2025:CGHC:34873-DB

**AFR**

**HIGH COURT OF CHHATTISGARH AT BILASPUR**

**CRA No. 611 of 2019**

*{Arising out of judgment dated 26-2-2019 passed by the Special Judge (Atrocities), District Janjgir-Champa in Special Sessions Trial No.27/2016}*

Judgment reserved on: 04/07/2025

Judgment delivered on: 22/07/2025

Jitendra Singh Rajput, S/o Surendra Singh Rajput, Aged about 30 years, R/o Magla, Police Station Civil Line Bilaspur, District Bilaspur, Chhattisgarh.

(In Jail)

--- **Appellant**

**Versus**

State of Chhattisgarh, through its A.J.K. Janjgir (not mentioned in the impugned judgment), District Janjgir-Champa, Chhattisgarh.

--- **Respondent**

**CRA No. 705 of 2019**

Sunil Dhruv, S/o Late Shri Gangaram Dhruv, Aged about 28 years, R/o Near Bhima Talab, Janjgir, District Janjgir-Champa, Chhattisgarh.

(In Jail)

--- **Appellant**

**Versus**

State of Chhattisgarh, through Police Station (Ajaak), Janjgir, District Janjgir-Champa, Chhattisgarh.

--- **Respondent**

**CRA No. 681 of 2019**

Dilharan Miri, S/o Shri Umed Das, Aged about 26 years, R/o Binoridiah, Police Station Masturi, District Bilaspur, Chhattisgarh.

(In Jail)

--- **Appellant**

**Versus**

State of Chhattisgarh, Through District Magistrate, Janjgir-Champa, Chhattisgarh.

--- **Respondent**

**CRA No. 609 of 2019**

Rajesh Kumar, S/o Agnihotri Daud, Aged about 49 years, R/o Mission Compound, Janjgir, Police Station Janjgir, District Janjgir-Champa, Chhattisgarh.

(In Jail)
--- **Appellant**

**versus**

State of Chhattisgarh, through its A.J.K. Janjgir (not mentioned in the impugned judgment), District Janjgir-Champa, Chhattisgarh.

--- **Respondent**

AND

**ACQA No. 676 of 2019**

Usha Devi Norge, Wd/o Late Satish Norge, Aged about 37 years, R/o Village Nariyara, Police Station Mulmula, District Janjgir-Champa, Chhattisgarh.

--- **Appellant**

**Versus**

1. State of Chhattisgarh, through the Station House Officer, Police Station S.C./S.T., District Janjgir-Champa, Chhattisgarh.

2. Jitendra Singh Rajput, S/o Surendra Singh Rajput, Aged about 30 years, R/o Magla, Thana Civil Line Bilaspur, District Bilaspur, Chhattisgarh.

--- **Respondents**

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|---|---|
| For Appellant Jitendra Singh Rajput (A-1) in Cr.A.No.611/2019 | : Mr. Rajeev Shrivastava, Senior Advocate with Mr. Akath Kumar Yadav, Advocate. |
| For Appellant Sunil Dhruv (A-2) in Cr.A.No.705/2019 | : Mr. Rishi Rahul Soni, Advocate. |
| For Appellant Dilharan Miri (A-3) in Cr.A.No.681/2019 | : Mr. Roshan Dubey, Advocate appears on behalf of Mr. C.K. Kesharwani, Advocate. |

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|---|---|
| For Appellant Rajesh Kumar (A-4) in Cr.A.No.609/2019 | : Mr. Sumit Singh and Ms. Vaishali Jeshwani, Advocates. |
| For Appellant Usha Devi Norge in Acq.A.No.676/2019 | : Ms. Pragati Pandey, Advocate on behalf of Mr. Rahul Tamaskar, Advocate. |
| For Respondent/State | : Mr. Ranbir Singh Marhas, Additional Advocate General and Mr. Arvind Dubey, Government Advocate. |

**Division Bench: -**
**Hon'ble Shri Sanjay K. Agrawal and**
**Hon'ble Shri Deepak Kumar Tiwari, JJ.**

**CAV Judgment**

**Sanjay K. Agrawal, J.**

1.1) In this batch of criminal appeals and the acquittal appeal, we are tasked upon to decide legality, validity and correctness of the impugned judgment of conviction and order of sentence dated 26-2-2019 passed by the Special Judge (Atrocities), District Janjgir-Champa in Special Sessions Trial No.27/2016 convicting and sentencing "**Men in Khaki**" namely, Jitendra Singh Rajput (A-1) – Sub-Inspector of Police, Sunil Dhruv (A-2) – Police Constable, Dilharan Miri (A-3) – Police Constable & Rajesh Kumar (A-4) – Sainik for custodial death of Satish Norge in police custody at Police Station Mulmula on 17-9-2016 at 5.30 p.m. in violation of the directives issued by their Lordships of the Supreme Court in the matter of **D.K. Basu v. State of W.B.**[1].

**Conviction and Sentences**

1.2) The trial Court while acquitting appellant Jitendra Singh Rajput (A-1) of the charges under Sections 3(1)(j) & 3(2)(v) of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 (for short,

1 (1997) 1 SCC 416

'the Act of 1989'), convicted all the appellants herein namely, Jitendra Singh Rajput (A-1), Sunil Dhruv (A-2), Dilharan Miri (A-3) & Rajesh Kumar (A-4) under Section 302 read with Section 34 of the IPC and sentenced them to undergo imprisonment for life & pay a fine of ₹ 2,000/- each, in default of payment of fine to further undergo additional rigorous imprisonment for one month finding that on 17-9-2016 at 5.30 p.m. at Police Station Mulmula, in furtherance of their common intention, A-1 to A-4 have assaulted Satish Norge (since deceased) knowing fully well that he is a member of Scheduled Caste by which he suffered 26 injuries over the body and died homicidal death against which these criminal appeals have been preferred by the accused persons (A-1 to A-4) invoking the criminal appellate jurisdiction of this Court under Section 374(2) of the Code of Criminal Procedure, 1973, whereas the acquittal appeal has been preferred by the wife of deceased Satish Norge under Section 372 of the CrPC for convicting the accused persons (A-1 to A-4) under Sections 3(1)(j) & 3(2)(v) of the Act of 1989.

