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Tej Singh Vs. State and anr.

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Court : Delhi

Decided On : Mar-05-2008

Reported in : 154(2008)DLT242

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

Acts : Delhi Police Act - Sections 120 and 124; Indian Penal Code (IPC) - Sections 34, 109, 114, 119, 120, 120B, 161, 167, 186, 201, 211, 217, 218, 219, 302, 304, 307, 323, 325, 342, 343, 353, 376, 420, 452 and 506; Prevention of Corruption Act; Code of Criminal Procedure (CrPC) , 1973 - Sections 161, 197, 197(1), 202, 313 and 428

Appeal No. : Crl. Appeal No. 11/2007

Appellant : Tej Singh

Respondent : State and anr.

Advocate for Def. : Sunil Sharma, APP and ; J.P. Dhanda, Adv.

Advocate for Pet/Ap. : Mukesh Kalia, Adv

Judgement :

Mukul Mudgal, J.

1. The trial court had rendered the impugned judgment dated 13th December, 2006 by which the accused SHO, R.P. Tyagi along with SI Tej Singh and Inspector K.P. Singh were convicted. The appellant in the present appeal SI Tej Singh was sentenced to three years rigorous imprisonment and to pay a fine of Rs. 25,000/- for his conviction for an offence punishable under Section 218 IPC and in default of payment of fine the appellant was directed to undergo three months simple imprisonment. In addition to it, the appellant was further sentenced to three years rigorous imprisonment and to pay a fine of Rs. 10,000/- for offence punishable under Section 201 IPC and in default of payment of fine he was further directed to undergo three months simple imprisonment and sentences awarded to the said convict were ordered to run concurrently with a benefit of Section 428 Cr.P.C.

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

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

b) At about 9.20 pm some one told Rishi Pal about two anti social persons who were extorting money at the point of knife at Circular Road, who thereinafter went to the spot.

c) Subsequently information was received in the police station Vivek Vihar that constable Rishi Pal has 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 in Police Station Vivek Vihar. It was revealed that constable Rishi Pal was stabbed by Mahender and Ram Kumar, who 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 anger picked up family members and neighbours of Mahender and Ram Kumar and confined them at Police Station

Vivek Vihar. The family members and neighbours were harassed and beaten and were asked to produce the absconding duo Mahender and Ram Kumar.

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

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

h) On account of the beatings Ram Kumar and Mahender sustained grievous injuries and were taken to SDN 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 beatings 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 an offence punishable under Section 304 IPC. Despite this order, case was not 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 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 Lt. Governor of Delhi, Case 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 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 SHO 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, SI 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 main accused R.P. Tyagi under Sections 302/342/120-B IPC, K.P. Singh who at the relevant time was a sub-inspector under Section 217 IPC and the appellant herein Tej Singh under Section 218/201 IPC.

3. The trial court while dealing with the case of the appellant in Paragraph 59 and 60 of its judgment held as follows:

59. Accused SI Tej Singh investigated said case (FIR 294/87). He prepared documents shown as 'personal search memo' Ex.PW40/DCS, disclosure statements purporting to be made by Mahinder Kumar Ex.PW 40/DC3, by Ram Kumar Ex.PW40/DC4, seizure memo of knife Ex.PW40/DC6, sketch of knife Ex.PW40/DC1 and personal search memo of Ram Kumar Ex.PW40/DC5. Accused Tej Singh admitted to have prepared all these documents in his statement recorded under Section 313 Cr.P.C. It is well proved on file that Mahinder Kumar and Ram Kumar appeared in police station on their own and not arrested from Surajmal Park as shown in that case. It is not proved on file that said

Mahinder Kumar and Ram Kumar gave any such disclosure statement or after their arrest any personal search of them was taken or any such knife was recovered from possession of any of them from that place. These facts if true were within the special knowledge of police. It was held by the apex court in case titled as State of Rajasthan v. Kashi Ram (supra) burden to prove such fact was upon the accused which were within his special knowledge. It was for this accused to establish all these facts being specially within his knowledge but no such evidence was led in this regard.

