handed over to him by the police before the examination of the patient. It was not signed by him anywhere. He stated that if it was handed over to him, he would have signed it. He stated that he had also seen document Ex. CW18/B and that the entry pertaining to patient Mahender was marked as Ex.DW11/A and was in the handwriting of Dr. V.P. Arya made at 5:00 pm. He further deposed that due to the seriousness in the condition of the patient, the same was examined first and then the entry was made in the Register. His pulse beat was not recordable and his life was in danger. He further stated that his priority was to save the patient's life and therefore, he examined the patient before making the entry in the said register. There was a standing order of the Medical Superintendent in this regard. He further stated that since there was no prescribed format of MLC and no column prescribed in the said format to prescribe the medicines required to be given to the said patient, it was not necessary to mention the medicines in the MLC prescribed to the patient. He stated that the said patient was referred to LNJP hospital as the same had suffered extensive injuries, he had suspected fracture and he appeared to be in a state of shock, therefore, he opted to refer him to the said hospital for specialised treatment and management in a better equipped hospital like the LNJP Hospital. He stated that he had not given his final opinion regarding the nature of injuries to the said patient as he had kept it under observations and the final opinion was to be given by the treating doctor in LNJP Hospital. He stated that the clinical examination is done by the treating doctor, who examines a live patient. It is not a thorough but a cursory examination and only salient injuries are to be recorded in addition to vital signs like the pulse beat, BP etc. On the other hand, a post mortem examination is a thorough examination since the person is already dead, the body of the same can be tilted or moved in any direction in order to trace out the injuries suffered by him. He stated that since the aim of post mortem is to find out the cause of death, all the injuries are examined minutely including internal injuries. He further stated that bruises are injuries caused by blunt objects by compression or crushing and are accompanied with painful

swelling of the relevant part. Superficial bruises appear within one to two hours of impact whereas when the injuries are more severe, there is rupture of blood vessels in deep tissues like muscles etc. He stated that it takes the blood to show up externally after several hours or 1-2 days to show the impact. Further, some bruises may show up even after the death due to breakdown of stagnated blood and pigmentation causing external staining. He stated that as per his experience such patients are required to be examined 2-3 times after the initial examination. He further stated that the patient Mahender Kumar was under sedation at the time of his examination and that death could have been caused due to shock of injuries. He stated that he had seen casualty card marked as Ex.CW18/C and admitted that it was in his handwriting and bore his signatures at point A. He stated that in the said card, he had advised the patient to be referred to LNJP hospital and had also prescribed medicines in this regard. He stated that the said patient remained with him for about one hour.

12B. DW 12 Sh. Qamar Ahmed, stated that in the year 1987 he was posted as DCP (East Delhi). He stated that as far as he could remember during his said posting one Mahender Singh died allegedly in the police custody and he had requested the ADM concerned to depute an SDM to hold an inquiry under Section 176 Cr.P.C. He admitted that the complainant of this case had filed a writ petition in the High Court of Delhi and an SLP in the Supreme Court and both were dismissed. He further stated that he did not write any letter to the SDM about the registration of the case and had communicated with the DCP, Headquarters-II. He stated that he identified signatures on document marked as Ex.DW12/B which was a letter which appeared to be signed by him. He stated that as far as he remembered SHO K.P.Singh registered FIR on receipt of entire inquest papers from Delhi Government. He further stated that vide order No. 4791 to 4810/HAP (E) dated 26.8.1987 he had placed SI Tej Singh, Mukesh Kumar, Constable Rattan Lal, Constable Vijender Singh, Constable Narender Singh No. 675/East and Constable Kanwar Pal under suspension.

7. The learned Counsel for the State Mr. Sunil Sharma, Additional Public Prosecutor contended as follows:

(a) The genesis of the case originated on 16th August, 1987 at around 9.30 when constable Rishi Pal of PS Vivek Vihar was stabbed by Ram Kumar and Mahender Kumar and consequently Case FIR No. 294/87 was registered against the aforesaid persons. The investigation of the case was entrusted to SI Tej Singh Verma. The assailants in this case escaped from the spot and a manhunt was launched to apprehend those culprits. As the victim in this case was a policeman therefore, all the policemen headed by SHO R.P.Tyagi entrusted themselves with the task of apprehending the assailants. All the family members of the assailants were picked up and were illegally confined in the Police Station. The family members were conveyed that they would be freed only when Mahender Kumar and Ram Kumar surrendered. Undue pressure was exerted on the family members of the assailants to produce them as one of their own brethren was stabbed and the whole police station was set into motion to nab the culprits. The stabbing incident where the policeman was a victim, aggravated the feelings of the SHO and other police personnel of the police station which ultimately culminated in the death of Mahender Kumar.

The counsel for the State further contended that the tactics of the SHO R.P. Tyagi and other police personnel paid off and the assailants in the case FIR No. 294/87 surrendered on 24th August, 1987 between 7.30 am and 8 am, as their own relatives including brothers of Mahender Kumar and Ram Kumar, brought them to the police station. The onslaught of the police on Mahender Kumar and Ram Kumar soon started and continued in the presence of the family members of Ram Kumar and Mahender Kumar. They were taken inside the building and the family members heard their cries. Thereafter, subsequently, the family members of Ram Kumar and Mahender were released from the police station. Ostensibly, the process of beating commenced from morning of 24th August, 1987 when they surrendered and as the events subsequently unfolded continued till late in the afternoon i.e. upto around 2 p.m.

(b) The counsel submitted that Mahender and Ram Kumar were grievously injured as a result of beatings and torture meted out to them by the accused SHO R.P. Tyagi and others and the accused launched a huge cover up in order to justify the injuries sustained by them. As the injuries were numerous, consequent upon

beatings from SHO R.P. Tyagi and others, they devised a method to cover the injuries sustained by Mahender and Ram Kumar and what followed was a gigantic cover up as under:

(i) At 2 :00 pm on 24th August, 1987, police is said to have received a call from some unknown person from Surajmal Park complaining that two ruffians were harassing public and consequently DD No. 7A was recorded and a so called team as constituted by R.P. Tyagi was dispatched to the spot.

(ii) As per DD No. 7A, the members of the raiding team were SI Tej Singh Verma, HC Narender Kumar, HC Manoj Kumar etc. who were sent to Surajmal Park and there SI Tej Singh Verma alongwith other members of the so called leading party apprehended the culprits, who were being subjected to beatings by the public.

(iii) SI Tej Singh Verma in order to cover up the torture and beatings meted out to Mahender and Ram Kumar fabricated documents such as disclosure slip, seizure memo of knife, site plan, Jama talashi memos.

(iv) SI Tej Singh Verma fabricated the aforesaid documents as the accused persons wanted to show that Ram Kumar and Mahender were present at Suraj Mal Park at 2.05 p.m. In order to save themselves and create evidence of their presence at Surajmal Park.

(v) SI Tej Singh Verma also admitted that he has prepared these documents in his statement under Section 313 Cr.P.C.

(vi) However, the deeds of SI Tej Singh Verma and SHO of R.P. Tyagi were exposed by none other than their own police officers who were examined in the court as PW8 HC Narender Kumar and PW38, HC Manoj Kumar.

(c) The counsel for the State contended that Ram Kumar and Mahender were initially taken to SDN Hospital and there the policemen accompanying the injured wrongly stated to the doctor that the injured were subjected to beatings by the public. This shows that the accused persons even gave wrong information to the doctors who treated them initially in SDN Hospital. Subsequently, the injured Mahender was shifted to LNJP Hospital as his condition was critical and there he

died at around 2 p.m. on 25th August, 1987.

The counsel contended that since the death of Mahender was a case of custody death, Sh. S.S. Rathore, SDM, was asked to conduct inquest proceedings and on 28th August, 1987 he directed the police to register a case relating to the death of Mahender but no such case was registered by the police. It is further submitted that subsequently for some inexplicable reasons, Sh. S.S. Rathore was transferred on the date of his report and Sh. Parimal Rai succeeded Sh. S.S. Rathore, who then conducted inquest proceedings. The learned Counsel submitted that this SDM conducted inquest proceedings afresh and vide order dated 3rd November, 1987 exonerated the policemen and gave a report that Mahender and Ram Kumar were subjected to beatings by public on 24th August, 1987 and further stated that in the report that he did not agree with the findings of Sh.S.S. Rathore, the earlier SDM. It is submitted by the counsel that Sh. Parimal Rai was not authorised to sit in appeal over the actions of his predecessor, i.e., Sh. S.S. Rathore. It seems that even the actions of Sh. Parimal Rai acquiesced in the huge cover-up as is evident in this case.

The learned Counsel for the State submits that Sh. S.S. Rathore gave directions for the registration of the case on 28th August, 1987 but no case was registered and instead the new SDM with his report dated 3rd November, 1987 submitted that the beatings were given by the members of the public and armed with his report the case was sent as 'untraced' which was then accepted by the MM, Z.S. Lohat.

(d) The learned Counsel for the State in order to strengthen his case further relied on the following important contentions:

i) Ram Kumar was an important eye witness to the beatings meted out to Mahender and himself. Externment proceedings were launched against him intendingly enough on 25th August, 1987. The accused persons were very well aware that the statement of Ram Kumar could put them in trouble and in order to remove him from the scene, such proceedings were launched. Unfortunately, Ram Kumar was found murdered and his dead body was found lying near a Railway track in Ghaziabad under mysterious circumstances on 19th November 1990

during the pendency of the trial.

ii) A perusal of the injuries on the body of the deceased as per the post mortem report shows that some of the injuries, such as injuries on the soles of the deceased shows that this was the work of the policemen. It is highly improbable that members of the public could have given beating to Mahender on the soles of his feet and further it is only the policemen who were best known to beat the culprits on this part of the body. Moreover there are injuries of rail pattern which shows that only professional policemen had given beatings to the deceased as has happened in this case.

iii) There are letters on record as written by senior officers and the perusal of these letters show that even DCP Qamar Ahmed expressed his concerns about the custody death and called upon the concerned police officers to collect documents and initiate actions as per law. But even this command of DCP was not adhered to and no action was taken by the accused persons and inspector K.P. Singh despite collecting documents relating to inquest proceedings did not register a case.

iv) As per Section 80 of the Evidence Act whenever any document is produced before any Court, purporting to be a record or memorandum of the evidence, or of any part of the evidence, given by a witness in a judicial proceeding or before any officer authorized by law to take such evidence, or to be a statement or confession by any prisoner or accused person, taken in accordance with law, and purporting to be signed by any Judge or Magistrate, or by any such officer as aforesaid, the Court shall presume that the document is genuine, that any statements as to the circumstances under which it was taken, purporting to be made by the person signing it, are true, and that such evidence, statement or confession was duly taken.

v) In the instant case, statements of witnesses including statement of Ram Kumar who was the co-accused with deceased in case FIR No. 294/87 were recorded before Ld. SDM in the inquest proceedings as well as in the complaint case and these statements speaks about involvement of the accused persons in this case. With the aid of Section 80 of The Indian Evidence Act, the documents which were part of evidence recorded before the Ld. SDM and before the Ld. MM can be

safely relied upon. If these documents are considered then the accused persons will have no escape route and their criminal liability in the instant case is clearly established.

(e) In the present case, the prosecution strongly relied upon the testimonies of PW8 HC Narender, of PW38 HC Manoj Kumar and PW9 Rajkali as already mentioned earlier in order to establish its case. In relation to the testimony of the star witness of the prosecution PW 9 Rajkali the counsel submitted that even if there are minor discrepancies in the statement of Rajkali, however it does not in any way hamper the case of the prosecution.

