

(1999) 09 BOM CK 0010

Bombay High Court

Case No: Criminal Appeal No. 186 of 1996

Dilip

APPELLANT

Vs

Parmar and others Vs
State of Maharashtra

RESPONDENT

Date of Decision: Sept. 18, 1999

Acts Referred:

- Criminal Procedure Code, 1973 (CrPC) - Section 313
- Evidence Act, 1872 - Section 3, 45, 61, 8, 9
- Penal Code, 1860 (IPC) - Section 304, 330, 34

Citation: (2000) 5 BomCR 410 : (2000) BomCR(Cri) 410

Hon'ble Judges: D.G. Deshpande, J

Bench: Single Bench

Advocate: A.P. Mundargi, for the Appellant; M.P. Galerra, Assistant Public Prosecutor, for the Respondent

Judgement

@JUDGMENTTAG-ORDER

D.G. Deshpande, J.

Heard Mr. Mundargi for the appellants and Mr. Galeria A.P.P. for the State respondents.

2. All the appellants are Police Officers who have been convicted by Additional Sessions Judge, Bombay for the offences u/s 330 of the Indian Penal Code and sentenced to rigorous imprisonment for different periods viz. Appellant No. 1 is sentenced to R.I. for three years and appellant Nos. 2 to 7 are sentenced to R.I. for two years along with fine.

3. The case against the appellants was that they caused death of one Raju Mohite by torturing him while he was in police custody, particularly, on the night of between 27th June 1990 and 28th June 1990. The prosecution had examined about 25

witnesses including relatives of victim deceased Raju, medical officers a Cooper Hospital and Bhagawati Hospital, all the doctors conducting postmortem, Special Executive Magistrate, inmates of Raju who were with him on the night of 27th June 1990 and who had witnessed, according to prosecution, the assault on Raju and who had identified all these accused, police officers who carried out investigation in the matter, police constable from Santacruz lock up and the Investigating Officer Mr. Inamdar.

4. The defence of the accused was of total denial, and according to them, the prosecution had failed to prove, firstly, that Raju died because of the alleged assault or beating. Secondly, according to them, there was no evidence from the prosecution to point out the participation of any of the accused in so called assault on the night of 27th June 1990. Thirdly, according to them, the death of Raju was disproportionately magnified by the news papers and a political issue was made out of that, therefore, the prosecuting agency selected them as scape goats and falsely implicated in this matter.

5. The trial Court disbelieved the prosecution case so far as offence u/s 304 of the Indian Penal Code is concerned but convicted the accused u/s 330 of the Indian Penal Code and sentenced them as aforesaid. The present appeal is arising out of the said conviction.

5-A. Before dealing with the respective submissions made by Counsel for the accused Mr. Mundargi and learned A.P.P. Mr. Galeria it is necessary to note down the sequence of events that has taken place with reference to the necessary documents on record and with reference to the evidence given by the particular witnesses. At the same time it is also necessary to classify the witnesses of the prosecution according to the role played by them. This is necessary for proper appreciation of their evidence.

6. Deceased Raju was the son of Yashwant Mohite who at the time of his death was about 26 years of age. He was strong built, and according to the prosecution, he had no criminal antecedents. Whereas according to defence, he was involved in manufacturing and selling of liquor, he was a chain snatcher and also involved in petty thefts. Raju was married when he died. P.W. No. 1 Balu Yashwant Mohite was the real brother of Raju. P.W. No. 3 Dinkar Mainaji More was the maternal uncle of Raju. P.W. 4 Hiranman Yashwant Mohite was also another brother of Raju but younger than P.W. No. 1 and P.W. No. 10 Babanabai was the aunt of Raju.

7. Deceased Raju was living with his father and brothers at Andheri (W) Bombay, near Tilak Nagar, New Link Road. At the relevant time, as per prosecution case i.e. in the last week of June, constables from Oshiwara Police Station were in search of Raju, and therefore, they went to the house of Raju where they learnt that Raju had gone to Nashik. Therefore, they took Raju's father with them and went to Nashik at the house of Babanabai P.W. No. 10. This was either on the night of 25th June 1990

or on the morning of 26th June 1990. Babanabai (P.W. No. 10) told the police party and Raju's father that Raju was staying in hotel, and that he was working in the said hotel since one month. The police party which included accused No. 1 and accused No. 7 and appears to have arrested Raju at Nashik and on the morning of 26th June 1990 he was kept in the lock up of Bhadrakali Police Station.

8. The record, charge sheet, papers relied upon by the prosecution and the documents proved show that Raju was shown to have been arrested on the night of 26th June 1990 at about 8.30 p.m. in Bombay and police entry in that regard was made in the police station diary of Oshiwara Police Station. Thereafter Raju was produced before Metropolitan Magistrate, Andheri on 27th June 1990. He was granted police custody remand up to 3rd July 1990. Thereafter he was sent to Santacruz Central Lock up which was meant for 5/6 police stations in that area. On the night of 27th June 1990 deceased Raju was brought along with Harshwardhan, Ramesh, Mangesh and Rajaram to Oshiwara Police Station for interrogation. This was done at the instance of accused/appellant No. 1. According to the prosecution case, the A.C.P. of concerned zone visited Oshiwara Police Station at 11.30 p.m. and after he left, Raju and his four inmates or colleagues, though not connected with the same offence, were physically assaulted by all the accused and the assault continued till the morning of 28th June 1990.

9. Raju was in the custody of Oshiwara Police Station till he was sent back at 10.30 p.m. on 30-6-1990. On 1st July 1990 or on the night of between 30th June 1990 and 1st July 1990. Raju complained about pain and suffering, and therefore, at the instance of accused/appellant No. 1 he was sent to or referred to Cooper Hospital where he was examined by the doctors of Cooper Hospital. Thereafter Raju was again kept in the custody of Oshiwara Police Station, and particularly of the accused up to 3rd July 1990 when at about 1.30 p.m. he was brought back to Santacruz Lock up.

10. Again on 4th July 1990 at about 10.30 a.m. Raju was handed over by officers of Santacruz Lock up to the accused for medical treatment.

11. Then he was referred to Ayurvedic Doctor Vijay Narayan Deo (P.W. No. 23). Thereafter Raju was not brought back to the lock up by Oshiwara Police.

12. It is also a part of the prosecution case which supports the defence that while deceased Raju was in the custody of police from 26th June 1990 to 5th July 1990 Raju was referred to one Dr. Vijay Deo on 2nd July 1990 at 9.30 a.m. for treatment for abdominal pain and fever. Dr. Deo found that there was tenderness of the abdomen on the right hand side. The eyes of Raju were yellow, and therefore, Raju was treated for Jaundice, abdomen pain and fever and medicine for two days was given. On 4th July 1990 also Dr. Deo was consulted by a constable viz. accused No. 3 for further medicine for Raju, but Raju was not produced for medical examination before Dr. Deo.

