

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

Date of Decision: 31.07.2017

1. CRA-D-263-DB-2003

Ravinder Kumar Sharma ... Appellant

Versus

State of Punjab ... Respondent

2. CRA-D-343-DB-2003

Parshotam Lal ... Appellant

Versus

State of Punjab and another ... Respondents

3. CRM-A-269-MA-2003

Smt. Lalita ... Applicant

Versus

Head Constable Kuldeep Singh ... Respondent

**CORAM:- HON'BLE MR. JUSTICE T.P.S. MANN
HON'BLE MR. JUSTICE MAHABIR SINGH SINDHU**

Present: Mr. A.P.S. Deol, Senior Advocate, with
Mr. Vishal Rattan Lamba, Advocate, for the appellant(s)
in CRA-D-263-DB-2003 & CRA-D-343-DB-2003.

Mr. Jagmohan Ghuman, D.A.G., Punjab.

None for the applicant in CRM-A-269-MA-2003.

MAHABIR SINGH SINDHU, J.

1. By the common judgment, three connected cases i.e. CRA-D-263-DB-2003 and CRA-D-343-DB-2003 filed by the convicts-

appellants as well as CRM-A-269-MA-2003 filed by complainant Lalita against the acquittal of the remaining accused are being disposed of being arising out of the same impugned judgment dated 4.3.2003, passed by the learned Additional Sessions Judge (Ad hoc), Amritsar.

2. Both the convict-appellants Ravinder Kumar Sharma and Parshotam Lal were convicted and sentenced under Sections 364/34, 302/34, 201/34 IPC in Sessions Case No.FTC/193(28)2002 for committing the murder of Amrit Lal in police custody and in second case, i.e. Sessions Case No.FTC/221(31)/2002 they were convicted under Section 331/34 IPC for causing grievous hurt to Anil Kumar son of Amrit Lal in order to extort his confession, in the following terms:-

Sr. No.	Offence	Sentence (RI)	Fine	In default (RI)
1.	Section 302/34 IPC	Life imprisonment	Rs.5000/-	6 months
2.	Section 364/34 IPC	5 years	Rs.1000/-	1 month
3.	Section 201/34 IPC	2 years	Rs.1000/-	1 month
4.	Section 331/34 IPC	5 years	Rs.1000/-	1 month

All the sentences were ordered to run concurrently.

3. CRM-A-269-MA of 2003 has been filed by complainant Lalita, widow of Amrit Lal against the acquittal of other accused in the two complaints filed by her, i.e. Sessions Case No.FTC/193(28)2002 and Sessions Case No.FTC/221(31)/2002. Both cases were consolidated vide order dated 01.08.2000 by the learned trial Court.

4. Brief facts of the case are that in the year 1985, Amrit Lal, husband of complainant Lalita(PW-2) shifted, from Amritsar to Khanna,

Distt. Ludhiana and started business of providing rikshaws on rent/hire basis. On the night intervening 19/20.7.1992 at about 1.00 AM, Amrit Lal was picked up forcibly from his House No.1010, Radhe Wali Gali, Ram Nagar, Khanna by convict-appellants and other police officials of Police Station Chheharta, District Amritsar and was brought to Police Station Chheharta on the allegations that he was involved in dealing of counterfeit and forged currency notes. Their house was searched by the accused and from one almirah they took away cash of ₹29,000/-, wrist watches, gold rings, one pair of ear rings and some diaries. The complainant, her son Arun Kumar (PW-5) and Ashok Kumar S/o Madan Lal as well as other persons of the locality witnessed the said incident. The complainant and her son Arun Kumar rushed to Amritsar on 20.7.1992 and informed their relatives regarding the aforesaid incident. It is further alleged that they continued to approach accused-appellants SI Ravinder Kumar and ASI Parshotam Lal from 20.7.1992 to 25.7.1992 and requesting them to release Amrit Lal; but they denied saying that Amrit Lal was not in their custody. On 22.7.1992, the complainant alongwith her sons Arun Kumar and Anil Kumar as well as Ram Lubhai (sister of Amrit Lal) saw Amrit Lal in the Police Station and met him there and he disclosed that he was being beaten and tortured by the police and he requested to get him released from custody otherwise he would be killed. The matter was also brought to the notice of SSP Amritsar, but of no consequence. On 25.7.1992 at about 10.30 AM, Anil Kumar, son of the complainant, who was aged about 17 years, was also unlawfully picked-up from Krishna Gali, Hide Market,

Amritsar by accused-appellants and other accused and was taken to Police Station 'A' Division. It is further alleged that he was shifted again and again to other places by blindfolding him and at last, he was taken to Interrogation Centre, Amritsar, situated at B.R. Modern School. He was severely beaten besides giving him electric shock and was forced to confess to the effect that his father Amrit Lal had been dealing in forged and counterfeit currency.

5. On 25.7.1992 at about 12.30/1.00 P.M. the condition of Amrit Lal became critical on account of the torture by the Police and he was lifted in a Maruti Gypsy by accused-appellants and other accused and was taken to Interrogation Centre which was witnessed by Sawinder Singh, Councillor, Vinod Kumar Rampal, and so many other persons. Shri Sawinder Singh, Councillor and others met Sewa Ram, Ex-MLA and apprised him about the condition of Amrit Lal. The complainant made complaints by way of telegrams to Chief Minister, Governor of Punjab, Home Minister of India, Prime Minister of India, Director General of Police, I.G. Police, Amritsar, against the accused expressing apprehension that Amrit Lal was being tortured and was likely to be implicated in false case by the Police. A doctor was brought to the interrogation centre by the Police, who examined Amrit Lal and they came to know that he was not likely to survive on account of the torture inflicted by accused police officials. It is further alleged that soon thereafter, convict-appellants and other accused forcibly administered acid to Amrit Lal with rubber pipe fitted with funnel which was thrust into his throat and he died. It is alleged that Anil Kumar

