REPORTABLE

IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO(S). 385-386 OF 2008

YASHWANT ETC. ...APPELLANT(S)

VERSUS

THE STATE OF MAHARASHTRA ...

RESPONDENT(S)

With

CRIMINAL APPEAL NO(S). 299 OF 2008

CRIMINAL APPEAL NO(S). 387-388 OF 2008

CRIMINAL APPEAL NO(S). 182-187 OF 2009

J U D G M E N T

N. V. RAMANA, J.

"**With great power comes greater responsibility**"

1. At the outset it is important to note that our police force need to develop and recognize the concept of 'democratic policing', wherein crime control is not the only end, but the means to

achieve this order is also equally important. Further the turn of events in this case obligates us to re-iterate herein that 'be you ever so high, the law is always above you!'

2. These criminal appeals are filed against the impugned common order and judgment, dated 13.12.2007, passed by the High Court of Judicature at Bombay, Nagpur Bench, in Criminal Appeal Nos. 393, 394, 395, 397, 419 and 420 of 1995. As the incident is same and contentions canvassed individually, being similar, we proposed to deal with the judgment through this common order.

3. The prosecution's case in brief are that on 23.06.1993, Police Inspector (P.I) Narule (**A-1**) was on duty, when one head constable Telgudiya (PW-48), working at the concerned Police Station, Deolapar came to P.I Narule (**A-1**) accompanied by three persons namely Ganeshprasad, Arunkumar and Kashiram. They informed P.I Narule (**A-1**) that they were staying at India Sun Hotel and were looted eight days before. It may be relevant that they informed P.I Narule (**A-1**) that they had not lodged any complaint concerning the incident.

4. On that night , the accused patrolling party which included P.I Narule (**A-1**), Assistant Police Inspector Yashwant Mukaji Karade (**A-2**), Sub-Inspector Rambhau Vitthalrao Kadu (**A-3**), Police constables Jahiruddin Bashirmiya Deshmukh (**A-4**), Nilkanth Pandurang Chaurpagar (**A-5**), Namdeo Nathuji Ganeshkar (**A-6**), Ramesh Tukaram Bhoyar (**A-7**), Ashok Bhawani Gulam Shukla (**A-8**), Sudhakar Marotrao Thakre (**A-9**) and Raghunath Barkuji Bhakte (**A-10**), along with Ganeshprasad, Arunkumar and Kashiram, went to the house of H.C.P Telgudiya (**PW-48**) at Police Lines, Ajni. In the meanwhile, H.C.P Telgudiya (PW-48) is supposed to have found out that a Christian male by the name of 'Anthony' was responsible for the looting. Although, the H.C.P Telgudiya (**PW-48**) confirmed that there was no 'Anthony', but he is supposed to have revealed that one Joinus (deceased) lives nearby, who was a known suspect from earlier robbery case. H.C.P. Telgudiya, took the police party to the residential quarters of Joinus (deceased), who had already slept after having his dinner and consuming some alcohol.

5. It was around 1:00 AM in the night, the police party reached the house of Joinus (deceased). He was taken into custody and his residential quarters were searched. It is alleged that during this process, some of the police men are supposed to have molested Zarina (PW-1), wife of Joinus (deceased). Thereafter, the police party tied Joinus (deceased) to an electric pole outside and was beaten by the police personnel with sticks. Later Joinus (deceased) and his other family members were taken to various locations including Rani Kothi, Hill Top restaurant wherein he was given beatings intermittently. At about 3:55 AM he was brought back to the police Station, wherein he was locked-up with two other cell mates.

