

CASE NO.:
Appeal (crl.) 106 of 2002

PETITIONER:
Sahadevan @ Sagadevan

RESPONDENT:
State rep. by Inspector of Police, Chennai

DATE OF JUDGMENT: 01/11/2002

BENCH:
N.Santosh Hegde & K.G.Balakrishnan.

JUDGMENT:
J U D G M E N T

(With CrI.A.No.105/2002)

SANTOSH HEGDE, J.

The High Court of Judicature at Madras, by its judgment dated 11th June, 2001 dismissed the Criminal Appeal No.467 of 1992 filed by the two appellants who have filed the above criminal appeals before us, whereby the High Court confirmed the judgment of the Sessions Judge, Chengalpattu made in S.C. No.17 of 1992, convicting and sentencing the appellants herein for various offences charged against them.

The two appellants before us and three others were charged for various offences under Sections 330, 348 and 302 read with Sections 34 and 201 IPC for having committed the murder of one Vadivelu on 5.3.1985. The learned Sessions Judge while acquitting three of the accused, convicted the appellants to undergo rigorous imprisonment for a period of five years for an offence punishable under Section 330 IPC. He also convicted these appellants to undergo rigorous imprisonment for three years under Section 348 IPC and to undergo 7 years imprisonment for an offence punishable under Section 201 IPC and further convicted these appellants to undergo imprisonment for life for an offence punishable under Section 302 read with Section 34 IPC and directed the sentences to be undergone concurrently.

The brief facts necessary for the disposal of these appeals are as follows :

A Crime No. 37/1985 was registered in the Wallajahbad Police Station in regard to the murder of a lady and her son in which case the deceased Vadivelu in these appeals and husband of the deceased lady, Ekambaram (PW-8) and one Loganathan were the suspects and the police were on the look out to arrest these three persons. According to the prosecution case, PW-3 and PW-4 who were the Constables of the Wallajahbad Police Station along with another Constable by name Ponnuswamy were entrusted with the responsibility of locating and producing the deceased Vadivelu for the purpose of investigation in the said case. The prosecution alleges that after considerable effort they with the help of Sivaprakasam who was the brother-in-law of the deceased apprehended the said Vadivelu at Chennai and brought him to the Police Station at Wallajahbad on 5.3.1985 and produced him before the A-2 who was in-charge of the police station at Wallajahbad. The

said A-2 is an appellant before us. It is the case of the prosecution that A-1 who is another appellant before us, was also a Sub-Inspector of Police in the said police station, and was present in the said station at that time. It is also the case of the prosecution that PW-8 Ekambaram who was another suspect in the double murder case, referred to herein above, was already arrested by the said police and was in the lock up of the said station, though his arrest was not officially recorded. The prosecution case further is that during Vadivelu's custody in the Wallajahbad Police Station, A-1 and A-2 assaulted the deceased by using a Ruler which was noticed by PW-8. The prosecution then also states that Sivaprakasam who had accompanied Vadivelu with PWs 3 and 4 when he was brought from Chennai also noticed the beating of Vadivelu. The prosecution then states that this Sivaprakasam narrated the incident to PW-1 the wife of Vadivelu, as also to his brother PW-6. According to the evidence of PWs 3, 4 and 8, A-1 and A-2 thereafter took the deceased in a jeep and was produced before PW-25 who was investigating the double murder case, who in his evidence before the Court stated that after questioning the said deceased he asked A-1 and A-2 to release the deceased. The prosecution further states on 5.3.1985 that A-1 and A-2 went in a police jeep to the residence of PW-1 at about 5 p.m. and asked her to hand over certain account books maintained by Vadivelu. This was done in the presence of PW-5. It is also stated that PW-5, while coming out that evening with the police towards the jeep, saw his father sitting in the jeep, who was then driven away in the jeep by accused A-1 and A-2. The further case of the prosecution is that in the early morning at about 2 a.m. on 6.3.1985 A-1 again went to the residence of PW-1 and asked for a photograph of Vadivelu. During that visit, it is stated that A-1 told PW-1 that her husband has escaped from there, when he was permitted to sleep in the Verandah of the police station. This visit of the accused was also noticed by PW-14 who is a retired School Master and the landlord of PW-1 as also PW-1's son PW-5. It is the case of the prosecution thereafter, that since Vadivelu did not come back to the house and when Sivaprakasam went to the police station and enquired about the whereabouts of Vadivelu, he was told that he had escaped from custody. A doubt arose in the mind of said Sivaprakasam as to the safety of Vadivelu and, hence, he discussed the matter with his brother PW-6 and also PW-1, and suspected that it is possible that Vadivelu must have been done away with by the concerned police. Therefore, after deliberation, they filed a writ of habeas corpus before the High Court in Chennai, wherein the High Court called upon the respondent-police which included the appellants herein to file their return. It is the case of the prosecution that in the return filed by the respondents in the said habeas corpus writ petition they took the stand that Vadivelu had escaped from the police custody and was absconding. Since after repeated opportunity the deceased was not traced by the police in spite of the directions issued to them by the Court, the High Court by its order dated 7.12.1988 directed the Director General of Police, Madras to issue instructions to concerned C.B.C.I.D. to register a case on the missing of Vadivelu from 5.3.1985. The said order also noticed that admittedly the said Vadivelu was taken into custody by the police and, therefore, the above direction was given to the Director General of Police. It is consequent to this direction issued by the High Court, that PW-26 registered a crime No.6/89 and initiated the investigation into the missing case of Vadivelu and PW-30 thereafter registered a case under