13. According to the prosecution and from the facts on record it is revealed that when Raju was first produced before the Metropolitan Magistrate on 27th June 1990, his date of arrest was shown by the Police in the remand paper as 26-6-90. But on 3rd July 1990 his date of arrest was shown as 25th June 1990 and remand was granted by the Metropolitan Magistrate up to 17th July 1990. However, on 5th July 1990 Raju was discharged by the Metropolitan Magistrate on the application being moved in that regard by the accused/appellant No. 1. Raju was released from the police custody some time in the morning at 11.00 or 11.30 a.m. (Specific time in that regard is not given either by the prosecution or by the defence). However, immediately at about 12.15 p.m. or so the maternal uncle of Raju, one Mr. Dinkar More, who was working in a factory as supervisor and whose factory was on the way of from Andheri Police Station to the house of Raju, saw Raju in Auto Rickshaw. He came out of his factory and saw that Raju was in a pitiable condition with injuries, all over his body. Raju, however, went home alone. His brother and father received him with injuries all over his body some of which were bleeding injuries and his condition was very delicate. He was unable to sit or do anything for himself. It appears that till 4 "O" clock Raju's father, brother and others in the family treated him after which maternal uncle Mr. More was called from his factory. Even before that Raju had disclosed to all his relatives, particularly named above, that he was severely and mercilessly beaten by the officers of Oshiwara Police Station. Therefore, when his relatives decided to admit him in Cooper Hospital. Raju firmly and flatly refused to go to Cooper Hospital urging that if he was taken to Cooper Hospital he would be dead because he was previously taken to Copper Hospital on his complaint by Oshiwara Police on account of physical assault to him.

14. Therefore, Raju was admitted in Bhagawati Hospital in the evening of 5th July 1990. Raju and all his relatives had decided to create a fictitious story for the constable at Bhagawati Hospital and the doctors at Bhagawati Hospital about the injuries on the person of accused Raju, and according to the prosecution, this fictitious story was invented in the interest of Raju and in order to protect him from further wrath of the officers of Oshiwara Police Station. Consequently, Raju and his relatives P.W. No. 1 Balu and others told the doctors at Bhagawati Hospital that Raju was kidnapped and abducted by some unknown persons and he was assaulted by them, and therefore, he received those injuries all over his body.

15. The doctors at Bhagawati Hospital noted the injuries and treated him. However, Raju died on the night of 7th July 1990. Dr. Vanmore who conducted postmortem of the body found that there were about 19 injuries on the person of Raju and in his opinion Raju died as a result of those injuries.

16. While Raju was admitted to Bhagawati Hospital and before he died many senior officers of D.N. Nagar or Oshiwara Police Station including A.C.P. and D.C.P. had visited Cooper Hospital and after the death of Raju an inquiry was started to find out the cause of his death, might be because of so called agitation and political fall out

of this custodial death or might be because of senior Police Officers found some truth in the allegations of Raju that he was assaulted by Oshiwara Police.

17. During this inquiry it was revealed that Raju was in the custody of and in the exclusive custody of these accused for the purposes of interrogation during the night of 27th June 1990 and 28th June 1990, that he was brought from Santacruz Lock up by the accused to Oshiwara Police Station and in the Kachcha lock up of Oshiwara Police Station he was subjected to physical assault and torture. During this inquiry, it was also learnt that four of the others inmates of Raju including Harshwardhan, Mangesh, Ramesh and Rajaram had witnessed the assault and some of them had also suffered at the hands of the said police officers. Their statements were recorded. After finding sufficient materials to proceed against the accused, F.I.R. was registered and there after an offence u/s 304-II of the Indian Penal Code was registered against the accused. Identification parade of all the accused was held by the S.E.M. wherein the aforesaid four inmates of Raju were identified these present accused/appellants being responsible for causing fatal injuries to Raju resulting in his death. And thereafter a charge sheet was filed against the accused before Additional Sessions Judge, Bombay.

18. However, before the death of Raju, as per the prosecution case, P.S.I. Parmar accused No. 1 along with his some other accused had started showing interest in the health and welfare of Raju after he was admitted to Bhagawati Hospital. As per the prosecution case, flock of police officers including accused started visiting Bhagawati Hospital and attempts were made firstly to find out whether Raju was in a position to give any history of assault, and whether he was in position to name any of his assailants i.e. the police officers. Attempts were also made to persuade Raju's relatives to remove Raju to some private hospital. Amount to the extent of Rs. 10,000/- to Rs. 20,000/- were offered to those relatives and according to the prosecution all this was done at the instance of P.S.I. Parmar who wanted to hash up the matter. The relatives of Raju did not accept the money, but insisted upon the doctors at Bhagawati Hospital that Raju should be removed to the private hospital. The doctors, however, did not grant permission in that regard and they were warned that if they removed Raju against medical advise Raju's life may be in danger and they would be responsible for his death.

19. It was in this background that the charge sheet for the aforesaid offences was filed against the accused/appellants and they were came to be convicted.

20. During their submissions before this Court Mr. Mundargi and Mr. Galeria took me through the entire prosecution evidence, all the exhibits and the relevant portions of the examination of the accused u/s 313 of the Cr.P.C. in support of their respective contentions. The main contention of Mr. Mundargi were as follows:

21. Firstly, according to him, the charge against the accused applicants was that they have assaulted deceased Raju on the night between 27-6-1990 and 28-6-1990

at Oshiwara Police Station causing him serious physical injuries. However, according to Mr. Mundargi, there is not a single witness of the prosecution who had directly witnessed the assault or who has supported the prosecution in that regard. Four independent witnesses, namely the other four persons i.e. the inmates of Raju who were present during the said interrogation in Oshiwara Police Station at the relevant time, though examined by the prosecution, did not support the prosecution, and therefore, their evidence was discarded by the trial Court. In the absence of any direct evidence on the material and vital aspect of the prosecution case, the trial Court erred in convicting the accused applicants for the offences u/s 330 r/ w section 34 of the I.P.C. It was not proved beyond reasonable doubt by the prosecution that all the accused applicants were present when deceased Raju was interrogated on the night between 27-6-90 and 28-6-90 in Oshiwara Police Station. Though evidence of P.W. 13 Revansiddha D. Karnalkar that deceased Raju was interrogated in the Kachcha Lock up of Oshiwara Police Station on the alleged night is there, this witness did not hear any shouts of deceased Raju, nor any noise of assault and beating of Raju by the accused applicants, and therefore, when the prosecution witness himself did not speak of any assault on deceased Raju by any of the accused applicants, it was wrong on the part of the trial Court to convict them for the offences u/s 330 of the I.P.C. Act.