60. As stated earlier it is well proved that none of said accused was arrested from said spot at Surajmal Park and all those documents were false. Accused Tej Singh is hence convicted for offence of preparing false documents knowing that by doing so, he will save some persons from legal punishment and with that intention gave information about offence which he knew to be false, all punishable under Section 218 IPC.

4. The learned Counsel for the appellant, Mr. Mukesh Kalia submitted as follows:

(i) It is the case of the prosecution that the appellant Tej Singh Verma was the Investigation Officer of the case FIR No. 294/87, Police Station Vivek Vihar, Delhi registered under Sections 307/186/353/34 IPC in which the deceased Mahender and co-accused Ram Kumar were wanted as accused.

(ii) The charge framed against the appellant is that he prepared the documents, i.e., DD No. 7/A and 9/A dated 24th August 1987 and the other documents in his official capacity. Hence, it is the admitted case of the prosecution that whatever was done by the Appellant was in discharge of his official duty. But, the Appellant was prosecuted without taking any sanction from the competent authority.

(iii) The learned Counsel for the appellant strengthened his arguments on three fold basis:

(a) Qua the morning incident: The counsel for the appellant submitted that nothing incriminating has been attributed by the 48 prosecution witnesses including Raj Kali, Manoj and Narender to suggest that the appellant had any knowledge about

the morning incident, wherein the prosecution claimed that the deceased was produced in the P.S. by his relatives. More so, nothing incriminating has been attributed to the Appellant to connect him with the morning incident.

(b) Receipt of information and formation of raiding party at Police Station : In regard to the submission made by the counsel for the appellant towards Receipt of information and formation of raiding party at Police Station, he submitted that as per the case of the prosecution, the role of the Appellant started only after the receipt of DD No. 7/A dated 24.8.1987 at 2.05 P.M. when information was handed over to the Appellant by a Duty Officer SI Surender Singh in the presence of PW/47 H.C. Daya Ram and thereafter the appellant along with the other staff proceeded towards Suraj Mal Park Road No. 58.

The counsel for the appellant submitted that it was SI Surender, Duty Officer, who had reduced in writing DD No. 7/A and further had assigned this DD No. 7/A to the appellant for investigation/enquiry, which was also admitted by PW/47 HC Daya Ram.

The counsel for the appellant further submitted that as per DD No. 7/A, SI Mukesh Kumar, No. 1944/D, Ct. Rattan Lal, No. 576/E, Ct. Kanwar Pal, No. 962/E, Ct. Virender, No. 1469/E, Ct. Narender Singh, No. 675/E and Ct. Manoj Kumar were the members of the Raiding Party and proceeded from the P.S. to the spot on the direction of Duty Officer SI Surender and this entry DD No. 7/A was admitted by SI Surender to be recorded by him. Out of these members of the Raiding Party, PW/8 Narender and PW/38 Manoj have deposed that they had not gone with the Raiding Party.

It is further submitted that no credence can be given to the statement of these two witnesses because circumstances suggest that they are hand in glove with the complainant party and the possibility of bargaining with the complainant cannot be ruled out, despite the fact their names were mentioned in DD No. 7/A as the members of the Raiding Party. The complainant had not made them accused in his complaint and in a way they were saved by the complainant from being prosecuted in this case and on the other hand they have tried to help the complainant by deposing in favour of complainant against the persons of their own

Department and that too in a complaint case where there was no compulsion upon them to depose, and it is further submitted that they were approached by the complainant and then they gave the statement before the Court of Magistrate and thereafter the Trial Court.

(c) Beatings given by member of the public : In regard to the last submission of his three fold arguments, counsel for the appellant submitted that when the appellant reached the spot, he had, no doubt, in his mind about the possibility of the deceased Mahender and Ram Kumar being beaten by the public as from the situation assessed by him from the spot, where public in a large number was present, which dispersed immediately after seeing the police.

The antecedents and past conduct of these two criminals is doubtful as those two criminals were involved in various acts of stabbing, extortion, drug trafficking, rape and assault especially in case FIR No. 155/87 of P.S. Vivek Vihar registered under Section 452/376/506/34 IPC, wherein the deceased Mahender, Ram Kumar and Fateh Singh entered in the house of Smt. Kanti Devi and raped here in her own house in the presence of her husband and her husband after hearing the cries had caused injuries on the person of deceased Mahender and Ram Kumar with a brick despite the fact that they were three in number and armed with deadly weapons like knife etc.