Section 302 IPC after seeking permission from the superior officer, and filed a charge-sheet against the above said accused persons on 22.11.1991.

At this stage, it is necessary to note that from the prosecution case, it is to be seen that on the morning of 6.3.1985 a dead body with a crushed head was found within the jurisdiction of Enathur which was noticed by PW-16 Panneerselvam who was then working as a Village Administrative Officer of Enathur, who lodged a complaint in regard to the same which was registered as Crime No.141/85 for an offence under Section 304A IPC, the investigation of which was taken up by PW-25 and later on the said case closed on 10.10.1986 as "not traceable". It is the prosecution case in these proceedings that this dead body was that of Vadivelu which was disposed of by the appellants to conceal the actual cause of death, after disfiguring his head.

The learned Sessions Judge on considering the material on record came to the conclusion that even though the prosecution case was based on circumstantial evidence, the prosecution was able to prove these circumstances beyond all reasonable doubt to establish the guilt of the appellants, and relying on such proved circumstances, convicted the appellants as stated above. The circumstances relied on by the learned Sessions Judge are follows :-

(1) PWs. 3 and 4 took Vadivelu into custody and handed him over to the 2nd accused in the Wallajahbad Police Station on 5.3.1985 morning.

(2) PW-8 saw the accused 1 and 2 beating the deceased on 5.3.1985 in Wallajahbad Police Station.

(3) PW-5, the son of the deceased saw Vadivelu in the evening of 5.3.1985 in the jeep in which the accused 1 and 2 came to the house of Vadivelu to take the account books from the house. Thereafter, the accused left along with the deceased.

(4) A-1 came to the house of PW-1 at about 2 a.m. on 6.3.1985 and informed her that Vadivelu had escaped from their custody and offered to pay Rs.20/- to PW-1 towards the expenses.

(5) The recovery of the body of Vadivelu with head injuries.

(6) The tampering of records viz., Ex.P-4 log book of the vehicle; P-15 case diary and secreting of the negatives (photographs of Vadivelu) from PW-18.

(7) Failure on the part of the accused to give any explanation or information so as to the release of Vadivelu from the police custody.

On appeal, the High Court after taking note of the law in regard to basing conviction on circumstantial evidence, as enunciated by this Court, agreed with the trial court that the prosecution has established the guilt of the accused. It, however, did not accept the circumstances relied on by the trial court, viz. the identification of the body of Vadivelu. In spite of the same, it held from the rest of the circumstances that the prosecution has established its case against the appellants and, hence, it concurred with the trial court.