The Hon'ble Supreme Court had laid down the following position of law in the case of State of Rajasthan v. Kalki : 1981 CriLJ1012 :.normal discrepancies in evidence are those which are due to normal errors of observation, normal errors of memory due to lapse of time, due to mental disposition such as shock and horror at the time of occurrence and those are always there, however honest and truthful a witness may be. Material discrepancies are those which are not normal, and not expected of normal person. Courts have to label the category to which a discrepancy may be categorized. Relying upon the aforementioned testimonies the counsel contended that the accused R.P.Tyagi played the pivotal role in the whole episode right from 16th August, 1987 till 25th August, 1987 and every subsequent action of the police in the entire incident had the stamp of R.P. Tyagi. Testimony of PW8 HC Narender, PW38 HC Manoj Kumar and PW9 Rajkali implicates this accused person. Particularly, corroborative is the evidence of surrender of Ram Kumar and Mahender Kumar in the police station in the morning of 24th August, 1987 and the plight of the two who surrendered all under the directions of R.P.Tyagi and he is liable for the custodial torture and death of Mahender. It is further submitted that R.P. Tyagi and others had beaten and tortured Mahender and Ram Kumar which led to the death of Mahender. The presence of Ram Kumar and Mahender in the police station between 7.30 and 8:00 am in the morning on 24th August, 1987 has been clearly established by the statements of PW9, Rajkali, PW8 HC Narender and PW38 HC Manoj Kumar as well as the other witnesses. Any other story of the public beating of Mahender Kumar and Ram Kumar in Surajmal Park is nothing but a facade erected by the

accused persons. Further the accused Tej Singh Verma fabricated the documents to prove the presence of Ram Kumar and Mahender at Surajmal Park. All subsequent events showed that the incident of Surajmal Park was manufactured by the accused persons.

(f) The Counsel for the State submitted that by no stretch of imagination one can say that the acts of R.P. Tyagi can be covered Under Section 197 of Cr.P.C. which speaks about sanction. There is no provision in law that after inflicting injuries on a person in a police station any police person can say that action cannot be taken against him without taking sanction from some competent authority. Thus, there is no question of sanction in such cases relating to any provision of law.

(g) The prosecution in order to examine and prove the case of custodial torture and death relied upon the following judgments of the Hon'ble Supreme Court:

(i) State of M.P. v. Shyamsunder Trivedi and Ors. 1995 SCC (Cri.) 715.:

The exaggerated adherence to and insistence upon the establishment of proof beyond every reasonable doubt, by the prosecution, ignoring the ground realities, the fact-situations and the peculiar circumstances of a given case, as in the present case, often results in miscarriage of justice and makes the justice delivery system a suspect. In the ultimate analysis the society suffers and a criminal gets encouraged. Tortures in police custody, which of late are on the increase, receive encouragement by this type of an unrealistic approach of the courts because it reinforces the belief in the mind of the police that no harm would come to them, if an odd prisoner dies in the lock-up, because there would hardly be any evidence available to the prosecution to directly implicate them with the torture; The courts must not lose sight of the fact that death in police custody is perhaps one of the worst kind of crimes in a civilized society, governed by the rule of law and poses a serious threat to an orderly civilised society. Torture in custody flouts the basic rights of the citizens recognised by the Indian Constitution and is an affront to human dignity. Police excesses and the maltreatment of detainees/undertrial prisoners or suspects tarnish the image of civilised nation and encourages the men in 'Khaki' to consider themselves to be above the law and sometimes even to become law unto themselves. Unless stern measures are taken to check the

malady, the foundations of the criminal justice delivery system would be shaken and the civilization itself would risk the consequence of heading towards perishing. The courts must, therefore, deal with such cases in a realistic manner and with the sensitivity which they deserve, otherwise the common man may lose faith in the judiciary itself, which will be a sad day.

18. In its 4th Report of June 1980, The National Police Commission noticed the prevalence of custodial torture etc. and observed that nothing is so dehumanizing as the conduct of police in practicing torture of any kind on a person in their custody. The Commission noticed with regard that the police image in the estimation of the public has badly suffered on account of the prevalence of this practice in varying degrees over the past several years and noted with concern the inclination of even some of the supervisory ranks in the police hierarchy to countenance this practice in a bid to achieve quick results by short-cut methods. Though Section 330 and 331 of the Indian Penal Code make punishable those persons who cause hurt for the purpose of extorting the confession, by making the offence punishable with sentence up to 10 years of imprisonment, but the convictions, as experience shows us, have been very few because the atrocities with the precincts of the police station are often left without any ocular or other direct evidence to prove who the offenders are. Disturbed by this situation, the Law Commission in its 113th Report recommended amendments to the Indian Evidence act so as to provide that in the prosecution of a police officer for an alleged offence of having caused bodily injuries to a person while in police custody, if there is evidence that the court may presume that the injury was caused by the police officer having the custody of that person during that period unless, the police officer proves to the contrary. The onus to prove the contrary must be discharged by the police official concerned. The recommendation, however, we notice with concern, appears to have gone unnoticed and the crime of custodial torture etc. flourishes unabated. Keeping in view the dehumanizing aspect of the crime, the flagrant violation of the fundamental rights of the victims of the crime and the growing rise in the crimes of this type, where only a few come to light and others don't, we hope that the Government and Legislature would give serious thought to the changes in the law not only to curb the custodial crime but also to see that the custodial crime does not go unpunished. The courts are also

required to have a change in their outlook and attitude, particularly in cases involving custodial crimes and they should exhibit more sensitivity and adopt a realistic rather than a narrow technical approach, while dealing with the cases of custodial crime so that as far as possible within their powers, the guilty should not escape so that the victim of the crime has the satisfaction that ultimately the majesty of law has prevailed.

(ii) *Munshi Singh Gautam (D) and Ors. v. State of M.P.* 2005 SCC (Cri.) 1269.:

2. Custodial violence, torture and abuse of police power are not peculiar to this country, but it is widespread. It has been the concern of international community because the problem is universal and the challenge is almost global. The Universal Declaration of Human Rights in 1948 which marked the emergence of a worldwide trend of protection and guarantee of certain basic human rights stipulates in Article 5 that 'No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment'. Despite this pious declaration, the crime continues unabated, though every civilized nation shows its concern and makes efforts for its eradication.

3. If it is assuming alarming proportions, now a days, all around it is merely on account of the devilish devices adopted by those at the helm of affairs who proclaim from roof tops to be the defenders of democracy and protectors of peoples' rights and yet do not hesitate to condescend behind the screen to let loose their men in uniform to settle personal scores, feigning ignorance of what happens and pretending to be peace loving puritans and saviours of citizens' rights.

5. The diabolic recurrence of police torture resulting in a terrible scare in the minds of common citizens that their lives and liberty are under a new and unwarranted peril because guardians of law destroy the human rights by custodial violence and torture and invariably resulting in death. The vulnerability of human rights assumes a traumatic torture when functionaries of the State whose paramount duty is to protect the citizens and not to commit gruesome offences against them.

6. Rarely in cases of police torture or custodial death, direct ocular evidence of the complicity of the police personnel alone who can only explain the circumstances in which a person in their custody had died. Bound as they are by the ties of brotherhood, it is not unknown that the police personnel prefer to remain silent and more often than not even pervert the truth to save their colleagues - and the present case is an apt illustration - as to how one after the other police witnesses feigned ignorance about the whole matter.

7. The exaggerated adherence to and insistence upon the establishment of proof beyond every reasonable doubt by the prosecution, at times even when the prosecuting agencies are themselves fixed in the dock, ignoring the ground realities, the fact-situation and the peculiar circumstances of a given case, as in the present case, often results in miscarriage of justice and makes the justice delivery system suspect and vulnerable. In the ultimate analysis the society suffers and a criminal gets encouraged. Tortures in police custody, which of late are on the increase, receive encouragement by this type of an unrealistic approach at times of the courts as well because it reinforces the belief in the mind of the police that no harm would come to them if one prisoner dies in the lock-up because there would hardly be any evidence available to the prosecution to directly implicate them with the torture. The courts must not lose sight of the fact that death in police custody is perhaps one of the worst kind of crimes in a civilized society, governed by the rule of law and poses a serious threat to an orderly civilized society. Torture in custody flouts the basic rights of the citizens recognized by the Indian Constitution and is an affront to human dignity. Police excesses and the maltreatment of detainees/under-trial prisoners or suspects tarnishes the image of any civilized nation and encourages the men in 'Khaki' to consider themselves to be above the law and sometimes even to become law unto themselves. Unless stern measures are taken to check the malady of the very fence eating the crops, the foundations of the criminal justice delivery system would be shaken and the civilization itself would risk the consequence of heading; towards total decay resulting in anarchy and authoritarianism reminiscent of barbarism. The courts must, therefore, deal with such cases in a realistic manner and with the sensitivity which they deserve, otherwise the common man may tend to gradually lose faith in the efficacy of the system of judiciary itself, which if it happens will be a sad day,

for any one to reckon with.

8. Though Sections 330 and 331 of the Indian Penal Code, 1860 (for short the 'IPC') make punishable those persons who cause hurt for the purpose of extorting the confession by making the offence punishable with sentence up to 10 years of imprisonment, but the convictions, as experience shows from track record have been very few compared to the considerable increase of such onslaught because the atrocities within the precincts of the police station are often left without much traces or any ocular or other direct evidence to prove as to who the offenders are. Disturbed by this situation the Law Commission in its 113th Report recommended amendments to the Indian [Evidence Act, 1872](#) (in short the 'Evidence Act') so as to provide that in the prosecution of a police officer for an alleged offence of having caused bodily injuries to a person while in police custody, if there is evidence that the injury was caused during the period when the person was in the police custody, the court may presume that the injury was caused by the police officer having the custody of that person during that period unless the police officer proves to the contrary. The onus to prove the contrary must be discharged by the police official concerned. Keeping in view the dehumanizing aspect of the crime, the flagrant violation of the fundamental rights of the victim of the crime and the growing rise in the crimes of this type, where only a few come to light and others don't, the Government and the legislature must give serious thought to the recommendation of the Law Commission and bring about appropriate changes in the law not only to curb the custodial crime but also to see that the custodial crime does not go unpunished. The courts are also required to have a change in their outlook approach, appreciation and attitude, particularly in cases involving custodial crimes and they should exhibit more sensitivity and adopt a realistic rather than a narrow technical approach, while dealing with the cases of custodial crime so that as far as possible within their powers, the truth is found and guilty should not escape so that the victim of the crime has the satisfaction that ultimately the majesty of law has prevailed.

9. But at the same time there seems to be disturbing trend of increase in cases where false accusations of custodial torture are made, trying to take advantage of the serious concern shown and the stern attitude reflected by the courts while

dealing with custodial violence. It needs to be carefully examined whether the allegations of custodial violence are genuine or are sham attempts to gain undeserved benefit masquerading as victims of custodial violence. The case in hand is unique case in the sense that complainant filed a complaint alleging custodial torture while the accused alleged false implication because of oblique motives.

10. It is the duty of the police, when a crime is reported, to collect evidence to be placed during trial to arrive at the truth. That certainly would not include torturing a person, be he an accused or a witness to extract information. The duty should be done within four corners of law. Law enforcers can not take law into their hands in the name of collecting evidence.

8. Now as far as involvement of the appellant R.P. Tyagi is concerned in the present case, learned Counsel for the appellant Shri R.N. Sharma raised the following contentions:

(i) The single accused such as the appellant herein could not have been convicted and sentenced under Section 302 IPC read with Section 120-B IPC when in the entire judgment trial court has not given any findings with regard to the alleged criminal conspiracy.

(ii) The learned Magistrate who recorded the statements of the complainant's witnesses after taking cognizance under Section 202 Cr.P.C. for the purpose of finding out as to a prima facie case existed against the accused persons cannot at all be said to have recorded evidence since the case was exclusively triable by Sessions Judge in view of the allegations levelled by the complainant.