2. **<u>Custodial Death</u>**

2.1) Custodial death represents the gravest transgression of human dignity and the highest degree of violation of fundamental and human rights. It is not merely a denial of life but an assertion of unlawful state power through violence and torture, executed behind the veil of authority. When the protectors of the law become perpetrators of

such cruelty, it signals a systematic breakdown of constitutional values and accountability. In a democratic society governed by the rule of law, such deaths are not just tragic–they are intolerable betrayals of justice. The State, as a constitutional entity, must be held to the highest standards of accountability and moral responsibility.

2.2) In **D.K. Basu** (supra), their Lordships of the Supreme Court while declaring that the fundamental rights guaranteed under Articles 21 & 22(1) of the Constitution of India required to be jealously and scrupulously protected, held that life or personal liberty in Article 21 includes right to live with human dignity, and observed as under: -

> "17. ... The expression "life or personal liberty" in Article 21 has been held to include the right to live with human dignity and thus it would also include within itself a guarantee against torture and assault by the State or its functionaries. ..."

2.3) In the matter of **Bhagwan Singh and another v. State of Punjab**[2], their Lordships of the Supreme Court have considered the duties of the police officers and the consequences of their act which may have a bearing on the facts of the present case. It reads as under: -

> "**7.** A case cannot be thrown out merely on the ground that the dead body is not traced when the other evidence clinchingly establishes that the deceased met his death at the hands of the accused. It may be a legitimate right of any police officer to interrogate or arrest any suspect on some credible material but it is needless to say that such an arrest must be in accordance with the law and the interrogation does not mean inflicting injuries. It should be in its true sense and purposeful namely to make the

2 (1992) 3 SCC 249

> investigation effective. Torturing a person and using third-degree methods are of medieval nature and they are barbaric and contrary to law. The police would be accomplishing behind their closed doors precisely what the demands of our legal order forbid. ...
>
> **8.** It is a pity that some of the police officers, as it has happened in this case, have not shed such methods even in the modern age. They must adopt some scientific methods than resorting to physical torture. If the custodians of law themselves indulge in committing crimes then no member of the society is safe and secure. If police officers who have to provide security and protection to the citizens indulge in such methods they are creating a sense of insecurity in the minds of the citizens. It is more heinous than a gamekeeper becoming a poacher."

2.4) Similarly, in the matter of **Dagdu v. State of Maharashtra**[3], *the Supreme Court* observed as under: (SCC p. 92, para 88)

> "... The police, with their wide powers, are apt to overstep their zeal to detect crimes and are tempted to use the strong arm against those who happen to fall under their secluded jurisdiction. That tendency and that temptation must in the larger interest of justice be nipped in the bud."

**Prosecution Case**

3. Case of the prosecution, in brief, is that on 17-9-2016, Devendra Kumar Sahu (PW-20), Operator, CSPDCL, posted at Electric Sub-Station, Nariyara, vide Ex.P-31, informed the police of Police Station Mulmula that Satish Norge (since deceased), R/o Village Nariyara, is making nuisance after consuming alcohol at Sub-Station Nariyara, which was recorded vide Ex.P-31A in roznamcha sanha. Immediately thereafter, Station In-charge J.S. Rajput (Station House Officer) after registering the said information vide Ex.P-32 along with Constables Dilharan Miri

3 (1977) 3 SCC 68

A-3) & Sunil Dhruv (A-2) started for Sub-Station Nariyara for confirmation of the said roznamcha sanha Ex.P-31A and on reaching there, they found that Satish Norge was in drunken condition and excessive smell of alcohol was coming from his mouth and there was redness of eyes. Satish Norge was taken to Community Health Centre, Pamgarh for medical examination as per Section 53 of the CrPC upon which Dr. Smt. Rashmi Dahire (PW-11) performed his MLC vide Ex.P-14 and found that Satish Norge (now deceased) is in drunken condition, excessive smell of alcohol was coming from mouth, there was redness of eyes and he was not able to stand properly.

4. A-1 to A-3 after reaching to Police Station seen Satish Norge (now deceased) in intoxicated condition and making nuisance at Sub-Station Office Nariyara and drawn proceedings under Sections 107 & 116(3) of the CrPC. Thereafter, vide roznamcha sanha No.603, Satish Norge was arrested and information to his family members was sent regarding his arrest and thereafter, again roznamcha sanha No.604 was registered citing that medical condition of Satish Norge is not well and he is vomiting and therefore he was taken to Community Health Centre, Pamgarh for treatment by A-2 to A-4 where the doctor has informed that he has been brought dead. Information regarding death of Satish Norge that he has been brought dead at CHC, Pamgarh was given by Dr. Smt. Rashmi Dahire (PW-11) on 17-9-2016 vide Ex.P-9. Merg intimation was given by Ramphal (PW-6), Washerman at CHC,

Pamgarh which was recorded vide Ex.P-10. Inquest over the dead body of Satish Norge was conducted vide Ex.P-4 and thereafter, a team of three doctors namely Dr. R.S. Joshi, Dr. Anwita Dhruv & Dr. K.K. Dahire (PW-12) conducted postmortem vide Ex.P-15 in which they found total 26 injuries on the dead body and cause of death was stated to be multiple contusion injuries over the body leading to congestion and cardio-respiratory arrest. FIR was registered vide Ex.P-17 on 19-9-2016 at 3 p.m. after merg inquiry and Crime Details Form was prepared vide Ex.P-16. Seizure of internal organs of the deceased body was made vide Ex.P-18 and vide viscera report Ex.P-23A, no poison was found in the internal organs.

5. Statements of witnesses were recorded under Section 161 of the CrPC. After due investigation, the accused/appellants were charge-sheeted for offence under Section 302 read with Section 34 of the IPC and in addition, Jitendra Singh Rajput (A-1) was also charge-sheeted for offence under Sections 3(1)(j) & 3(2)(v) of the Act of 1989 and charge-sheet was filed before the jurisdictional criminal court and the case was committed to the Court of Sessions, Janjgir-Champa, from where the learned Special Sessions Judge (Atrocities), District Janjgir-Champa, received the case on transfer for conducting trial and hearing and disposal in accordance with law.