In these appeals, the learned counsel appearing for the appellants very seriously contended that most of the circumstances relied upon by the courts below have not been proved beyond reasonable doubt. They argued that in the absence of any material to establish that the body that was found in Crime No.141/85 was that of the deceased

Vadivelu, it would be hazardous to presume that the deceased Vadivelu had died because of the alleged beating given to him by the appellants i.e. assuming that such an incident did take place in the Police Station on 5.3.1985. The argument of the learned counsel in this regard is that in cases where the corpus-delicti is not found, there should be some acceptable evidence produced by the prosecution to prove that the death of the missing person was in fact caused, and the accused persons are directly responsible for causing such death, and that the alleged injury caused to the missing person was sufficient in the normal course to cause such death. In the absence of such proof as to the actions of the accused persons connecting them with such assault or injury, it is not possible to convict the appellants of an offence punishable under Section 302. Elaborating this contention, the learned counsel argued that there is absolutely no evidence whatsoever to hold, that by the so called attack on Vadivelu in the police station he had died or that the injury caused, if any, on Vadivelu by these appellants were sufficient in the normal course to cause a death. They contend that even according to the evidence of PW-8, the deceased was alive when he was taken to the police station, which is supported by the evidence of PWs 25, 1 and 5, to show that Vadivelu was alive till 5 O'clock in the evening of 5.3.1985. Therefore, it is their contention that the deceased could not have died because of the beating suffered by him in the police station. The learned counsel also argued in the absence of corpus-delicti, the prosecution should establish by link evidence that Vadivelu had actually died because of the acts of the appellant without which there can be no conviction for an offence under Section 302 IPC.

They further contend that the evidence of the prosecution witnesses cannot be accepted for various reasons, for example, so far as PW-8 is concerned, he was an accused in a crime wherein the allegations against him was that he along with Vadivelu and Loganathan were responsible for the murder of PW-8's wife and son, which was investigated by the police and, therefore, he had every reason to implicate the police, including these appellants falsely. They also contend that the evidence of PW-8 is not corroborated in any manner by any other evidence led by the prosecution and, therefore, it is not safe to rely on his evidence. They contend that the evidences of PWs 1 and 5 even if it is to be accepted as being true, would not further the prosecution case, in any manner, because their evidence only shows that Vadivelu was seen in the company of the appellants on the evening of 5.3.1985 and A-1 had visited the house of PW-1 in the mid night between 5th and 6th March, 1985. This evidence would not, in any manner, support the prosecution case to base a conviction on the appellants for having murdered Vadivelu.

Learned counsel appearing for the appellants further contended from the prosecution case itself that it is clear that the deceased was released by the police after interrogation and he had gone away, therefore, there could be no reason why these appellants should be held guilty for the murder of Vadivelu, more so when the factum of death of Vadivelu itself is highly doubtful. The learned counsel very strongly supported the finding of the High Court that the identification of the body found in Crime No.141/85 has not been proved to be that of the deceased Vadivelu. In this regard, they pointed out that the wife of the deceased had not mentioned the identification mark on the body of the deceased in the first instance, when her statement was recorded by the police.

In the above background, we will now discuss the various circumstances taken into consideration by the courts below, to come to the conclusion that the appellants are guilty of the offence charged against them.