(iii) The enquiry conducted under Section 202 Cr.P.C. cannot be said to have been conducted in exercise of judicial powers, and the learned Magistrate while embarking upon enquiry under Section 200 and 202 Cr.P.C. was not empowered to refer portion of the enquiry to an outside agency like police which is evident from the perusal of the summoning order that all the statements of complainant's witnesses were recorded with the active help and dictation of Inspector Kishan Singh of Crime Branch.

(iv) The learned Magistrate had flouted the mandatory provisions of Section 210 Cr.P.C. which provides the procedure to be followed when there is a complaint case when police investigation in respect of the same offence is being undertaken. It was further submitted that wherein investigation under Section 156(3) Cr.P.C. was in progress and the Investigating officer of the case was granted time to file his final report then without waiting for the police report, the learned Magistrate resorted to enquiry under Section 202 Cr.P.C. whereas the mandate of law is that Magistrate shall stay the proceedings of such inquiry or trial and call for a report on the matter from the police officer conducting the investigation.

The learned Counsel for the appellant relied upon the following judgments of the Hon'ble Supreme Court to strengthen his arguments:

a) In *Markandey Rai v. Sheo Kumar Thakur and Anr.* : AIR1961 Pat120 , the Hon'ble Supreme Court held as follows:

During the course of an inquiry under Section 202, Criminal P.C. has to satisfy himself on the evidence adduced by the prosecution, if a prima facie case has been made out so as to put the proposed accused on trial, and it is only at the stage of the trial that the truth or falsity of the allegations made in the complaint petition has to be finally determined. The accused in such an inquiry cannot be compelled to appear, but there will be no illegality if he, of his own accord, appears before the inquiring officer and assist him in the matter of the inquiry; but he cannot be permitted either to cross examine the witnesses produced by the complainant, or to produce his own evidence in defence. Where the inquiring officer has allowed the accused to cross examine the 'witnesses of the complainant, or to adduce evidence in defence, or has taken into consideration some informations received by him either on confidential inquiry or from some other source, the procedure, though not illegal in the sense that it vitiates the ultimate order passed by the Magistrate, is unjustified, improper and condemnable.

(9) In an earlier, decision of Upper Burma Judicial Commissioner's Court in 11 Ind Cas 249 , the same view has been taken, and it has been held that a local investigation is not intended by the Legislature to supersede a regular trial, and

that when it is found that there is evidence in support of the complainant's charge, the function of the officer making the local investigation is fulfilled. The process should then issue and the truth or falsity of the evidence determined in a regular manner. It was pointed out that the object of Section 202 is to prevent the issue of process where there is some initial ground for doubting the truth of the complaint and where on a local investigation there appears to be no evidence to support it.

12. On a consideration of the authorities referred to above, the law on the subject in our opinion, is that, during the course of an inquiry under Section 202 Cr.P.C. the inquiring officer have to satisfy himself on the evidence adduced by the prosecution, if a prima facie case has been made out so as to put the proposed accused on trial and it is only at the stage of the trial that the truth or falsity of the allegations made in the complaint petition has to be finally determined.

b) In *Dr. S.S. Khanna v. Chief Secretary, Patna and Anr.* : [1983]2SCR724 , the following position of law was laid down by the Hon'ble Supreme Court:

An inquiry under Section 202 is not in the nature of a trial for there can be in law only one trial in respect of any offence and that a trial can commence only after process is issued to the accused. The said proceedings are not strictly proceedings between the complainant and the accused. A person against whom a complaint is filed does not become an accused until it is decided to issue process against him. Even if he participates in the proceedings under Section 202 he does so not as an accused but as a member of the public. The object of the inquiry under Section 202 is the ascertainment of the fact whether the complaint has any valid foundation calling for the issue of process to the person complained against or whether it is a baseless one on which no action need be taken. The section does not require any adjudication to be made about the guilt or otherwise of the person against whom the complaint is preferred. Such a person cannot even be legally called to participate in the proceedings under Section 202.v) The trial court erred by not recording the pre-charge evidence as per the provisions of law which caused serious prejudice to the defence of the appellant since he was deprived of an opportunity of proving his innocence.

In *Raj Kishore Prasad v. State of Bihar* : 1996 CriLJ2523 , the Hon'ble Supreme Court held as follows:

10. Now it is well neigh settled that 'evidence' envisaged in Section 319 of the Code is the evidence tendered during trial of the case if the offence is triable by a court of Session. The material placed before the committal Court cannot be treated as evidence collected during enquiry or trial.vi) The evidence placed before the trial court in the form of statements during pre summoning stage cannot be treated as evidence and the same can not be the basis for sentencing and convicting the appellant as he had no opportunity to cross examine the witnesses at that stage.

In *Shashi Jena and Ors. v. Khadal Swain and Anr.*, the Hon'ble Supreme Court held as follows:

8. From a bare perusal of the aforesaid provision, it would appear that evidence given by a witness in a judicial proceeding or before any person authorized to take it is admissible for the purpose of proving in a subsequent judicial proceeding or in a later stage of the same judicial proceeding, the truth of the facts which it states in its evidence given in earlier judicial proceeding or earlier stage of the same judicial proceeding, but under proviso there are three pre-requisites for making the said evidence admissible in subsequent proceeding or later stage of the same proceeding and they are, (i) that the earlier proceeding was between the same parties; (ii) that the adverse party in the first proceeding had the right and opportunity to cross examine; and (iii) that the questions in issue in both the proceedings were substantially the same, and in the absence of any of the three pre-requisites afore-stated Section 33 of the Act would not be attracted. This Court had occasion to consider the question in the case of *V.M. Mathew v. V.S. Sharma and Ors.* : AIR 1996 SC109 , in which it was laid down that in view of the second proviso, evidence of a witness in a previous proceeding would be admissible under Section 33 of the Act only if the adverse party in the first proceeding had the right and opportunity to cross examine the witness. The Court observed thus at pages 110 and 111:

The adverse party referred in the proviso is the party in the previous proceeding against whom the evidence adduced therein was given against his interest. He had the right and opportunity to cross examine the witness in the previous proceeding... the proviso lays down the acid test that statement of a particular witness should have been tested by both parties by examination and cross examination in order to make it admissible in the later proceedings.vii) The appellant could not legally have been confronted with the contents of the statements recorded during the pre-summoning stage while recording his statements under Section 313 Cr.P.C. and more particularly any allegations during the testimony recorded during the trial.

viii) The appellant being a public servant is entitled to protection of Section 197 Cr.P.C. which requires the sanction of the government for the offences alleged to have been committed by him while acting or purporting to act in discharge of his official duty. The learned Magistrate by taking cognizance of such offence erred in law and vitiated the whole process of trial.

In *B. Saha and Ors. v. M.S. Kochar* : 1979 CriLJ1367 it was held:

The words 'any offence alleged to have been committed by him while acting or purporting to act in the discharge of his official duty' employed in Section 197(1) of the Code, are capable of a narrow as well as a wide interpretation. If these words are construed too narrowly, the section will be rendered altogether sterile, for, 'it is no part of an official duty to commit an offence, and never can be'. In the wider sense, these words will take under their umbrella every act constituting an offence, committed in the course of the same transaction in which the official duty is performed or purports to be performed. The right approach to the import of these words lies between two extremes. While on the one hand, it is not every offence committed by a public servant while engaged in the performance of his official duty, which is entitled to the protection of Section 197(1), an act constituting an offence, directly and reasonably connected with his official duty will require sanction for prosecution and the said provision. The Supreme Court in the case of *Sankaran Moitra v. Sadhna Das and Anr.* held as under:

In *H.H.B. Gill and Anr. v. King*, the Judicial Committee of the Privy Council had an occasion to deal with the provisions of Section 197 of the Code in juxtaposition of Section 270 of the [Government of India Act, 1935](#). Referring to Dr. Hori Ram Singh and applying the ratio laid down therein, their Lordships observed that a public servant can only be said to act or purport to act in the discharge of his official duty, if his act is such as to lie within the scope of his official duty. The Judicial Committee proceeded to state that in considering Section 197, 'much assistance' could be derived from the Judgment of Dr. Hori Ram Singh. It then formulated the test thus:

A public servant can only be said to act or to purport to act in the discharge of his official duty, if his act is such as to lie within the scope of his official duty. Thus, a Judge neither acts nor purports to act as a Judge in receiving a bribe, though the judgment which he delivers may be such an act; nor does a Government medical officer act or purport to act as a public servant in picking the pocket of a patient whom he is examining, though the examination itself may be such an act. The test may well be whether the public servant, if challenged, can reasonably claim that, what he does, he does in virtue of his office. ix) The learned Magistrate did not follow the dictum of law in allowing the complainant to examine his witnesses without examining the complainant himself first as in this case the complainant was examined as CW 52 and was fully allowed to fill up the gaps for a considerably long time. It is further submitted that the learned trial court erred in law in totally relying upon the statements of complainant's witnesses recorded during pre-summoning stage, while passing the impugned judgment and order on sentence by holding that the deposition of CWs made before learned Metropolitan Magistrate who did not stick to their earlier statements have not become irrelevant or inadmissible in view of Section 33 of Indian Evidence Act.

x) The counsel for the appellant contended that the trial court erred in holding that Section 80 of the Indian Evidence Act obliges the court to presume a document purporting to be a record on memorandum of evidence or of any part of the evidence given by a witness in a judicial proceeding taken in accordance with law and purporting to be signed by a Judge or Magistrate is genuine and that statements purporting to be made by the person signing it, are true and that such

evidence, statements or confession was duly taken particularly when none of the witnesses examined during trial supported their earlier recorded statements recorded during pre-summoning stage.

9. The learned Counsel for the appellant submitted that the evidence tendered by the defence witnesses was entitled for an equal treatment as that of the prosecution witnesses since the learned trial court rejected the evidence of defence witnesses quite casually without assigning any justified reasons. Particularly instructive was the documentary evidence brought on record regarding the bad antecedents of Mahender Kumar and Ram Kumar and regarding the fact that the police party apprehended them on 24th August, 1987 from Road No. 58, Surajmal Park, Shahdara where they were found in injured condition having been beaten up by the public. The defence witnesses further supported the fact that after the spot proceedings, both the aforesaid injured persons were referred to General Hospital, Shahdara and this position was fully supported by DW7, namely Sh. Parimal Rai.

10. The learned Counsel for the appellant submitted that the post mortem report cannot by itself be treated as a substantial piece of evidence, when the doctor conducting the post mortem namely Dr. Vishnu Kumar was never produced in the witness box and the said P.M. report No. 393/87 dt. 26th August, 1987 of deceased Mahender Kumar was got exhibited as Ex.PW-36/A through Dr. Rimteke, who explicitly admitted in his cross-examination that the service record of Dr. Vishnu Kumar was available with the hospital which contains even the personal addresses of the doctors and further admitted that he had never conducted any post mortem as he was a General Surgeon. It is further submitted that Dr. Vishnu Kumar had been examined during pre-summoning stage as CW-21 and at that time he specifically stated that there was no injury on any vital part of the body of the deceased Mahender Kumar and as such no intention to commit murder on the part of the appellant is made out. The counsel further submitted that no efforts were made by the prosecution to call Dr. Vishnu Kumar in witness box to tender his evidence, despite the fact that his presence could have been easily obtained and as such non-examination of the author of post mortem report is fatal to the prosecution case in view of Section 45 of the Indian Evidence Act.