6. The accused/appellants abjured the guilt and entered into defence. In order to bring home the offence, the prosecution examined as many as

thirty witnesses and exhibited 37 documents apart from Article A-1, copy of Caste Certificate. The defence has not examined any witness, however, exhibited nine documents, in support of its case.

**Findings of trial Court**

7. The trial Court after appreciating oral and documentary evidence available on record, while acquitting appellant Jitendra Singh Rajput (A-1) of the charges under Sections 3(1)(j) & 3(2)(v) of the Act of 1989, convicted and sentenced the appellants (A-1 to A-4) in the manner mentioned in the opening paragraph of this judgment against which the instant appeals under Section 374(2) of the CrPC have been preferred, whereas, complainant Usha Devi Norge, wife of deceased Satish Norge, has preferred acquittal appeal.

8. The trial Court came to the conclusion that death of Satish Norge was homicidal in nature and it took place after he was taken into custody by police and further recorded a finding that death of Satish Norge occurred in police custody and his death has been homicidal. The trial Court has also recorded a finding that the injuries found over the body of Satish Norge are on account of the fact that he was beaten in the police custody and the appellants have not explained how Satish Norge died in police custody on account of custodial violence and it has further been proved by the evidence of Sukhsagar (PW-2) – Village Sarpanch, Prakash Norge (PW-3) – son of the deceased, Mithailal

Norge (PW-4) – uncle of the deceased, Ravindra Kumar (PW-5) & Vinita Norge (PW-13).

**Submissions on behalf of Appellants**

9. Mr. Rajeev Shrivastava, learned Senior Counsel appearing on behalf of accused/appellant Jitendra Singh Rajput (A-1) in Cr.A.No.611/2019, would vehemently submit that cause of death of the deceased could not be ascertained to be homicidal in nature as it has to be decided on the basis of evidence adduced by expert i.e. Dr. K.K. Dahire (PW-12), who could not ascertain that cause of death was homicidal in nature. He would further submit that there was huge crowd of villagers at Sub-Station Nariyara and villagers have assembled therein and Satish Norge was beaten by the villagers on account of which he died and it is not the case where he died in the custody of Jitendra Singh Rajput (A-1). In alternative, learned Senior Counsel would also submit that there is no evidence that A-1 has beaten Satish Norge with intention to cause his death and at the most, it would fall under the category of culpable homicide not amounting to murder. A-1 is already in custody since 25-9-2016, therefore, he be sentenced to the period already undergone by him.

10. Mr. Rishi Rahul Soni, learned counsel appearing on behalf of accused/ appellant Sunil Dhruv (A-2) in Cr.A.No.705/2019, would submit that except taking the deceased to the hospital and bringing him back as mentioned in the roznamcha sanha (Ex.P-32), presence of Sunil Dhruv

(A-2) is not at all established, therefore, he is entitled for clean acquittal. He would rely upon the decisions of the Supreme Court in the matters of **State of M.P. v. Shyamsunder Trivedi and others**[4] and **Sunil Mahadeo Jadhav v. State of Maharashtra**[5] to buttress his submission.

11. Mr. Roshan Dubey, learned counsel appearing on behalf of accused/ appellant Dilharan Miri (A-3) in Cr.A.No.681/2019, would submit that the role of Dilharan Miri (A-3) is limited as mentioned in roznamcha sanha Ex.P-32 and as such, his case is alike to that of Sunil Dhruv (A-2) and therefore he is also entitled for acquittal.

12. Mr. Sumit Singh, learned counsel appearing on behalf of accused/ appellant Rajesh Kumar (A-4) in Cr.A.No.609/2019, would submit that the trial Court is absolutely unjustified in convicting Rajesh Kumar (A-4) as he was a driver, his role is limited to driving of vehicle owned and possessed by the police station, he has not played any active role in the alleged crime and the deceased was not in his custody, as such, he could not have been convicted by the trial Court, therefore, he is entitled for acquittal. He would rely upon the decision of the Supreme Court in the matter of **Balu alias Bala Subramaniam and another v. State (UT of Pondicherry)**[6] in support of his contention.

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4 (1995) 4 SCC 262
5 (2013) 15 SCC 177
6 (2016) 15 SCC 471

**Submission on behalf of Complainant/Wife of the deceased (in Acquittal Appeal)**

13. Ms. Pragati Pandey, learned counsel appearing on behalf of the complainant/appellant Usha Devi Norge – wife of deceased Satish Norge in Acquittal Appeal No.676/2019, would submit that the trial Court is absolutely unjustified in acquitting accused/appellant Jitendra Singh Rajput (A-1) of the charges under Sections 3(1)(j) & 3(2)(v) of the Act of 1989 knowing fully well that the deceased belongs to Scheduled Caste and therefore acquittal of A-1 of the said charges is bad in law, which has been seriously opposed by the learned Senior Counsel appearing for A-1/respondent No.2 in the acquittal appeal as also by the learned State counsel appearing for respondent No.1 in the acquittal appeal.