was present at the interrogation centre when Amrit Lal was killed by the convicts and other accused and he too was threatened to meet the same fate in case he resists confession. Anil Kumar was severely beaten by the police as a result of which he lost his hearing capacity. As soon as killing of Amrit Lal became open, so many persons gathered outside the interrogation centre, but the accused successfully whisked away the dead body of Amrit Lal in a Maruti Gypsy from the interrogation centre. A protest was raised by the public and the relations of the deceased who surrounded the premises of Police Station Chheharta and thereafter, Anil Kumar was released from the custody by the accused in the evening of 25.7.1992 after obtaining his signatures on some blank papers and Anil Kumar narrated the facts of the murder of his father to the complainant and other persons.

6. Both the cases were committed to the Court of Sessions on 26.02.1998 as the offence under Sections 302/364 IPC were exclusively tried by the Court of Sessions.

7. In order to cover up their illegal acts and to create false version in defence, convict-appellant Ravinder Kumar Sharma got registered an FIR No.108 dated 25.7.1992, Police Station Chheharta, Distt. Amritsar under Sections 489-A, 489-C, 420, 468 and 471 IPC against Anil Kumar alleging that he was apprehended and 12 forged currency notes were recovered from him. Another case FIR No.109 dated 25.7.1992, Police Station Chheharta was registered against Amrit Lal under Section 309 IPC alleging that while in police custody in

case FIR No.108/92, he, on the pretext of easing himself went to the toilet, took acid and died while he was being taken to the hospital. Third FIR No.110, dated 25.7.1992 under Sections 302/34 IPC was registered against the convict-appellants and other accused on written complaint made by Sawinder Singh, Councillor, Ward No.3, Chheharta. Finding, that no action had been initiated in FIR No.110 dated 25.7.1992 regarding murder of Amrit Lal for more than 1½ month and no arrests had been made, two complaints were filed before the the Court of Illaqa Magistrate on 10.9.1992 by complainant Lalita (PW2).

8. In complaint No.193(28) all the accused, except Constable Vidya Sagar were charge-sheeted under Sections 147/364/149/195, 302/149, 201/149, 220/149 IPC and in complaint No.31/221 all the accused were charge-sheeted under Sections 147, 331/149 and 220/149 IPC.

9. After hearing both the parties, learned trial Court consolidated both the complaints vide order dated 1.8.2000 and it was made clear that the evidence be recorded in Sessions Case No.28 (193) and be read for disposal of both the cases.

10. To prove the charges levelled in the complaint, the prosecution examined as many as 15 witnesses and also tendered various documents.

11. Dr. Babu Lal-PW/1 conducted medico-legal examination of Anil Kumar s/o Amrit Lal on 26.7.1992 at 8.40 PM and found nine injuries on his body which were although simple in nature. (Ex.PA is

the copy of the MLR.)

12. Complainant Lalita appeared as PW-2 and corroborated her statement made in the complaint.

13. Sawinder Singh, PW-3 stated that he was Councillor of Municipal Corporation, Amritsar in the year 1992 and Ravinder Kumar, accused was posted as SHO in Police Station, Chheharta in the year 1992. He had further stated that about eight years ago when he was present at the house of Sewa Ram MLA, complainant Lalita told him that Police of Chheharta has abducted her husband from Khanna. Ram Lubhai sister-in-law of the complainant and some other persons were with her at that time. He further stated that PW2 Lalita told him that the accused had also taken money, ornaments and watches from her house at Khanna. He further stated that he accompanied PW2 Lalita and others to Police Station Chheharta, where he could not see the accused and Amrit Lal. After 3/4 days, when he again went to the Police Station Chheharta, he met Amrit Lal there who told that he was suffering and be taken out from the Police Station. The witness has also stated that they met Ravinder Kumar accused, the then SHO, but he expressed his inability to release Amrit Lal due to the instructions of the higher authorities. Lalita informed him that her son Anil was also taken away by the Police and he went to the residence of SSP, Amritsar and narrated him the aforesaid incident and was assured that justice will be done. On the next day, he saw dead body of Amrit Lal in the mortuary.

14. Dr. Gurmanjit Rai (PW11), who conducted the post-mortem

deposed that the dead body of Amrit Lal was brought to the mortuary on 25.7.1992 at 9.30 PM by Head Constable Kuldip Singh and Constable Kundan Singh and a Medical Board was constituted by SDM, Amritsar and he was also member of the Board. The post-mortem examination was conducted by the Board on 26.7.1992 at 8.30 A.M. and found following 26 injuries on the body of the deceased which were ante mortem in nature caused by blunt weapon:-

- “1. *Reddish blue contusion 3x1.5 cm on right side of face and just below right eye.*
2. *Reddish blue contusion 12x3 cm present on the front of left upper arm in its middle.*
3. *Reddish blue contusion 9x1.5 cm 3 cm below injury No.2.*
4. *Bluish contusion 4x3 cm on the back of left hand in its middle.*
5. *Bluish contusion 3x2 cm present on the radial border of left forearm just above wrist joint.*
6. *Reddish contusion 5x3 cm on front of right upper arm 12 cm below the tip of shoulder.*
7. *Reddish brown abrasion 8x1 cm on the front of right upper arm just above elbow.*
8. *Reddish blue contusion 5x4 cm on the front of right forearm 2 cm above wrist joint.*
9. *Reddish blue contusion 12x5 cm on the left inguinal region. On dissection, diffuse haematoma present in the sub-cutaneous tissue.*
10. *Reddish blue contusion 4x4 cm on the front of left thigh 5 cm below mid inguinal point.*
11. *Reddish blue contusion 11x8 cm on the medial aspect of the thigh in its middle.*