So far as the circumstance which pertains to the production of Vadivelu before PW-2 in Wallajahbad Police Station is concerned, there is evidence of PWs. 3, 4 and 8 which, in our opinion, is practically admitted by the defence. It is not in dispute that Vadivelu was one of the suspects in Crime No.141/85 and the police of Wallajahbad Police Station were on the look out for him. It is not in dispute, as spoken to by PW-3 that he along with PW-4 and another constable was deputed to trace the said Vadivelu on 28.2.1988. It is also clear from the evidence of PWs 3 and 4 that they sought help of Sivaprakasam, the brother-in-law of the deceased to identify and trace the said Vadivelu since PWs 3 and 4 did not know Vadivelu personally. From the evidence of PW-3, it is to be seen that these persons i.e. PWs 3, 4, Sivaprakasam and another constable searched for Vadivelu in Kancheepuram, Gudiatham, Keelapatti, Ambur, Vyasarpadi and finally traced him at Chennai and brought him to the police station at Wallajahbad on 5.3.1985 morning. This was also spoken to, by PW-8, who according to his evidence was already in police custody on that day in Wallajahbad Police Station. This evidence of PWs 3 and 4 is not challenged in the cross-examination. As a matter of fact, as was observed by the two courts below, even in their statement made under Section 313 Cr.P.C., the appellants have not disputed the fact that Vadivelu was produced in the police station. A-1, of course, in his statement had stated that he was produced before A-2, meaning thereby, he was not produced before him. But the actual factum of production of Vadivelu in the police station on 5.3.1985 is not disputed. In these circumstances, it is clear that Vadivelu was in the police station on 5.3.1985. It is seen from the evidence of PW-8 that he saw A-1 and A-2 assaulting Vadivelu with a Ruler. In regard to this part of the prosecution case, the defence contends that there is no material to show that this witness was in fact in police custody on 5.3.1985 because the official records of the police station shows his arrest has been made only on 9.3.1985. But in the cross-examination PW-8 in specific terms has stated that he was arrested before Vadivelu was brought to the police station and kept in the police station illegally and he was in such custody for about 20 days before he was produced before the Magistrate. The two courts below, in our opinion, rightly rejected the defence case that PW-8 was arrested only on 9.3.1985 and, therefore, we have no hesitation in accepting the fact that PW-8's evidence as to the beating of Vadivelu on 5.3.1985 in the police station at Wallajahbad. The same cannot be rejected merely on a suggestion made by the defence. It is also clear from the evidence of PW-25, that A-2 produced Vadivelu before him on 5.3.1985 sometime in the afternoon. This factor also goes to show that A-2, even according to PW-25 was with Vadivelu on 5.3.1985 in the afternoon. From the evidence of PWs 1 and 5, it is clear that on the evening of 5.3.1985 Vadivelu was in the company of A-1 and A-2. Therefore, it is clear that the prosecution has established beyond all reasonable doubts that Vadivelu was in the company of A-1 and A-2, atleast till about 5 p.m. in the evening of 5.3.1985. On the basis of the above evidence, it can be safely concluded that the first circumstance alleged against the accused person stands proved by the evidence of the prosecution.

In regard to the second circumstance which speaks of

the factum of assault of Vadivelu by A-1 and A-2, the same is sought to be established by the prosecution from the evidence of PW-8. We have already held that the prosecution case that PW-8 was arrested much earlier than 9.3.1985 and was in the Wallajahbad Police Station on 5.3.1985 is acceptable. Therefore, the defence case that Vadivelu was arrested only on 9.3.1985 has to be rejected. In such circumstances and having perused his evidence and the line of cross-examination, we are satisfied that the evidence of PW-8 as accepted by the two courts below must be true and, therefore, we find no reason to differ from the findings of two courts below and hold that the prosecution has established the fact that PW-8 was witnessed the assault of Vadivelu by the appellants on 5.3.1985, when he was brought to the Wallajahbad Police Station.

We have already noticed from the evidence of PWs. 1 and 5, that A-1 and A-2 came to the house of PW-1 on 5.3.1985 at about 5 p.m. and asked for the accounts books of Vadivelu. It is also seen at that time PW-5 noticed Vadivelu sitting in the police jeep and before he could call his mother PW-1, accused drove away with Vadivelu. From this evidence, circumstance No.3 stands proved.

From the evidence of PW-14 and PWs 1 and 5, it is clear that A-1 did go to the house of PW-1 in the early morning at 2 a.m. on 6.3.1985 and ask her for a photograph of the deceased and offered to pay Rs.20/- towards the expenses of PW-1, and told PW-1 that her husband had escaped from their custody while sleeping in the Verandah. This shows that A-1 has made out a case of escape of the Vadivelu on the night of 5.3.1985. Therefore, it is clear that circumstance No.4 relied upon by the prosecution as to the appellants trying to make out a false case of Vadivelu escaping from the police station stands established.

The 5th circumstance considered by the courts below pertains to the identification of the dead body found at Enathur. This is a very important circumstance so far as the prosecution case is concerned. Learned Sessions Judge accepted the prosecution case that the said dead body was that of Vadivelu. This was on the basis of the evidence of PWs.1 and 6, who had pointed out the identification marks on the person of Vadivelu, and by comparing these identification marks with those found by the doctor who conducted the post mortem. The trial court also placed reliance on the evidence of PW-18, the photographer, and held that the body which was the subject matter of Crime No.141/85 was that of Vadivelu's. However, the High Court placing an undue emphasis on the failure of PWs.1 and 6 to mention the approximate height and weight of Vadivelu, came to the conclusion that the prosecution has not proved that the said dead body was that of Vadivelu.