The learned Counsel for appellant raised the plea that even if the entire case of the Prosecution is deemed to be true, without admitting the same, it does not fall within the ambit of Section 302 IPC particularly when the injuries reflected in MLC and post mortem report reveal that the said injuries were mainly bruises, lacerations and abrasions caused by blunt weapon. Dr. S. Patnaik, PW6 admitted in his cross-examination that the possibility cannot be ruled out in patient suffering further abrasions after examination by Dr. A.K. Verma if he was transported or made to travel in a jeep for one and half hour and that there may be bruises which may show-up externally even after death due to extra-vasation of blood fluid, particularly when the injured were rushed to hospital immediately after having been apprehended from Road No. 58, Surajmal Park, Shahdara, New Delhi after having been found in injured condition since they had been beaten-up by public.

The counsel for the appellant stated that the testimony of Dr.A.K. Verma recorded during the inquest proceedings by Sh. Parimal Rai cannot be totally ignored who had stated that he had medically examined the patient Mahender Kumar on his arrival in Casualty and at that time he was in agonizing pain and replied to questions relevantly and the patient gave an alleged history of being involved in some quarrel and being assaulted by some persons during the quarrel and more particularly when all the medical records like M.L.C., Post Mortem report and records of LNJP hospital corroborate the police records to the effect that deceased Mahender Kumar and Ram Kumar were beaten up by the public persons. In light of the above mentioned facts, the appellant cannot be said to be involved in any of the alleged offences as held by the Trial Court. To strengthen his plea, it was further submitted that the Inquest Report of Sh. Parimal Rai, DW 7, exhibited as DW7/A, referred to the dying declaration of deceased Mahender Kumar in which it was stated that the deceased was assaulted by public persons.

In the case of State of Haryana v. Ram Singh 2002 (1) JCC 385 the Hon'ble Supreme Court held as under:

Value of the Post mortem report by itself is not a substantive piece of evidence, but the evidence of the doctor conducting the post mortem can by no means be ascribed to be insignificant. The significance of evidence of Doctor lies vis-a-vis

the injuries appearing on the body of the deceased person and likely use of the weapon therefore and it would then be the prosecutor's duty and obligation to have the corroborative evidence available on record from the other prosecution witnesses.

11. The learned Counsel for the appellant raised a plea that the trial court should not have relied upon the testimony of those witnesses who had been making constant improvements before the court when compared to their previous statements and statements of such witnesses who were constantly changing their stand were not worthy of any consideration. Particularly noticeable were the improvements in the statements and testimonies given by the star witness of the prosecution PW9, Smt. Raj Kali. This PW was examined on three occasions:

a) During inquest proceedings by Ld. SDM on 26th August, 1987 i.e. Sh. S.S. Rathore.

b) During Pre-summoning stage as CW-8 i.e Ex.PW-9/A.

c) During Trial as PW-9.

A comparative analysis of the statements tendered before the MM as compared to the statements tendered before the SDM shows that there are a lot of improvements and the same are as follows:

i) During the inquest proceedings she did not state that on 24th August, 1987 at 7.30 or 8.00 a.m. she noticed Mahender Kumar and Ram Kumar present at P.S. or that her other three sons Rajender, Manohar and Kishan Chand as well as Jassu and Rajender-II were present in the Police Station.

ii) She did not state before the SDM that the police officials were shouting or that she tried to talk to Mahender and Ram Kumar but was prevented from doing so.

iii) She had not stated during the inquest proceedings that while she was standing outside P.S., she heard weeping voice of Mahender Kumar and Ram Kumar or that when she tried to meet them she was prevented from doing so by the police officials.

iv) In statement before Ld. M.M. she did not impute any role to the appellant, which she had done in her statement during inquest proceedings, like the appellant allegedly saying that he had already committed three murders or taking her inside the room and misbehaving with her. Rather in this statement she does not allege that appellant R.P.Tyagi was present in P.S. on 24th August 1987 at 7.30 to 8.00 a.m. or that the SHO, SI Lakhmi Chand and SI Mukesh were involved in this act or that it was they who said that they had ordered to bring the woods for burning her and all arrangements for her funeral had already been completed or that when she alongwith her daughter-in-law Premwati went to JPN Hospital, the SHO was present there, who did not allow her to see Mahender Kumar.

v) Statement recorded before the Ld. M.M. on 7th December 1991 in fact does not attribute any role to the appellant R.P.Tyagi either regarding alleged lifting of this PW or her family members or regarding their alleged detention in P.S. or regarding alleged production of deceased Mahender Kumar and Ram Kumar or the presence of appellant at P.S. Vivek Vihar at relevant time or any role as attributed to said appellant during inquest proceedings and before Ld. Trial Court.

The learned Counsel for the appellant further contended that the following improvements were made during the testimony in the trial by PW9 Raj Kali when compared to her earlier statements tendered during inquest proceedings and before the Ld. MM Shahdara, Delhi.

a. In Ex.PW1/B she stated that on 16th August 1987 police came to her house, gave them severe beatings, took them to Police Station and there again gave them severe beatings. Whereas in statement Ex. PW-9/A before Ld. MM Shahdara, Delhi, she does not impute any role to any police officials regarding beatings given to them at her residence as well as Police Station. On this aspect she has not alleged anything in her statement before Ld. Trial Court.

b. In Ex.PW-1/B i.e. the statement tendered before Sh. S.S. Rathore, SDM, Shahdara, Delhi this PW only alleged that while being detained in P.S. the SHO said that he had already committed three murders and they took her in room and misbehaved with her and the SHO i.e. appellant, SI Lakhmi Chand and SI Mukesh were involved in this act and that they allegedly had ordered to bring the woods for

burning her and all arrangements for her funeral had been completed or that when she went to LNJP Hospital with tea, the SHO, i.e. the appellant was present there, who did not allow her to seek Mahender Kumar. Whereas, in her statement Ex.PW-9/A before MM Shahdara, Delhi she has not supported her earlier version regarding alleged role of appellant herein on the aforesaid aspects and has completely exonerated him in this statement.

c. This PW for the first time named the appellant herein and others while deposing before Ld. Trial Court, thereby alleging that four police officials namely R.P. Tyagi, Surender, Narender and Mukesh Kumar asked her regarding whereabouts of Mahender Kumar and Ram Kumar, to which she expressed ignorance.

d. She alleged for the first time that they started hurling abuses to them and that it was the appellant who detained her as well as daughter-in-law Premwati in lock-up and that the appellant told them that unless and until Ram Kumar and Mahender Kumar will be produced, he will keep them in Police lock-up.

e. She further alleged for the first time before Ld. Trial Court that the appellant also stated that he will kill her son and that he also gave her beating with lathies, as a result of which she sustained severe injuries on her fingers and that he also used filthy language for her and her daughter-in-law Premwati and that nephew of Ram Kumar aged only about 15 days was also not spared by him.

f. This PW further alleged in her statement for the first time before the Ld. Trial Court that when her son Kishan Chand produced Mahender Kumar and Ram Kumar in P.S., then appellant went to them in the P.S. and asked the accused Constable Jagdish to release them from P.S. and that they came down to the at ground floor and then Police officials took Ram Kumar and Mahender inside the police station.

She further alleged for the first time that the appellant herein asked them to leave P.S. stating that now Mahender and Ram Kumar were available to him and that she requested the appellant to allow them to see Mahender and Ram Kumar.

According to the learned Counsel for the appellant a perusal of the above mentioned statements and testimonies lead to the following conclusion:

a. This PW was duly confronted with all her previous statements recorded during the Inquest Proceedings and before the Ld. MM during pre-summoning stage and after confrontations nothing incriminating against the appellant herein remained in her statement tendered before the learned Trial Court.

b. During her cross-examination before the Ld. Trial Court this PW admitted it to be correct that her statement was read over by her counsel before deposing in the Court, which makes it evident that she was a tutored witness and as such her testimony even otherwise neither inspires confidence nor deserves the weightage attached to it by learned trial court.

c. She admitted she did not recollect as to which Police Official's name she had stated to the SDM in her statement and that she did not know any of the police officials who had come to her house on 16th August, 1987 and that she had not mentioned the names of those police officials right from the day they had come to her home till the day when her statement was recorded by Ld. M.M. and that she had not given the description and facial features of those police officials in her statement before the SDM or before the Ld. MM.

The learned Counsel for the appellant contended that after perusal of statements of witnesses recorded during trial i.e. statements of PW 3 Jaswant, PW4 Chiranji Lal, PW7 Rajinder, PW12 Rajinder Prashad, PW13 Manohar Lal, PW14 Prem Wati, PW15 Anil Kumar, PW16 Neetu, PW17 Alah Ram, PW18 Pappu, PW19 Krishna, PW20 Sondai, PW23 Jamna Devi, PW33 Sukhbiri, PW34 Jamman Lal, PW38 HC Manoj Kumar and PW44 Constable Satpal Singh, who did not support the complainant's case, and were declared hostile and nothing could be elicited by the learned Additional Public Prosecutor during their cross-examination, no link remain as to evidence to connect the appellant with the alleged offences.

12. The counsel for the appellant submitted that non-examination of the complainant and not proving his signatures on the complaint during the trial has an adverse effect on the case of the complainant and under such circumstances, the

complaint which was a basic document based upon which the law was set into motion cannot be looked into. It was further contended that when a case is based on circumstantial evidence, the prosecution is duty bound to complete the chain of events and in the present case, production of deceased Mahender Kumar at P.S. Vivek Vihar on 24th August, 1987 by PW7 Rajinder, PW3 Jaswant @Jassu, PW12 Rajinder Prasad and PW13 Manohar Lal has not been proved during trial since the aforesaid PWs did not support the prosecution case on this aspect or any other aspect of the complainant's case. The counsel further contended that the statement of PW38 HC Manoj is enough to destroy the alleged story of the complainant that deceased Mahender Kumar was produced before appellant herein on 24th August, 1987 at about 7:00 or 7.15 am when this PW categorically denied the presence of the appellant in the police station as the relevant time and further stated that he saw SI Mukesh giving 2-3 slaps on the mouths of those two persons i.e. deceased Mahender Kumar and Ram Kumar.

13. The learned Counsel for the appellant submitted that the court must arrive at the following conclusions with regard to the conviction and sentence by the learned trial court:

(i) It is wrong to convict and sentence the appellant merely because he was SHO of PS Vivek Vihar at the relevant point of time. The principle of vicarious liability is inapplicable in all criminal jurisprudence.

(ii) When there is not even an iota of evidence on record against the appellant, how can the present case fall in the category of rarest of rare cases. The following case therefore, does not warrant death penalty which has been awarded to the appellant.

14. After considering the pleas of the counsel for the parties we are of the view that the counsel for the defence has built his case on the fact that at around 2:00 pm on 24th August, 1987, the police station, Vivek Vihar received a call from some unknown person from Surajmal Park complaining to the police that two ruffians were harassing the public and a police team constituted by R.P. Tyagi was dispatched to the spot. The members of the so called police party apprehended the culprits, who were being subjected to severe beating by the public. Thereafter,

the two arrested persons were taken to the hospital where Mahender died subsequently. However, in our view the prosecution has been able to prove the fact that the story built up by the defence is concocted and based on false predications. The prosecution has been successfully able to complete the chain of events beyond reasonable doubt.