Similarly, there are details of FIRs mentioned against these persons wherein they have inflicted the injuries on the public persons as well as on the police officials on duty and the possibility also cannot be ruled out of their being involved in similar acts of causing injury and harm to the general public, wherein the matters have not been reported/brought to the notice of the police.

The Counsel for the appellant further submitted that it can also be inferred that the anger had developed in the eyes of public against these persons and the victims and aggrieved persons, were waiting for the right opportunity and when much water had flown above their head, they mobilized and gave beatings to Mahender and Ram Kumar to teach them a lesson.

(iv) The counsel for the appellant in respect to the question of motive to kill Mahinder submitted that there was no motive for the appellant to kill Mahender and even if one will go by the averments, made by the complainant, then the police had more grievances against Ram Kumar, as it was in fact Ram Kumar, who had given the vital blow from knife on the chest of Ct. Rishi Pal and whereas Mahender is said to have only snatched the danda and gave a blow to him by the danda.

(v) The counsel for the appellant further submitted that the complainant's family was having so many persons who were involved in criminal activities. They were well-versed with the technicalities of the law, Court procedure, safeguard and remedies, available to them. They were of desperate character involved in including injuries on public persons, police persons, indulging in rape, extortion and drug trafficking. By implicating number of police officers, they had a motive to put pressure upon the police, so that they can carry on their illegal activities smoothly. It is further submitted that the motive to falsely implicate police officials further gets corroboration from the fact the same was done with a view to get compensation from the state.

(vi) The learned Counsel for the appellant contended that the trial court failed to appreciate that there are various inconsistencies and contradictions among the testimonies of various witnesses which create a serious doubt regarding the veracity of the statements of the witnesses on which the trial court has relied upon. The trial court has also based undue reliance on the prosecution version and totally ignored the case of the defence. The trial court has without any reasons disbelieved the testimonies of the defence witnesses.

5. The learned Counsel for the State in order to strengthen the case of the prosecution submitted that Mahender and Ram Kumar were grievously injured as a result of beatings and torture meted out to them by 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 and as a result of consequent beatings from R.P. Tyagi and others, they devised a method to cover up the injuries sustained by Mahender and Ram Kumar and what followed was a gigantic cover up as under:

(i) At 2 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.

6. 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 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 leading 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.

7. 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 Manoher Lal, Rajinder, etc. were kept in Police Poost 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. 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

Constable Manoj Kumar (PW38).

b. Rajkali 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 on 24th August 1987.

Though there are embellishments and improvements made in the statements of Rajkali from that made before the SDM Shri SS 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, PW11 Govind Ram, PW 18 Pappu, PW 20 Sondai, PW 21 Subash, PW 23 Jamna Devi, PW 33 Sukhbiri and PW 34 Jamman.

8. 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, 2007 in the police station.

There is no reason for at least the police witnesses to depose falsely against their own brethren 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 Rajkali PW 9 and PW 10 Rakesh Kumar, PW 11 Govind Ram, PW 18 Pappu, PW 20 Sondai, PW 21 Subash, PW 23 Jamna, PW 33 Sukhbiri and PW 34 Jamman Lal, who all deposed to the effect that the deceased Mahender and Ram Kumar were present in the police station Vivek Vihar between 7.30 a.m. and 8.00 a.m.

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 by the police patrol led by then SI (Investigating Officer) Tej Singh Verma the appellant herein 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 pm on that day. PW 8 Narender Kumar stated to the effect that he was not member of the raiding party that went to Suraj Mal Park on 24th August, 1987 at about 2.00 p.m. 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 Manoj Kumar PW 38, who is supposed to have driven the police party in the official vehicle along with PW 8 Narender Kumar 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, PW 4 Chiranjilal, PW 9 Rajkali, PW 10 Rakesh, PW 11 Govind Ram, PW 12 Rajinder Prasad, 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 the 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 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, surface on their own in the mid-afternoon at a public park and publicly pick up a quarrel with members of the public to attract uncalled for attention to them.