22. Further deceased Raju, as per the prosecution case, was arrested by applicant No. 1 and / at Nashik, was kept in the lock up of Bhadrakali Police Station on the morning of 26-6-1990, brought to Bombay and was in their custody up to the afternoon of 5-7-1990 when he was discharged by the Magistrate. But during this time victim deceased Raju was sent to main lock up at Santacruz Police Station 2-3 times and it was not the prosecution case that during all this period deceased Raju was in the exclusive custody of the accused-petitioners. Deceased Raju was released on 5-7-1990 at about 11.00 a.m. or thereafter and he was noticed by his maternal uncle at about 1.00 p.m. i.e. within 2-3 hours for the first time after his discharge and there were circumstances to show that Raju could have been assaulted by some others during this time and therefore applicants could not be held guilty for the injuries on the persons of deceased Raju.

23. Mr. Mundargi also submitted that while in custody of the police from 27-6-1990, and after the alleged assault on the night between 27-6-1990 and 28-6-1990 he was referred to Cooper Hospital at the request of deceased Raju and three doctors at Cooper Hospital, who examined him, did not find any serious injuries on the person of deceased Raju as alleged by the prosecution. He also contended that the evidence of these three doctors regarding the injuries on the person of deceased Raju only on 1-7-1990 was in total contrast of the injuries noted on the body of the deceased Raju at the time of the postmortem and since the charge against the accused applicants is about the assault on deceased Raju only on the night between 27-6-1990 and 28-6-1990 accused-applicants could not be attributed with the injuries which were found on the body of deceased Raju at the time of postmortem.

According to Mr. Mundargi since there was no charge against the accused applicants for causing injury to Raju till he was discharged on 5-7-1990, the accused applicants could not be held responsible or liable for injuries found on the body of deceased Raju during postmortem.

24. Mr. Mundargi further contended that the relatives of Raju who were examined as prosecution witnesses, namely, P.W. 1 Balu Yeshwant Mohite, P.W. 3 Dinkar Mainaji More and P.W. 4 Hiranman Yeshwant Mohite were his close relatives had exaggerated their case beyond comprehension and this was done by them only with a view to falsely implicate the personnel from the police department, where they were accused facing the trial, and therefore, their evidence was liable to be discarded.

25. Regarding the medical evidence, Mr. Mundargi contended it has come on record that deceased Raju was himself complaining of suffering from jaundice and therefore he was treated by P.W. 23 Dr. Vijay Narayan Deo on 2-7-1990 and 3-7-1990 and since P.W. 20 Dr. Vasant N. Vanmore conducting postmortem had opined that liver of deceased Raju was found fatty with yellow colour, there was strong probability that Raju died as a result of jaundice and not as a result of any beating or assault by the accused petitioners. He also contended that if according to Dr. Vanmore there were about 19 injuries on the person of victim deceased Raju and since there was no explanation from the prosecution of these injuries, adverse inference in favour of accused petitioners and against the prosecution was liable to be drawn.

26. Criticizing the evidence of important prosecution witness P.W. 11 Pandurang M. Kumbhar who was posted at Santacruz Police Station lock up during the relevant period, Mr. Mundargi contended that as per the procedure of the lock up, as given by this witness, no injuries were noticed or noted on the person of deceased Raju when he was brought back to Santacruz lock up on 30-6-1990 i.e. after the incident of assault on the night between 27-6-1990 and 28-6-1990. Therefore, according to Mr. Mundargi if no injuries were found on the person of deceased Raju by this important witness at any time during the stay of Raju at Santacruz lock up, the entire prosecution case or assault by the accused applicants on the night between 27-6-1990 and 28-6-1990 was liable to be rejected.

27. Mr. Mundargi also contended that Raju's relatives, namely, P.W. 1 Balu P.W. 3 Dinkar and P.W. 4 Hiranman and even Raju before he died had given a story to the constable at Bhagawati Hospital and the doctors at Bhagawati hospital that Raju was kidnapped and abducted by some unknown persons and he was assaulted by them and consequently in view of this positive story coming from the prosecution itself the case of the prosecution that the accused applicants assaulted Raju on the alleged night was liable to be rejected.

28. Challenging further the prosecution case Mr. Mundargi contended that from the evidence of the prosecution that has come on record the Police Officers of D.N. Nagar Police Station had made enquiry into the causes of death of Raju but the statements of the witnesses recorded during this enquiry by P.W. No.25 were never made available to the defence resulting in serious prejudice to the defence. He also contended that adverse inference was liable to be drawn against the prosecution for not supplying the important papers to the applicants.

29. Learned A.P.P. Mr. Galena refuted all the objections raised by Mr. Mundargi and contended that the accused were rightly found guilty by the trial Court and they were not entitled for acquittal.

30. While considering the respective submissions of the Counsel for the accused/appellants Mr. Mundargi and learned A.P.P. Mr. Galeria it is required to be made clear at this juncture that all the accused have been acquitted of the offences u/s 304 of the Indian Penal Code. The trial Court has acquitted them of the offences because according to the trial Court necessary ingredients of the said offences were not established by the prosecution. Obviously therefore there is no conviction against the accused causing death of Raju and as such the submissions made by Mr. Mundargi and Mr. Galeria regarding cause of death of Raju are not required to be gone into. It is only to be found out whether the conviction of the accused/appellants u/s 330 r/w section 34 of the Indian Penal Code is correct and proper.

31. Secondly, the defence of the accused that Raju was suffering from Jaundice is required to be discarded because according to the defence Jaundice was the cause of Raju's death and since cause of Raju's death is not related to their conviction u/s 330 read with section 34 of the Indian Penal Code, that aspect need not be considered. It is true that the prosecution has led evidence of witness Dr. Deo about the treatment given by him to Raju. However that evidence has been rightly discarded by the trial Court as bogus and not inspiring any confidence at all. The certificate issued by Dr. Deo is on a simple paper torn out from the student note book. It does not bear his stamp nor his registration number. He has not maintained case papers and it is not disclosed from his evidence that he is an expert in confirming diagnosis of jaundice merely after seeing deceased Raju. Therefore, his evidence for the purpose of finding out cause of death is not required to be considered at all though it will have to be considered at the relevant juncture with reference to the conduct of the accused vis-a-vis deceased Raju.

32. Thirdly, so far as the relatives of Raju viz. P.W. No. 1 Bam Mohite, the brother of Raju; P.W. No. 3 Dinkar More, the maternal uncle of Raju and P.W. No. 4 Hiranman Mohite the brother of Raju are concerned, their evidence is required to be accepted and was rightly accepted by the trial Court. Firstly because none of these witnesses have any grudge against the present accused. Secondly they are not eye witnesses. Thirdly they have narrated about the facts prior to arrest of accused Raju at Nashik

and after return of accused Raju on 5th July 1999 i.e. after he was discharged by the Magistrate. This part of the evidence is about the Raju's actual physical condition because of the torture, admitting Raju in Bhagawati Hospital and the statement made by Raju to them about the assault and the story invented by Raju. None of these witnesses therefore state anything against any of the accused directly or indirectly or about any assault being caused by the accused/appellants to Raju. Their evidence is natural evidence and even though they are interested witnesses there are no reasons to discard their evidence or to disbelieve them.