15. The portions of the testimony of PW 9 Rajkali in the court as a prosecution witness which is relevant is as under-

Smt. Raj Kali deposed that on the day of Janmashtmi, i.e., 16th August 1987 she along with her children and husband was sleeping in her house. On the same night at about 9:00 PM, police officials went to her house and started enquiring about her son Mahender and his friend Ram Kumar. Her family reported that both Ram Kumar and Mahender were not at home and the police officials took them to police station, Vivek Vihar. She stated that while she was kept in the police station, her husband and her other sons Manohar Lal, Rajinder, etc. were kept in Police Post Anaz Mandi. She further deposed that after about a week on 24th August 1987 at about 7:30 or 8:00 AM she along with Yamuna etc. was released from the police station. When they were coming out of the police station she noticed Mahender Kumar and Ram Kumar present in the police station as well as the presence of her three sons Manohar Lal, Rajinder, and Kishan Chand. She stated that Jassu and Rajinder were also present there and police was shouting out that Ram Kumar and Mahender have been produced in the police station by their relatives. In the meanwhile, when they tried to talk to Mahender Kumar the police officer present there directed them not to talk with them and further asked to them to leave the police station.

Thus, after a perusal of the statements and testimonies of Rajkali before the SDM, as a witness in the complaint case before learned metropolitan magistrate and as a prosecution witness in the trial court, the following conclusive evidence can be relied upon to implicate the appellant.

The sum and substance of the testimony of PW9 Rajkali, which is worthy of belief is:

a. That Mahender and Ram Kumar surrendered in the police station Vivek Vihar between 7.30 a.m and 8.00 am. This testimony is corroborated by the evidence of PW38 Constable Manoj Kumar.

b. She along with her family members and her neighbours were continuously detained by the police and given a beating right from 16th August, 1987 till the date when the deceased, Mahender and Ram Kumar surrendered on 24th August, 1987.

c. This testimony is supported by the testimony of PW-10 Rakesh Kumar, PW-11 Govind Ram, PW-12 Rajinder Prasad, PW-13 Manohar Lal, PW-14 Prem Wati, PW-15 Anil Kumar, PW-16 Neetu, PW-19 Krishna, PW-20 Sondai, PW-21 Subash, PW-23 Jamna Devi, PW-31 Om Wati, PW-33 Sukhbiri, PW-34 Jamman Lal, who all deposed to the effect that they were summoned to the police station regularly since 16th August 1987 until the surrender of Mahender and Ram Kumar on 24th August 1987.

Though there are embellishments and improvements made in the statements of Rajkali from that made before the SDM Shri S.S. Rathore who had conducted the first inquest proceedings; in her statement before the Metropolitan Magistrate in the complaint case on 7th December 1991 and in her testimony before the court recorded in Court as PW 9 on 17th July 2004, 24th July 2004, 31st July 2004 and 7th August 2004, we are not completely relying upon the same. We are only relying upon the aforementioned portion of her testimony which has been consistent before the SDM, the Metropolitan Magistrate and as a prosecution witness in the trial court to complete the chain of events, as put up by the prosecution to implicate the appellant which has also been supported by PW 8 and PW 38 who are police personnel themselves and further strengthened by the depositions of PW 10 Rakesh Kumar, PW 11 Govind Ram, PW 18 Pappu, PW 20 Sondai, PW 21 Subash, PW 23 Jamna Devi, PW 33 Sukhbiri and PW 34 Jamman Lal.

16. While PW9 Raj Kali has made some improvements from her statements before the Inquest Officer, the Metropolitan Magistrate and in her testimony in Court, we cannot lose sight of the fact that Rajkali is the widowed mother of the deceased

Mahender who was a young man. She has battled against heavy odds and the largely obstructive attitude of the entire administrative machinery to bring to book the killers of her son. Thus, due to her traumatic experience and the passage of time there are bound to be discrepancies. Undoubtedly, there are certain other minor improvements and embellishments made in her evidence as a prosecution witness but her version on the essence of the case set up by the prosecution is credible and worthy of belief even after discarding the improvements and consequently where her testimony is supported by other witnesses, she can be relied upon.

17. Quite apart from the fact that her testimony on the above issues is supported by other witnesses, even the police witness PW38 HC Manoj Kumar and PW8 HC Narender Singh support the case set up by the prosecution about the presence of Mahender and Ram Kumar in the morning of 24th August, 1987 in the police station .

There is no reason for at least the police witnesses to depose falsely against their own colleagues and the plea of the counsel for the appellant that this was done so as to save themselves as they were hand in gloves with the deceased Mahender Kumar's father, cannot be accepted as their evidence is supported by the testimony of PW 9 Rajkali and PW 8 Constable Narender Kumar, PW 10 Rakesh Kumar, PW 11 Govind Ram, PW 18 Pappu, PW 20 Sondai, PW 21 Subash, PW 23 Jamna Devi, PW 33 Sukhbiri and PW 34 Jamman Lal.

Once the presence of the deceased and his accomplice Ram Kumar in the police station is established in the morning at about 7.30 a.m. then the whole story of the defence that Mahender and Ram Kumar were arrested at Suraj Mal Park at around 2 :00 pm upon being beaten by the enraged public is totally unworthy of belief and appears to be a concoction. The most vital evidence to falsify the version of 2 o'clock incident in Suraj Mal Park is the testimony of PW38 HC Manoj Kumar. He is said to be the driver of the official vehicle which is shown in the police record to have taken the police party to Suraj Mal Park. The said Manoj Kumar has deposed without any effective cross-examination that he did not go to Suraj Mal Park at 2:00 pm on that day. Once the defence version of an incident of

2 o'clock at Suraj Mal Park is falsified by the evidence of the police driver of the jeep PW 38 Manoj Kumar, who is supposed to have driven the police party in the official vehicle, coupled with the fact that the presence of Mahender and Ram Kumar in the police station having been established by the testimony of PW 2 Satish Aggarwal, PW4 Chiranji Lal, PW 9 Rajkali , PW10 Rakesh Kumar, PW11 Govind Ram, 12 Rajinder Kumar, PW 13 Manohar Lal, PW 14 Prem Wati, PW 16 Neetu, PW 17 Alah Ram, PW 18 Pappu, PW 19 Krishna, PW 20 Sondai, PW 21 Subash, PW 31 Om Wati, PW 34 Jamman Lal, the story of 2 o'clock incident appears to be fabricated with a view to explain the injuries on the person of not only the deceased Mahender but his friend Ram Kumar also.

Even otherwise, it is extremely odd and opposed to the common course of human conduct that two culprits who were said to have been bold enough to have stabbed a police constable causing him a serious injury would, when the entire police force of the area is relentlessly searching for them almost for more than a week, would surface on their own in the mid-afternoon at a public park and pick up a quarrel with members of the public so as to attract uncalled for attention to them.

We cannot lose sight of the fact that it is not in dispute that Mahender and Ram Kumar were said by the police to be part of a criminal gang led by their father and accordingly it is highly unlikely that two such alleged criminals who had been outrageous enough to stab a police constable on duty would be tackled by members of the irate public of the area. Thus, not only does the evidence of PW38 HC Manoj Kumar and PW 8 Narender Singh amongst others falsifies the police visit to Suraj Mal Park at 2 p.m. on 24th August, 1987 but the said version is also unbelievable for its very incredulous nature.

Owing to the reasons described above that this Court cannot accept the plea that Mahender and Ram Kumar were beaten up by the public in the afternoon at about 1.30 pm and the police party took them to the hospital from Suraj Mal Park. We are, thus, satisfied beyond any doubt that Mahender and Ram Kumar were in the police station from 7.30 a.m. onwards.

18. The statement of Ram Kumar before the SDM Shri S.S. Rathore on 26th August 1987 is the most contemporaneous account of the incident of 24th August

1987. The following paragraph of Ram Kumar's statement is relevant:

On 24th August 1987 at 7.30 am, we surrendered in the police station Vivek Vihar. Subsequently at about 8.00 am, they (policemen) released mine and Mahender's family members. Then Sh. Tyagi, SHO, Vivek Vihar came over there, removed our clothes and handed us upside down by tying our stomach and legs with an iron rod and gave us severe beatings. Then they made us keep our hands on a bench, gave iron rod and danda (cudgel) blows on them as a result whereof Mahender and mine fingers of hand, hands and feet got fractured. They they made me lie on the bench with my back resting on the bench and 5-6 policemen rolled an iron rod twice on my legs as a result whereof I became unconscious.

The statement of Ram Kumar has to be seen in view of Section 80 of the Evidence Act, which reads as under:

Presumption as to documents produced as record of evidence - Whenever any document is produced before any Court, purporting to be a record or memorandum of the evidence, or of any part of the evidence, given by a witness in a judicial proceeding or before any officer authorized by law to take such evidence, or to be a statement or confession by any prisoner or accused person, taken in accordance with law, and purporting to be signed by any Judge or Magistrate, or by any such officer as aforesaid, the Court shall presume-that the document is genuine; that any statements as to the circumstances under which it was taken, purporting to be made by the person signing it, are true, and that such evidence, statement or confession was duly taken.

It has also been held by the Hon'ble Supreme Court in the case of Bhagwan Singh v. State of Punjab : 1952 CriLJ1131 , as under:

The certificate of the committing Magistrate endorsed on the deposition sheet states that the deposition was read out to the witness and that the witness admitted it to be correct. The Court is bound to accept this as correct under Section 80 of the Evidence Act until it is proved to be untrue. The burden is on the person seeking to displace the statutory presumption and if he chooses to rely on the testimony of a witness which the Court is not prepared to believe the matter

ends there. The duty displacing the presumption lies on the person who questions it. The Court, is, of course, bound to consider such evidence as is adduced but it is not bound to believe such evidence nor is there any duty whatever on the court to conduct an enquiry on its own.

Thus, in view of the law laid down by the Hon'ble Supreme Court statement given by Ram Kumar, the only eyewitness of the incident of 24th August 1987 of the police torture and atrocities cannot be ignored altogether. The Court is bound to accept this under Section 80 of the Evidence Act until it is proved to be untrue. The onus of displacing the presumption lies on the person who questions it. This Court is thus bound to consider such evidence as is adduced but it is not bound to believe such evidence. The statement of Ram Kumar can be relied upon to the extent of corroborating the evidence as rendered by PW 9 Raj Kali, PW 8 HC Narender Singh and PW38 HC Manoj Kumar. Further, the story put forward by the defence is totally contrived and the presumption as to the truth of the statement of Ram Kumar has also not been displaced by the defence. Hence, in our view the statement of Ram Kumar can be used to complete the chain of events which led to the torture and custodial death of Mahender.

19. There can be no denial that some witnesses took a 'U' turn. Rajender (PW7) deposed that he did not know any person in the name of Jassu, Rajender, Kishan Chan, Manohar, Mahender and Ram Kumar. Needless to say that in his statement before the court of learned Metropolitan Magistrate, Delhi, this witness had deposed to have produced Mahender Kumar and Ram Kumar in the company of Jassu, Kishan Chand and Rajender. Since Rajender and Mahender are his real brothers, it cannot be presumed that he did not know his own brothers. PW 34 Jamman Lal during his cross examination by the learned Additional Public Prosecutor flatly refused to have given any statement in the Court. On being further cross examined, this witness identified his signatures on statement Ex.PW34/A. PW 3 Jaswant @ Jassu denied having given any statement before the court. He also denied his statement Ex.PW3/A, though he admitted his signatures on the same at Point 'A1'. PW 33 Sukhbiri also did not remember as to whether she had given any statement before the court of Metropolitan Magistrate. Similarly, PW 39 Anita refused to have given any statement in the court, though

she also identified her signatures on statement, which is marked as PW 39/A at point 'A'.

It was held by the Supreme Court in the case of Sheikh Zakir v. State of Bihar : [1983]3SCR312 , that it is not quite strange that some witnesses do turn hostile but that by itself would not prevent a court from finding an accused guilty if there is otherwise acceptable evidence in support of the conviction. The Hon'ble Supreme Court has upheld this mandate of law in several judgments, including in the case reported as State v. Ram Prasad Misra and Anr. 3 (1996) CCR 115 (SC), where the Hon'ble Supreme Court observed as follows:

The evidence of a hostile witness would not be totally rejected if spoken in favour of the prosecution or the accused, but can be subjected to close scrutiny and for portion of the evidence which is consistent with the case of the prosecution or defence may be accepted.