12. *Reddish blue contusion 7x4 cm on the anteromedial aspect of right thigh 9 cm above the knee joint.*
13. *Reddish blue contusion 7x5 cm on medial aspect of right thigh in its middle.*
14. *Brownish black contusion on front of left knee 2x1 cm in size.*
15. *Brownish black contusion 1x1.5 cm on front of left tibial tuberosity.*
16. *Brownish black contusion 0.75x0.5 cm present 2 cm below injury No.15.*
17. *Reddish brown abrasion 1.5x0.75 cm present on right tibial tuberosity.*
18. *Reddish blue contusion 6x3 cm was present on inner aspect of right ankle joint.*
19. *Brownish black contusion 2x1 cm on lateral aspect of right knee joint.*
20. *Reddish blue contusion 13x10 cm on the back of right thigh in its middle.*
21. *Bluish black contusion 15x12 cm present on back of left thigh in its middle.*
22. *Bluish black contusion 8x5 cm present on the back of right thigh in its lower 1/3.*
23. *Bluish black contusion 9x6 cm present on the back side of left thigh in its lower 1/3.*
24. *Reddish brown abrasion 7x1 cm present on right side of front of chest, just below outer angle of clavicle.*
25. *Bluish black contusion 10x8 cm in the middle of left buttock.*
26. *Bluish black contusion 12x9 cm in the center of right buttock."*

15. Viscera was taken and sent to the Chemical Examiner to express an opinion about the cause of death. Ex.PK is the copy of PMR with pictorial diagram Ex.PK/1. Report of Chemical Examiner is Ex.PL. On the basis of report of Chemical Examiner (Ex.PL), the doctor opined that cause of death in this case was due to "corrosive poisoning", which was sufficient to cause death in the ordinary course of nature (Ex.PM). PW11 also gave his opinion (Ex.PN/1) that duration of the injuries No.6, 7, 17 and 24 was 24 hours and injury No.1 to 5, 8 to 13 and 18 to 20 were of 20/24 to 48 hours and duration of rest of injuries was 2 to 4 days.

16. Dr.Harinderpal Singh PW-12 has deposed about the medico-legal examination of Anil Kumar conducted by him on 28.7.1992 and found 9 (nine) injuries suffered by him. Injury No.1 to 8 were declared as simple in nature, but injury No.9 was kept under observation subject to the opinion of E.N.T. Surgeon. A Medico-legal re-examination was conducted by Board of Doctors constituted by Civil Surgeon on the application of Lalita, complainant. On the basis of the report of E.N.T. Specialist, statement was made by the doctor on 3.5.1994 in the Court of JMIC declaring injury No.9 as grievous.

17. PW14 Dr. S.P. Popli, Medical College, Amritsar deposed that Anil Kumar was suggested definite hearing loss and was referred to PGI, Chandigarh for further evaluation.

18. PW13 Dr. Nitin, Reader, ENT Department, Government Medical College, Sector 32, Chandigarh deposed that while he was posted as Sr. Resident at PGI, Chandigarh, Anil Kumar was referred

for treatment and examination for loss of hearing by ENT Department, Medical College and Hospital, Amritsar and during his examination severe loss of hearing of right side ear and profound loss of hearing of left side ear was found.

19. Daljit Singh PW-13 Clerk of Civil Hospital, Amritsar produced medico-legal reports from 12.7.1992 to 28.7.1992 pertaining to Dr. H.P. Singh which included MLR HPS/25/92 dated 28.7.1992 of Anil Kumar s/o Amrit Lal.

20. According to Dr. Ranjit Singh PW/13-A, Anil Kumar was examined by Dr. S.P. Popli, Head of E.N.T. Department, Medical College, Amritsar, with whom he was attached. Anil Kumar was referred to PGI for confirmation of his hearing loss.

21. Dr. Nitin PW/13-B has stated that he was posted as Sr. Resident PGI, Chandigarh when Anil Kumar was referred there for treatment and examination of his hearing loss and he was examined by him on 3.8.1992 and 10.8.1992 and it was found that he had suffered loss of hearing of right ear and profound loss of hearing of left ear. Ex.PS is the certificate issued in this regard and Ex.PT is the original OPD Card issued by ENT Department which contained treatment as well as investigation which was made.

22. Dr. S.P. Popli (PW/14) has stated that on 31.7.1992, Anil Kumar was referred to his department for E.N.T. examination. Ex.PU is the OPD slip issued by the department which contained his opinion. He had found central perforation on the left side in the ear drum. Anil Kumar was complaining of deafness and as such pure tone

audiometry was ordered and the report, which was made, there was no response to that. He further examined and found that he had suffered hearing loss. He was referred to PGI for further examination.

Opinion Ex.PU was given by him.

23. Statement of convict Ravinder Kumar Sharma was recorded under Section 313 Cr.P.C. and he has taken the plea that on 25.7.1992, a secret information was received by him and acting on the basis thereof, a raid was conducted and Anil Kumar was apprehended and six fake currency notes of Rs.100/- each were recovered from him. A case FIR No.108/1992 under Section 489-A IPC was registered in Police Station Chheharta, where he was posted as SHO at that time. During the investigation, it was disclosed by Anil Kumar that his father, Amrit Lal was also involved in the dealing of fake currency notes. Consequently, he (Ravinder Kumar Sharma) along with other police officials went to apprehend Amrit Lal, but he tried to run away and while being chased, he (Amrit Lal) fell in the manhole and while he was being taken out, he had put-up resistance and in that process he suffered certain injuries. Amrit Lal was brought to the Police Station, where, on his request he was allowed to answer the call of the nature in the toilet where he consumed acid which was lying there for cleaning flush. He further stated at that time that he was not present and when incident came to his notice, he tried to rush Amrit Lal to the hospital, but he died on the way. Consequently, case FIR No.109/1992 under Section 309 IPC was registered against Amrit Lal on 25.7.1992 at Police Station Chheharta. He further explained that Lalita-

complainant and Ram Lubhai, sister of Amrit Lal, belonged to the Congress Party which was in power at that time and due to their pressure FIR No.110 dated 26.7.1992 under Section 302 IPC was registered against the appellant as well as other police officials and after investigation of the same the allegations were found to be false and cancellation report was filed.