**Submission on behalf of the State of Chhattisgarh**

14. Mr. Ranbir Singh Marhas, learned Additional Advocate General appearing on behalf of the State/respondent, would submit that the trial Court has clearly recorded a finding that it is the appellants (A-1 to A-4) who have taken Satish Norge in police custody after arresting him and thereafter, he was brought to the hospital dead in police custody and his death has been found to be homicidal by the trial Court and as many as 26 injuries were found over his body which clearly establish that all the appellants have beaten him mercilessly by which he suffered death and thereafter he was taken to CHC, Pamgarh, which is

further witnessed by Sukhsagar (PW-2), Prakash Norge (PW-3), Mithailal Norge (PW-4), Ravindra Kumar (PW-5) & Vinita Norge (PW-13). The learned Additional Advocate General would further submit that as per the statement of Sukhsagar (PW-2), when the deceased was brought back to the police station from hospital, he asked for water and informed that he has been brutally assaulted. Similarly, as per the statement of Prakash Norge (PW-3), who is son of the deceased, while sitting in police station, his father was suffering from too much pain and asked water from him, at that time, he informed that the police persons had assaulted him with wooden club and legs. Mithailal Norge (PW-4) has stated that he saw that the police persons were assualting the deceased. According to the statement of Vinita Norge (PW-13), hands of the deceased were tied and police persons were assaulting him. As such, it is a case where the conviction recorded and the sentences awarded deserve to be confirmed and even it is not a case where the offence could be converted to a lesser offence of Section 304 Part-II of the IPC, as it is a case of homicidal death amounting to murder. The learned State counsel has heavily relied upon the decision of the Supreme Court in the matter of **Prithipal Singh and others v. State of Punjab and another**[7] to buttress his submission. Therefore, all the four criminal appeals deserve to be dismissed.

7 (2012) 1 SCC 10

15. We have heard learned counsel for the parties and considered their rival submissions made herein-above and also went through the record carefully and thoroughly as well.

16. Case of the prosecution is partly based on the testimonies of Sukhsagar (PW-2), Prakash Norge (PW-3), Mithailal Norge (PW-4), Ravindra Kumar (PW-5) & Vinita Norge (PW-13) and also based on the circumstantial evidence. The five golden principles which constitute the *panchsheel* of a case based on circumstantial evidence has been laid down by the Supreme Court in the matter of **Sharad Birdhichand Sarda v. State of Maharashtra**[8] in which their Lordships have held in paragraph 153 of their report as under: -

> "153. A close analysis of this decision would show that the following conditions must be fulfilled before a case against an accused can be said to be fully established :
>
> (1) the circumstances from which the conclusion of guilt is to be drawn should be fully established.
>
> It may be noted here that this Court indicated that the circumstances concerned 'must or should' and not 'may be' established. There is not only a grammatical but a legal distinction between 'may be proved' and "must be or should be proved" as was held by this Court in *Shivaji Sahabrao Bobade v. State of Maharashtra*[9] where the following observations were made:
>
> Certainly, it is a primary principle that the accused *must* be and not merely *may* be guilty before a court can convict and the mental distance between 'may be' and 'must be' is long and divides vague conjectures from sure conclusions.

8 (1984) 4 SCC 116
9 (1973) 2 SCC 793

(2) the facts so established should be consistent only with the hypothesis of the guilt of the accused, that is to say, they should not be explainable on any other hypothesis except that the accused is guilty,

(3) the circumstances should be of a conclusive nature and tendency,

(4) they should exclude every possible hypothesis except the one to be proved, and

(5) there must be a chain of evidence so complete as not to leave any reasonable ground for the conclusion consistent with the innocence of the accused and must show that in all human probability the act must have been done by the accused."

**Incriminating Circumstances**

17. The trial Court in paragraph 102 of its judgment has culled out 12 incriminating circumstances and further recorded a finding that considering the nature of injuries sustained by the deceased and the manner in which the injuries were inflicted, death of the deceased was homicidal in nature and proceeded to convict the accused/appellants (A-1 to A-4) under Section 302 read with Section 34 of the IPC. The incriminating circumstances culled out by the trial Court are as under: -

102– उपरोक्त साक्ष्य विवेचना के आधार पर परिस्थितिजन्य साक्ष्य की निम्नानुसार श्रृंखला निर्मित होती हैः–

(a) दिनांक 16–9–16 को विद्युत सब स्टेशन नरियरा में भीड़/गांव वालों द्वारा सतीष कुमार नोरगे (सूर्यवंशी) से मारपीट नहीं किया जाना।

(b) दिनांक 17–9–16 को विद्युत सब स्टेशन नरियरा में दिन के 1.55 बजे के कुछ समय पूर्व भीड़/गांव वालों द्वारा सतीष कुमार नोरगे (सूर्यवंशी) से मारपीट नहीं किया जाना।

(c) दिनांक 17–9–16 को 1.55 बजे के कुछ समय पूर्व विद्युत सब स्टेशन नरियरा से अभियुक्तगण द्वारा सतीष कुमार नोरगे (सूर्यवंशी) को जीवितावस्था में पकड़ा जाना/अभिरक्षा में लेना।

(d) दिनांक 17–9–16 को दिन के 1.55 बजे चिकित्सक डॉ0 रश्मि डाहिरे अ0सा011 द्वारा सतीष कुमार नोरगे (सूर्यवंशी) का परीक्षण कर प्रदत्त रिपोर्ट प्र0पी014–अनुसार सतीष कुमार नोरगे (सूर्यवंशी) चोटिल अथवा चोटग्रस्त नहीं था। अर्थात अभियुक्तगण द्वारा सतीष कुमार सूर्यवंशी को पुलिस अभिरक्षा में लिए जाते समय सतीष कुमार नोरगे चोटिल अथवा चोटग्रस्त नहीं था।

(e) रोजनामचा सान्हा रिपोर्ट प्र0पी033–दिनांक 17–9–16 अभियुक्तगण द्वारा विद्युत सब स्टेशन नरियरा से सतीष कुमार नोरगे (सूर्यवंशी) को अभिरक्षा में लेकर सी0एच0सी0 पामगढ़ में डॉ0रश्मि डाहिरे अ0सा011 से प्रथम मेडिकल परीक्षण (प्र0पी014) कराने के बाद दिन के 2.30 बजे थाना मुलमुला लाना।

(f) रोजनामचा सान्हा रिपोर्ट प्र0पी034 समय 2.35 बजे अभियुक्तगण द्वारा सतीष कुमार नोरगे (सूर्यवंशी) को प्रतिबंधात्मक कार्यवाही हेतु गिरफ्तार करना।

(g) रोजनामचा सान्हा रिपोर्ट दिनांक प्र0पी035 दिन के 3.15 बजे सतीष कुमार नोरगे (सूर्यवंशी) की तबीयत बिगड़ने पर अभियुक्तगण द्वारा ईलाज हेतु सी0एच0सी0 पामगढ़ रवाना होना।

