
(2005) 01 BOM CK 0034
In the Bombay High Court
Case No : Criminal Appeal No. 242 of 1996

State of Maharashtra

APPELLANT

Vs

Sadashio Mundaji Bhalerao and Others

RESPONDENT

Date of Decision : 17-01-2005

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 174, 313
Evidence Act, 1872 — Section 27, 8
Penal Code, 1860 (IPC) — Section 201, 224, 300, 302, 304

Citation : (2005) 01 BOM CK 0034

Hon'ble Judges : S.T. Kharche, J;J.N. Patel, J

Bench : Division Bench

Advocate : A.B. Choudhari and D.B. Yengal, app, for the Appellant; C.H. Jaltare, for Respondent Nos. 1, 7 and 9, V.M. Deshpande, for Respondent Nos. 2, 3 and 4, R.L. Khapre, for Respondent Nos. 8, 10 and 11 and S.A. Brahme, for the Respondent

Judgement

This Judgment has been overruled by : Sadashio Mundaji Bhalerao Vs. State of Maharashtra, AIR 2007 SC 1028 : (2007) CLT 847 Supp : (2006) 12 SCALE 470 : (2006) 9 SCR 733 Supp

J.N. Patel, J.—This appeal is preferred by the State challenging the judgment and order passed by the 2nd Additional Sessions Judge, Wardha, in Sessions Trial No. 19 of 1992 decided on 30-4-1996, acquitting the original accused, who are joined here as respondents, on charges of having committed offences under Sections 302 and 201 read with Section 34 of I.P.C.

2. The background facts can be summed-up as under:

A complaint came to be lodged by one Namdeo Tulshiram Taywade, resident of Village Takarkheda within the jurisdiction of Police Station Arvi, alleging the incident the dacoity which took place in his place in which the inmates of his house got injured. On the basis of the complaint of Namdeo Tulshiram Taywade, the police registered Crime No. 254 of 1987 on 24-10-1987 at 9.50 O"Clock

against the unknown persons for having committed offences under Sections 395, 397 and 398 of I.P.C. The investigation of the case was with P.I. Bhadikar of Police Station Arvi, who is original accused No. 2. On 5-11-1987 at 00.15 hours, the police arrested seven persons, namely (1) Bastam Devidas Pawar, aged 30 years, (2) Comrade Bhimrao Pawar, aged 30 years, (3) Dilip Khusmya Ghosale, aged 20 years, (4) Chaubharat Ramchandra Ghosale, aged 30 years, (5) Partya Khusmya Ghosale, aged 35 years, (6) Navbharat Ramchandra Ghosale, aged 35 years, and (7) Ganagacharan Sukhadeo Pawar, aged 26 years. All these persons were residents of Mardi. On their arrest, the police moved an application before the Judicial Magistrate, Arvi, seeking police custody remand for the purpose of investigation of the case. It appears that the suspects were produced at the residence of the learned Magistrate and on the basis of the facts stated in the remand application that the arrested persons are suspected of having committed dacoity in the house of Sudhakar Atmaram Taywade of Takarkheda and they beat the inmates of the house, namely Sudhakar Atmaram Taywade, and Sou. Kunda Shankar with stones and sticks and injured them. They also opened fire from a country-made revolver, because of which Subhash son of Pralhad Kale got injured and at the gun point, they snatched away the ornaments on the persons of the ladies and gents. The accused persons came to be arrested on the basis of the description given by the complainant. They are the seasoned house breakers and thieves. The police custody remand of seven days was sought, that is till 12-11-1987, for the purpose of recovery of Katta (country-made pistol) used in the offence and stolen property. The learned Magistrate passed an order: "Accused produced, no complaint of illtreatment, perused the case diary, PCR granted till 11-11-1987 and the copy of the same endorsed to CJM". After taking the police custody remand, the suspects were brought to Police Station Arvi, where the necessary entry came to be taken in the arrest and lock-up registers.

It is the prosecution case the between the nigh of 5-11-1987 and 6-11-1987, P.Cs. Ramrao, Eknath and P.H.C. Ramchandra took out one Dilip Khusmya Ghosale, who was one of the accused in Crime No. 254 of 1987 registered under Sections 395, 397 and 398 I.P.C., from police lock-up and taken him to the D.B. Room for interrogation. In the said D.B. Room P.S.I. Shende, P.H.C. Ramchandra, P.Cs. Ramrao, Eknath, Tryambak, Gopalsingh, Samsherkha and Madhukar tied victim Dilip with a rope in the manner known as Ghodi (one of the common modes of torture applied by the police) and given him beating with kick and fist blows. This went on for some time till victim Dilip died. On this, the police officers, in order to cover up their misdeeds, registered an offence u/s 224 of I.P.C. against accused Dilip vide Crime No. 624 of 1987 on 6-11-1987 at 2.15 O'Clock, at the behest of Head Constable Uttamrao Kesharao Watkar (B.No. 443) of Police Station Arvi, who lodged the detailed report that when accused Dilip was taken for urination, he gave jerk to the police and ran away. Initially, the investigation of this crime was with P.I. Bhadikar, who is the original accused No. 2. But subsequently it was handed over to P.S.I. Bhalerao, who is the original accused No. 1. In sum and substance, the report lodged by Police Head

Constable Watkar was that accused Dilip was taken to the D.B. Room and P.I. Bhadikar, P.S.I. Shende, Police Constables Buckles No. 716, 870, 274, 917, 745, 471 and Police Head Constable Buckle No. 190 were interrogating him. During the time of interrogation, the accused was brought in the courtyard to enable him to urinate near the compound wall, from where he fled away.