24. Parshotam Lal, convict pleaded under Section 313 Cr.P.C. that his name along with other accused had been mentioned by the complainant after going through the FIR and record of their posting at the Police Station and there is similar version of other accused also.

25. In their defence, accused-appellants examined 9 defence witnesses.

26. Surinder Singh (DW/1) stated that on 25.7.1992 he was posted as DSP at Amritsar and he was the Circle Officer of Police Station Chheharta. Ravinder Kumar Sharma-appellant was the SHO of Police Station Chheharta and reported on phone that he had apprehended Anil Kumar and recovered from him fake currency notes and further on interrogation he had disclosed that Amrit Lal (deceased), his father was also involved in this act. The appellant was instructed to go ahead with the investigation and during the course of investigation, he arrested Amrit Lal. But after some time it came to his notice that Amrit Lal has consumed acid and committed suicide. Consequently, a case under Section 309 IPC was registered and post mortem on the dead body of Amrit Lal was got conducted. Report was made to SSP, Amritsar. Enquiry was conducted by SDM. Case FIR

No.110/1992 with regard to the death of Amrit Lal was registered against the accused. Thereafter, the investigation was conducted in the said FIR and ultimately, cancellation report (Ex.DG) was submitted.

27. DW2 Hardip Singh has stated that on 25.7.1992, he was posted as SSP, Amritsar and he was informed by SHO, Police Station Chheharta and Circle Officer about the apprehension of persons dealing with fake currency notes. On the same day, SHO and DSP telephonically informed him that one of the person apprehended had since consumed acid. Consequently, SP City and DSP were directed to look into the matter and the District Magistrate was requested to depute some Magistrate for the inquiry. On the next day, he received a complaint that it was not a case of suicide, rather, the deceased had been forcibly administered acid by the convicts-appellants and other Police officials. Resultantly, FIR No.110/1992 was registered under Section 302 IPC and convicts-appellant Ravinder Kumar Sharma was suspended in the interest of free and fair investigation.

28. DW3 Inspector Udhamp Singh has stated that in the year 1995, while he was posted as Inspector, CIA Staff, Amritsar, Additional Director General of Police (Crime Branch) Chandigarh, formed an investigation team to enquire/investigate the case FIR No.110/1992 of Police Station Chheharta. Special team was headed by Deputy Inspector General, Border Range, Amritsar. Prior to that cancellation report (Ex.PG) of FIR No.110 had been submitted, which was not accepted by the higher authorities because of certain lacunas. They made investigation and came to the conclusion that Amrit Lal had

himself consumed acid and committed suicide.

29. DW4 ASI Shiv Nath has stated that on 25.7.1992 he was posted as MHC of Police Station Chheharta. On that day, Amrit Lal was arrested. Entry in this regard was made by him with regard to taking out Amrit Lal from the lockup. He has stated in his cross-examination that on 14.8.1992 he had returned two bundles of books, five wrist watches, cash of ₹2136/- and some papers relating to mortgage of rickshaws to Ram Lubhai (PW-9) sister of the deceased in the presence of DSP Surinder Singh (DW1). Ravinder Kumar Sharma-appellant had interrogated Amrit Lal and during the course of interrogation, on the pretext to ease himself, he was allowed to go to toilet. Soon thereafter Constable Kundan Lal noticed that something had happened to Amrit Lal who rushed to the toilet and found Amrit Lal lying semi-conscious and when he was being taken to the hospital, he died on the way. ASI Parshotam Lal, accused was one of the police officials who took the deceased to the hospital. He further stated that bathroom (toilet) was temporarily constructed. According to him, photocopy of the entry dated 25.7.1992 was prepared by him. Original Roznamcha was not produced in Court as the same was destroyed after two years.

30. DW5 Kulwant Singh has stated that his father was running kiryana shop and also used to sell paint. Besides articles of paint, they used to keep and sell acid for cleaning sanitary equipments for which they had licence. He could not say as to who had purchased the acid from his father. He has further stated that during investigation the

CIA Inspector had approached him and the writing (Ex.DJ) which was obtained from him by Inspector Udhamp Singh, according to which Ram Lakhan used to purchase acid for cleaning sanitary equipments from his shop.

31. DW6, SI Gajinder Singh, has stated that on 26.5.1995 he was posted as SHO Police Station Chheharta. A team of investigation officers was constituted by I.G. Punjab, Chandigarh. He was directed by Gurdial Singh Dhillon SP(D) to submit cancellation report being SHO and he submitted cancellation report (Ex.DH) on 26.2.1996.

32. DW7, Dharam Dutt has stated that in the year 1992 he was posted as SDM, Amritsar and as per orders dated 25.7.1992 by District Magistrate, Amritsar, he conducted inquest proceedings under Sections 174/176 Cr.P.C on the dead body of Amrit Lal. Photocopy of the order dated 26.7.1992 passed by the District Magistrate on the application of Ravinder Singh, SHO, P.S. Chheharta is Ex.DM.

33. The trial Court after considering all the materials on record held the accused-appellants guilty of the charges levelled against them and sentenced them accordingly, as stated above and acquitted other accused.