The trial court came to the following conclusion that it is apparent that these witnesses told a blatant lie. Having supported the case of complainant before the court of Metropolitan Magistrate, Delhi, these witnesses clearly turned around. At the same time, it is equally true that nothing came out in cross examination of these witnesses to belie their earlier depositions except their flat refusal. Thus, the trial court held that even if these witnesses have turned hostile there is sufficient material to establish the guilt of the accused.

We also cannot lose sight of the fact that the respondent R.P. Tyagi was the SHO of the area who wields considerable power particularly in the locality of Vivek Vihar where the habitation of the deceased was. It is not unusual in such a situation for the witnesses to turn hostile when this case has taken a tortuous and time consuming route and particularly when the date of the incident was 24th August 1987 and the testimony of the prosecution witnesses was recorded in the year 2004. With the passage of time many witnesses would have been too tired out to have consistent courage to undertake to depose against the local police force.

In our view even if witnesses have turned hostile, there is sufficient material on record to establish the guilt of the appellant in the case. It is clearly evident from

the relevant portions of testimonies of PW 8 Constable Narender, PW 9 Smt. Rajkali and PW 38 Constable Manoj Kumar that the appellant is guilty and other witnesses turning hostile does not detract from the essential case set up by the prosecution.

20. In so far the complicity of the accused and particularly of accused R.P. Tyagi is concerned, the following factors clearly incriminate him:

(a) The fact that Externment proceedings in relation to Ram Kumar were initiated by him on 25th August 1987 itself, the day when Mahender had died.

(b) The death of Ram Kumar under mysterious and unexplained circumstances removed the only actual eye witness of the assault which led to the death of Mahender.

(c) Injuries on the sole of the deceased Mahender Kumar show a typical mode of custodial torture and the non registration of the case in respect of the alleged public beatings at 1.30 p.m. on 24th August, 1987, leading to the death of Mahender Kumar on 25th August 1987, for a period of nearly 8 months.

(d) PW 2 Satish Agarwal's deposition to the fact that he had called up the police station for release of the family members of Mahender and Ram Kumar. This clearly shows that the accused had surrendered in the police station in the morning hours around 7:30 am prior to the call made by PW 2.

(e) The fact that the witnesses who had earlier supported the prosecution case had resiled from their statements is very natural following the death of Ram Kumar under highly mysterious and unexplained circumstances. This circumstance of Ram Kumar's sudden death would have been a deterrent to the witnesses who eventually turned hostile.

(f) The deposition of PW 34 Jhamman Lal, uncle of Ram Kumar further strengthens the prosecution case where he said as follows:.I also did not tell to the court that a constable had asked me to see R.P. Tyagi by handing over a visiting card of latter. I did not tell that police persons who cam there, returned to PS. (Confronted with statement Ex.PW34/A from portion L to L where it is so

recorded).

It is true that I went to GRP Police Station, Ghaziabad and identified the dead body of Ram Kumar which was lying on Railway Track, near shed. I had seen the dead body. There was no blood on his body. We met SHO PS Vijay Nagar, Ghaziabad. I did not tell to the court that accused R.P. Tyagi had gone there or requested SHO not to take any action against the culprits or that SHO had refused to do so. (Confronted with statement Ex.PW34/A from portion N to N where it is so recorded).

Thus, PW 34 Jhaman Lal has deposed that Inspector R.P. Tyagi was seen at the Ghaziabad police station under whose jurisdiction the body of Ram Kumar was recovered following his unexplained death.

(g) The threat administered to PW 16 Neetu by the accused R.P. Tyagi, the fact that the PW 3, 7, 10, 12, 13, 14, 15, 16, 17, 18, 19, 20, 23, 33, 34, 38 and 44 turned hostile after the death of Ram Kumar under highly mysterious and unexplained circumstances. The admission of PW 16 Neetu that threat was administered to him by the accused R.P. Tyagi in relation to the given case provides us with an insight into the reason for the witnesses turning hostile thus leaving the prosecution case intact and pointing towards the culpability of R.P. Tyagi.

21. In so far as motive of the crime is concerned, it is evident that the incident of the Janmashtmi day, i.e., 16th August 1987, when Constable Rishi Pal who was one of the policemen attached to the Vivek Vihar police station, was stabbed by Ram Kumar who was the friend and accomplice of the deceased Mahender Kumar has a pivotal bearing. The prosecution has successfully established that as a sequel of the stabbing of the Rishi Pal, the police force attached to the Vivek Vihar police station of which accused Inspector R. P. Tyagi was the SHO, had launched the full scale offensive to trace out Mahender and Ram Kumar. Evidence of the witnesses PW's 2,4,9,10,11,12,13,14,15,16,17,18,19,20,21,22,31,33, who were all relatives and friends of deceased Mahender Kumar, who deposed about their detention and the police inquiries and atrocities to trace the whereabouts of the missing duo Ram Kumar and Mahender, clearly indicates that there was ample

proof of the involvement of police force of Vivek Vihar police station, who were deeply incensed with the temerity of Mahender and Ram Kumar in having caused an injury to one of their own brethren. The anger of the police force was further fuelled by the fact that for about 8 days Mahender and Ram Kumar had managed to cock a snook at the police and evade apprehension. The desperation of the police to trace out the missing duo has been testified to by PW's 2,4, 9, 10, 11, 12, 13, 14, 16,17,18,19,20,21, 31 and 34 whose testimonies are worthy of belief, particularly when it received corroboration by the evidence of two witnesses, i.e., PW 8 HC Narender and PW 38 HC Manoj Kumar. Thus, we have no doubt that the motive in the incident of beating of Mahender and Ram Kumar was fully established by the prosecution beyond doubt.

22. The counsel for the appellant contended that the accused R.P. Tyagi could not have been confronted with the contents of the statement recorded during pre-summoning stage while recording his statements under Section 313 Cr.P.C. and more particularly with regard to the allegations put to him during the testimony recorded during the trial. It was also contended by the counsel for the appellant that the trial court erred in law while relying upon the statements of the complainant's witnesses recorded during pre-summoning stage and also erred by holding the view that the deposition of the CWs made before the learned Metropolitan Magistrate who did not stick to their earlier statements have not become irrelevant or inadmissible in view of Section 33 of Indian Evidence Act. However, in the case of *State of Tamilnadu v. Rajendran (supra)* it was observed that when a death reference is made by a court to the High Court for confirmation, the High Court has to satisfy itself whether a case beyond reasonable doubt has been made out against the accused for imposition of extreme penalty of death and for that the proceedings require a reappraisal and reassessment of the entire facts and law so as to arrive at its independent conclusion. Therefore, we considered and examined the evidence afresh and took into cognizance the testimonies of the prosecution witnesses and the defence witnesses and did not consider it necessary to look into the facts and circumstances of the case in light of the evidence tendered during the pre-summoning stage as complainant's witnesses.

23. It is submitted by the learned Counsel for the appellant that the post mortem report cannot by itself be treated as a substantial piece of evidence as the said post mortem report No. 393/87 dated 26th August 1987 of deceased Mahender Kumar was exhibited as Ex.PW 36/A. Even though Dr. Vishnu Kumar was examined during pre summoning stage as CW-21 but was never examined as a witness in the trial court proceedings. However, it is a proven fact through the deposition of PW-36 Dr. Vinod Kumar Ramtek that he had seen Dr. Vishnu Kumar writing and signing before him the aforesaid post mortem report. He had also stated that the said doctor who conducted the post mortem report had already retired and his whereabouts were not known. In our view, the trial court rightly held that the post mortem report Ex.PW-36/A has been proved as per law. Dr. Vishnu Kumar had rightly pointed 43 external injuries on dead body of Mahender Kumar caused by a blunt object. A bare perusal of the said post mortem report shows that the injuries inflicted, such as soles of feet of the deceased found flattened and marked by bruises, were more probable in the police station rather than at a public place. Photographs marked as Ex.PW5/B-1 to PW5/B-27, and statement of PW-1 S.S. Rathor, the then SDM, corroborate and prove the fact that such injuries were caused as a result of beating of the deceased by the police in the police station Vivek Vihar.

24. It is also the plea of the learned Counsel for the appellant that the appellant being a public servant is entitled to protection of Section 197 Cr.P.C. which requires the sanction of the government for the offences alleged to have been committed by him while acting or purporting to act in discharge of his official duty. The learned Magistrate by taking cognizance of such offence erred in law and vitiated the whole process of trial.

All these issues were considered in detail at the time of initiation of trial and by summoning order dated 7th April 2001 wherein the learned Additional Sessions Judge KKD Courts, held as follows:

In the present case, the accused persons who are public servants cannot at all claim that what they did was by virtue of their office. It is no argument that without being in office they would not have committed the offence alleged against them.

As already observed, it is no part of official duty to commit offence as defined under the IPC or any other law including the Prevention of Corruption Act wherein Section 197 Cr.P.C. has been held to be not at all applicable. The specific actions alleged against the accused persons are categorized in the summoning orders which are altogether outside the scope of official duties of the accused persons which no reasonable man would deem to commit under the color of that office. The reasonable approach has to be taken in the facts and circumstances of the case and that reasonable and prudent approach goes against the accused persons. To my mind even the use of filthy language and abuses are not connected with the discharge of official duties what to talk of custodial death, wrongful confinement, making wrong entries, acting upon wrong entries so as to create a net to save the accused persons in connivance with each other.

In our view it was rightly held by the trial court that no such sanction was called for in this case as actions alleged against the accused persons were not in discharge of their official duties and that proceeding of learned Metropolitan Magistrate in holding inquiry under Section 202 Cr.P.C. was also not illegal in any way. The specific actions alleged against the accused persons which are categorized in the summoning orders are altogether outside the scope of official duties of the accused persons which no reasonable man would deem to commit under the color of his official duties. By no stretch of human imagination the acts of Custodial torture which results in death can be said to be falling under the scope of 'official duties' and therefore in our view also, prosecution of the appellant as in the present case does not require any sanction from higher authority.

25. In our view the reliance by the counsel for the accused R.P. Tyagi on the decision of the Bench of three Hon'ble Judges of the Supreme Court in *Sankaran Moitra v. Sadhna Das and Anr.* : AIR 2006 SC1599 is not warranted. Paragraph 17 of the said judgment of the majority view reads as follows:

17. The High Court has stated that killing of a person by use of excessive force could never be performance of duty. It may be correct so far as it goes. But the question is whether that act was done in the performance of duty or in purported performance of duty. If it was done in performance of duty or purported

performance of duty Section 197(1) of the Code cannot be by-passed by reasoning that killing a man could never be done in an official capacity and consequently Section 197(1) of the Code could not be attracted. Such a reasoning would be against the ratio of the decisions of this Court referred to earlier. The other reason given by the High Court that if the High Court were to interfere on the ground of want of sanction, people will lose faith in the judicial process, cannot also be a ground to dispense with a statutory requirement or protection. Public trust in the institution can be maintained by entertaining causes coming within its jurisdiction, by performing the duties entrusted to it diligently, in accordance with law and the established procedure and without delay. Dispensing with of jurisdictional or statutory requirements which may ultimately affect the adjudication itself, will itself result in people losing faith in the system. So, the reason in that behalf given by the High Court cannot be sufficient to enable it to get over the jurisdictional requirement of a sanction under Section 197(1) of the Code of Criminal Procedure. We are therefore satisfied that the High Court was in error in holding that sanction under Section 197(1) was not needed in this case. We hold that such sanction was necessary and for want of sanction the prosecution must be quashed at this stage. It is not for us now to answer the submission of learned Counsel for the complainant that this is an eminently fit case for grant of such sanction.