According to the prosecution, factually the victim had died due to torture meted out to him in the course of interrogation. On this, his dead body was removed in Police Jeep No. MGF 2289. At the relevant time, the said Jeep was driven by one Siddusing. The dead body was taken to the hillock (Donger) at Mouza Walani under the jurisdiction of Police Station Katol, where it was kept in the bushes. The dead body was then taken from that place. P.H.C. Watkar removed the clothes on the dead body. Then it was placed the culvert under the bridge on the border of Andhra Pradesh in Adilabad. The clothes worn by the deceased were then burnt.

It so happened that the rumours spread over in the town of Arvi that one person by name Dilip had died in police custody, who was amongst the suspects arrested in connection with the Takarkheda dacoity case. Therefore, one Dr. Shyamsunder Leeladharji Bhutada lodged a report with Police Station Arvi that there is a hot discussion in the Village that on 6-11-1987 at about 2 O'Clock in the night, Arvi Police beat severely one suspect in the Takarkheda dacoity case in the D.B. Room for extracting the details of dacoity and during that, accused Dilip died and, therefore, he suspected that the police officers interrogating might have killed him. He requested in the said report to hold enquiry in the case. The report in the case came to be taken by P.I. Bhadikar and offence u/s 302 read with Section 34 of I.P.C. came to be registered vide Crime No. 263 of 1987 on 7-11-1987 at 18.25 hours. Initially P.I. Bhadikar - accused No. 2 - was investigating the case. Thereafter the investigation came to be transferred to P.I. Rode of C.I.D. (Crime). Then it was entrusted to PW 28 Bhagwangir Goswami on 25-12-1987, who was at the relevant time working as P.I., C.I.D. (Crime).

P.I. Goswami recorded the statements of witnesses including the co-accused in the Takarkheda dacoity case, who were arresting along with deceased Dilip. We are informed that except for Police Head Constable Watkar, all other police officers suspected in the commission of offence got pre-arrest bail. P.I. Goswami was also entrusted with the investigation in the Takarkheda dacoity case, which was registered vide Crime No. 254 of 1987 against Dilip and other co-accused for having committed offence u/s 395, 397 and 398 of I.P.C. and so also investigation in Crime No. 624 of 1987, which came to be registered against deceased Dilip for having committed offence u/s 224 of I.P.C. In the course of investigation, P.C. Tryambak (B.No. 27), who was arrested in the case on 26-5-1989, made a statement to show the place where the dead body of deceased Dilip was taken and dumped. Though nothing incriminating was found by way of discovery except for location of spot where the dead body was abandoned, the Investigation Officer could get the trail and he made enquiries

about the dead body from Adilabad Rural Police Station. On this, he came to know that on 9-11-1987, P.H.C. Gangadharan Maykal (PW 19) received a report from one Meshram Naga son of Pocha, the Kotwal of Village Pusai, that one unknown dead body was lying on a culvert on Pusai. On receiving this information, Police Head Constable Maykal registered Crime No. 87 of 1987 u/s 174 of Cr.P.C. As the information was received late, Circle Inspector B. Shantikumar (PW 26) visited the scene of offence on the next day. He held inquest over the dead body in the presence of panchas. According to him, he also summoned the Finger Print Expert, that is G. Vyankappa (PW 22), and got the dead body photographed. As the dead body was highly decomposed, G. Vyankappa took the finger prints of the deceased on the spot. Similarly, the doctor was also summoned, who conducted the post mortem over the dead body of the deceased. Thereafter the dead body was buried.

According to the prosecution, Paratya son of Kusamya Ghosale (PW 5) and Shobha widow of Dilip Ghosale (PW 6) identified the photograph shown to them as that of deceased Dilip. The Investigating Officer then collected the finger prints obtained by PW 22 G. Vyankappa and also obtained the specimen of the finger print of the deceased, which was found on the receipt executed by the deceased in favour of One Barkaji Shinganapure (PW 9). The said receipt as well as the finger prints obtained by the Finger Print Inspector of Adilabad Police were sent to Finger Print Expert PW 23 Arun Kulkarni, who gave the report that the finger prints in the specimen thumb impression tally with the finger prints in the thumb impression obtained by PW 22 G. Vyankappa, the Finger Print Inspector of Adilabad Police.

It is the case of the prosecution that in so far as the offence registered against Dilip and his associated for having committed dacoity vide Crime No. 253 of 1987, on investigation, the complicity of none of the suspects arrested in the case was found and, therefore, the Investigating Officer filed "A" Summary and all the suspects came to be discharged as "A" Summary was accepted by the learned Magistrate.

As regards the offence registered against deceased Dilip vide Crime No. 624 of 1987 is concerned, it was found to be false and, therefore, "B" Summary was filed in the case.

On completion of the investigation, the police found that the accused in the case have committed murder of Dilip Khusmya Ghosale in the course of interrogation by beating him and in order to cause disappearance of the evidence of the offence, they have disposed of his dead body by hiding it under the bridge in the jurisdiction of Police Station Adilabad in Andhra Pradesh.

In the meantime, P.I. Goswami got transferred and the investigation came to be handed over to PW 25 Uttam Solanke, SDPO, Arvi Division, who received the case diary of the crime from P.I. Goswami on 7-7-1990. On 21-9-1990, he sent all the investigation papers to Home Department along with the requisition report

for sanction to prosecute all the accused persons. On 22-1-1991, the sanction order was received by this witness, who then filed charge-sheet against the accused persons and that is how the accused persons came to be tried before the Court of Session on a charge of having committed offence under Sections 302 and 201 read with Section 34 of I.P.C.