34. Learned counsel for the appellants contended that there are material contradictions in the statements of prosecution witnesses. The medical evidence is not conclusive to prove the guilt of the convicts-appellants. Cancellation report was submitted in FIR No.110 dated 26.7.1992 by the Police after thorough investigation of the case. Further, learned trial Court has recorded the findings merely on the

basis of surmises and conjectures and there is no proof beyond reasonable doubt that the convict-appellants have committed the offence.

35. On the other hand, learned counsel for the State submitted that the prosecution had fully proved the case beyond reasonable doubt. It was further submitted that the appeals deserve dismissal as learned trial Court has gone into each and every aspect of the case and had rightly concluded in convicting the appellants.

36. Heard both sides.

37. Most important aspect of the matter is that inquest proceedings under Section 174 Cr.P.C were conducted by SI Ravinder Kumar-accused on 25.7.1992 and photocopy of the same is Ex.PAA. In the said report there is no reference of any injury on the body of Amrit Lal; rather column No.10 of the inquest report where description of injury mark was to be made, the same has been mentioned as Nil. Column No.12 was also left blank wherein he was required to enter the nature of the weapon used to cause injuries. Post-mortem on the dead body was conducted by Board of Doctors of which Dr. Gurmanjeet Rai was a member. In view of the opinion of doctors, as many as 26 ante mortem injuries were found on the dead body and keeping in view their duration, it is clear that the injuries had been suffered on 21/22.7.1992, 23/24.7.1992 and 24/25.7.1992.

38. The version of convict-appellant Ravinder Kumar is that on 25.7.1992 when on the information given by Anil Kumar he and other police officials went to apprehend Amrit Lal, he tried to escape and fell

in the manhole and while pulling him out, he resisted and suffered injuries. If it was so, then he should have been medically examined immediately. Even if he was not got medically examined at that time, then at least in the inquest report which was prepared by convict Ravinder Kumar Sharma himself, he should have mentioned the injuries therein. As per the relevant entries of the inquest report Ex.PAA, no injury was found on the person of the deceased. Further, from the unimpeachable statement made by Dr.Gurmanjit Rai (PW-11), that there was no possibility that the deceased had suffered all the injuries on 25.7.1992. Even the medical evidence proves beyond shadow of doubt that injuries were caused on 22/23 and 24.7.1992.

39. PW-2 Lalita is the wife of Amrit Lal whereas Arun Kumar PW-5 is son of Amrit Lal. There is no allegation levelled by the appellants that the deceased was having any enmity against the police or the appellants. Mohan Lal is the elder brother of Amrit Lal. Ram Lubhai (PW-9), sister of Amrit Lal also stated that she was informed by Lalita and Arun Kumar about the abduction of her brother from his residence at Khanna. Lalita and Arun Kumar were the two persons who were the eye witnesses to the abduction of Amrit Lal from his residence at Khanna and their statement further found support from Sawinder Singh, Vinod Kumar and Ram Lubhai. Lalita PW-2 has stated that acid was put in the mouth of Amrit Lal in the presence of Anil Kumar and Anil Kumar has since died and therefore, the prosecution has not been able to rely on her statement.

40. PW11 Dr. Gurmanjeet Rai has stated that all the injuries

were the result of use of violence and certain injuries suggested that these were of typical torture. Viscera of the deceased was taken and was sent to the Chemical Examiner. Report of the Chemical Examiner is Ex.PL, on the basis of which opinion was given by the doctor that cause of death was corrosive poisoning which was sufficient to cause death in the ordinary course of nature and according to him, probable time that had elapsed between consumption of poison and death was about a few hours. He further stated that hydrochloric acid in diluted form is generally used for cleaning toilets. According to him, concentrated form of acid was administered in this case but he could not say if it was sulfuric acid or hydrochloric acid. He was also sure to say that in this case extent of burn injuries of lips, buccal cavity and alimentary canal, perforation in alimentary canal and discolouration suggest administration of sulfuric acid. Ex.PQ is the letter written by Director, Forensic Science, Laboratory, Punjab, Chandigarh to Inspector General of Police (Crime), wherein it was stated that from the description of injuries mentioned in respect of lips, tongue, oral cavity, stomach, mucossa, the acid responsible for this should be sulfuric acid, whereas acid used for cleaning toilet is hydrochloric acid. As such, he was of the view that story of the local police would not match with the injuries mentioned. This evidence is found to be sufficient to prove that intake of sulfuric acid was the cause of death of Amrit Lal.

41. The question that remains unanswered is as to whether Amrit Lal himself consumed the acid or same was administered to him

by the police.

42. DW4 Shiv Nath in his cross-examination has stated that on 25.7.1992 he had made entry with regard to taking out of Amrit Lal from the lock-up for his interrogation by the accused Inspector Ravinder Kumar. He has also stated that Amrit Lal was seen by him proceeding to the toilet and, later on, it was noticed by Constable Kundan Lal that something had happened to him who raised noise and thereafter, he rushed to the toilet and found Amrit Lal lying semi-unconscious. He removed Amrit Lal from there to take him to the hospital. He could not say as to who accompanied him except accused ASI Parshotam Lal. He has stated in his cross-examination that bathroom was temporarily constructed. He has stated that Amrit Lal was lodged in the police lock-up of which he was Incharge, on 25.7.1992 at 4.15 PM and at that time he was having injuries on his person.

43. DW5 Kulwant Singh has stated that Inspector, CIA had come to him during investigation of this case and a writing (Ex.PJ) was taken from him. On the basis of statement of this witness, it was not proved that acid was purchased from the shop by Punjab Home Guard employee for the use of police at Police Station Chheharta. There is no doubt that acid which has resulted into the death of Amrit Lal was sulfuric acid and not used for cleaning toilets. Statement of DW-4 also proved that there was no permanent toilet in the premises of Police Station Chheharta. It was set up just by putting some bricks and was temporarily made and there was no door to that. Thus, it does not

seem to be acceptable that acid had been kept there for cleaning toilet and moreover, there was no door.