6. In the morning of 24.06.1993 at 7:30 AM, on duty police constables found Joinus (deceased) to be motionless and on examination he was found to be not breathing. Meanwhile, Magistrate was requested to conduct an inquest and chemical analysis. The case was handed over to the State CID for investigation into the matter. A complaint came to be registered against one Anthony, being Crime No. 238/1993 under Section 420 of IPC at 10:20 PM on 24.06.1993 after

the death of Joinus. Thereafter, post-mortem was conducted, and investigation was conducted by P.I. Oza. After requisite sanction was granted by the Government for prosecuting the accused, the investigating officer laid charges against ten erring officers in the following manner-

> 1.) That you all the accused on 23.06.1993 at about 23.00 hours made an entry in the Movement Register of Crime Branch at Sr. No. 26 that you left the Crime Branch Office for Night Patrolling and thereafter along with Ganeshprasad Thakur, Arunkumar Gupta, Kashiram Barethia, Head Constable Madhorao Tenguriya drove in the police van Bearing No. MH-12/9887 and forcibly entered the house of the deceased Joinus Adam Yelamati at about 00.45 hours on 24.06.1993. The deceased was wearing his underwear and banian and was sleeping in his house. You all the accused in furtherance of your common intention pulled the deceased out of his house and took him on the road and tied him to the electric pole with a rope and he was given merciless beating with the stick. The deceased was made to sit in the said Crime Branch Vehicle and he was brought to the office of Crime Branch. You made him naked and also gave a heavy beating to the deceased with the stick in the Crime Branch office. At that time you all were aware that such merciless beating would cause the death of the deceased. You kept him in the lock up at about 3.55 a.m. without registering any offence in the Crime Branch. In the morning, the deceased found dead. You did commit murder of Joinus Adam Yellamati and thereby you all committed an offence punishable u/s. 302 r/w. Sec. 34 of the Indian Penal Code and within my cognizance.
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> 2.) Secondly, that you all the accused in furtherance of your common intention entered the house of deceased Joinus Adam Yellamati at about 00.45 hours on 24.06.1993 and pretended to take the personal search of the wife of the deceased namely Zarina and under the pretext of taking search, touched the breasts of Zarina. Thereafter, you made her to sit in your police van and also took pinches on her body with an intention to outrage her modesty. Thereafter, she was brought to your Crime branch office and you inserted your hand in the petticoat of Zarina with an intention to outrage her modesty and by such assault you

all thereby committed an offence punishable u/s 354 r/w Sec. 34 of the Indian Penal Code and within my Cognizance.

3.) Thirdly, that you all the accused in furtherance of your common intention, wrongfully confined two children of the deceased namely Kumari Stenlos aged 10 years and boy Jorge aged 8 years and the brother of Zarina by name Richard Abraham, aged 19 years and another cousin brother by name Stenly Patrik, aged 19 years and thereby committed an offence punishable u/s. 342 of the Indian Penal Code, and within my cognizance.

4.) Fourthly, that you all the accused in furtherance of your common intention, on the aforesaid day, date, time and place, voluntarily caused hurt to Joinus Adam Yellamati, aged 42 years and Zarina w/o Joinus Yellamati for the purpose of extorting from the said Joinus Yellamati and Zarina w/o Joinus Yellamati certain information which might lead to detection of offence of cheating committed at Hotel "India Sun", Nagpur, in respect of one Ganeshprasad Babulal Thakur and one Arunkumar Gupta and thereby committed an offence punishable u/s. 330 r/w Sec 34 of the Indian Penal Code and within my cognizance.

5.) Fifthly, that you all the accused in furtherance of your common intention on the aforesaid day, date, time and place, assaulted Joinus Adam Yellamati and Zarina w/o Joinus Yellamati, intending by such assault to dishonor said Joinus Adam Yellamati and Zarina w/o Joinus Yellamati and thereby committed an offence punishable u/s. 355 r/w Sec. 34 of the Indian Penal Code and within my cognizance.