3. In reply to the charge, all the accused persons pleaded not guilty and claimed to be tried. It is not disputed that deceased Dilip, who was arrested as a suspect along with the others having committed offence under Sections 395, 397 and 398 of I.P.C. registered vide Crime No. 254 of 1987, escaped from custody on the pretext of passing urine by suddenly giving jerk to P.H.C. Uttam Watkar (B.No. 443) and P.C. Madhukar (B.No. 716), who were taking him to the police station after his interrogation was over and for which a report was duly lodged by P.H.C. Uttam Watkar of Police Station Arvi and offence u/s 224 of I.P.C. came to be registered against the said Dilip vide Crime No. 624 of 1987 at Police Station Arvi. It is the case of the accused/respondents that they have been falsely implicated by the co-accused arrested along with Dilip for having committed offences like murder and so on.

4. In the trial, the prosecution led both direct and indirect evidence in the nature of examining eye-witnesses, who were in police and magisterial custody at Police Station Arvi. As regards the identity of the dead body of deceased Dilip, the police officers and Finger Print Expert from Adilabad have been examined and so also the Finger Print Expert of State of Maharashtra. In addition to this, the police have brought on record circumstantial evidence to prove the guilt against the original accused as well as the medical and forensic evidence in support of their case. On conclusion of the trial, the learned 2nd Additional Sessions Judge came to the conclusion that the direct evidence tendered by the prosecution in the form of eye-witnesses, that is PWs 2 Gangadhar, 3 Babarao and 7 Krushna, is not reliable, as they are interested witnesses and had every reason to falsely implicate the police officers of Police Station Arvi, as they had a grudge against them for arresting them in various offences plus certain contradictions and omissions have been brought on record to show that it would be unsafe to rely upon their evidence and one of the instances on which these witnesses have been found unreliable is that they did not inform to any one in respect of the incident of beatings to Dilip Ghosale in police custody.

5. On the point of identity of the dead body of Dilip Ghosale, the Trial Court found that the prosecution has not established that the alleged dead body was the Dilip Ghosale, as his own brother, that is Paratya son of Kusmya Ghosale (PW 5), and his widow, that is Shobha, (PW 6), did not identify the dead body. On forensic evidence, the Trial Court was of the opinion that the prosecution has failed to establish the genuineness of the finger prints sent for comparison to the Finger Print Expert and has disbelieved the sale receipt executed by deceased Dilip Ghosale in favour of one Barkaji Shinganapure, who had purchased one cow and calf from him in the sum of Rs. 750/-, on the count that this document was

produced late and from unreliable source and its execution itself appears to be very doubtful, as the greeze of the bullock cart was taken as an ink for affixing the thumb impression on the receipt.

6. While summing up, the learned Trial Court found that the evidence of none of the eye-witnesses to the incident, who has narrated that Dilip was beaten to death and his body was disposed of, can be relied upon. On the other hand, the Trial Court found that out of the two possibilities, the first possibility that Dilip died due to beatings given by the members of the Detection Branch, who were the accused persons, and the second possibility that Dilip must have given jerk to the police while he was being taken for urination and escaped from the clutches of the police, which is favourable to the defence, must be taken in this case and thus came to the conclusion that the prosecution has failed to establish the offence mainly against the accused persons and acquitted them of the offence punishable under Sections 302 and 201 read with Section 34 of I.P.C.

7. Shri A.B. Choudhari, the learned "A" Panel Counsel appearing for the appellant/State, submitted that the Trial Court has failed to appreciate the evidence in proper perspective and the reasons given by the Trial Court in disbelieving the witnesses to the incident are perverse, which has resulted in miscarriage of justice. Shri Choudhari further submitted that the prosecution has established that deceased Dilip was taken out from the Police Lock-up for the purposes of interrogation and was beaten by the police personnel to such an extent that he died and at the relevant time, the best possible evidence the prosecution could produce is of the suspected persons, who were arrested and lodged in police custody or magisterial custody and, therefore, there was no justification to discard the evidence of eye-witnesses mainly for the reason that the suspected persons were accused of serious offences and had a grudge against the police.

8. It is submitted by Shri Choudhari that the prosecution has placed before the Trial Court ample material proving that the dead body found in District Adilabad was that of deceased Dilip by leading independent evidence to that effect and, therefore, there was no reason to disbelieve such evidence. It is submitted that the fact that after Dilip died in police custody, he was taken away and never returned to the police lock-up, is not disputed except that the respondents have taken a plea that he escaped from their custody. However, the real story is otherwise. The dead body of Dilip was disbanded by the accused persons, who were responsible for committing his murder, and that the prosecution has brought on record sufficient evidence to link the dead body found in District Adilabad, which was independently enquired into by Adilabad rural Police u/s 174 of Cr.P.C.

9. It is submitted that the Trial Court has failed to take notice of the fact that the dead body of Dilip was traced after 4 to 5 days and was highly decomposed and, therefore, it was not possible for the Medical Officer, who conducted the autopsy on the dead body, to give the opinion as to the exact cause of death. The Trial Court, therefore, erred in holding that it cannot be the dead body of deceased Dilip.