33. The cumulative effect of the evidence of these witnesses is that on the night of 24-6-1990 some constables went to the house of Raju where they roughly handled the inmates of Raju's house while making inquiry about Raju. Father of Raju was taken to Nashik and at Nashik as per the evidence of Babanabai (P.W. No. 10) police went to the lodge where Raju was staying and arrested by the accused No. 1. The evidence of these witnesses will also show that they came to know about the detention of Raju till 5th July 1990 only after Raju met his maternal uncle Dinkar More (P.W. No. 3) and when he went to his house. The witnesses saw pathetic condition of Raju on account the injuries on his body and therefore in the evening they admitted Raju in Bhagawati Hospital after inventing a false story. So far as earlier part of testimony of these witnesses is concerned i.e. prior to arrest of Raju on 26th June 1990 at Nashik there are absolutely no reasons to disbelieve them. So far as their story after 5th July, 1990 from 12.00 p.m. onwards is concerned the same will have to be discussed at proper stage.

34. There is more than abandoned evidence on record to show that Raju was arrested by the accused at Nashik. The evidence of Babanabai and evidence of Vishnu Bhujbal (P.W. No. 24) the constable at Bhadrakali Police Station coupled with the station diary entry Exhibit 101, strongly prove the fact that Raju was arrested in the morning of 26th June 1990 by the accused at Nashik and he was kept in the lock up of Bhadrakali Police Station and from there he was brought to Bombay. There is absolutely no reason to disbelieve the evidence of P.W. No. 24 Vishnu Bhujbai regarding arrest of Raju at Nashik. So also there is no reason to disbelieve the evidence of P.W. No. 10 Babanabai in this regard.

35. Once the trial Court accepted that Raju was arrested at Nashik in the Morning of 26-6-1990 and once the same fact is accepted by this Court for the reasons stated above it is clear that the story of the defence that Raju was arrested in the evening of 26th June 1990 at Bombay is required to be rejected as false. Similarly for the same reason the station diary entry made by accused No. 1 in the station diary of Oshiwara Police Station that Raju was arrested some time at about 8.00 p.m. or so moving in suspicious circumstances within the vicinity of Oshiwara Police Station vide station diary Exhibit 16 is also required to be rejected because this entry made at 10.00 p.m. on 26th June 1990 and it shows that at 8.30 p.m. Raju was arrested near Taraporwala Garden at Bombay.

36. When the prosecution has successfully proved that Raju was arrested by accused No. 1 with the help of accused No. 7 at Nashik in the morning of 26th June 1990 then entry at Exhibit 16 dated 26-6-1990 in Oshiwara Police Station Diary is to be labelled as false and fabricated entry and the trial Court has rightly rejected this entry on the same ground.

37. The obvious reason for making this false entry on the part of accused No. 1 is that if Raju was arrested in the morning of 26-6-1990 at Nashik, then Raju would have been required to be produced before the Magistrate on the same day. Admittedly Raju was not produced before any Magistrate at Nashik on 26-6-1990 nor he was produced at any time on 26-6-1990. In order to over come this legal obstacle this false entry Exhibit 16 appears to have been made by accused No. 1 to the effect that Raju was arrested at 8.30 p.m. on 26-6-1990.

38. This false entry also shows that Raju was in the custody of accused from the morning of 26-6-1990 without being produced before any Magistrate and he was first time produced before the Metropolitan Magistrate on 27th June 1990. This false entry Exhibit 16 also speaks about the conduct of the accused in the whole episode and this entry has therefore to be read in the context of subsequent conduct that is unfolded by the prosecution evidence against all the accused because not only the entry is false regarding the date and time of arrest of accused/Raju but the contents of the entry are also false. The whole defence is blown into pieces by virtue of this entry.

39. It is therefore proved beyond reasonable doubt that deceased Raju was in the custody of accused No. 1 from the morning of 26-6-1990 and he was produced before the Magistrate for the first time on 27-6-1990. The police custody remand obtained on 27-6-1990 speaks volumes about conduct of the accused. Those remand papers i.e. the certified copies, are produced and proved by P.W. No. 25 vide Exhibit 106. In the remand application dated 27th June 1990 date of arrest of deceased Raju is shown as 26th June 1990, and it is stated that he was found moving in suspicious circumstances. On that day remand was granted up to 3-7-1990. Second remand application is dated 3-7-1990 and in that application seven days remand was requested by the police for finding out the stolen property and Raju was labelled as hardened criminal who was not ready to cooperate with the police regarding discovery in different offences. In that remand application date of arrest of Raju was shown as 25-6-1990 at 21.45 p.m. The Magistrate granted remand up to 17-7-1990.

40. The third remand application is dated 5-7-1990 about discharge on the ground that there was no possibility of finding out any stolen property from Raju, and therefore, he was liable to be discharged though prayer for seeking attendance of Raju was made to the Magistrate.

41. From all these remand applications it is clear that the conduct of accused No. 1 was suspicious and certainly not befitting an honest, sincere and law abiding Police Officer (if at all accused No. 1 can be said so with reference to the facts of the said case). Mr. Galeria, learned A.P.P. strongly and vehemently urged that neither on 26-6-1990 nor on 3-7-90 or 5-7-90 deceased Raju was produced before the Metropolitan Magistrate at any time by accused No. 1. He also contended that none of these remand applications shown that deceased Raju was produced before the Magistrate, that he was present when the remand applications were decided by the Magistrate, nor they show that the Magistrate made inquiry to Raju about any ill-treatment being given to him.

42. Ordinarily it is presumed that the judicial officers discharge their duties correctly and properly by following legal procedure. However in the instant case I am not inclined to draw such inference or presumption about the concerned Judicial Magistrate. He should have noted in his remand application whether Raju was produced before him, at what time he was produced and whether he made any inquiry from Raju regarding any ill-treatment meted out to him. Since none of the remand applications at Exhibit 106 show that Raju was produced before the Magistrate or the Magistrate made any inquiry from Raju about the ill-treatment given to him, it has to be held that Raju was not produced before the Metropolitan Magistrate at any time of the three dates mentioned above.

43. Second thing that falsifies the defence in this regard is that in the first remand application dated 27th June 1990 the date of arrest is shown as 26th June 1990. This is obviously with reference to the station diary entry Exhibit 16 which is made by the P.S.I. of Oshiwara Police Station and since the entry itself is found to be false, the remand application has to be rejected as false. Thirdly, Exhibit 16 as well as this remand application dated 27-6-1990 show that Raju was involved in number of cases of theft and robberies and he was required to be interrogated for tracing property involved. This statement is also totally false because the defence could not bring anything on record to show that Raju was involved in such criminal activities at any time in the past or that he had any record against him in respect of his habitual offences of thefts and robberies.