44. On 25.7.1992 at about 12.30/1.00 PM Amrit Lal (deceased) in an injured condition was taken by the convicts-appellants in a Gypsy to Interrogation Centre (B.R. Modern School) where his son Anil Kumar was already there as a detenu. Prosecution has also relied upon the telegrams, which were sent to the Chief Minister, Punjab and other authorities expressing apprehension that Amrit Lal was likely to be involved in some false cases and in this regard statement made by Harbhajan Lal PW/10, who was the Senior Section Operator of Central Telegraph Office, Amritsar. Ex.PG, PH & PJ are certified copies of the telegrams, which were sent from Central Telegraph Office, Amritsar. Perusal thereof shows that the same were transmitted on 25.7.1992 at about 2.15 PM.

45. Ram Lubhai PW-9 also stated in her cross-examination that she had moved so many representations to the higher authorities against the present appellants and other police officials for taking the desired action against them.

46. Sarwan Kumar, PW-7 did not support the prosecution case and as such, was declared hostile and was cross-examined. The argument that Sarwan Kumar was the interested witness is of no significance, as such, his statement cannot be discarded only on this ground. The argument that Sawinder Singh PW-3 was Municipal Councillor from Congress Party and Vinod Kumar PW-4 was also Congress worker and even Ram Lubhai PW-9, sister of the deceased,

was close to Sewa Ram, the then MLA, would not be sufficient to doubt the prosecution case and as such, their version cannot be discarded. Even prior to filing of the present complaints, a writ petition was also filed by the complainant before this Court, which was dismissed by observing that they should approach the trial Court.

47. FIR No.108 of 1992 (Ex.PA) was registered against Anil Kumar son of Amrit Lal on 25.7.1992 alleging that he was found in possession of fake currency notes. The trial was conducted and Anil Kumar was acquitted by learned Sessions Judge, Amritsar, vide judgment dated 12.11.1999 (Ex. PZ). Learned trial Court observed in para 34 that the prosecution case was highly doubtful and the judgment has became final. There is no evidence on record that the judgment of acquittal has been set aside by any competent authority of law, rather, leave to appeal was rejected by this Court vide order dated 11.8.2000. Anil Kumar was arrested in FIR No.108/1992 and he was medico-legally examined on 26.7.1992 by Dr. Babu Lal who found nine injuries on his person. Copy of MLR is Ex.PR and the duration of the injuries was described as within 24 hours. The same is reproduced as under:-

- “1. A contusion of 2x2 c.m. present on left side of forehead, 1½ c.m. above the eyebrow. Colour of contusion is brown otherwise condition of the patient is normal.
2. A contusion of 10x4 c.m. present over the right side of the face in front of right ear. Colour of contusion fainting brown.

3. *A contusion of 4x3 c.m. which is of fainting brown colour present over the outer side of left arm (deltoid region 4 c.m.) below the left acromion process.*
4. *A faint swelling of 6x3 c.m. present on front of left wrist joint movement of the joint is normal. No visible mark of injury is present.*
5. *A swelling of 10x4 c.m. present in front of right wrist joint & extending upward to forearm. Movements of the wrist are normal.*
6. *A fainting brown contusion of 5x4 c.m present on right shoulder joint.*
7. *A swelling of 3x2 c.m present over the base of right thumb. Movements of the thumb are normal.*
8. *A fainting brown contusion of 10x2 c.m present on outside of right thigh in 1.5 c.m upper 1/3.*
9. *Patient is c/o pains in both ears and hardness in hearing. However, no visible mark of injuries is present on both the ears.*

Injury No.9 kept under observation subject to spinal and ENT surgeon.

Injury No.1 to 8-simple."

48. Thus, the evidence is sufficient to conclude that injuries were caused on the body of Anil Kumar after his arrest by the police on 25.7.1992 and the alleged recovery of fake currency notes was not proved before the learned trial Court. Thus, the torture of Anil Kumar was clearly illegal and unwarranted. Surinder Singh, DSP who was posted as DSP Amritsar and was Circle Officer of Police Station

Chheharta, was examined by the defence, but the learned trial Court has rightly observed that no reliance can be placed on the statement of such like witness.

49. The argument that there is no direct evidence to prove the case under Section 302 IPC against the appellants is not acceptable. In case of custodial death by police, direct evidence is very difficult and it is only the police officials who can explain the circumstances about the death of Amrit Lal and whatever possible has been tried to be produced by the complainant in support of her case beyond reasonable doubt. The Court below has considered the ground realities and facts and circumstances of the case. Otherwise, in such like cases there will be total failure of justice and it would be a total abuse of process of law in the hands of Police manipulating each and every aspect of the case. In a civilized society torture in police custody should be deprecated as the same is against the basic human rights of the citizens recognized by the Constitution of India and is against the human dignity. If there is no check and balance upon the police officials then they will consider themselves as law unto themselves.

50. The accused-appellants used excessive force towards the victim as he allegedly resisted the allegation made by them. The convicts-appellants misused their power being members of law enforcement agencies instead of pressing the rule of law. The convicts-appellants being police officials cannot be allowed to get away with what they have done in the present case.

51. The Hon'ble Supreme Court in D.K. Basu vs. State of

W.B., (1997) 1 SCC 416, has observed as under:-

"9. ...Custodial violence, including torture and death in the lock-ups strikes a blow at the rule of law, which demands that the powers of the executive should only be derived from law but also that the same should be limited by law. Custodial violence is a matter of concern. It is aggravated by the fact that it is committed by persons who are supposed to be the protectors of the citizens. It is committed under the shield of uniform and authority in the four walls of a police station or lock-up, the victim being totally helpless. The protection of an individual from torture and abuse by the police and other law-enforcing officers is a matter of deep concern in the free society."