Learned counsel appearing for the appellant supported the finding of the High Court by pointing out that the identification marks spoken to by PWs.1 and 6 were not mentioned in the first instance by these witnesses when their statement was recorded. They also supported the conclusion of the High Court, that in the absence of the description of the dead body as to its height and weight, in the evidence of PWs.1 and 6, it should be held that the prosecution has failed to establish the identification of the dead body. They also contend that the evidence of PW-18 in this regard is wholly artificial and should not be relied upon because of the fact that the said witness could not have remembered the features of the dead body which he had seen about 7 years

earlier.

We have carefully examined the evidence of PWs.1 and 6. They have stated that Vadivelu had a birthmark on his right side buttocks as also a surgical mark on the back side of his shoulder. These witnesses have also stated that he had undergone circumcision, which is not a common thing amongst the members of the caste to which Vadivelu belonged. The doctor who conducted the post mortem examination of the dead body had in his evidence stated that these identification marks were found on the said body and, therefore, the identification marks spoken of by PWs.1 and 6 found on person of Vadivelu tally with the identification marks found on the dead body on which the doctor conducted the post mortem, indicating that the body was that of Vadivelu. This apart, it is seen from the evidence of PW-1 that on the day when Vadivelu went missing, he was wearing a white shirt and a white dhoti. PW-3, the Constable who arrested Vadivelu has in his evidence stated that when he arrested him and produced him in Wallajahbad Police Station, he was wearing a white shirt and a white dhoti. The dead body which was found in Crime No.141/85 was also found wearing a white shirt and a white dhoti. This further supports the prosecution case in regard to the identification of the dead body. The fact that PWs.1 and 6 did not speak about the approximate height and the weight of Vadivelu would not, in our opinion, on the facts of this case outweigh the other evidence adduced by the prosecution for the identification of the dead body. In our opinion, the High Court has put an undue emphasis on non-mentioning of the approximate height and weight of Vadivelu, especially when 3 very specific identification marks were pointed out by these witnesses. The fact that these identification marks were stated by these witnesses in their subsequent statement also would not, in our opinion, in any manner reduce the evidentiary value of their evidence. In these circumstances, we are of the considered opinion that the Sessions Court was justified in placing reliance on this part of the prosecution evidence and coming to the conclusion that the body which was recovered in Crime No.141/85 was that of Vadivelu, and that the High Court was not justified in reversing this finding while coming to this conclusion. We have deliberately not placed any reliance on the evidence of PW-18 since we find some force in the arguments addressed on behalf of the appellants that the identification through the photograph made by PW-18, after nearly 7 years may not be safe to be relied upon.

The 6th circumstance pertains to the tampering of the entries in the log book of the Police Jeep TNL 9403, and also secretion of certain photographs and negatives taken by PW-18. From the material on record, it is clear that these tamperings and secretions took place only when the log book, photographs and negatives were in the possession of the police, therefore, the courts below were justified in drawing an inference that tampering of the log book as well as secretion of photographs and negatives was done by the concerned police to help the accused, therefore, the courts below were justified in treating this piece of evidence as a link evidence in the process of considering the circumstances against the appellants.

The last circumstance relied on by the courts below pertains to the stand taken by the appellants in the trial as to parting company with Vadivelu. Here we must notice that as