10. It is submitted by Shri Choudhari, the learned "A" Panel Counsel for the appellant/State, that the Trial Court has rejected the evidence of material eye-witnesses on flimsy ground that they had not reported the matter to any other relative or superior officer, who visited the Police Station. It is submitted that the Trial Court has not taken a realistic approach that no person in detention of police would dare to complain against the police and this fact by Dr. Bhutada, which is at Exhibit 50. It is submitted that the very defence taken by the respondents/original accused that the said Dilip escaped from their custody has been found to be false and in the given facts and circumstances, this can be used as a conduct which points out at the guilt of the respondents/accused.

11. In a decision rendered by the Supreme Court in the case of State of Uttar Pradesh Vs. Ram Sagar Yadav and Others, , Shri Choudhari pointed out that the principle on the basis of which the Court held that the offence made out against the police officered is one u/s 302 I.P.C. as except in cases covered by the five exception mentioned in Section 300 culpable homicide is murder if the act by which the death is caused is done with the intention of causing death, or if the act falls within any of the three clauses of Section 300, namely, 2ndly, 3rdly and 4thly. It is submitted that in the said case, it was held where the accused brought to the police station was beaten by the constables with the intention to cause such bodily injury as the constable knew would cause his death, the injuries would fall under clause 2ndly of Section 300. Therefore, this is a fit case where all the original accused, who are the respondents before the Court, deserve to be convicted for the offence u/s 302 read with Section 34 and so also for the offence u/s 201 read with Section 34 of I.P.C.

12. Shri Choudhari also highlighted the fact as regards the degree of proof accepted in the case of custodial death by referring to the case of State of M.P. Vs. Shyamsunder Trivedi and Others, . It is submitted that in the case, the Supreme Court has held that the exaggerated adherence to and insistence upon the establishment of proof beyond every reasonable doubt, by the prosecution, ignoring the ground realities, the fact-situations and the peculiar circumstances of a given case, as in the present case, often results in miscarriage of justice and makes the justice delivery system suspect. It has also been held that in the case of custodial torture, very few persons, who are accountable for it, are convicted and went on to observe that as experience shows us, have been very few because the atrocities within the precincts of the police station are often left without any ocular or other direct evidence to prove who the offender are. Shri Choudhari submitted that this is almost an identical case where the victim died in a Police Station as a result of extensive beatings given to him and the police officers created false clues and fabricated evidence to conceal the truth, like in the present case an offence came to be registered that the victim had escaped from the lawful custody of the police.

13. Shri Choudhari also referred to two other cases, that is Bhagwan Singh and Anr. v. State of Pubjab and Bhagwan Singh and another Vs. State of Punjab, ,

wherein similar modus operandi was adopted by the police officers resulting custodial death of a victim and causing disappearance of the dead body, and submitted that the Supreme Court has highly deprecated the third degree treatment meted out to the accused persons in the custody of the police, by observing as under:

" It may be a legitimate right of any police officer to interrogate or arrest any suspect on some credible material but 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 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. 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."

14. It is also submitted that the conclusions drawn by the Trial Court are perverse in nature and it has gone to the extent of giving benefit of doubt by discarding evidence of eye-witnesses on untenable grounds.

15. By concluding his arguments, Shri Choudhari submitted that as the prosecution has sufficiently established the presence and participation of all the respondents, their acquittal deserves to be quashed and set aside and they deserve to be convicted accordingly.

16. On behalf of the respondents/accused, who are represented by a team of defence counsel, Shri Jaltare, the learned counsel, defends the judgment and order of acquittal of the Trial Court on all four. It is submitted that the respondents, who were at the relevant time serving in Police Department and posted at Arvi Police Station, District Wardha, were charged with the offences punishable under Sections 302 and 201 read with Section 34 of I.P.C. It is submitted that it is the prosecution case that all the respondents in furtherance of their common intention committed murder of one Dilip Ghosale in the premises of Police Station Arvi and in order to screen themselves from legal punishment, they caused certain evidence of the said offence to disappear, i.e. the dead body of Dilip. It is submitted that in order to establish the case, the prosecution has led evidence, which can be classified as direct evidence as well as indirect or circumstantial evidence. Shri Jaltare has pointed out to this Court that the evidence of the so-called eye-witnesses, who were at the relevant time in the custody at Police Station, is not consistent and is unreliable. It is submitted that the witnesses have given different versions of story as to how Dilip was taken out from the police lock-up and the period for which he was interrogated. It is submitted that the witnesses had also differed in the manner

in which the victim was taken out from police lock-up and the location where he was assaulted and the period for which the police are alleged to have assaulted.

17. It is further submitted that the witnesses had also differed on the count of taking away of the victim from the Police Station in the police jeep and, therefore, considering the fact that when all these persons were arrested by the police in serious offences and were in their custody, it is expected of them to depose against the police personnel against whom they had a grudge and, therefore, none of the witnesses can be held to be reliable.

18. Shri Jaltare submitted that in fact the State CID has made out a false case against the respondents, which is evident from the admission given by Investigating Officer Goswami (PW 28), who in spite of filing "B" Summary in the case registered against Dilip Ghosale, continued his search for him, which itself goes to show that the Investigating Officer himself was not sure that Dilip Ghosale was done to death in police custody. It is submitted on behalf of the respondent that the witnesses at the earliest opportunity failed to disclose to superior police officer or their relatives that Dilip Ghosale was given beatings in police custody and taken away in the jeep. It is submitted that the Superintendent of Police had visited Arvi Police Station; So the witnesses had opportunity to interact with him and also with their relatives while being taken to the Court. It is submitted that it is only because of the complaint lodged by one Dr. Bhutada the police registered a false case against the respondents and conducted investigation accordingly so as to falsely implicate them. It is submitted that there is no reason to disbelieve the respondents that the victim actually escaped from the police custody and this was not the only case as it is a common feature of suspects in custody escaping from Arvi Police Station, which had occurred prior to the incident and also subsequent to the incident in which Dilip had escaped.