44. Third falsity of remand applications Exhibit 106 Colly, is that the remand application dated 3-7-1990 date of arrest of Raju was shown as 25-6-1990 at 21.45 p.m. This is a false statement because in the earlier remand application his date of arrest is shown as 26-6-1990 at 22.00 p.m. and secondly Raju was referred to hardened criminal who was not ready to budge to the rigour of interrogation of the police and he is not ready to disclose where the property is hidden or kept by him. This is absolutely false statement made by accused No. 1. Fourthly, the police asked for Magistrate custody remand of seven days, but Magistrate granted 15 days remand obviously for no reason.

45. The remand application dated 5-7-1990 is also false and concocted one. Firstly, because it is in total contrast with the remand application dated -3-7-1990 wherein Raju was labelled as hardened criminal requiring seven days police custody for recovering so called property. But in this remand application dated 5-7-1990 his discharge was claimed on the ground that there was no possibility of any recovery at the instance of Raju.

46. The entire conduct of accused No. 1 reveals that all these remand applications were falsely prepared by accused No. 1 who acted in a manner reflecting total disregard and irresponsible to his position, authority and legal obligations cast upon him as Police Officer.

47. If Raju was hardened criminal and his detention in custody for seven days was necessary as per remand application dated 3-7-1990, then there were no reasons on earth to get his discharge on 5-7-1990. Secondly, if the recovery of the so called stolen property involved in the offences was necessary on 3-7-1990 and Raju's interrogation was also necessary, then asking for discharge on 5-7-1990 was the height of falsity on the part of accused No. 1 not only with reference to mere remand applications but also to his whole conduct as a responsible police officer. The Magistrate who granted discharge may have accepted at that time the case of the accused No. 1 that Raju's presence was not required as there was no possibility of any recovery at the instance of Raju. But this Court cannot accept the case of accused No. 1 that Raju's discharge was required because there was no possibility of any recovery. On the contrary, seeking discharge of Raju on 5-7-1990 suddenly is a grave circumstance that speaks about the guilt of the accused regarding the charges levelled against them. There are very strong reasons to conclude that discharge of Raju on 5-7-1990 was sought because Raju was likely to collapse at any time. There are also strong reasons to believe that on 5-7-1990 Raju was not at all produced before the Magistrate when the discharge was sought by accused No. 1

48. Coming to the crucial question as to whether the accused had caused injuries on the person of deceased Raju while he was in their custody, the evidence of P.W. No. 11 Pandurang Kumbhar and P.W. No. 13 Revansiddha Karnalkar is required to be considered. P.W. No. 11 at the relevant time was attached to Santacruz Police Station Lock Up where the accused and under trial prisoners from Oshiwara Police Station were kept. This witness has produced and proved the relevant extract of registers maintained at Santacruz Police Station Lock up regarding movements of the under trial prisoners viz. Raju, P.W. No. 5 Harshvardhan P.W. No. 6 Ramesh, P.W. No. 7 Mangesh and P.W. No. 8 Rajaram. He has given details of the procedure that is followed when the under trial prisoners are brought to the Santacruz Police Station Lock Up from different police stations for different purposes. In addition, he has stated that Raju was brought to Santacruz Police Station Lock Up on 27-6-1990 at 1.55 p.m. and he was brought there at the instance of accused No. 1. He has produced relevant entry Exhibit 32. Along with Raju some four five other under trial

prisoners were brought and entry about that is at Exhibit 33. Further according to this witness, Raju was in lock up till 27-6-1990 and Raju was taken out of the lock up at 7.50 p.m. along with Harshwardhan, Ramesh arid Mangesh. He has produced the relevant entry Exhibit 35. This witness further stated that Raju was brought back to Santacruz Police Station Lock on 30-6-1990 at 1.50 a.m.

49. The evidence of P.W. No. 11 is convincing evidence, supported by the relevant entries and the documents proved by him and it has, therefore, held that the witness P.W. No. 11 succeeded in proving that Raju was in custody of the accused from 7.50 p.m. on 27-6-1990 to 1.50 a.m. on 30-6-1990.

50. The evidence of this witness further shows that Raju was taken out of the lock up for medical treatment vide entry Exhibit 40 at 00.50 hours and brought back from the hospital at 3.45 a.m. as per Exhibits 41. Further according to this witness Raju was taken out of the lock up by accused Nos. 3 and 4 at 2.05 p.m. on 1-7-90 and thereafter he was brought back to the lock up on 3-7-90 at 1.40 p.m. Raju was again taken out of the lock up at 10.30 a.m. on 4-7-90 and was then never brought back to the lock up but directly discharged.

51. From all this evidence it is clear that Raju was in custody of the accused from the morning of 26-6-1990 till 1.55 p.m. on 27-6-1990, from 7.50 p.m. on 27-6-1990 till 1.50 a.m. on 30-6-1990 and from 00.50 hours on 1-7-90 till 1.40 p.m. on 3-7-1990 and from 10.30 a.m. on 4-7-1990 till he was discharged on 5-7-1990 between 10.30 a.m. to 11.00 a.m. (exact time was not being given either by the prosecution or by the defence).

52. At this juncture it is necessary to point out that while framing the charge neither learned A.P.P. nor the trial Court gave serious consideration to these facts born out by the charge sheet and the documents annexed thereto. The charge of assault has been framed against the accused in respect of the assault that took place only on the night intervening between 27-6-1990 and 28-7-1990 and there is no charge about the assault on Raju during all the aforesaid period when deceased Raju was in exclusive custody of the accused. The result of this serious omission in framing charge is that the case of the prosecution regarding the assault stands confined to the night intervening between 27-6-1990 and 28-6-1990 when in fact there are circumstances and material on record to show that Raju was assaulted through out his entire period of detention and custody by the accused. However, in view of the omission and defects in the charge this Court cannot consider as a material against the accused.

53. So far as evidence of P.W. No. 11 is concerned, it was vehemently urged by Mr. Munderggi that if Raju was really assaulted on the night of 27-6-1990 and 28-6-1990 then P.W. No. 11 would have noticed injuries on the person of Raju when Raju was brought back to the lock up on 30-6-1990 at 1.50 a.m. and in that event P.W. No. 11 would have definitely made an entry about the injuries on the person of Raju in the

relevant register. Mr. Mundergi also contended that no Police Officer in charge of the lock up would admit an injured victim or under trial prisoner because ultimately it would be their responsibility to account for all those injuries.

54. On the other hand it was contended by learned A.P.P. Mr. Galeria that Santacruz Lock Up was not a jail and it was internal arrangement of the police, and therefore, it was not necessary nor obligatory on the part of P.W. No. 11 to note the injuries on the person of Raju. Secondly, he contended that there is nothing on record to show that Raju's injuries were visible to any outsider. I find considerable force in the contention of Mr. Galeria, because the question of noting injuries would come only if deceased Raju complained to P.W. No. 11 about the same and/or only if those injuries were visible being on face, hand and feet. The arguments of Mr. Mundargi, therefore, can not be accepted in this regard.