In our view the above judgment is inapplicable because it is the case of the defence that the beatings were not administered by the police and were administered by the members of the public at the incident which took place at 1.30 PM on 24th August, 1987 owing to a public outrage and violent reaction arising from the misbehaviour by the deceased Mohinder and Ram Kumar. It is not the defence's case that the injuries were caused by the accused while doing their duties as a police officer. The plea on facts by the accused is that the deceased Mohinder and Ram Kumar had been beaten up by the members of the public and police had absolutely no role in it. Once such a plea is taken by the defence, reliance on Section 197 Cr.P.C. is not justified as it is not even the defence's case that the injuries were caused to the deceased during the performance of official duties by the accused. In fact, the accused's case is of outright denial of the occurrence of the incident of beating in the police station. It is another matter that

we have found that such a case set up by the defence is absolutely unworthy of belief but nevertheless in judging the applicability of Section 197 Cr.P.C., the plea of the defence as to in what manner was the act complained of done and performed as part of official duty becomes relevant. In the present case the accused not having taken a stand that the injuries were caused during the course of the performance of the official duties by the accused, the reliance on Section 197 Cr.P.C. cannot be permitted to be raised.

Even assuming that the plea of Section 197 was applicable to the accused, we may also notice the judgment of the Constitution Bench Judgement of the Hon'ble Supreme Court in K. Satwant Singh v. The State of Punjab : [1960]2SCR89 , which does not appear to have been brought to the notice of the Three Judge Bench of the Hon'ble Supreme Court hearing Shankaran Moitra's case (supra). The relevant portion of law laid down by the Constitution Bench in so far as relates to Section 197 Cr.P.C. reads as follows:

16. Under Section 197 no Court shall take cognizance of an offence committed by a public servant who is removable from his office by the Governor-General-in-Council or a Provincial Government, save upon a sanction by one or the other as the case may be, when such offence is committed by him while acting or purporting to act in the discharge of his official duty. Henderson was charged with intentionally aiding the appellant in the commission of an offence punishable under Section 420 of the Indian Penal Code by falsely stating as a fact, in his reports that the appellant's claims were true and that statement had been made knowing all the while that the claims in question were false and fraudulent and that he had accordingly committed an offence under Section 420/109, Indian Penal Code. It appears to us to be clear that some offences cannot by their very nature be regarded as having been committed by public servants while acting or purporting to act in the discharge of their official duty. For instance, acceptance of a bribe, an offence punishable under Section 161 of the Indian Penal Code, is one of them and offence of cheating or abetment thereof is another. We have no hesitation in saying that where a public servant commits the offence of cheating or abets another so to cheat, the offence committed by him is not one while he is acting or purporting to act in the discharge of his official duty, as such offences have no

necessary connection between them and the performance of the duties of a public servant, the official status furnishing only the occasion or opportunity for the commission of the offences (vide Amrik Singh's case). The Act of cheating or abetment thereof has no reasonable connection with the discharge of official duty. The act must bear such relation to the duty that the public servant could lay a reasonable but not a pretended or fanciful claim, that he did it in the course of the performance of his duty (Vide Matajog Dobey's case).

In any event, therefore, the position of law would be governed by the above judgment of the Constitution Bench of the Hon'ble Supreme Court and consequently the plea of the accused that Section 197 bars the prosecution of the accused can not be sustained.

26. Section 197 of the Code of the Criminal Procedure (Act V of 1898) reads as under:

197. (1) Prosecution of Judges and public servants - When an person who is a Judge within the meaning of Section 19 of the Indian Penal Code, or when any Magistrate or when any public servant who is not removable from his office save by or with the sanction of a (Provincial Government) or the (Central Government), is accused of any offence alleged to have been committed by him while acting or purporting to act in the discharge of his official duty, no Court shall take cognizance of such offence except with the previous sanction-

(a) in the case of a person employed in connection with the affairs of the (Dominion), of the Governor-General exercising his individual judgment, and

(b) in the case of a person employed in connection with the affairs of a Province, of the Governor of that Province exercising his individual judgment.)

A comparison of Section 197 as defined under Code of Criminal Procedure (Act 5 of 1898) and as defined under the Code of Criminal Procedure 1973 leads to the conclusion that the genesis of the section is the same though there are very minute changes. In light of the above, the law laid down in Satwant Singh's case (supra) is of considerable significance. Therefore, the findings in the impugned

judgment of the trial Court on the inapplicability of Section 197 of the Code of Criminal Procedure when viewed in the light of the law laid down in Satwant Singh's case (supra) thus, becomes sustainable.

In so far the other plea of the learned Counsel for the appellant R.P. Tyagi that material placed before the trial court in the form of statement during pre-summoning stage cannot be treated as evidence and be the basis for the conviction of the appellant, is concerned, there can be no quarrel on this proposition. However, this Court while sustaining the conviction of the appellant has not relied upon any portion of the evidence as substantial evidence which was recorded at the pre summoning stage. In so far as the plea relating to Section 33 of the Indian Evidence act by the appellant is concerned, we are not basing the conviction on statements recorded at the pre summoning stage but have viewed such pre summoning statement only with a view to ascertain whether the prosecution witnesses have been consistent in the various stages of pre summoning evidence and substantive evidence given as a prosecution witnesses.

Similarly, the order of examination of the complainant as a witness is not a plea on the basis of which judgment of the trial court can be assailed, particularly when no such plea was taken before the trial court. The learned Counsel for the appellant has contended that the evidence tendered by the defence witnesses has been disregarded by the trial court without giving any justifiable reason. Since such evidence was to the effect that the incident took place at 1.30 pm at Surajmal Park, we have perused the entries in the police records and found that the said incident could not have occurred particularly in view of the evidence of two police witnesses PW 8 Narender Kumar and PW 38 Manoj Kumar themselves. Since we have recorded a finding as to the fact that the incident took place at 1.30 pm at Surajmal Park, as the deceased was already in the custody of police at 7.30 am, the testimony of the defence witnesses at the occurrence of incident at 1.30 pm cannot be given any credence.

27. The law laid down by the statutes both national and international strongly condemns cases of custodial death. When a person dies in the custody of police due to injuries ostensibly caused by beatings and there were severe allegations of

torture against the police, in such circumstances, it is for the police to explain the injuries suffered by such deceased. It is not sufficient for the accused in whose custody the deceased was, merely to deny claim of torture. The police has to establish that injuries found on the body of such person were caused not by them but by someone else.

The trial court in reference to the aforementioned contention referred to the judgment of the Hon'ble Supreme Court in State of Rajasthan v. Kashi Ram 2006 IX AD SC (561).

The respondent was tried for murder of his wife; relationship between them was not cordial. There were instances of respondent assaulting deceased and treating her with cruelty, prosecution established that deceased was last seen alive in her house and that PW 2 had seen her as well as the accused in their rented premises. It was proved that two doors of the house were found locked in the morning, the respondent made only a bald denial of all the incriminating circumstances put to him and had no explanation to offer. In these circumstances, it was held by the Hon'ble Supreme Court of India that the respondent having been seeing last with the deceased, the burden was upon him to prove as to what happened thereafter, since those facts were within his special knowledge.

The Hon'ble Supreme Court has also emphasized on aspects of custodial violence and death and emphasized on the need to curb the cases relating to tortures in police custody as has been aforementioned in the case of State of M.P. v. Shyamsunder Trivedi and Ors. 1995 SCC (Cri.) 715 and in Munshi Singh Gautam (D) and Ors. v. State of M.P. 2005 SCC (Cri.) 1269.

28. The National Police Commission in its 4th Report of June 1980 took note of the existing scenario of custodial torture and according to its observations the practice of torture of any kind on a person in custody the police is most 'dehumanizing'. It also took note of the fact that the public estimation of the police image had received a severe blow over many years, because of the prevalence of the practice of custodial torture. The Commission expressed regret over it and expressed concern over the inclination and partiality of even high ranking police officials towards the practice of custodial torture with an aim to achieve quick

results. Although the persons who cause hurt for the purpose of extorting the confession are punishable under Section 330 and 331 of the Indian Penal Code but convictions have been rare since 'the atrocities within the precincts of the police station are often left without any ocular or other direct evidence to prove who the offenders are.'

This situation also drew the attention of the Law Commission which recommended, in its 113th Report, an amendment to the Indian Evidence Act - by introducing Section 114-B in order to provide for an alleged offence of having caused bodily injuries to a person while in police custody, if there is evidence then the court may presume that the injury was caused by the police officer having the custody of that person during that period, unless the police officer proves to the contrary. The Law Commission recommended the introduction of Section 114-B which reads as under:

Section 114-B. (1) In a prosecution (of a police officer) or an offence constituted by an act alleged to have caused bodily injury to a person, if there is evidence that the injury was caused during a period when that person was in the custody of the police, the court may presume that the injury was caused by the police officer having custody of that person during that period.

(2) The court, in deciding whether or not it should draw a presumption under Sub-section (1), shall have regard to all the relevant circumstances, including, in particular, (a) the period of custody, (b) any statement made by the victim as to how the injuries were received, being a statement admissible in evidence, (c) the evidence of any medical practitioner who might have examined the victim, and (d) evidence of any magistrate, who might have recorded the victim's statement or attempted to record it.

The burden of proof in such a case has been recommended to lie on the concerned police official. These recommendations, however, have not effectuated upto now and the 'dehumanizing' crime of custodial torture has continued.

29. Now, we come to the plea of the learned Counsel for the appellant that the offence even held proved against the appellant does not constitute murder as

defined under Section 300 of the IPC. Section 300 IPC reads as follows:

300. Murder. Except in the cases hereinafter excepted, culpable homicide is murder, if the act by which the death is caused is done with the intention of causing death, or

2ndly. If it is done with the intention of causing such bodily injury as the offender knows to be likely to cause the death of the person to whom the harm is caused, or

3rdly. If it is done with the intention of causing bodily injury to any person and the bodily injury intended to be inflicted is sufficient in the ordinary course of nature to cause death, or

4thly. If the person committing the act knows that it is so imminently dangerous that it must, in all probability, cause death or such bodily injury as is likely to cause death, and commits such act without any excuse for incurring the risk of causing death or such injury as aforesaid.

We are of the view that offence, in the present case, at best against the appellant is culpable homicide not amounting to murder. The most salient feature to put this offence in the category of culpable homicide not amounting to murder is that the established facts and the evidence on record does not disclose that the beatings administered to the deceased Mahender were with the intention of causing death or with the intention of causing such bodily injury as is likely to cause death or with knowledge that the said act is so imminently dangerous that it must in all probability cause death or such bodily injury as is likely to cause death.

30. In view of the above finding, we find ourselves unable to sustain the conviction of the appellant under Section 302 of the IPC. However, this is a case which clearly falls under Section 304 of the IPC. Section 304 of the IPC reads as follows:

304. Punishment for culpable homicide not amounting to murder. Whoever commits culpable homicide not amounting to murder, shall be punished with imprisonment for life, or imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine, if the act by which the death is

caused is done with the intention of causing death, or of causing such bodily injury as is likely to cause death;

or with imprisonment of either description for a term which may extend to ten years, or with fine, or with both, if the act is done with the knowledge that it is likely to cause death, but without any intention to cause death, or to cause such bodily injury as is likely to cause death.