(h) दिनांक 17–9–16 को शाम के 5.30 बजे डॉ0रश्मि डाहिरे अ0सा011 द्वारा परीक्षण कर सतीष कुमार नोरगे (सूर्यवंशी) को मृत घोषित करना (प्र0पी09)

(I) दिनांक 18–9–16 को सतीष कुमार खाखा न्यायिक मजि0 प्रथम श्रेणी अ0सा027 द्वारा प्रदत्त सतीष कुमार नोरगे (सूर्यवंशी) के शव का पंचनामा प्रतिवेदन प्र0पी04 (दिन के 2.00 बजे) में सतीष कुमार नोरगे (सूर्यवंशी) के शरीर पर एक से अधिक चोटें पाया जाना।

(j) डॉ0के0के0डाहिरे अ0सा012 तथा अन्य दो चिकित्सक की टीम द्वारा दिनांक 18–9–16 को दिन के 3.45 बजे सतीष कुमार नोरगे (सूर्यवंशी) का पोस्टमार्टम कर प्रदत्त रिपोर्ट प्र0पी0 15 में मृतक सतीष कुमार सूर्यवंशी के शरीर पर कुल 26 चोटें पाया जाना।

(k) डॉ0के0के0डाहिरे अ0सा012 तथा डॉ0आर0एस0जोशी एवं डॉ0अन्विता ध्रुव की टीम द्वारा पोस्टमार्टम पश्चात प्रदत्त प्र0पी015 रिपोर्ट में मृतक सतीष

कुमार सूर्यवंशी की मृत्यु का कारण–उपरोक्त 26 चोटें यकृत फटने और श्वांसावरोध से होना।

(I) अभियुक्तगण की पुलिस अभिरक्षा में मृतक सतीष कुमार नोरगे के शरीर पर आयी/पायी गयी चोटों का अभियुक्तगण द्वारा स्पष्टीकरण नहीं देना।

**Evidence and Proof in case of Custodial Death**

18. In **Shyamsunder Trivedi's** case (supra), their Lordships of the Supreme Court have laid down the law with regard to evidence and proof of custodial death or police torture and held as under: -

> "16. ... The High Court erroneously overlooked the ground reality that rarely in cases of police torture or custodial death, direct ocular evidence of the complicity of the police personnel would be available, when it observed that 'direct' evidence about the complicity of these respondents was not available. Generally speaking, it would be police officials 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."

19. Similarly, in the matter of **Munshi Singh Gautam (dead) and others v. State of M.P.**[10], it has been held by the Supreme Court that death in police custody is perhaps one of the worst kinds of crime in a civilised society governed by the rule of law and poses a serious threat to an orderly civilised society, and observed as under: -

> **"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

10 (2005) 9 SCC 631

> makes the justice-delivery system suspect and vulnerable. In the ultimate analysis 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 in the torture. The courts must not lose sight of the fact that death in police custody is perhaps one of the worst kinds of crime in a civilised 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 tarnishes the image of any civilised nation and encourages the men in "*khaki*" to consider themselves to be above the law and sometimes even to become a law unto themselves. Unless stern measures are taken to check the malady of the very fence eating the crop, the foundations of the criminal justice-delivery system would be shaken and civilisation 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 the judiciary itself, which if it happens, will be a sad day, for anyone to reckon with."

20. Similarly, in the matter of **State of M.P. v. Sewa Singh**[11], reiterating the principle of law laid down in **Shyamsunder Trivedi's** case (supra), it has been held that in the case of custodial violence there would be less possibility of getting direct evidence, and direct independent witness

21. In the matter of **K.H. Shekarappa and others v. State of Karnataka**[12], with regard to custodial death, it has been held by their Lordships of the Supreme Court that it is for the accused/appellants to explain as to

11 (2007) 11 SCC 295
12 (2009) 17 SCC 1

in which circumstances the person in custody had died. It was held in paragraph 50 of the report as under: -

> **"50.** The fact that the deceased and the injured were arrested and brought to the police station is not in dispute. It is not in dispute that the deceased and the injured were brought to the police station on their two feet. The testimony of the medical officers, who had performed autopsy on the dead bodies of the two deceased would indicate that both the deceased were brought dead to the hospital. When the deceased, who were brought to the police station, were alive and were produced dead before the medical officer, it is for the appellants to explain as to in which circumstances they had died. The deceased were in the custody of the appellants, who were police officials. During the time when they were in police custody they had expired. Therefore, it was within the special knowledge of the appellants as to how they had expired. In view of the salutary provisions of Section 106 of the Evidence Act, 1872, it was for the appellants to offer explanation regarding the death of the two deceased."

**Applicability of Section 106 of the Evidence Act**

22. Section 106 of the Evidence Act states that when any fact is especially within the knowledge of any person, the burden of proving that fact is upon him. It is impossible for the prosecution to prove certain facts particularly within the knowledge of the accused. Section 106 is not intended to relive the prosecution of its burden to prove the guilt of the accused beyond reasonable doubt. But Section 106 would apply to cases where the prosecution has succeeded in proving facts from which a reasonable inference can be drawn regarding the existence of certain other facts, unless the accused by virtue of his special knowledge regarding such facts, failed to offer any explanation which

might drive the court to draw a different inference. (See **Balvir Singh v. State of Uttarakhand**[13] and **Anees v. The State Govt. of NCT**[14].)