19. It is submitted that none of the witnesses has stated that he had even suspected that Dilip had died and, therefore, it cannot be said that the respondents were instrumental in beating Dilip to death and causing disappearance of his dead body.

20. It is submitted on behalf of the respondents that the police had taken the witnesses to identify the dead body, which they had denied as that of Dilip, and on the second occasion, they were shown a photograph, but due to the persistent pressure on the part of the police, it was identified as that of Dilip, which they have admitted in their evidence and, therefore, the prosecution has failed to establish that the dead body of which photograph was shown to the brother of Dilip, that is Paratya (PW 5) and his widow, that is Shobha (PW 6), was not that of Dilip, which fact has been admitted by the witnesses in their cross-examination. As in the evidence of Paratya (PW 5), it has been deposed that they were so much annoyed because of harassment meted out to them by the police, they had stated whatever they wanted and identified the photograph as that of Dilip as they wanted to get rid of them. In this regard, it is pointed out that

Shobha (PW 6), the widow of the deceased, has not even stated in her evidence that she had seen the photograph and, therefore, the evidence that the dead body of Dilip was recovered by Rural Police Station, Adilabad, will have to be discarded.

21. On the issue of circumstantial evidence, it is submitted that it is mainly concerned with the identification of the dead body, which is based on the sale receipt (Exhibit 98), which Dilip is alleged to have executed in favour of Barkaji Carpenter (PW 9), who has not supported the prosecution, and, therefore, the Trial Court was justified in ignoring this part of evidence as regards the identity of the dead body on the basis of finger print report. One major issue, which was raised before us, is the fact that G. Vyankappa (PW 22), the Finger Print Inspector, who collected the thumb impressions of the unknown dead body, has in the report Exhibit 135 clearly stated that the unknown dead body of which he obtained the finger prints was in highly decomposed condition, dermis and epidermis of fingers were not found, and if this is read in context to his cross-examination, particularly in para 3 of his deposition, he has admitted that the upper part of the skin is called dermis. Under the dermis, there is an epidermis. We called it skin layer. After the dermis and epidermis, there is a flesh. It is correct to say that the prints are not visible on the flesh. Therefore, if this evidence is read with the report Exhibit 135, it is quite clear that as the body was in highly decomposed condition and dermis and epidermis of fingers are not found, then the possibility of G. Vyankappa (PW 22), the Finger Print Inspector, collecting the finger prints of the deceased, does not arise, as they were non-existent and, therefore, his evidence that he obtained the finger prints of left and right hands" thumb of the deceased by applying the spoon method, cannot be accepted and once this circumstantial evidence becomes doubtful, there is nothing brought on record as evidence to show that the unknown dead body found by Rural Police, Adilabad, was that of the deceased and, therefore, on both the counts, that is on the identification of the photograph of the dead body as well as the evidence of the Finger Print Inspector, the prosecution has failed to prove the case against the respondents. It is submitted that the specimen thumb impression, which is procured by the police, is also shrouded by mystery and the Trial Court was justified in arriving at a finding that it is procured in a very unusual manner. Therefore, it is submitted that the prosecution has failed to identify the dead body found in Adilabad as that of Dilip.

22. Shri V.M. Deshpande, the learned counsel, assisted the Court by making available us the literature on taking finger prints and submitted that cadaver spoon is a piece of apparatus for finger printing the dead and it has got its own shortcomings and, therefore, though this method is applied in cases of highly decomposed body, G. Vyankappa (PW 22) did not elaborate the manner in which he could obtain the finger prints by applying the so-called spoon method, particularly when the dermis and the epidermis were not available. Shri Deshpande pointed out from the book "The Finger Print System At Scotland Yard" by Frederick R. Cherrill, which is practical treatise on finger print identification,

from page 156 onwards, how to do the finger printing of cadavers. Similarly, he also filed the Xerox copies from the book "Finger Printing" by Charles Edward Chapel, from page 79 onwards, which speak about the finger printing of dead people by a spoon method, which is supposed to have been adopted by G. Vyankappa (PW 22), and submitted that it is not a foolproof method and it is most unsafe to rely upon such evidence.

23. Shri Khapre, the learned counsel appearing for the respondents/accused, submitted that the whole attempt on the part of the prosecution was to frame the respondents, who were investigating into a serious case of dacoity in which Dilip Ghosale and his associates came to be arrested as suspects and Dilip escaped from police custody. It is submitted by Shri Khapre that not only the police immediately registered an offence u/s 224 of I.P.C. vide Crime No. 624 of 1987 at Arvi Police Station against Dilip, but also tried their best to locate him and as ultimately he could not be traced out, they flashed wireless messages and this conduct on the part of the respondents shows that Dilip did escape from the police custody. It is submitted that this fact stands established from the circumstances - firstly that Dilip got an opportunity to escape as he was taken to urinate by giving jerk to police constables and thereafter he was not found in spite of the best efforts on the part of the police, secondly that the State CID, which was entrusted with the investigation of the case, could not locate the dead body of Dilip and tried to implicate the respondents by forcing the witnesses particularly the relatives of the deceased to identify any dead body which was found by them as that of Dilip, and thirdly that Inspector Goswami was himself not sure that Dilip has been tortured to death in police custody as in spite of filing "B" Summary in his case, he was still searching for him with the hope that he may be able to re-arrest the said Dilip. Shri Khapre submitted that in such cases it is doubtful to ascertain whether a particular person was done to death or escaped from police custody. It is submitted that the Supreme Court in the case of Smt. Shakila Abdul Gafar Khan Vs. Vasant Raghunath Dhoble and Another, , has granted compensation to the kin and kith of the victim. Therefore, the Court can adopt such a course and dismiss the appeal.