9. We cannot lose sight of the fact that it is not in dispute that Mahender and Ram Kumar were said 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. 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 of the 2:00 pm incident at Surajmal Park, 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 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.

10. 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 said Jassu, Kishan Chand and Rajender, Rajender and Mahender are his real brothers. It cannot be presumed that he did not know his own brothers. Sh. Jamman Lal (PW 34) 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. Jaswant @ Jassu (PW3) denied having given any statement before the court. He also refused about 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 mark 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 fact that the hostile witnesses having given the statements about the facts within their special knowledge under Section 161 Cr.P.C. recorded during investigation, have resiled from correctness of the versions in the statements without giving any reason as why the IO could record statements contrary to what they had disclosed shows that they had no regard for the truth, they fabricated evidence in their cross examination to hold the accused which did not find place in their Section 161 statement.

The trial court came to the 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 rightly 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 appellant in the present appeal and the other connected appeals were police personnel of the area who wielded 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 particularly when this case has taken a tortuous and time consuming route and 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 so as to have the consistent courage to undertake to depose against the local police force.

In our view also 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 HC Narender Kumar, PW 9 Rajkali and PW 38 HC Manoj Kumar that the appellant is guilty and any witness turning hostile does not detract from the essential case set up by the prosecution.

11. 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, where 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 2 Satish Aggarwal, PW 4 Chiranji Lal, PW 9 Rajkali, PW 10 Rakesh Kumar, PW 11 Govind Ram, PW12, Rajinder Prasad, PW 13 Manohar Lal, PW 14, Prem Wati, PW 15 Anil Kumar, PW 16 Neetu, PW 17 Alah Ram, PW 18 Pappu, PW 19 Krishna, PW 20 Sondai, PW 21 Subash, PW 22 Harpal Singh, PW 31 Om Wati, PW 33 Sukhbiri, who were all relatives and friends of deceased Mahender, 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 about 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 2 Satish Aggarwal, PW 4 Chiranji Lal, PW 9 Raj Kali, PW 10 Rakesh Kumar, PW 11 Govind Ram, PW 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 and PW 34 Jamman Lal, 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.

12. 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 which 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.

13. In our view the reliance by the counsel for the accused 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 case of the defence 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 Mahender 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 Section197 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.

14. 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.

15. 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 no such 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 weight.

16. In our view, once the prosecution has been able to prove the fact that the story built up by the defence is concocted and based on false predications, any subsequent act done by any person to cover up the act of torture and beating administered to Mahender and Ram Kumar by the police officers of Police Station Vivek Vihar is also concocted and based on false predications. There cannot be any other finding except that the appellant SI Tej Singh Verma in order to cover up the torture and beatings meted out to Mahender and Ram Kuamr fabricated documents such as personal search memo, disclosure statements purporting to be made by Mahender Kumar and Ram Kumar, seizure memo of knife, sketch of knife and personal search memo of Ram Kumar. Once the prosecution has been able to prove beyond any reasonable doubt that the story built by the defence about the incident alleged to have occurred in the Surajmal Park in the afternoon is false as the accused were already in custody of the Vivek Vihar police station in the morning. The whole story built up by the defence is completely concocted and based on false premises, there is no element of doubt that the appellant fabricated the aforesaid documents so as to wrongly show that Ram Kumar and Mahender were present in Surajmal Park, at 2.05 pm. The appellant SI Tej Singh Verma was the Investigating Officer in case FIR No. 294/87. He had himself prepared all the documents such as personal search memo, disclosure statements purporting to be made by Mahender Kumar and Ram Kumar, seizure memo of knife, sketch of knife and personal search memo of Ram Kumar. It was also admitted by him in his statement under Section 313 Cr.P.C. that he prepared all these documents. The prosecution has been able to prove beyond any reasonable doubt that the story built up by the accused is false and concocted, and the natural corollary of it is that Mahender and Ram Kumar appeared in the Police Station on their own in the morning at about 7.45 a.m., and were not arrested from Surajmal Park, at 2:05 in the afternoon and all documents prepared by the appellant to demonstrate the incident and arrest of the deceased Mahender Kumar and Ram Kumar at 2:00 pm at Surajmal Park, are forged and prepared by the appellant so as to support the false plea of the public beatings administered to the deceased Mahender Kumar

and Ram Kumar.