52. Further, in Munshi Singh Gautam and others vs. State of M.P., (2005) 9 SCC 631, the Hon'ble Supreme Court has held as under:-

"8. Though Sections 330 and 331 of the Indian Penal Code, 1860 (for short the "IPC") make punishable those persons who cause hurt for the purpose of extorting the confession by making the offence punishable with sentence up to 10 years of imprisonment, but the convictions, as experience shows from track record have been very few compared to the considerable increase of such onslaught because the atrocities within the precincts of the police station are often left without much traces or

any ocular or other direct evidence to prove as to who the offenders are. Disturbed by this situation the Law Commission in its 113th Report recommended amendments to the Indian Evidence Act, 1872 (in short "the Evidence Act") so as to provide that in the prosecution of a police officer for an alleged offence of having caused bodily injuries to a person while in police custody, if there is evidence that the injury was caused during the period when the person was in the police custody, the court may presume that the injury was caused by the police officer having the custody of that person during that period unless the police officer proves to the contrary. The onus to prove the contrary must be discharged by the police official concerned. Keeping in view the dehumanizing aspect of the crime, the flagrant violation of the fundamental rights of the victim of the crime and the growing rise in the crimes of this type, where only a few come to light and others don't, the Government and the legislature must give serious thought to the recommendation of the Law Commission and bring about appropriate changes in the law not only to curb the custodial crime but also to see that the custodial crime does not go unpunished. The courts are also required to have a change in their outlook approach, appreciation and attitude, particularly in cases involving custodial crimes and they should exhibit more sensitivity

and adopt a realistic rather than a narrow technical approach, while dealing with the cases of custodial crime so that as far as possible within their powers, the truth is found and guilty should not escape so that the victim of the crime has the satisfaction that ultimately the majesty of law has prevailed.

xxxx

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

53. The prosecution has duly proved that Amrit Lal was abducted by the present appellants from his residence at Khanna on the intervening night of 19/20.7.1992 at about 1.00 AM, who was kept in Police custody, tortured and ultimately murdered. It is clearly established that during his detention in the Police custody he was ruthlessly tortured and the doctor who conducted the post-mortem has rightly opined that all the injuries on the person of the deceased were the result of use of violence and certain injuries suggested that these were of typical torture. The story put-forth by the appellants that Amrit Lal committed suicide by consuming acid is not proved. He was administered acid forcibly which was duly witnessed by Anil Kumar,

son of deceased Amrit Lal. Said Anil Kumar is unfortunately no more in this world. But the fact remains that whatever had been stated by Anil Kumar was duly admissible in view of the fact that he died during the trial of the present case. Even the death by poisoning of Amrit Lal in Police custody is an admitted fact and thus, it was for the appellants to explain the circumstances under which the death had taken place. The justification put-forth by the appellants that Amrit Lal committed suicide had rightly been discarded by the learned trial Court. There is overwhelming evidence and record that Amrit Lal was abducted from Khanna by the Police and he has been kept in illegal detention at Police Station Chheharta and with the CIA Staff, Amritsar. Appellant-Ravinder Kumar Sharma being the SHO at the relevant time was under obligation to treat Amrit Lal as human being; but he was given the treatment worse than an animal.

54. The helpless complainant sent several telegrams to the Chief Minister, DGP and other higher authorities before the death of Amrit Lal, but everything went in vain. The medical evidence fully corroborated the prosecution version that Amrit Lal was mercilessly tortured in Police custody and he was administered sulfuric acid to cause his death and the story of committing suicide by consuming toilet/flush cleaner is lame excuse by the appellants. Although FIR No.110/1992 was registered on the basis of statement of Sawinder Singh PW-3, but the same was not properly investigated, rather cancellation report was submitted and it was tried to bury the matter at threshold. After the death of Amrit Lal inquest proceedings were

conducted by appellant-Ravinder Kumar Sharma himself instead by a Magistrate as the death has taken place in the Police custody; but the proceedings under Sections 174/176 Cr.P.C were conducted by Ravinder Kumar-appellant himself and no injury was mentioned by him on the person of the deceased. The factum of non-mentioning of any injury in the inquest report gave clear indication that the appellant had tried to save his skin by ignoring all the injuries and tried to make vain efforts to blame deceased Amrit Lal. Very strangely, the accused who was the Investigating Officer himself made inquest report on the death of Amrit Lal while in custody and had given a clean chit to himself describing Amrit Lal's case as a case of suicide and registered an FIR No.109 dated 25.7.1992 under Section 309 IPC therein as well, as is clear from Ex.PB. A clear cut violation of law has been made by accused-appellant Ravinder Sharma, as he was duty bound to call upon a Magistrate to conduct inquest under Section 176 Cr.P.C. as the death occurred while the victim was admittedly in custody.

55. Further, both the FIRs, i.e. FIR No.108 dated 25.7.1992 and FIR No.109 dated 25.7.1992 have been registered on the basis of complaint made by accused-appellant Ravinder Sharma. Surprisingly, the investigating officer himself only had played the role of complainant, apprehended, searched and interrogated Anil Kumar vide FIR No.108 dated 25.7.1992 registered at 2.40 p.m. at Police Station Chheharta (Ex.PA), apprehended and interrogated Amrit Lal in the aforesaid FIR, himself taken Amrit Lal to hospital and registered another FIR No.109 dated 25.8.1992 under Section 309 IPC on the

death of Amrit Lal, at 5.30 p.m. just in a span of only 3 hours and himself made inquest report on the death of Amrit Lal.