55. Further evidence of prosecution regarding assault by the accused during the night between 27-6-1990 and 28-6-1990 has come on record from P.W. No. 13 Revansiddha Karnalkar. He has stated that he was P.S.I. attached to Oshiwara Police Station and on the night of 27-6-1990 he was on duty in the police station. He has stated that at about 12.00 in the night the D.C.P. Zone VII had visited the police station and he made inquiries with the accused present in the Kachcha Lock Up of the police station and then went away. And thereafter accused No. 1 along with his staff i.e. other accused started interrogation to the accused in the lock up including deceased Raju and P.W. Nos. 5 to 8. According to the prosecution, it is during this interrogation Raju was assaulted with leather belt and sticks.

56. This witness being a Police Officer is not expected to say anything about the actual assault being caused by the present accused. However, he supports the prosecution case that in the Kachcha Lock Up all these accused interrogated Raju along with others. Considering the position of P.W. No. 13 and his relations with the present accused as a colleague and as a Police Officer in similar rank, absence of any evidence of actual assault by this witness can support the defence, in any manner whatsoever to the contrary, it proves from his evidence that Raju was being interrogated by all these accused on that fateful night.

57. Considering the evidence of P.W. No. 11 and 13 it has to be concluded that the prosecution has succeeded in proving that the deceased Raju was in exclusive custody of these accused and they interrogated him during the night of 27-6-1990 and 28-6-1990.

58. So far as injuries on the person of Raju were concerned, there are three sets of circumstances. Firstly, examination of Raju by the doctors at Cooper Hospital on 1-7-1990, examination of Raju by Ayurvedic Doctor Vijay Deo for so called jaundice and examination of Raju by the doctors at Bhagawati Hospital on 5-7-1990, and postmortem examination of Raju after his death by Dr. Vanmore (P.W. No. 20).

59. Regarding medical evidence it was contended by Mr. Mundargi that if the case of the prosecution regarding assault by the accused on Raju on the night of 27-6-1990 and 28-6-1990 is accepted, then accused can not be held guilty and responsible for all the injuries that was found on the person of Raju on 5-7-1990 by the doctors at Bhagawati Hospital and during postmortem conducted by Dr. Vanmore (P.W. No. 20) on 7-7-1990. According to Mr. Mundargi the injuries on the person of Raju noted by the doctors at Cooper Hospital on 1-7-1990 and injuries noted subsequently on 5-7-1990 and 7-7-1990 by Dr. Vanmore were differing in degree, in depth, intensity and numbers, and since there is no charge against the accused about torturing Raju during all the periods from 27-6-1990 till 5-7-1990, those injuries found on 5-7-1990 and 7-7-1990 can not at all be taken into consideration.

60. There is no doubt in my mind that all the injuries found on the person of Raju by the doctors at Bhagawati Hospital on 5-7-1990 and the injuries found on the body of deceased Raju by Dr. Vanmore (P.W. No. 20) during postmortem were the result of physical torture inflicted upon Raju by all these accused, However, since the charge is in respect of assault on the night of 27-6-1990 and 28-6-1990 and since Raju was examined on 1-7-1990 at Cooper Hospital, I will restrict myself to the medical evidence adduced by the doctors at Cooper Hospital regarding the injuries on the person of Raju on 1-7-1990. The injuries noted by the doctors at Bhagawati Hospital on 5-7-1990 and the injuries noted during postmortem are more in number, serious in nature and grave in intensity than the injuries noted by the doctors at Cooper Hospital on 1-7-1990. But for all the reasons above and considering the specific charge, those injuries will have to be discarded in favour of the accused. Therefore, this Court will have to concentrate only on the medical evidence adduced by the doctors at Cooper Hospital when they examined Raju on 30-6-1990 and to find out if the injuries found on 5-7-1990 and 7-7-1990 tally and to what extent.

61. In this regard prosecution has examined P.W. No. 17 Dr. Rajendraprasad Tripathi, P.W. No. 18 Dr. Rajesh Bijalani and P.W. No. 19 Dr. Rajendra Padhye, all of whom were attached to Cooper Hospital at that relevant time and who had occasion to examine Raju who was produced by the accused for his medical examination. P.W. No. 17 Dr. Rajendraprasad has stated that when he examined Raju he found the following injuries on the person of Raju:---

1. Infected wound left arm and abrasion were 3" in length.
2. Oedema of both hands and feet with tenderness and old minor abrasions.
3. Blackness of skin (of both wrists and back and lateral part of both the thighs X ray was taken of abdomen in a standing position. X ray of both hands ante posterior aspects and lateral aspects.

The Doctor has also stated that Raju was given history of pain in the abdomen and vomiting, but did not give history of the injuries. He opined that these injuries are caused and the injuries at Sr. No. 3 must be 2/3 days old because of blackness

occurs after the injuries are inflicted by hard and blunt substance.

62. P.W. No. 18 Dr. Rajesh Bijalani who examined Raju found the following injuries:---

1. Minor abrasions over the right wrist.
2. Minor abrasions over the left shoulder and left upper arm.
3. Swelling on the dorsum of both the hands.
4. Brushing and blackening over lateral part of abdomen, back and upper lateral part both thighs. Some minor abrasions and tenderness was also notice in those areas.

He also stated that the swelling on the dorsum can be as a result of physical assault and as a result of disease or uratory problems. He also opined that the swelling on the dorsum was as a result of assault and not of any sickness or other disorder. Doctor also noted that the injuries on the hands due to handcuffs. P.W. No. 19 Dr. Rajendra Padhye stated that he examined Raju who gave history of tying his hands with handcuffs.

63. Mr. Mundargi vehemently contended that if the aforesaid factors noted by three doctors are taken into consideration, they could not be said to be causes of assault. I am in total disagreement with this submission. Firstly, because Raju was in the custody of the accused. Secondly, the conduct of accused No. 1 particularly right from 26-6-1990, is suspicious. Thirdly, Raju was in their custody and that he was interrogated in the night of 27-6-1990 and 28-6-1990 and in that background the injures noted by Dr. Rajendra as infected wound left arm and abrasion, osdema of both hands and feet with tenderness, and blackness of skin of both wrists and back and lateral part of both thighs positively indicate, and as has been rightly held by trial Court, that Raju was subjected to physical assault. Dr. Rajesh Padhye has particularly noted injury at Sr. No. 4 of his notes as Brushing and blackening over lateral part of abdomen, back and upper lateral part both thighs. Some minor abrasions and tenderness was also noticed in those areas.