17. The trial court convicted the appellant Tej Singh under Section 201 and 218 of the Indian Penal Code.

Sections 201 and 218 read as follows:

201. Causing disappearance of evidence of offence, or giving false information to screen offender. - Whoever knowing or having reason to believe that an offence has been committed, causes any evidence of the commission of that offence to disappear, with the intention of screening the offender from legal punishment or with that intention gives any information respecting the offence which he knows or believes to be false.

If a capital offence - if the offence which he knows or believes to have been committed is punishable with death, be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

If punishable with imprisonment for life - and if the offence is punishable with imprisonment for life or with imprisonment which may extend to ten years, shall be punished with imprisonment of either description for a term which may extend to three years, and shall also be liable to fine.

If punishable with less than ten imprisonment - and if the offence is punishable with imprisonment for any term not extending to ten years, shall be punished with imprisonment of the description provided for the offence, for a term which may extend to one-fourth part of the longest term of the imprisonment provided for the offence, or with fine, or with both.

218. Public servant framing incorrect record or writing with intent to save person from punishment or property from forfeiture - Whoever, being a public servant, and being as such public servant, charged with the preparation of any record or other writing, frames that record or writing in a manner which he knows to be incorrect, with intent to cause, or knowing it to be likely that he will thereby cause, loss or injury to the public or to any person, or with intent thereby to save, or knowing it to

be likely that he will thereby save, any person from legal punishment, or with intent to save, or knowing that he is likely thereby to save, any property from forfeiture or other charge to which it is liable by law, shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both.

In our view the trial court rightly convicted the appellant under Section 218 of the Indian Penal Code but erred in convicting the appellant under Section 201 of the Indian Penal Code. The appellant did not cause any evidence of the commission of the offence to disappear but only prepared false documents such as personal search memo, disclosure statements purporting to be made by Mahender Kumar and Ram Kumar, seizure memo of knife, sketch of knife and personal search memo of Ram Kumar. There is no evidence on record to show that the appellant caused disappearance of evidence of the offence with the intention of screening the offender from legal punishment.

In our view, it is proved beyond any reasonable doubt that none of the aforementioned persons were arrested from Surajmal Park. The appellant SI Tej Singh Verma is hence only guilty of the offence of preparing false documents such as personal search memo, disclosure statements purporting to be made by Mahender Kumar and Ram Kumar, seizure memo of knife, sketch of knife and personal search memo of Ram Kumar in spite of knowing that by doing so, he will save his colleagues in Vivek Vihar police station, from legal punishment and with that intention gave information about the offence which he knew to be false. The appellant is thus held guilty of the offence punishable under Section 218 of the Indian Penal Code and the judgment of the trial court in so far it convicts the appellant under Section 218 IPC is affirmed. However, it is also to be seen that the appellant was just working and following the directions of his superior officers.

18. In view of the above position of law, the appellant being Investigating officer of the case FIR No. 294/1987, in our view, is liable for conviction under Section 218 of the Indian Penal Code. It is also to be seen that the deeds of the appellant were exposed by none other than his own colleagues in the police department, PW 8 Narender and PW 38 Manoj Kumar and further corroborated by the testimony of

PW 9 Rajkali, the mother of the deceased Mahender. Accordingly, the judgment delivered by the learned Additional Sessions Judge vide SC No. 01/2006 convicting the appellant under Section 218 is affirmed as observed by us in the aforementioned paras of this judgment and the appellant is convicted under Section 218 IPC and sentenced to six months imprisonment and to pay a fine of Rs. 5000/-. But the conviction under Section 201 of the IPC sentencing the appellant for three years rigorous imprisonment and to pay a fine of Rs. 10,000/- cannot be sustained and the same is set aside.

19. With the above observations and directions, the appeal is partly allowed and stands disposed of.

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