7. All the accused pleaded not guilty and claimed trial. The Sessions Court in Sessions Case No. 416 of 1993, by order dated 22.09.1995, passed following order-

ACCUSED	SECTION	PUNISHMENT/ACQUITTAL
Accused No. 1-10	302 of IPC	Acquitted
Accused No. 1-10	330 r/w. 34 of IPC	Each of them was convicted to suffer rigorous imprisonment for three years and to pay a fine of Rs. 500/-, in default three months further rigorous imprisonment.
Accused	354 r/w. 34	Each of them was convicted to suffer

No. 1-10	of IPC	rigorous imprisonment for six months and to pay a fine of Rs. 300/-, in default three months further rigorous imprisonment.
Accused No. 1-10	355 r/w. 34 of IPC	Each of them was convicted to suffer rigorous imprisonment for three years and to pay a fine of Rs. 300/-, in default one month further rigorous imprisonment.
Accused No. 1-10	342 r/w. 34 of IPC	Each of them was convicted to suffer rigorous imprisonment for three years and to pay a fine of Rs. 300/-, in default one month further rigorous imprisonment.

The sentence was ordered to run concurrently.

8. The reasons provided by the trial court for the acquittal/conviction in short, are as follows-

   i. That reliance is placed on the evidence of Dr. Kewalia/PW-49 (Ex. 296), to conclude that there was a possibility of death of the deceased, may have been due to asphyxiation.
   ii. That the post mortem report or the medical evidence clearly indicates that the injuries in the Column No. 17 did not correlate with the asphyxial death.
   iii. That the injuries sustained simple injuries and were not sufficient to cause death of an individual.
   iv. That the presence of the accused-officers are admitted and the same cannot be dislodged as the same is proved by the movement register.
   v. From the conspectus of other evidence it was clear that injuries were caused by the police officer to extract information, which would squarely fall under the four corners of Section 330 of IPC.

9. Aggrieved by the order of the trial court, accused-Bhaskar [**A-1**], Yashwant [**A-2**], Raghunath [**A-10**]) filed Criminal Appeal No. 393 of 1995, Jahiruddin [**A-4**], Nilkanth [**A-5**] and Namdeo [**A-6**] filed Criminal Appeal No. 394 of 1995, Ramesh

[**A-7**], Ashok Bhavani Gulam Shukla [**A-8**], Sudhakar [**A-9**] filed Criminal Appeal No. 395 of 1995, Rambhau [**A-3**] filed Criminal Appeal No. 397 of 1995, before the High Court. On the other hand, State of Maharashtra also filed Criminal Appeal being Criminal Appeal No. 419 of 1995 against the judgment of acquittal and Criminal Appeal No. 420 of 1995 for enhancement of sentence.

10. By order dated 13.12.2007, the High Court dismissed the appeal preferred by the State being Criminal Appeal No (s). 419 and 420 of 1995, but partly allowed the appeals preferred by the accused officer by acquitting accused no. 1 to 9 of the offences punishable under Sections 354, 355, 342 read with 34 of IPC, however, upheld the conviction under Section 330 of IPC. Moreover, Raghunath Barkuji Bhakte (**A-10**) was acquitted of all the offences. The High Court passed the aforesaid order on the following grounds-

    i. That the injuries to the deceased are established by the Post-mortem report, corroborated by the photographs taken during the investigation.
    ii. That the benefit of doubt as to the cause of death was not result of the injuries sustained by the accused, should enure to the accused appellants herein.

iii. Even though there are many discrepancies in the evidence of PW-1 [Zarina], the court separated the falsehood from the truth.
iv. That offence under Section 355 of IPC is not proved beyond reasonable doubt as there are stark discrepancies in this regard.
v. That the accused A-10's presence is not proved and the benefit of doubt needs to be given to him, thereby mandating his acquittal.

11. Still aggrieved by the High Court order, accused-Yashwant [**A-2**] and Bhaskar [**A-1**] filed Criminal Appeal No. 385 of 2008, Rambhau [**A-3**] filed Criminal Appeal No. 386 of 2008, Jahiruddin [**A-4**], Nilkanth [**A-5**] and Namdeo [**A-6**] filed Criminal Appeal No. 387 of 2008, Ramesh [**A-7**] and Ashok Bhavani Gulam Shukla [**A-8**] filed Criminal Appeal No. 388 of 2008, Sudhakar [**A-9**] filed a Criminal Appeal No. 299 of 2008, State of Maharashtra filed Criminal Appeals No. 182-187 of 2009. This Court by order dated 22.02.2008, while issuing notice in these cases, the appellant-accused were also issued show cause notice for enhancement of sentence. It may not be out of context to note that accused A-1 is said to have passed away after filing of these appeals, accordingly, the name of accused A-1 was struck off and the conviction against him stands abated.