**Discussion and Analysis**

23. One of the incriminating circumstances recorded by the trial Court in paragraph 102 of the judgment was that death of deceased Satish Norge was homicidal in nature. In this regard, the trial Court has recorded specific finding that Satish Norge was brought to Police Station Mulmula by A-1 to A-4 and he was taken to Community Health Centre, Pamgarh where Dr. Smt. Rashmi Dahire (PW-11) conducted medical examination vide Ex.P-14 and he was found to be in drunken condition, excessive smell of alcohol was coming from his mouth, redness of eyes was also noticed and he was not able to stand properly, and thereafter, he was arrested in the police station by A-1 as mentioned in roznamcha sanha Ex.P-31A and information to family members was given and thereafter, proceeding under Section 163 of the CrPC was drawn. As such, it is not in dispute that deceased Satish Norge was arrested on 17-9-2016 at 2.35 p.m. in the police station after the MLC was conducted by Dr. Smt. Rashmi Dahire (PW-11) vide Ex.P-14 in which no injuries were noticed on his body by Dr. Smt. Rashmi Dahire except that he was in drunken condition and he was brought to the police station. Thereafter, after arrest at 3.15 p.m., medical condition of Satish Norge became unwell and he is said to

13 2023 SCC OnLine SC 1261
14 2024 SCC OnLine SC 757

have started vomiting and he was taken to Pamgarh hospital by the accused/appellants herein at 5 p.m. where it was informed that he was brought dead and information regarding death of the deceased was given by Dr. Smt. Rashmi Dahire (PW-11). As such, when Satish Norge was brought to the police station after his medical examination, though he was in drunken condition, but was alive and taken back to the police station after the MLC and second time, he was produced dead before Medical Officer Dr. Smt. Rashmi Dahire (PW-11). Furthermore, when Satish Norge was subjected to medical examination on 17-9-2016 at 1.55 p.m. by Dr. Smt. Rashmi Dahire (PW-11) vide Ex.P-14, he was alive and not injured and thereafter, after death, when he was subjected to postmortem by Dr. K.K. Dahire (PW-12) and two other doctors, following 26 injuries were noticed over his body: -

1. Abrasion 0.5 c.m. x 0.5 c.m. bluish black colour lower lip mid point.
2. Inflammation 2 c.m. x 2 c.m. occipital region.
3. Contusion reddish black colour 1 c.m. x 0.5 c.m. right shoulder.
4. Contusion 6 c.m. x 3 c.m. in right arm.
5. Linear abrasion 7 c.m. reddish black colour right elbow.
6. Contusion 3 c.m. x 2 c.m. right elbow.
7. Swelling 10 c.m. x 6 c.m. right dorsum of hand.
8. Contusion 6 c.m. x 4 c.m. left arm.
9. Contusion with diffuse swelling 18 c.m. x 10 c.m. left forearm.
10. Contusion mid part of thigh anterolateral right side.

11. Contusion 6 c.m. x 3 c.m. left thigh ant. Part.
12. Contusion 17 c.m. x 12 c.m. left dorsum of foot.
13. Contusion 10 c.m. x 9 c.m. left anterolateral upper part of foot.
14. Ecchymosis 9 c.m. x 5 c.m. right hypogastrium.
15. Ecchymosis 10 c.m. x 5 c.m. left hypogastrium.
16. Contusion 5 c.m. x 4 c.m. right iliac region.
17. Contusion 17 c.m. x 11 c.m. right dorsum of foot.
18. Contusion 14 c.m. x 5 c.m., 10 c.m. x 5 c.m., 14 c.m. x 4 c.m. and multiple contusions 30-40 oblique in back.
19. Dry flame contusion 27 c.m. x 20 c.m. back.
20. Contusion 17 c.m. x 10 c.m. left thigh mid point.
21. Contusion 9 c.m. x 3 c.m. left thigh.
22. Contusion 8 c.m. x 5 c.m. posterior part of left thigh.
23. Contusion 18 c.m. x 7 c.m. left leg calf.
24. Contusion 8 c.m. x 5 c.m. left thigh.
25. Huge contusion. Left buttock to posterior part of thigh up to left popliteal foreleg 42 c.m. x 30 c.m.
26. Contusion 24 c.m. x 12 c.m. left calf and leg.

24. Ex.P-34 – proceeding under Sections 107 & 116(3) of the CrPC was also drawn against the deceased and thereafter, when he became seriously unwell, he was taken to Community Health Centre, Pamgarh where he was declared dead by Dr. Smt. Rashmi Dahire (PW-11) and thereafter, on 18-9-2016, when his dead body was subjected to inquest vide Ex.P-4, then number of injuries were found over his body.

25. Cause of death was multiple contusion injuries over the body leading

to congestion, rupture of liver and cardio-respiratory arrest. As such, since the deceased died in police custody after his arrest at 2.35 p.m. and he died before he was taken to the hospital being declared brought dead by the doctor finding that death was homicidal which is the correct finding of fact.

26. Relying upon the statements of some prosecution witnesses, A-1 has projected a false case that deceased Satish Norge was beaten by the crowd of villagers while he was creating nuisance in the Sub-Station. The said argument cannot be accepted in view of the fact that the deceased was medically examined by Dr. Smt. Rashmi Dahire (PW-11) vide Ex.P-14 on 17-9-2016 at 1.55 p.m. in which she did not found any injury on the body of the deceased except that he was in drunken condition.

27. The accused/appellants are police officers and when there are number of injuries over the body of the deceased running into 26, they could have very well brought it to the notice of Dr. Smt. Rashmi Dahire (PW-11) informing her about the same, which they did not do, therefore, at this stage, they cannot take a false defence which reinforces the circumstances establishing that Satish Norge died due to the cruel police torture and beating by the accused/appellants herein which is also supported by the evidence of Sukhsagar (PW-2) – Village Sarpanch, as he has stated in paragraph 3 of his statement before the Court that when Satish Norge was brought back to the police station

from the hospital, he asked for water and informed him that he was brutally assaulted. Similarly, Prakash Norge (PW-3) – son of Satish Norge, has stated that while sitting on the platform outside the police station, his father was writhing in too much pain and asked water from him and informed him that he was assaulted by 4-5 police personnel with the help of wooden club, hands and legs. Similarly, Mithailal Norge (PW-4) – uncle of the deceased, has stated in paragraphs 3, 4 & 5 of his statement before the Court that he saw the police while assaulting the deceased. Ravindra Kumar (PW-5) – cousin of the deceased, has stated that the deceased while in police custody has vomited and the same has been cleaned by him, at that time, the deceased was not well and he asked the SHO to release him. Vinita Norge (PW-13) has stated that she saw that the hands of Satish Norge were tied and police personnel were assaulting him.