discussed hereinabove, the prosecution has established the fact that Vadivelu was seen in the company of the appellants from the morning of 5.3.1985 till at least 5 p.m. on the same day, when he was brought to his house and thereafter his dead body was found in the morning of 6.3.1985. Therefore, it has become obligatory on the appellants to satisfy the court as to how, where and in what manner Vadivelu parted company with them. This is on the principle that a person who is last found in the company of another, if later found missing, then the person with whom he was last found has to explain the circumstances in which they parted company. In the instant case the appellants have failed to discharge this onus. In their statement under Section 313 Cr.P.C. they have not taken any specific stand whatsoever. In the evidence of PW-25, it is elicited that on 5.3.1985 in the afternoon when Vadivelu was produced before the said witness, he after interrogation allowed Vadivelu to go, but then it is found from his evidence that he instructed A-1 to keep a watch over Vadivelu. In such circumstances, it was incumbent upon A-1 to have explained to the court in what circumstances they parted company. He has not given any explanation in this regard. On the contrary, the prosecution has established the fact that on the very day at about 5 p.m., Vadivelu was brought to the house of PW-1 by the appellants which was seen by PW-5. This part of the evidence of PW-5 has gone unchallenged in the cross-examination and, therefore, we will have to proceed on the basis that, what is stated by PW-5 in this regard is true. If that be so, the prosecution has established the fact that on 5.3.1985 at 5 p.m. Vadivelu was still in the company of these appellants and, therefore, in the absence of any specific explanation from the appellants in this regard, and in view of the other incriminating circumstances against the appellants having been proved by the prosecution, an adverse inference will have to be drawn against these appellants as to their part in the missing of Vadivelu. At this point, it may be relevant to note that though no specific stand has been taken by the appellants as to their parting company with Vadivelu, in their statement under Section 313 Cr.P.C., it is seen from the evidence of PWs.1 and 5 that A-1 told the said witnesses on the night intervening between 5th and 6th March, 1985 that Vadivelu had escaped from the Police Station when he was allowed to sleep in the verandah of the Police Station. This explanation given by A-1 to PW-1 which was also heard by PWs.5 and 14, clearly shows that the same is totally false and obviously was an excuse made by the appellants to conceal the true facts and, therefore, this circumstance of A-1 making a false statement to PW-1 can also be taken as a circumstance against the appellants, in establishing the appellants' guilt. This Court in more than one case has held, that if the prosecution, based on reliable evidence, establishes that the missing person was last seen in the company of the accused and was never seen thereafter, it is obligatory on the accused to explain the circumstances in which the missing person and the accused parted company. See *Joseph v. State of Kerala* [2000 5 SCC 197]. Therefore, we are in agreement with the finding of the courts below that circumstance No.7 also stands established against the appellants.

In view of this fact, we have agreed with the trial court that the dead body found on 6.3.1985 is that of Vadivelu. We need not answer the argument of the appellant that there is no linking evidence produced by the prosecution to establish the death of Vadivelu, which is an argument based on certain observations of this Court made in the case

of Ram Gulam Chaudhary & Ors. vs. State of Bihar, (2001 (8) SCC 311)

It was also argued before us on behalf of the appellants that the courts below ought not to have placed any reliance on Ex. P-26 which is supposed to be a note of post mortem examination on the body, found in Crime No.141/85, on the ground that the said note is not proved in accordance with law. From the records, we see that this document was accepted by the courts below with consent of the parties and no objection whatsoever was taken at any time during the time before the trial court nor even at the appellate stage. It was contended for the first time in this Court that this document ought not to have relied on by the courts below. We do not think that we should permit this question to be raised at this belated stage, without really knowing what was the reason for allowing this document to be admitted in evidence by the defence. We find, having permitted this document to be put in evidence by consent, the defence has denied the prosecution an opportunity of properly bringing the said document in evidence and, hence, we think that it is not appropriate for us to permit the appellants to raise this objection at this belated stage.

It is then argued on behalf of the appellants that from the prosecution case itself, it is clear that the prosecution is not sure when exactly Vadivelu was taken away from the Police Station. It is also argued on behalf of the appellants that there is so much discrepancy in the prosecution case, that it is not safe to place reliance on the same to base a conviction. It is true that there are some inconsistencies in the prosecution case, but then we cannot be oblivious of the fact that this case had a chequered career because of the involvement of the Police Officers in the death of Vadivelu. It has come on record, that based on the allegations made in a habeas corpus writ petition, the High Court of Madras had directed an investigation to be conducted as to the missing of Vadivelu. In the said writ petition itself, serious allegations were made against the appellants and the High Court was constrained to issue a direction as per its order dated 7.12.1988, that the Director General of Police, Madras, should issue instructions to the concerned CBCID to register a case on the missing of Vadivelu. In that order itself, the High Court had noticed that Vadivelu was taken into custody by the Police and the Police had stated that he had escaped from their custody and absconded thereafter. In spite of the directions being given on 7.12.1988 we find that the chargesheet was laid only on 22.11.1991. During the trial, we find some material witnesses have turned hostile and other witnesses like PW-25 who even though did not turn hostile, have tried to help the defence to the best possible extent. Thus, it has become the duty of the courts below to find out the truth as to the prosecution case. In a situation like this, as held by this Court, the benefit of an act or omission of the investigating agency, should not go to the accused in the interest of justice. In this regard the following observations of this Court in the case of Ram Bihari Yadav v. State of Bihar & Ors. [1998 4 SCC 517] may be noted :