24. Concluding their arguments, the learned counsel appearing for the respondents submitted that in this case the prosecution has failed to establish that it is the respondents, who were instrumental in beating Dilip Ghosale to death while in their custody. On the other hand, in all probability, Dilip has escaped from police custody and, therefore, the Trial Court had rightly given benefit of doubt to the respondents by considering it as a strong possibility particularly in absence of the finding of the dead body of Dilip and its identification. It is submitted that so far as the identification of the dead body is concerned, the prosecution has failed to establish the photograph as that of Dilip, as Paratya (PW 5) and Shobha (PW 6) were shown different photographs in the police station.

25. The key issues in the case, which arise for our consideration, are whether the

prosecution has proved that the respondents in furtherance of their common intention caused death of the said Dilip Ghosale while he was in their custody by giving such bodily injury to the suspect which they knew is likely to cause his death, whether Dilip Ghosale died a homicidal death, whether the prosecution has proved that the dead body found by Rural Police Adilabad was that of victim Dilip Ghosale and whether the prosecution has proved that the respondents/original accused in furtherance of their common intention caused disappearance of the dead body and the other material, which could have been used as an evidence in the commission of offence of murder, and in order to shield themselves from having committed custodial death of victim Dilip Ghosale, registered a false F.I.R. u/s 224 of I.P.C. on the count that the deceased had escaped from their custody in which he was lawfully detained and that they did so with the intention of screening themselves from legal punishment.

25A. The undisputed facts of the case are that that deceased Dilip Kusmya Ghosale was arrested along with six others in Crime No. 254 of 1987, which was registered at Police Station Arvi on 24-10-1987 at 9.50 O "Clock on the basis of the complaint lodged by one Namdeo Tulshiram Taywade, for having committed offences under Sections 395, 397 and 398 of I.P.C. The crime was investigated by Police Inspector Bhadikar (Original accused No. 2/respondent No. 2), who was the Investigating Officer. All the accused in the case were produced before the Judicial Magistrate First Class on 5-11-1987 and were remanded to police custody till 11-11-1987. In the night between 5-11-1987 and 6-11-1987, Police Inspector Bhadikar, the Investigating Officer, and other police personnel, who were concerned with the investigation of the case, took out deceased Dilip Kusmya Ghosale, who was the accused in the Takarkheda dacoity case, from the police lock-up and carried him to the room of D.B. Squad for interrogation. Thereafter the deceased did not return to the police lock-up. It is the prosecution case that the deceased was beaten mercilessly during interrogation due to which he died and his dead body was taken away in a police jeep and abandoned on the border of Andhra Pradesh, that is under the bridge in Village Pusai, District Adilabad. On the other hand, it is the plea of all the respondents/original accused that when Dilip Kusmya Ghosale was being brought back to the police lock-up by P.H.C. Uttamrao Keshavrao Watkar and P.C. Tryambak Punaji Satote after his interrogation was over, he wanted to urinate. Therefore, he was allowed to do so near the compound wall, from there he fled away by giving jerk to the police constables and since then he was not traceable and, therefore, on 6-11-1987 at 3 O "Clock, P.H.C. Watkar, Buckle No. 443, attached to Police Station Arvi, lodged a report with Police Station Arvi against the said Dilip Ghosale and an offence u/s 224 of I.P.C. came to be registered against him vide Crime No. 624 of 1987.

26. In order to establish its case that Dilip Ghosale was taken in the interrogation room and tortured to death, the prosecution has examined witnesses out of the persons, who were at the relevant time in police lock-up at Arvi Police Station, namely Gangadhar son of Relumal Lalwani (PW 2), and Babarao son of Ganeshrao Neware (PW 3), who were co-accused involved in a murder case

along with the others. The police also examined Kamred son of Bhimrao Pawar (PW 4), one of the co-accused in the Takarkheda dacoity case and brother-in-law of the deceased, Paratya son of Kusmya Ghosale (PW 5), the elder brother of the deceased, who have supported the prosecution, and the other witnesses, namely Krushna son of Bapurao Varhade, the Driver, (PW 7), and Dhanraj son of Wasudeorao Kadave, the Rickshaw Puller, who did not support the prosecution.