28. The incriminating circumstances recorded by the trial Court in paragraph 102(a) to (l) holding that deceased Satish Norge was taken into custody on 17-9-2016 at 1.55 p.m. near Electric Sub-Station, Nariyara live and further at that time, he was not suffering from any injury which is established from the statement of Dr. Smt. Rashmi Dahire (PW-11) vide her report Ex.P-14 and also as per the roznamcha sanha Ex.P-33, he was medically examined and found not suffering from any injury and thereafter, he was arrested at police station vide Ex.P-32 and immediately within 45 minutes he became unwell and

thereafter, when he was taken to the hospital, he was declared dead by Dr. Smt. Rashmi Dahire (PW-11) and number injuries were found on his body and in postmortem report Ex.P-15, 26 injuries were found on his body and as per the postmortem report, he died on account of multiple contusion injuries over the body leading to congestion and cardio-respiratory arrest, are correct finding of fact based on the evidence available on record. It was within the specific knowledge of A-1 to A-4 as to how and in what circumstances he died and they ought to have explained in their statement under Section 313 of the CrPC, however, it could not be explained by A-1 to A-4 at all as to how and in what circumstances deceased Satish Norge sustained 26 injuries which the trial Court has rightly held that the appellants have failed to explain how the deceased suffered 26 injuries in police custody after having been arrested vide Ex.P-32.

29. In that view of the matter, we are of the considered opinion that the trial Court is absolutely justified in holding that the incriminating circumstances (a) to (l) culled out by the trial Court in paragraph 102 of the judgment are clearly established beyond doubt and death of the deceased was homicidal in nature, in other words, rather he died homicidal death in police custody and it is a case of custodial death. Even the presence of A-2 to A-4 in the commission of offence is also clearly established on the basis of evidence available on record.

**Culpable Homicide/Culpable Homicide not amounting to murder**

30. In this regard, Section 299 of the IPC deserves to be noticed herein, which deals with culpable homicide and which states as under: -

> "**299. Culpable homicide**.–Whoever causes death by doing an act with the intention of causing death, or with the intention of causing such bodily injury as is likely to cause death, or with the knowledge that he is likely by such act to cause death, commits the offence of culpable homicide."

31. Section 299 of the IPC is in three parts. The first part takes in the doing of an act with the intention of causing death. The second part deals with the intention of causing such bodily injury as is likely to cause death. The third part is the act which was done was done with the knowledge the accused was likely by such act to cause the death.

32. In this regard, the decision of the Supreme Court in the matter of **Laxman Kalu Nikalje v. State of Maharashtra**[15] may be noticed herein profitably in which their Lordships have held as under: -

> "11. ... Section 299 is in three parts. The first part takes in the doing of an act with the intention of causing death. [As it was clear] Laxman did not intend causing death and the first part of Section 299 does not apply. The second part deals with the intention of causing such bodily injury as is likely to cause death. Here again, the intention must be to cause the precise injury likely to cause death and that also, as we have shown above, was not the intention of [accused]. ... *The act which was done was done with the knowledge [the accused] was likely by such act to cause the death of [deceased]. The case falls within the third part of Section 299 and will be punishable under the second part of Section 304* ..."

33. The Supreme Court in the matter of **Dalip Singh and others v. State of**

15 AIR 1968 SC 1390

**Haryana**[16] while dealing with a case of police atrocities wherein death occurred in police custody due to injuries inflicted by policemen, observed pertinently as under: -

> "9. ... All the four accused shared the common intention to beat the deceased violently and they must have knowledge that by inflicting such injuries, they were likely to cause the death of the deceased. The High Court has convicted them under Section 304 Part I IPC as though they intentionally inflicted such injuries which are likely to cause death. 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. Instead we convict each of the accused under Section 304 Part II read with Section 34 IPC and sentence each of them to undergo 5 years' RI. ..."

34. Reverting to the facts of the present case in light of the aforesaid proposition of law, it is quite vivid that in order to attract the offence of culpable homicide, the offence must have to be committed with the intention of causing death, or with the intention of causing such bodily injury as is likely to cause death, or the act committed by the accused must be with the knowledge that he is likely by such act to cause death. In the present case, the accused persons who were Station House Officer (A-1), Constables (A-2 to A-3) and Sainik (A-4) were aware that the beating given to the deceased could result in death, as the intention of the accused/appellants was to teach a lesson to the deceased who had dared to make nuisance in the Electric Sub-Section,

16 1993 Supp (3) SCC 336

though multiple injuries were caused on the body of the deceased person.

35. In that view of the matter and in view of the judgments laid down by the Supreme Court in **Laxman Kalu Nikalje** (supra), **R.P. Tyagi v. State (Government of NCT of Delhi)**[17] and **Dalip Singh** (supra), we are of the view that offence under Section 304 Part II of the IPC would be made out against the accused/appellants A-1 to A-4 and accordingly, we hereby alter their conviction under Section 302 read with Section 34 to one under Section 304 Part II read with Section 34 of the IPC. Consequently, the sentence of life imprisonment awarded to them is set aside and they are sentenced to suffer rigorous imprisonment for ten years for the altered conviction. However, the sentence of fine imposed upon them by the trial Court with default stipulation shall remain intact. The criminal appeals stand partly allowed.

36. Let a certified copy of this judgment along with the original record be transmitted to the trial Court concerned and to the Superintendent of Jail where the appellants are lodged and suffering jail sentence, forthwith for necessary information and action, if any.

**Acquittal Appeal No.676/2019**

37. The present acquittal appeal has been filed on behalf of Usha Devi Norge, widow of Satish Norge (deceased), who has been done to death by the police in custodial violence praying against the acquittal of

17 (2009) 17 SCC 445

Jitendra Singh Rajput (A-1) of the charges under Sections 3(1)(j) & 3(2)(v) of the Act of 1989.