"Though the prosecution has to prove the case against the accused in the manner stated by it and that any act or omission on the part of the prosecution giving rise to any reasonable doubt would go in favour of the accused, yet in a case like the present one where the record shows that investigating

officers created a mess by bringing on record dying declaration and GD Entry and have exhibited remiss and/or deliberately omitted to do what they ought to have done to bail out the appellant who was a member of the police force or for any extraneous reason, the interest of justice demands that such acts or omissions of the officers of the prosecution should not be taken in favour of the accused, for that would amount to giving premium for the wrongs of the prosecution designedly committed to favour the appellant. In such cases, the story of the prosecution will have to be examined de hors such omissions and contaminated conduct of the officials otherwise the mischief which was deliberately done would be perpetuated and justice would be denied to the complainant party and this would obviously shake the confidence of the people not merely in the law enforcing agency but also in the administration of justice."

Placing reliance on the above enunciation of law, we reject the above argument of the appellants.

It is then contended on behalf of the appellants that the Police Officers have no motive whatsoever to have committed the murder of Vadivelu and the prosecution case being one of circumstantial evidence, the benefit of doubt should be given to the appellants. We do not think it is possible to accede to this request of the appellants either. This Court had held in the case of circumstantial evidence that if the circumstances relied upon by the prosecution are proved beyond doubt, then the absence of motive would not hamper a conviction. See *Mani Kumar Thapa v. State of Sikkim* [2002 7 SCC 157].

On behalf of appellant No.1, it is then argued that the said appellant was not the investigating officer in Crime No.37/85 and he had no reason whatsoever to take part in the beating of the deceased, and that it is clear from the prosecution case that this appellant was not with A-2 when Vadivelu was taken to be produced before PW-25.

According to the learned counsel, A-1 was in a meeting between 9 a.m. and 2 p.m. on 5.3.1985 with his superior officers which is proved by the evidence of PW-25.

Therefore, he contended that this appellant had no part to play in the alleged murder of Vadivelu and he has been implicated falsely. We cannot accept this evidence addressed on behalf of appellant No.1. It is true that this accused was not the investigating officer in the case of double murder. Still it is clear from the evidence that he was in the Police Station when Vadivelu was brought to the Police Station. From the evidence of PW-8, it is seen that he also took part in the assault on Vadivelu. It is further clear from the evidence of PWs.1 and 5 that this appellant was found in the company of Vadivelu and A-2 when they came to the house of PW-1 at about 5 p.m. on 5.3.1985. It is also clear from the evidence of PWs.1, 5 and 14 that this appellant went to the house of PW-1 at about 2 a.m. in the morning of 6.3.1985 to inform PW-1 that Vadivelu had escaped from the Police Station. In such circumstances, we are of the opinion that the arguments addressed on behalf of this appellant cannot be accepted.

Before concluding, we think it appropriate to refer to some of the observations of this Court in a case akin to the

facts of the present case that is the case of Bhagwan Singh & Anr. vs. State of Punjab, 1992 (3) SCC 249 which appropriately refers to the duties of the police officers and the consequences of their act which may have a bearing on the facts of this case.

"A case cannot be thrown out merely on the ground that the dead body is not traced when the other evidence clinchingly establishes that the deceased met his death at the hands of the accused. It may be a legitimate right of any police officer to interrogate or arrest any suspect on some credible material but it is needless to say that such an arrest must be in accordance with the law and the interrogation does not mean inflicting injuries. It should be in its true sense and purposeful namely to make the investigation effective. Torturing a person and using third degree methods are of medieval nature and they are barbaric and contrary to law. The police would be accomplishing behind their closed doors precisely what the demands of our legal order forbid. In Dagdu v. State of Maharashtra this Court observed as under : (SCC p.92, para 88)

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

It is a pity that some of the police officers, as it has happened in this case, have not shed such methods even in the modern age. They must adopt some scientific methods than resorting to physical torture. If the custodians of law themselves indulge in committing crimes then no member of the society is safe and secure. If police officers who have to provide security and protection to the citizens indulge in such methods they are creating a sense of insecurity in the minds of the citizens. It is more heinous than a game-keeper becoming a poacher."

For the reasons stated above, we find no merit in these appeals and the same are dismissed.

JUDIS