12. When the matter was argued, learned senior counsel, Mr. R. Basant and Mr. S. Nagamuthu, together contended that-

a. That the concurrent opinion of the court below, w.r.t non applicability of Section 302 of IPC, need not be disturbed.
b. The defence of superior orders were applicable for the other accused subordinate officers.
c. That in any case the charge under Section 330 of IPC could have been attracted in this case.
d. In alternative, he pleads that only Section 323 of IPC may be maintainable which would suffice a punishment of the period already undergone.
e. In any case they plead that acquittal of Accused A-10 should not be interfered with.

13. On the other hand, Mr. Nishant Ramakantrao Katneshwarkar, leaned counsel for the State of Maharashtra has brought to our notice that the evidence of PW-49, who has categorically stated that the effect of death was the cumulative effect of the injuries caused. Further, it is contended that the number of injuries are sufficient to prove the causal connection. In the end, the State has argued that the custodial torture needs to be taken seriously and punished appropriately. Alternatively, State seeks to press for charges under Section 304 Part II of IPC, in case Section 302 of IPC is not made out.

14. Having heard learned counsels for both the parties and perusing the documents on record, we are of the opinion that

we need to address only four questions herein, as the High Court has sufficiently considered other questions, which we need not interfere with. The first question is whether the incident narrated above amounted to murder so as to attract Section 302 of IPC?

15. A brief narration of background facts may be necessary to understand the circumstances in which this contention arose. That it has been established by PW-21 (Kishan Khadode), that the lock-up in which Joinus (deceased) was found was suffocating, dirty and bottle guard seeds were found vomited in the place where the body of the deceased was found. PW-49 (Dr. Kewaliya), the doctor who conducted post-mortem, opines that the cause of death was due to asphyxia, as there were indications for the same such as defecation, urethra discharge etc. Even though PW-49 was not subjected to detailed cross-examination on the aspect of choking due to vomiting, However, the doctor does accept the possibility of asphyxiation due to such choking from the contents of vomit. The other circumstance was that the deceased was found to be in an inebriated condition, which as per the medical evidence decreases the resistance to

stress. Moreover, it is on record that the deceased was earlier suffering from Tuberculosis.

16. It is a matter of record that both the courts below have taken a concurrent view that the crime narrated above did not amount to culpable homicide as the cause of death was asphyxiation and there was nothing on record to prove that the injuries were the cause of the death. It is well settled that in order to be called a murder, it needs to be culpable homicide in the first place, that is to say all murders are culpable homicides, but the vice versa may not true in all cases. Therefore, we need to ascertain whether a case of culpable homicide is made out herein in the first place. In this context, we need to observe Section 299 of IPC at the outset-

> **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.
>
> (**emphasis supplied**)

17. As noted above, causation is an important ingredient to determine as to whether a person commits culpable homicide in the first place. Causation simply means "causal relationship between conduct and result". In this respect we need to assess whether the contentions of the parties could stand the scrutiny of the law of the land. Section 299 of IPC indicates two types of causations, one the factual causation and the second the legal causation. Coming to the factual causation, it is a matter of fact as to whether the action of the accused caused death of the person. But the second aspect concerns itself, whether the death can be sufficiently imputed to the accused's action as being responsible legally. In our considered opinion this case turns on the second leg of causal relationship wherein, could the injuries caused by the police officers be sufficiently imputed to be the cause of death of Joinus herein?