38. In order to decide the acquittal appeal, it would be appropriate to notice Section 3(2)(v) of the Act of 1989, which stood prior to its amendment with effect from 26-1-2016 as under: -

> "**3. Punishment for offences of atrocities -**
>
> (1) xxx xxx
>
> (2) Whoever, not being a member of a Scheduled Caste or Scheduled Tribe -
>
> (i) to (iv) xxx xxx
>
> (v) commits any offence under the Indian Penal Code punishable with imprisonment for a term of ten years or more against a person or property <u>on the ground that such person is a member of a Scheduled Caste or a Scheduled Tribe or such property belongs to such member</u>, shall be punishable with imprisonment for life and with fine;"

Prior to its amendment w.e.f. 26-1-2016, the unamended portion of Section 3(2)(v) of the Act of 1989 was:

> "on the ground that such person is a member of a Scheduled Caste or a Scheduled Tribe or such property belongs to such member"

After the amendment, the substituted portion of Section 3(2)(v) of the Act of 1989 is:

> "knowing that such person is a member of a Scheduled Caste or a Scheduled Tribe or such property belongs to such member."

39. The unamended provision of Section 3(2)(v) of the Act of 1989 came to be considered before the Supreme Court in the matter of **<u>Patan</u>**

**Jaman Vali v. State of Andhra Pradesh**[18] wherein their Lordships have held that it has to be established by the prosecution on the basis of evidence adduced that the accused has committed sexual intercourse/ crime on the ground that such person is a member of a Scheduled Caste or a Scheduled Tribe community and held as under:-

> "**58.** ... We agree with the Sessions Judge that the prosecution's case would not fail merely because PW1 did not mention in her statement to the police that the offence was committed against her daughter because she was a Scheduled Caste woman. However, there is no separate evidence led by the prosecution to show that the accused committed the offence on the basis of the caste identity of PW2. While it would be reasonable to presume that the accused knew the caste of PW2 since village communities are tightly knit and the accused was also an acquaintance of PW2's family, the knowledge by itself cannot be said to be the basis of the commission of offence, having regard to the language of Section 3(2)(v) as it stood at the time when the offence in the present case was committed. As we have discussed above, due to the inter-sectional nature of oppression PW2 faces, it becomes difficult to establish what led to the commission of the offence – whether it was her caste, gender or disability. This highlights the limitation of a provision where causation of a wrongful act arises from a single ground or what we refer to as the single axis model.
>
> **59.** It is pertinent to mention that Section 3(2)(v) was amended by the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Amendment Act, 2015, which came into effect on 26 January 2016. The words "on the ground of" under Section 3(2)(v) have been substituted with "knowing that such person is a member of a Scheduled Caste or Scheduled Tribe". This has decreased the threshold of proving that a crime was committed on the basis of the caste identity to a threshold where mere knowledge is sufficient to sustain a conviction...
>
> **60.** xxx xxx xxx

18 AIR 2021 SC 2190

> **61.** However, since Section 3(2)(v) was amended and Clause (c) of Section 8 was inserted by Act 1 of 2016 with effect from 26 January 2016 these amendments would not be applicable to the case at hand. The offence in the present case has taken place before the amendment, on 31 March 2011. Therefore, we hold that the evidence in the present case does not establish that the offence in the present case was committed on the ground that such person is a member of a SC or ST. The conviction under Section 3(2)(v) would consequently have to be set aside."

40. After the amendment to the provision of Section 3(2)(v) of the Act of 1989, the wording of the substituted portion is *"knowing that such person is a member of a Scheduled Caste or a Scheduled Tribe or such property belongs to such member"*. The word "knowing" has been defined in the Black's Law Dictionary, Eighth Edition, Page 888, – "1. Having or showing awareness or understanding; well-informed. 2. Deliberate; conscious''.

41. In the matter of **Shashikant Sharma and others v. State of Uttar Pradesh and another**[19], Section 3(2)(v) of the Act of 1989 as amended came to be considered before their Lordships of the Supreme Court, wherein it has been held that in order to commit offence punishable under Section 3(2)(v) of the Act of 1989 (as amended), there must be allegation that the accused not being a member of Scheduled Caste or Scheduled Tribe committed an offence under the provision of IPC punishable with imprisonment for 10 years or more on a member of Scheduled Caste or Scheduled Tribe knowing that such person belongs to the said community.

19 2023 SCC Online SC 1599

42. Bearing in mind the aforesaid principle of law laid down by their Lordships of the Supreme Court qua Section 3(2)(v) of the Act of 1989 (as amended w.e.f. 26-1-2016), it is quite vivid that from the entire material available on record, it is evident that no legally admissible evidence has been led to prove that appellant Jitendra Singh Rajput (A-1) has committed the offence knowing fully well that the deceased belongs to Scheduled Caste community. Section 3(2)(v) of the Act of 1989 (as amended) can be pressed into service only if it is proved beyond reasonable doubt that the offence has been committed on a member of Scheduled Caste or Scheduled Tribe community knowing that such person belongs to the said community. The prosecution could have brought legal evidence on record to show that the appellant (A-1) had the well informed knowledge that the deceased belongs to Scheduled Caste/Scheduled Tribe community, therefore, having regard to the language of Section 3(2)(v) of the Act of 1989 as it stood after its amendment w.e.f. 26-1-2016 and further the prosecution must have led separate evidence to demonstrate that appellant has committed the offence in question knowing fully well the caste identity of the deceased, in light of the decision in **Shashikant Sharma** (supra), the acquittal of A-1 of the charges under Sections 3(1)(j) & 3(2)(v) of the Act of 1989 is legally sustainable and it is hereby affirmed. Accordingly, the acquittal appeal is dismissed having no merit.

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**Conclusion**

43. (1) Criminal Appeal Nos.611/2019, 705/2019, 681/2019 & 609/2019 preferred on behalf of A1 to A-4 are allowed.

(2) Acquittal Appeal No.676/2019 preferred on behalf of complainant Usha Devi Norge – wife of the deceased, is dismissed.

Sd/-
(Sanjay K. Agrawal)
**JUDGE**

Sd/-
(Deepak Kumar Tiwari)
**JUDGE**

Soma