27. The case against the respondents came to be registered on the report lodged by Dr. Shamsunder son of Leeladharji Bhutada, who, in addition to his medical practice, was also reporter of newspaper Daily Lokmat. Dr. Bhutada (PW 1) deposed before the Court that on 7-11-1987 when he was present in his dispensary at about 2 or 3 p.m., he received phone calls from the people making enquiry with him as to whether he knew that the accused had escaped from the police station. He informed them that he had not confirmed this fact from police and at about 3 p.m., he and other reporters had a discussion and decided to enquire the matter with the Superintendent of Police, who was scheduled to visit the Police Station in the evening time. In the evening, Dr. Bhutada went to see the Superintendent of Police, who was sitting in the courtyard of Police Station, and disclosed his identity and he told the Superintendent of Police that one accused had escaped from police custody, but some people said that the said accused was dead. According to Dr. Bhutada, the Superintendent of Police also confirmed the same and told him that as no one had made a complaint so far in this behalf and assured Dr. Bhutada that if there was any such complaint, he would make enquiry into the matter and that somebody should come forward and he asked whether he would lodge a complaint and it is on this basis that Dr. Bhutada gave his complaint in writing to him, which is at Exhibit 50. If one sees the complaint Exhibit 50 lodged by Dr. Bhutada, which has been treated as an F.I.R., that surfaces is that it is the outcome of the discussion amongst villagers about the death of the accused arrested in the Takarkheda dacoity case due to the beatings at the hands of police. In his complaint, he has stated that Dilip, who was arrested as a suspect in the Takarkheda dacoity case, was beaten severely by Arvi Police in the enquiry room of D.B. at about 2 O "Clock in the night on 6-11-1987 for extracting details of dacoity and for recovering the ornaments stolen away during dacoity and for recovery the weapons used by the dacoits in committing dacoity and that due to such beatings, accused Dilip died and, therefore, he suspected that the police personnel who were enquiring him might have killed Dilip and he requested to hold enquiry in this case. Pursuant to his complaint, a panchanama of the spot came to be drawn on 8-11-1987, that is of the D.B. Room which is normally used as interrogation room by the police and where it was alleged that Dilip Ghosale was taken for interrogation by Shri S.M. Bhalerao, SDPO, Arvi. Shri Bhalerao also prepared the panchanama of the motor vehicle, that is police jeep bearing registration No. MGF 2289, which was suspected to be used in the commission of offence. Initially the investigation of the case to some extent was carried out by the officers of Arvi Police Station, but then as it appears from the record, there was a question in the Legislative

Assembly over the issue, the case came to be transferred to the State CID and it came to be entrusted to Police Inspector Shri Bhagwangir son of Chaingir Goswami (PW 28).

28. In these background facts, now let us examine the evidence of the witnesses on the basis of which the prosecution claims to have established that the respondents were instrumental in causing death of Dilip Ghosale due to mercilessly beating him during interrogation.

29. So far as Gangadhar Relumal Lalwani (PW 2) and Babarao Ganeshrao Neware (PW 3) are concerned, they have been arrested in a murder case and it is not in dispute that at the time of incident, both these witnesses were detained in magisterial custody. They deposed that past midnight one Pardhi boy, whose name has been given as Dilip Kusmya Ghosale, who was in the police lock-up, was taken out from the police lock-up to the interrogation room and the police personnel, whom both these witnesses have identified before the Court, stated that they gave him beatings by fist and kick blows. Gangadharan (PW 2) stated that he noticed it right from the place in front of the temple of Police Station where his attention was drawn due to the noise, whereas Babarao (PW 3) stated that he was brought in between police station and MCR lock-up by accused No. 2, that is Police Inspector Bhadikar, and he was assaulted by accused No. 2 and other members of staff by fist and kick blows. According to these two witnesses, the Pardhi boy (reference made to the victim as he belonged to Pardhi Tribe) became unconscious. As he became unconscious, original accused No. 2 P.I. Bhadikar told original accused No. 13 to bring water. Some water was put into the mouth of the deceased and some water on his face. As the police personnel felt that the deceased person was pretending, he was again subjected to beatings by sticks, fist and kick blows and he became more unconscious. Therefore, police jeep was called and the deceased boy was put in the said jeep. Gangadhar (PW 2) noticed that at that time there were handcuffs in both the hands of the boy and Babarao (PW 3) goes a step further and states that he was put in an empty gunny bag and then the jeep left the Police Station. According to them, the police jeep returned to Police Station at about 10 to 10.30 a.m. Babarao (PW 3) in his evidence has specifically stated that at about 7 or 8 a.m. some members of the police staff came to us and said that whatever incident was seen by them, they should forget it. So far as these two witnesses are concerned, their evidence is mainly assailed on the ground that they were hardened criminals, that they were in magisterial custody, that they had a grudge against the police, that they are not consistent as regards the place and duration of assault and that they did not complain to the Superintendent of Police or any other relative, to whom they happened to meet thereafter. It was also tried to be suggested that they could not have seen the incident as claimed by them, as the place where suspect Dilip Ghosale was interrogated was not visible from the MCR Room, which has been specifically denied by them.

30. On overall assessment of the evidence of the aforesaid two witnesses, we are

of the opinion that the evidence of these two witnesses cannot be thrown overboard mainly for the reason that they had a grudge against the police. They may be habitual criminals, but the fact that they were present in the police lock-up within the precincts of Arvi Police Station is not disputed. They know all the police personnel, that means the accused, who have participated in the beating while interrogating suspect Dilip Ghosale, and they have identified them before the Court and have spoken about their presence and participation. A small variation on the part of these witnesses as to the period of time and the place where the victim was mercilessly beaten does not in any manner dislodge their evidence so as to discredit them. The alleged improvement that Dilip was put into the gunny bag while he was put in the jeep and taken out of the police station, also does not affect the credibility of Babarao (PW 3). Rather it has come in the cross-examination of Babarao (PW 3), particularly in the later part in para 6 that he noticed that the garments of Dilip were torn. The deceased was wearing banian and knicker of khaki coloured and he had sustained injuries all over his body and he witnesses that the whole body of deceased was swollen and bleeding. Therefore, the facts which emerge from their evidence that Dilip Ghosale was taken out of the police lock-up for the purposes of interrogation and during interrogation he was mercilessly beaten by the police personnel, who were present at the time of interrogation, that he was removed in a police jeep and taken away from the police station and that thereafter nothing was heard about him, stand established. Mainly because these witnesses have not disclosed the incident to Superintendent of Police Shri Sharma or any other person or relative cannot be a reason to disbelieve them particularly considering the situation that they were placed under detention. Even if they had revealed this information to the superior officer or any third party, one does not know what action would have been taken or rather it was simply enquired till Dr. Bhutada lodged a formal report to the Superintendent of Police. One thing cannot be overlooked that the report lodged by Dr. Bhutada, about which he has stated before the Court, was based on the discussion going on in the Village that one of the suspects in the Takarkheda dacoity case had either escaped or died in police custody, which also indicates that the information did leak out and culminated into a report lodged by Dr. Bhutada, but for want of which the police would have not registered any offence against the police officers, who were investigating into the Takarkheda dacoity case.