64. It might be that because of restricted nature of the charge, the Court can not take into consideration all the grave and serious injuries found on the person of Raju by the doctors at Bhagawati Hospital and during postmortem noted. But the injuries noted by the doctors P.W. Nos. 17, 18 and 19 strongly and conclusively prove that the injuries to the abdomen, back, lateral part of both the thighs, hands, shoulders and the wrists with minor abrasions were caused while Raju was in the custody of the accused. These injuries support the case of the prosecution that Raju was beaten and assaulted with leather belt and sticks by the accused.

65. In fact, even though the postmortem notes show about 19 injuries on the person, Raju of the closure scrutiny will show that there were injuries on abdomen, both the thighs, back, hands and the wrists and for a limited purpose of comparing

the evidence of P.W, Nos. 17, 18 and 19 the postmortem notes are required to be looked into and it is clear that the postmortem notes also support the prosecution case, (even if restricted and limited charge framed against the accused is taken into consideration), that Raju had severe injuries on his person and he was examined by the doctors at Cooper Hospital.

66. The third point that is required to be considered is the conduct of the accused after 5-7-1990.

67. Two aspects of the prosecution case were pressed into service by Mr. Mundargi in defence. Firstly, according to him, Raju was discharged on 5-7-1990 at about 11.30 p.m. pursuant to the order of Metropolitan Magistrate, and thereafter Raju was seen for the first time by his maternal uncle P.W. No. 3 Dinkar More at 12.00 noon or 12.15 p.m. on the same day. According to Mr. Mundargi, Raju must have been assaulted by someone-else during this period of half an hour to 45 minutes and therefore the accused cannot be held guilty for the injuries found on the person of Raju. He further contended that when Raju was admitted in Bhagawati Hospital on 5-7-1990 relatives of Raju and Raju himself told the doctors in Bhagawati Hospital and the constable present there that Raju was kidnapped and abducted by some unknown persons, and therefore, according to Mr. Mundargi assault must have been caused to Raju by his abductors.

68. All these contentions are required to be outright rejected. Firstly, because there is nothing with accused No. 1 to show that Raju was produced before the Magistrate at the time of seeking order of discharge. Secondly, on considering the conduct of accused No. 1 in getting discharge of Raju on 5-7-1990 when in fact he obtained remand for 15 days on 3-7-1990, it is clear that Raju was required to be released forthwith from the custody because his condition was precarious obviously on account of the assault. All the circumstances brought on record reveal that accused No. 1 realized on 5-7-1990 that any further detention of Raju would boomerang upon him and upon the accused, otherwise there was no reason on earth for accused No. 1 to get discharge of Raju on 5-7-1990. Thirdly, there is a strong evidence on record to show that Raju was assaulted at least on the night of 27-6-1990 and 28-6-1990 and therefore, in this background the defence of the accused that within one hour of discharge from 11.00 a.m. to 12.15 p.m. Raju must have been assaulted by others can not be accepted at all.

69. It is true, as per the prosecution case and the evidence given by P.W. Nos. 1, 3 and 4 and the doctors at Bhagawati Hospital and the constable present there that the story was given to all of them by P.W. Nos. 1, 3 and 4 and Raju that Raju was kidnapped and abducted and therefore he received those injuries. But these three witnesses P.W. Nos. 1, 3 and 4 have given most satisfactory explanation about this concocted story which has positively been proved by the prosecution that when Raju was seen by P.W. Nos. 1, 3 and 4 in a injured condition on 5-7-1990 from 12.15 onwards and when they decided to admit Raju in Cooper Hospital Raju vehemently

opposed the idea and told them that under any circumstances he should not be taken to Cooper Hospital because previously he was taken there because of the assault by these accused and if he had again taken there, Oshiwara Police will know about them and that will be the end of Raju's life. I find no reason whatsoever to discard or disbelieve this explanation coming from P.W. Nos. 1, 3 and 4. The conduct of Raju and his refusal to go to Cooper Hospital was most natural as the constable from Oshiwara Police Station was likely to be there at Cooper Hospital and on seeing Raju there with complaints against his own officer the consequences would be unimaginable. It will be seen that Raju's apprehension of further brutality was well founded. The contention of Mr. Mundergi in this regard therefore can not be at all accepted.

70. P.W. Nos. 1, 3 and 4 have given consistent cogent and convincing evidence about pitiable and miserable condition of Raju when Raju returned to house on 5-7-1990 after noon. There were injuries all over his body particularly on forearms, legs, back side his buttocks and even on his face. He was not in a position to sit and he was hungry. He was receiving pains when he sat on a stool in his house. The skin of his buttocks was stuck and he had vomiting of blood and passing of blood from stools. It is this condition that makes me to again comment on failure of prosecution to frame charge against the accused about the assault on Raju right from 30-6-1990 to 5-7-1990.

71. There is one more aspect that goes against the present accused and that is the subsequent conduct of the accused No. 1 and all the accused right from the time when Raju was admitted in Bhagawati Hospital.

72. In fact, if Raju was innocent, he was not assaulted as alleged and his further detention was not going to help accused No. 1 in recovering any house property and if for all these reasons accused No. 1 had sought discharge of Raju on 5-7-1990 from the Magistrate then there is absolutely no reason why P.S.I. and other accused should take interest in the health of Raju or his whereabouts and what happens to him thereafter. However, it has come in the evidence that from the moments when Raju was admitted in Bhagawati Hospital in the evening flock of Police Officers including accused No. 1 and other accused started taking very keen but most unnatural interest in Raju. The facts pertaining to this have brought on record in the evidence of P.W. Nos. 12, 13, 14 and 15. P.W. 12 Bhaskar Lambat was attached to Dahisar Police Station as a P.S.I. in July 1990. He stated that at about 10 p.m. on 5-7-1990 he received a telephone message from the constable on duty at Bhagawati Hospital that Raju had brought his brother Balu in the hospital with a history of assault with some persons. The message also revealed that 5-6 days back Raju was taken away by 5-6 persons and was returned in injured condition on 5-7-1990. According to P.W. No. 12 he informed the said message to P.I. Savale and both of them went to Bhagawati Hospital. This witness tried to find out whether story of kidnapping has any grain of truth. In the mean time the mother, wife and brother

Hiraman of Raju Mohite were brought to the police station by one constable. They gave information to P.W. 12 of what had happened with Raju on the earlier days. P.W. No. 12 also noticed marks of violence on the body of Raju and it was learnt by P.W. No. 12 that Raju was assaulted while he was in custody of Oshiwara Police Station and that offence was committed by Oshiwara Police Station.