18. It is settled under common law wherein the principle of '*take their victim as they find them*' is followed,[1] meaning 'A person who does any act/omission which hastens the death of another person who, when the act is done or the omission is

1 ***R v Blaue***, [1975] 3 All ER 446 (CA)

made, is labouring under some disorder or disease arising from another cause, is deemed to have killed that other person.' This principle has been expressly ingrained under the Explanation 1 to the Section 299 of IPC. Without going into details on this aspect as this is not a case of multiple causation requiring us to consider the same, rather it is a case wherein the deceased died of asphyxiation due to contents of his vomit, hours later from the time when the injury was inflicted, which is an independent reason for cause of death herein.

19. As elucidated above, various other circumstances which dis-associate the cause of death to the actions of the appellant officers are available. It is on record that the injuries noted in the post-mortem report clearly indicate that the nature of these injuries were not grievous. The head injury noted does not show any internal fracture to the skull bone. Therefore, when, on facts, it is concurrently inferred by the courts below that the cause of death was due to asphyxiation, we do not see any reasons for accepting a different factual inference herein, as the same is not perverse.

20. Further, we agree with the reasoning of the High Court on the aspect that the PW-1 (Zarina) has not been completely honest in her statements. She has at times deposed over-zealously, thereby mandating us to be cautious in accepting her evidence. Further no witness has clearly deposed on the aspect of injuries and how they happened to be, except for blank statements that 'beatings were given to the deceased Joinus'. Further we may note that the surrounding circumstances also strengthen our conclusions such as firstly, the condition of the deceased was said to be good as per the statements of PW-21 (cell-inmate) and PW-42 (head constable) although he was suffering from tuberculosis, when he was admitted in the lock-up. Secondly, Joinus (deceased) was heavily inebriated when he was arrested and thirdly, the aspect of asphyxiation which is a significant cause to break the chain of causal link between the death of Joinus and the injuries inflicted by the appellants herein.

21. As discussed above, the causal link between the injuries caused to the deceased by the erring officers and the death is not connected, therefore, Section 299 of IPC is not attracted.

Accordingly, there is no question of attracting Section 302 or 304 of IPC.

22. In any case this Court in catena of cases has taken a view that, as regards the inference of facts, when two Courts have acquitted the accused-appellant of charges under Section 302 of IPC, then it would not be appropriate upon this Court to overturn the factual finding, unless the view taken by the lower courts is shown to be highly unlikely or unreasonable or perverse. Although the learned counsel for the State has tried to argue that the cumulative effect of the injuries was responsible for the death, but the medical evidence itself, on the other hand affirms the high possibility of death due to asphyxiation. Further there is no material brought before us to portray that the courts below had taken a perverse view. In this light, when two reasonable views are possible, then reversal of concurrent acquittal would not be appropriate herein [*refer* ***Chandrappa v. State of Karnataka***, (2007) 4 SCC 415; ***Mahtab Singh v. State of U.P***, (2009) 13 SCC 670].

23. It may not be out of context to note that it is generally difficult to prosecute the custodial torture cases as the

evidence available on record may not sufficient. It is in this context that Law Commission in its 113th Report published in 1985 had recommended inclusion of Section 114-B to the Evidence Act, but the same was never materialized into a statutory law. Further this Court in ***State of M.P. v. Shyamsunder Trivedi***, 1995 (4) SCC 262, appealed to the Parliament for considering such amendment.

24. The Second question is with respect to the defence of superior order or infamously known as 'Nuremburg defence' pleaded by the accused-appellants (subordinate officers). The earliest known example, wherein such defence was pleaded was before an international ad hoc tribunal, can be traced to the trial of Peter Von Hagenbach for occupation of Breisach on the orders of Duke of Burgundy in the year 1474.[2] We are aware of the fact that IPC allows such a defence if conditions provided under Section 76 of IPC are fulfilled. A three-Judge Bench of this Court in ***State of West Bengal v. Shew Mangal Singh and Ors.***, AIR 1981 SC 1917, observed as under-