In our view, the offence falls in Clause II of Section 304 of the IPC, as the act committed by the policeman was done with the knowledge that it is likely to cause death because the accused being the SHO of the police station must be aware that the beatings administered to the deceased Mahender could result in death. However, we are not able to come to a finding in favour of the prosecution that the act was done with the intention to cause death or the intention to cause such bodily injury as was likely to cause death. The intention of the accused was to teach a lesson to the deceased who had dared to hurt a policeman by giving him severe beatings in the police station. However, an intention to cause death or such injury as would, in all likelihood, cause death, has not been proved. There were multiple injuries on the body of the deceased person but no evidence had been given to show any particular injury of grievous nature. If the factual matrix of the whole case is taken into consideration it must be held beyond any doubt that the accused were responsible for inflicting those injuries and they must be attributed only with the knowledge that by inflicting such injuries they were likely to cause the death in which case the offence would be one punishable under Section 304 Part II IPC. So, the Death Reference and the appeal stands answered to the effect that the death sentence awarded to the appellant R.P. Tyagi cannot be confirmed. As far as the appeal of this appellant is concerned we allow it to the extent that his conviction under Section 302 IPC stands converted into one under Section 304 Part (II) IPC. Now, we proceed to consider as to what punishment appellant R.P. Tyagi deserves for his conviction under Section 304 Part II of the Indian Penal Code.

In coming to such conclusion we are fortified in our view by the position of law laid down by the Hon'ble Supreme Court in the following judgments:

A. In the case of Dalip Singh and Ors. v. State of Haryana : 1993 CriLJ2092 , it was observed by the Hon'ble Supreme Court that :

Taking the case as a whole into consideration it must be held that the accused were responsible for inflicting those injuries and they must be attributed the knowledge only that by inflicting such injuries they were likely to cause the death in which case the offence would be one punishable under Section 304 Part II IPC. Accordingly, we set aside the conviction of the accused under Section 304 Part I IPC and sentence of 10 years RI awarded thereunder. B. In the case of Munshi Singh Gautam v. State of M.P. (supra) the Supreme Court held as under:From the medical evidence on record it is clear that the injuries to the deceased were confined to the skin and upper level of the body. Grievous injuries were not found on the vital parts of the body like the head, liver, spleen, heart, lungs etc. The duration of the injuries were widely variant. The right lung of the deceased was TB affected. The combined effect of alcohol and the injuries shortened the period of death and resulted in a quicker death. That being so, the conviction of the accused G in terms of Section 304 Part II IPC cannot be faulted.

31. In Gauri Shanker Sharma v. State of U.P. : [1990]1SCR29 it was observed on cases of custodial death :

The offence is of a serious nature aggravated by the fact that it was committed by a person who is supposed to protect the citizens and not misuse his uniform and authority to brutally assault them while in his custody. Death in police custody must be seriously viewed for otherwise we will help take a stride in the direction of police raj. It must be curbed with a heavy hand. The punishment should be such as would deter others from indulging in such behavior. There can be no room for leniency.

The courts must not lose sight of the fact that death in police custody is perhaps the worst kind of crime in a civilized society governed by the law. Torture in police custody flouts the basic rights of the citizens as recognized by the [Constitution of India](#) and is against the basic principles of human dignity of life and liberty of an individual as envisaged in the Preamble to the Constitution. The men in uniform should not consider themselves to be above the law and sometimes even to

become law unto themselves. In cases of the police tortures and excesses, stern measures are required to be taken so that common man may not lose faith in the law enforcement machinery and the foundations of the criminal justice delivery system is further strengthened. Nothing is so dehumanizing as the conduct of the police officer in inflicting torture of any kind on a person in their custody. The courts are also required to adopt a more deterrent stance, particularly in cases involving custodial torture and death.

In view of the above position of law and the accused being the SHO of the police station, in our view, deserves the most severe punishment because when the upholder of law turns into a law breaker, the most stringent punishment should be awarded. Accordingly, we sentence the appellant to undergo eight years of Rigorous Imprisonment. After taking into account the enormity of the offence, we also impose a fine of Rs. 2 lakhs on the accused to be payable to the mother of the deceased, Raj Kali. In case, the fine is not paid the appellant shall be liable to serve a further term of imprisonment of six months. We are also of the view that had the same offence been committed by a superior officer, then the offence would have warranted an even more stringent punishment.

32. The relevant position of law in so far as compensation is concerned, is to be found in the following cases.

(i) In *Mangilal v. State of M.P.* : 2004 CriLJ880 :

The power of the court to award compensation to victims under Section 357 is not ancillary to other sentences but is in addition thereto. In *Hari Singh v. Sukhbir Singh* it was observed that the power under Section 357 is a measure of responding appropriately to crime as well as reconciling the victim with the offender. It is, to some extent, a recompensatory measure to rehabilitate to an extent the beleaguered victims of the crime; a modern constructive approach to crimes and a step forward in our criminal justice system. In *Sarwan Singh v. State of Punjab* it was held that in awarding compensation, the court has to decide whether the case is a fit one in which compensation has to be awarded. If it is found that the compensation should be ordered to be paid, then while arriving at the quantum to be paid, courts are obliged to keep into account the capacity of the

accused to pay the compensation besides taking into consideration also the nature of the crime in each case, the justness of the claim for compensation and the need for it in the context of the victim or members of the family of the victim and other relevant circumstances, if any, in so fixing or apportioning the amount of compensation. As noted above, the mode of application of the fine is indicated in Sub-section (1) of Section 357. Sub-section (3) contains an independent and distinct power to award compensation.

Sub-section (1) of Section 357 deals with a situation when a court imposes a fine or a sentence (including sentence of death) of which fine also forms a part. It confers a discretion on the court to order as to how the whole or any part of fine recovered is to be applied. For bringing in application of Sub-section (1) of Section 357 it is a statutory requirement that fine is imposed and thereupon make further orders as to the disbursement of the said fine in the manner envisaged therein. If no fine is imposed, Sub-section (1) of Section 357 has no application. In the case at hand no fine was imposed by the trial court or the High Court. Sub-section (3) on the other hand deals with the situation where fine does not form part of the sentence imposed by a court. In such a case, the court when passing a judgment can order the accused persons to pay by way of compensation such amount as may be specified in the order to the person who has suffered a loss or injury by reason of the act of which the accused person has been so convicted and sentenced. The basic difference between Sub-sections (1) and (3) is that in the former case, the imposition of fine is the basic and essential requirement, while in the latter even the absence thereof empowers the court to direct payment of compensation. Such power is available to be exercised by an appellate court or by the High Court or Court of Session when exercising revisional powers.

(ii) In *Pankajbhai Nagjibhai Patel v. State of Gujarat* (2001) 2 SCC 595 :

A Magistrate who thinks it fit that the complainant must be compensated with his loss he can resort to the course indicated in Section 357 of the Code. This aspect has been dealt with in *Bhaskaran* case as follows: (SCC p. 521, para 31)

However, the Magistrate in such cases can alleviate the grievance of the complainant by making resort to Section 357(3) of the Code. It is well to remember

that this Court has emphasised the need for making liberal use of that provision (Hari Singh v. Sukhbir Singh). No limit is mentioned in the sub-section and therefore, a Magistrate can award any sum as compensation. Of course while fixing the quantum of such compensation the Magistrate has to consider what would be the reasonable amount of compensation payable to the complainant. Thus, even if the trial was before a Court of a Magistrate of the First Class in respect of a cheque which covers an amount exceeding Rs 5000 the Court has power to award compensation to be paid to the complainant. In our view this question does not now pose any practical difficulty. Whenever a Magistrate of the First Class feels that the complainant should be compensated he can, after imposing a term of imprisonment, award compensation to the complainant for which no limit is prescribed in Section 357 of the Code.

(iii) In Sube Singh v. State of Haryana : 2006 CriLJ1242 :

Award of compensation as a public law remedy for violation of the fundamental rights enshrined in Article 21 of the Constitution, in addition to the private law remedy under the law of torts, was evolved in the last two-and-a-half decades.

It is thus now well settled that the award of compensation against the State is an appropriate and effective remedy for redress of an established infringement of a fundamental right under Article 21, by a public servant. The quantum of compensation will, however, depend upon the facts and circumstances of each case. Award of such compensation (by way of public law remedy) will not come in the way of the aggrieved person claiming additional compensation in a civil court, in the enforcement of the private law remedy in tort, nor come in the way of the criminal court ordering compensation under Section 357 of the Code of Criminal Procedure.

In view of the above position, we direct the State to pay a compensation of Rs. 2 lakhs to the mother of the deceased in addition to Rs. 2 lakhs awarded against the accused. We are constrained to award compensation against the State in view of the role played by the police officers in delaying the proceedings and attempting to scuttle the course of justice as well as vicarious liability for the action of its officers.

33. The Hon'ble Supreme Court in the case of State of Uttar Pradesh v. Ram Sagar Yadav and Ors. : 1986 CriLJ836 , held as follows:

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 to 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 pervert 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 handmaids 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 instance 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).

In accordance with the above decision of the Hon'ble Supreme Court, we also reiterate that the urgent need to amend the law appropriately may be considered so that policemen who commit atrocities on persons who are in their custody are not allowed to escape by reason of atrocities or absence of evidence. The convictions in such cases have been rare since the atrocities within the precincts of the police station are often left without any ocular or other direct evidence to prove who the offenders are. The Law Commission in its 113th Report recommended an amendment to the Indian Evidence Act by introducing Section 114-B in order to provide for alleged offence of having caused bodily injuries to a person while in police custody if there is evidence then the court may presume that the injury was caused by the police officer having the custody of that person during that period, unless the police officer proves to the contrary. However, these recommendations have not been effectuated upto now and the dehumanizing crime of custodial torture has continued. Therefore, this issue deserves due

legislative and executive attention.

34. Certain glaring features of the case cannot escape our attention and we enumerate them as follows:

(a) Delay in registration of FIR for about 5 1/2 months inspite of the Lt. Governor's order which was communicated through the office of Deputy Commissioner, Delhi. This FIR was registered on 11th February 1988 while Mahender Kumar died 25th August 1987.

(b) Change without any cause of the Inquest officer, the then SDM Shri S.S. Rathore, who had also directed to register a case on the very next date of the incident, i.e., 26th August 1987.

(c) Application for externment order of Ram Kumar put forward by the accused R.P. Tyagi, the then SHO of police station Vivek Vihar on 25th August 1987 which was mechanically approved on 28th October, 1987 by Shri Qamar Ahmed, Deputy Commissioner of Police.

(d) Death of Ram Kumar under highly mysterious and unexplainable circumstances.

We regretfully note that the crime of custodial death instead of attracting critical attention and ire of the higher authorities, unfortunately, resulted in sustained efforts first to ignore the crime and then thereafter attempt to cover it up by the factors enumerated above. The Lieutenant Governor, in the present case, in a commendable manner, had adopted the correct approach by directing the registration of the FIR. However, we are sorry to note that inspite of the direction by the Lieutenant Governor, the attempt to obfuscate and delay the course of justice and prevent unravelling of truth continued and the FIR was eventually registered only on 11th February 1988. Dedicated efforts of the mother of the deceased, Raj Kali in relentlessly battling with the authorities, in the present case, reached its fruition by the conviction rendered by the learned Additional Sessions Judge, while the act of the Lieutenant Governor in responding to the public outcry occasioned by the death of the deceased has been praiseworthy. The delay by the

remaining officers of the government of National Capital Territory of Delhi has not been exactly covered with glory and we deprecate such attempts to cover up a heinous crime. The appeal is partly allowed and the Death Reference stands answered in terms of this judgment. The judgment dated 13th December 2006 delivered by the learned Additional Sessions Judge, Karkardooma Courts, Delhi, recording the conviction of the appellant R.P. Tyagi vide SC No. 01/2006 under Sections 302/342/120-B IPC is set aside and the appellant is convicted under Section 304 Part II and sentenced to undergo eight years Rigorous Imprisonment. The fine and compensation shall be paid to Rajkali, the mother of the deceased Mahender.

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