73. The next witness in this regard is P.W. No. 13 Revansiddha Karnalkar who was attached to Oshiwara Police Station as a P.S.I. in June 1990. Evidence of this witness has already been discussed so far as custodial interrogation of Raju by the accused on the night of 27-6-1990 and 28-6-1990 is concerned. However, this witness has stated that on 5-7-1990 at about 7.45 a.m. he received a telephone call from P.I. on duty at Dahisar Police Station enquiring about the officer P.S.I. Parmar. And further this witness was asked to inform P.S.I. Parmar, the accused No. 1, to contact Dahisar Police Station by telephone. At that time P.S.I. Parmar, the accused No. 1 was not in the police station and therefore, one constable was sent to inform him about the message.

74. P.W. No. 14 Ramesh Honawar has stated that on 6-7-1990 at about 12 noon he went to Bhagawati Hospital pursuant to the information given by P.S.I. Lambat on phone that Raju was complaining of assault by Oshiwara Police Station. The witness further states that at that time at about 12.00 noon or so he saw P.S.I. Parmar, the accused No. 1, in Bhagawati Hospital.

75. There are other witnesses who speaks about the conduct of the officers of Oshiwara Police Station and that of the accused including P.S.I. Parmar the accused No. 1 after Raju was admitted in Bhagawati Hospital. P.W. No. 1 Balu Mohite has stated that when Raju was admitted in the hospital at about 6.30 p.m. to 7 p.m. on 5-7-1990 he was with him till 1.00 a.m. and thereafter he returned to his house at 1.30 a.m. However, in the morning between 3 a.m. to 4 a.m. police from Dahisar Police Station came and took Balu his mother and wife of Raju Chandrabhaga to Dahisar Police Station. They made inquiry about Raju. Their statements were recorded and then again went to the hospital after 11.00 a.m. At about 1.00 p.m. police from Dahisar Police Station came to the hospital and made inquiries from Raju and Raju told them that he was beaten by the police personnel.

76. Further according to Balu after about half an hour one Inspector Aabasaheb Patil from Oshiwara Police Station came to the hospital. He also made inquiries from Raju. At about 4.00 to 4.30 p.m. (on 6-7-1990) accused No. 1 and other Police Officers from Oshiwara Police Station came to Bhagawati Hospital along with accused Nos. 3 and 7. Inspector Bhambhare was there. He took aside P.W. No. 1 Balu and told him that Raju's condition was not good and Raju should be removed to some private hospital. Therefore constable Badal took Balu to the corner at the compound of hospital and told him that Raju should be taken to private hospital like Nanawati or Western India Hospital at Jogeshwari and even if this removal of Raju to some other private hospital was going to be costly, Balu and Raju's relatives should not be

bothered about the same because police were ready to pay 10 to 20 thousand. Constable Badal also showed bundle of currency notes of Rs. 100/-.

77. This part of Balu's testimony is fully corroborated by the evidence of P.W. No. 3 who has stated that after A.C.P. Kumbhar visited Bhagawati Hospital and left one officer by name Aabasaheb Patil from Oshiwara Police Station came to the hospital. He was accompanied by one other officer Mr. Bhambhare (P.W. No. 2), accused No. 1 Parmar and 5-6 constables. They talked with Balu and the talk was what Balu has deposed to and which is referred to above. According to this witness all these persons were present in the hospital till Raju died.

78. P.W. No. 4 Hiranman has also stated amongst other things corroborating P.W. Nos. 1 and 3 and has also stated that on 6-7-1990 at about 1.00 p.m. he went to the hospital along with Balu and their mother. At that time some constables and some officers from Oshiwara Police Station were present in the hospital. So also one officer by name Aabasaheb Patil was present. All of them were making inquiries with Raju and thereafter A.G.P. Kumbhar came there and after A.G.P. Kumbhar left, Balu told this witness about the offer given by the Oshiwara Police Station for removing Raju to some private hospital and showing bundle of currency notes.

79. All these evidence of P.W. Nos. 1, 3 and 4 and P.W. Nos. 12, 13 and 14 undoubtedly proved that after Parmar, the accused No. 1, learned Raju being admitted to Bhagawati Hospital he started taking steps including giving inducement and offer of money to see that no complaint should be lodged against him and against the other accused. In this regard it was contended by Mr. Mundargi that none of the witnesses say that accused No. 1 had offered money to Balu and others and had suggested that Raju be removed to some private hospital. According to Mr. Mundargi, if some other officers offered money, that blame can not be put on accused No. 1. There is absolutely no substance in this submission. As soon as Parmar the accused No. 1, learnt that Raju was admitted in hospital, he was bound to involve or likely to involved him along with other accused for the assault, they rushed to Bhagawati Hospital. In fact, they had no business to go to Bhagawati Hospital. They should have remained miles away from Bhagawati Hospital but they went there, particularly, accused Nos. 1, 3 and 7. It was in their presence that offer of money of Rs. 10 to 20 thousand and offer or proposal to remove Raju to some private hospital was given. There can be no dispute that this was done at the instance of the accused. Had the accused no role to play in the assault and if at all Raju was assaulted by his kidnappers or abductors then none of the accused would have cared or bothered about Raju even for a minute after he was discharged by the Magistrate. Therefore, very presence of the accused in the Bhagawati Hospital shows that they wanted to do everything within their power and limits to stop Raju from lodging a complaint or to pressurise Raju's relatives from getting the matter out of their control.

80. For all these reasons it is clear that there is absolutely no substance in this appeal and in the defence raised by the accused, firstly, of total denial, and secondly, of false implication. It is necessary to mention here that neither P.W. No. 1, 3 or 4 had any grudge against the present accused. They had not stated anywhere that these accused assaulted Raju, they have nothing to do with the accused, and therefore, their evidence is required to be accepted without any hesitation. Mr. Mundargi criticized the evidence of each of the prosecution witness. I have considered his submissions at length regarding all the important witnesses who had bearing on the prosecution case. The trial Court has also given due consideration to the submissions made by the defence and has rejected their story out right.

81. I do not find any reason to interfere with the findings and judgment of the trial Court, and therefore, appeal is required to be dismissed.

82. In fact, this is a case where looking to the seriousness of the matter and the manner in which an innocent person like Raju was brutally beaten up, assaulted and tortured, the State should have come in appeal against the acquittal of the accused u/s 304 of the Indian Penal Code, even otherwise this Court could have issued notice for enhancement of the sentence at the time of admission, but since no such notice was issued, it was not proper to issue such notice when the arguments were heard by me finally.

83. There is an evidence of Harshwardhan, Ramesh and Mangesh (P.W. Nos. 5, 6 and 7 respectively) who were all present when Raju was assaulted in Kachcha Lock Up of Oshiwara Police Station. All these witnesses have turned hostile and they can not be blamed because if Raju could be tortured to death, then their supporting the prosecution in this case, may bring wrath upon them in future. For all these reasons I pass the following order :

ORDER :

84. The appeal is dismissed and the judgment of conviction and sentence of the trial Court against all the accused is maintained, confirmed and up held.

85. The accused to surrender before the trial Court within four weeks of this order for undergoing sentence.

86. Certified copy expedited.

87. Appeal dismissed.