56. Further, while acquitting Anil Kumar in case FIR No.108 dated 25.7.1992 under Sections 489-A/482-C/420/468/471 IPC registered at Police Station Chheharta, the trial Court specifically dealt with the death of Amrit Lal. The stand of the prosecution was that while they were about to apprehend Amrit Lal, he tried to escape and fell in a manhole and received injuries. But no reference to this effect was ever made in the FIR nor any injury report was prepared by the investigating officer while apprehending Amrit Lal. The trial Court has completely relied upon the statement of Dr. Gurmanjit Rai, DW1, who conducted post mortem examination on the dead body of Amrit Lal and clearly came to the conclusion that some of the injuries on the person of Amrit Lal were found to be 24 to 48 hours old and some injuries were two to four days old, belying the prosecution story that all were received while evading arrest on 25.7.1992. The trial Court was of the firm view that Amrit Lal was apprehended on the intervening night of 19/20.7.1992 and was tortured in police custody since then.

57. It is pertinent to mention here that against the acquittal of Anil Kumar in aforesaid FIR No.108 dated 25.7.1992, the State had filed leave to file an appeal challenging the judgement of the trial Court, but this Court declined the same vide its order dated 11.8.2000 in CRM-246-MA of 2000, thereby affirming the judgment of acquittal passed by the trial Court.

58. The trial Court also relied upon copy of daily diary report

dated 19.7.1992 which shows that accused-appellants Ravinder Kumar Sharma alongwith other police officials left for Ludhiana for secret duty on 19.7.1992 at 7.30 a.m. and returned on 20.7.1992 at 4.00 p.m. from Khanna, District Ludhiana. The trial Court further observed that admittedly, the incident happened in the police station premises, but no bottle of acid, allegedly consumed by Amrit Lal, was taken into possession and the trial Court held the police personnel guilty of torturing and putting some acid in the mouth of Amrit Lal and to make up a case of suicide.

59. Another important aspect that shakes the very basis of the case of the defence is that DW1 Surinder Singh, SP Operations stated in his cross-examination that he received first information regarding arrest of Anil Kumar at 1.00/1.30 p.m. and second information regarding arrest of Amrit Lal at 2.30 p.m. on 25.7.1992. Whereas FIR No.108 dated 25.7.1992 was registered at 2.40 p.m. on 25.7.1992 showing arrest of Anil Kumar and it was on his interrogation that Amrit Lal was alleged to had been apprehended.

60. Further, DW4 Shiv Nath, stated in his cross-examination that he was the Incharge of police lock-up, Police Station Chheharta being MHC and the keys of lock-up were with him. He stated that Amrit Lal was lodged in police lock-up at 4.15 p.m. on 25.7.1992 without any visible injuries on his person.

61. Even otherwise, for the sake of arguments, if the story of appellant Ravinder Kumar Sharma is accepted that Amrit Lal was arrested on 25.7.1992 and while apprehending him, he evaded arrest

and fell in a manhole and received injuries, the very statement of DW4 Shiv Nath who was none other than MHC, Incharge of police lock-up, stated that there was no visible injuries on Amrit Lal at 4.15 p.m. on 25.7.1992, which belies the whole story projected by the defence.

62. It was the case of the prosecution that SI Ravinder Kumar Sharma, SHO, Parshotam Lal ASI and other Police officials including (accused No.3 to 7) at Police Station Chheharta had lifted deceased Amrit Lal from his residence at Khanna and this fact had also been deposed to by Lalita PW-2 in her examination-in-chief, although in cross-examination, she stated that when her house was raided at Khanna, she was not aware about the names of the accused. She has also stated that name of Ravinder Kumar, Parshotam Lal and Kuldip Singh were known as they were having their name plates at that time and name of rest of the accused came to her knowledge when they visited Police Station Chheharta.

63. PW4 Vinod Kumar has stated that on 25.7.1992 he had seen Ravinder Kumar and Parshotam Lal accused alongwith a gunman taking Amrit Lal in Gypsy from the Police Station. PW-5 Arun Kumar also stated in his cross-examination that his father was picked up by Police from their residence at Khanna. Three persons, namely, SI Ravinder Kumar Sharma, ASI Parshotam Lal and Head Constable Kuldip Singh were having name plates and names of remaining accused came to their knowledge from Police Station Chheharta.

64. There is overwhelming evidence to conclude that both the appellants, i.e. Ravinder Kumar Sharma and Parshotam Lal had

committed the offence under Sections 364/34, 302/34, 201/34 IPC in Sessions Case No.28/193//FTC/2002 and under Sections 331/34 IPC in complaint SC No.31/221 for causing grievous hurt to Anil Kumar to extort confession and were consequently, sentenced thereunder.

65. The judgment of conviction passed by the trial Court is well reasoned and based on proper appraisal of evidence as well as correct interpretation of law. There is no illegality or infirmity therein as well as in the order of sentence. The said judgment of conviction and order of sentence are upheld and as such, appeals CRA-D-263-DB of 2003 and CRA-D-343-DB of 2003 are found to be without any merit and are dismissed accordingly.

66. The Court also does not find any substance to grant leave to appeal in CRM-A-269-MA of 2003 in order to challenge the acquittal of HC Kuldip Singh as PW8 Deepak named only Ravinder Kumar Sharma and ASI Parshottam Lal to be the one who had taken Anil Kumar away from his house on 25.7.1992 at 10.00/11.00 a.m. The application is without any merit and, therefore, dismissed. Leave to appeal is declined.

(T.P.S. MANN)
JUDGE

(MAHABIR SINGH SINDHU)
JUDGE

31.07.2017
monika/gulati

Whether speaking/reasoned	Yes
Whether reportable	Yes