2 Y. Dinstein, "The Defence of Obedience to Superior Orders in International Law", Leyden, 1965.

> Section 76 of the Penal Code provides that nothing is an offence which is done by a person who is, or who by reason of a mistake of fact and not by reason of a mistake of law in good faith believes himself to be, bound by law, to do it. The illustration to that section says that if a soldier fires on a mob by the order of his superior officer, in conformity with the commands of the law, he commits no offence. The occasion to apply the provisions of the section does not arise in the instant case since the question as to whether the accused believed in good faith on account of a mistake of fact that he was bound by law to do the act which is alleged to constitute an offence, would arise only if, to the extent relevant in this case, the order or command of the superior officer is not justified or is otherwise unlawful.

25. It is a matter of record that accused A-1 has passed away and the matter against him stands abated. The other accused-appellants, with a view to take advantage of this situation, as an after-thought have pleaded herein the defence that they were merely executing the orders of accused A-1. At the outset we may indicate that it is not merely that the accused-appellants have to prove that they have followed the order of the superior officer (accused A-1), rather they need to also prove to the Court that the aforesaid appellants *bonafidely* believed that the orders issued by accused A-1 were legal. However, our attention was not drawn to any argument before the courts or evidence on record to this effect that the

accused-appellants were merely acting on the orders of their superiors on a *bonafide* belief that such orders were legal. It was not even their case from the beginning that the accused-appellants were not aware of facts and circumstances, rather all of them started out as a investigation party with full knowledge and participation. On the perusal of the record, we may note that this argument is only taken before this court, to seek a re-trial and such attempt cannot be taken into consideration herein.

26. The third question concerns about the acquittal of Accused A-10 (Raghunath Bhakte). It would be necessary to deal with the individual liability of accused A-10, as he states that he was not present with the investigation party. Although some evidence points to his presence with the investigation party, but the fact remains that all the other accused have unanimously stated that A-10 did not accompany them as he fell sick during the investigation and accordingly, went home. We need to examine the liability of accused A-10, with the above premise in mind.

27. It is wrought in our criminal law tradition that the Courts have the responsibility to separate chaff from the husk and

dredge out truth. It may not be out of context to note that the legal maxim '*falsus in uno, falsus in omnibus*' is not applicable in India, thereby the courts are mandated to separate truth from falsehood. [*refer* ***Kulwinder Singh v. State of Punjab***, (2007) 10 SCC 455; ***Ganesh v. State of Karnataka***, (2008) 17 SCC 152; ***Jayaseelan v. State of Tamil Nadu***, (2009) 12 SCC 275] It is not uncommon that in some cases witnesses in the jealousness to see all the accused get conviction, may stretch the facts or twist them. In those instances, it is necessary for the Courts to be cautious enough to not 'rush to convict' rather uphold justice. It is clear from the statements of all the accused as well as the evidence of PW-41 (Driver Vijay Thengde), PW-48 (HC Telgudiya) and PW-66 (I.O Dy. SP. Godbole) that there exists a reasonable doubt as to the presence of A-10, during the patrolling party and thereafter. Therefore, we are not inclined to disturb the findings of the High Court on this aspect as well.

28. The fourth question, which we need to consider, concerns the punishment under Section 330 of IPC. At the outset, we need

to state that we do not find any material on record to interfere with the conviction of the accused under the aforesaid Section, except for the quantum of punishment, which we need to determine.

29. Recently, this Bench in ***State of Rajasthan v. Mohan Lal and Anr***[3], following ***Soman v. State of Kerala***, (2013) 11 SCC 382 and ***Alister Anthony Pareira v. State of Maharashtra***, (2012) 2 SCC 648 observed as under-

> From the aforementioned observations, it is clear that the principle governing the imposition of punishment will depend upon the facts and circumstances of each case. However, the sentence should be appropriate, adequate, just, proportionate and commensurate with the nature and gravity of the crime and the manner in which the crime is committed. The gravity of the crime, motive for the crime, nature of the crime and all other attending circumstances have to be borne in mind while imposing the sentence. The Court cannot afford to be casual while imposing the sentence, inasmuch as both the crime and the criminal are equally important in the sentencing process. The Courts must see that the public does not lose confidence in the judicial system. Imposing inadequate sentences will do more harm to the justice system and may lead to a state where the victim loses confidence in the judicial system and resorts to private vengeance.

3 Criminal Appeal No. 959 of 2018

30. From the facts portrayed it is clear that the police knew the identity of the deceased was different from the person, they wanted to investigate initially. The manner in which the deceased and his family members were taken into custody reflects pure act of lawlessness and does not befit the conduct of the Police. The High Court of Lahore in ***Lal Mohammad v. Emperor***, AIR 1936 Lah 471, had observed that there was a requirement to treat the crime under Section 330 with stringent punishments in order to have deterrent effect, in the following manner-

> In my opinion, however, conduct of this sort by responsible police officers engaged in the investigation of a crime, is one of the most serious offences known to the law. The result of third degree methods or of actual torture or beating such as in this case must be that innocent persons might well be convicted, confession being forced from them which are false. In almost every case in which a confession is recorded, in criminal Courts, it is alleged by the defence that the police have resorted to methods such as these. It is seldom, however, that an offence of this nature is or can be proved. It clearly is the duty of the Courts when a case of this kind is proved to pass sentences which may have a deterrent effect.

31. In ***Ratanlal and Dhirajlal's Law of Crimes*** (27th Ed.), the author while discussing the sentencing under Section 330 of IPC notes as under-

> **The causing of hurt by a responsible police officer engaged in investigation of a crime is one of the most serious offences known to law and deterrent punishment should be inflicted on the offender.**
>
> (**emphasis supplied**)

32. The factual narration of the events portrayed herein narrate a spiteful events of police excessiveness. The motive to falsely implicate Joinus for a crime he was alien to was not befitting the police officers investigating crimes. The manner in which Joinus was taken during late night from his house for investigation ignores the basic rights this country has guaranteed its citizen. It is on record that injuries caused to the individual were in furtherance of extracting a confession. The *mala fide* intention of the officers-accused to undertake such action are writ large from the above narration, which does not require further elaboration.

33. As the police in this case are the violators of law, who had the primary responsibility to protect and uphold law, thereby mandating the punishment for such violation to be

proportionately stringent so as to have effective deterrent effect and instill confidence in the society. It may not be out of context to remind that the motto of Maharashtra State Police is "*Sadrakshnāya Khalanīghrahanāya*" (Sanskrit: "To protect good and to Punish evil"), which needs to be respected. Those, who are called upon to administer the criminal law, must bear, in mind, that they have a duty not merely to the individual accused before them, but also to the State and to the community at large. Such incidents involving police usually tend to deplete the confidence in our criminal justice system much more than those incidents involving private individuals. We must additionally factor this aspect while imposing an appropriate punishment to the accused herein.

34. In the facts and circumstances of this case, the punishment of three-year imprisonment imposed by the Trial Court under Section 330 of IPC, would be grossly insufficient and dis-proportional. We deem it appropriate to increase the term of sentence to maximum imposable period under Section 330 of IPC i.e., seven years of rigorous imprisonment, while

maintaining the fine imposed by the Trial Court. Accordingly, we modify the sentence to this limited extent.

35. In light of the afore-said discussion, we partly allow the Criminal Appeal Nos. 182-187 of 2009 in the afore-stated terms. Further Criminal Appeal Nos. 385-386 of 2008, Criminal Appeal Nos. 387-388 of 2008, Criminal Appeal No. 299 of 2008 stand dismissed.

36. The appellants-accused are directed to surrender before the authorities for serving out the rest of the sentence forthwith.

.....J.
(N.V. RAMANA)

.....J.
(MOHAN M. SHANTANAGOUDAR)

New Delhi,
September 04, 2018