31. We place the aforesaid two witnesses on a higher pedestal compared to Kamred son of Bhimrao Pawar (PW 4) and Paratya son of Kusamya Ghosale (PW 5), who are the other eye-witnesses to the incident and related to deceased Dilip, for the simple reason that these two witnesses, that is Gangadhar (PW 2) and Babarao (PW 3) might have had a grudge with the police, but there was no reason for them to falsely implicate the police officers, who were interrogating the suspects in the Takarkheda dacoity case. Nothing has been brought on record by the learned counsel for the defence in their cross-examination to show as to why these two witnesses would unnecessarily implicate all the police personnel,

at the most they would have grievance against the specific police officer if they were falsely implicated in the case. On the other hand, they are facing serious charge, like murder, and were in magisterial custody and, therefore, to ignore their evidence on this count alone would not be proper. The evidence of these two witnesses has to be considered from the point of view of trustworthiness. We do not find that their evidence is imaginary and they have stated before the Court which never happened. On the other hand, it inspires confidence as it stands corroborated by admitted facts. The minor discrepancy in their evidence as noted has to be ignored as error due to lapse of memory. While appreciating oral evidence, it has to be kept in mind that there would hardly be a witness whose evidence does not contain some amount of exaggeration or embellishment, but if it otherwise does not affect the veracity of their ocular evidence, it cannot be a reason to disbelieve such witness.

32. So far as Kamred son of Bhimrao Pawar (PW 4) is concerned, he also belongs to Pardhi community and is related to Dilip as his brother-in-law. In his evidence before the Court, he had stated that they all are residents of Village Marda, District Amravati. They belong to Pardhi community. Dilip was the younger brother of his wife and they were apprehended by Arvi Police in connection with the Takarkheda dacoity case. He had identified only accused No. 13 Kishore. According to him, after they were arrested they were produced at the house of the Magistrate and remanded to police custody and thereafter detained in the police custody at Arvi Police Station. He has stated that one Gangacharan of Dhamangaon was also arrested and was kept with them. As regards the incident that Dilip was taken out for interrogation, he specifically stated that Dilip was taken out from police lock-up, he was handcuffed and then they heard the the scream of Dilip like "Are Ba Melo", which went on from 12 night to 2 a.m. According to this witness, accused Kishor and Bhalerao Saheb told to bring Dilip from the lock up. The shouts of Dilip stopped and in answer to a question as to whether Dilip died because of the beatings given in the Police Station Arvi, he said it is true. This shows that Kamred (PW 4) did not actual see Dilip being beaten by the police officers, who were interrogating him, but he heard Dilip's screaming. The evidence of this witness and that of Paratya (PW 5) is consistent on account of the facts that Dilip was handcuffed and taken out of the Police Station for interrogation, that they heard the shouts of Dilip in their language like "Melo Re Bappa", that after some time his shouts stopped and that the time period given by Paratya (PW 5), who is the brother of Dilip, is also between 12 night and 1 a.m. and thereafter Dilip was not brought in the police lock-up. Paratya (PW 5) has also given particulars as to what information the police were trying to gather from them as he has stated in his evidence that the police were saying that they would show them pistol and one kg. Gold. So on this count, the evidence of these two witnesses that Dilip was taken out from police lock-up in handcuffs and they heard his screaming, which stopped after some time, rather leads to necessary inference that he was being assaulted by the police, otherwise there was no reason for him to scream- fearing his death, which shows the brutal

manner in which he was given beating. Their evidence corroborates the evidence of the first two witnesses, namely PW 2 Gangadhar and PW Babarao. By examining these four witnesses, the prosecution has led sufficient evidence to show that victim Dilip Ghosale was tortured in police custody to such an extent and duration that he died. The police officers facing the accusations did not dispute the fact that Dilip Ghosale was in their custody and was taken out for interrogation. But they have come up with a plea that he escaped from their custody. The end result is the same, that means victim Dilip Ghosale was not seen after the incident.

33. The Trial Court while appreciating the evidence gave no justification and subscribed to the view that out of the two possibilities that is Dilip died in Police Station due to the torture and the second being that he probably escaped from the custody the accused are entitled to the benefit of the possibility that for urination have given jerk to the police while he was being taken for urination and thereby must have escaped from the clutches of police being favourable to the defence and it must be accepted. In the case of State of Punjab Vs. Karnail Singh, , the Supreme Court while considering the principle rendered by observing in para 6 of the reported judgment as under:

"6. There is no embargo on the appellate court reviewing the evidence upon which an order of acquittal is based. Generally; the order of acquittal shall not be interfered with because the presumption of innocence of the accused is further strengthened by acquittal. The golden thread which runs through the web of administration of justice in criminal cases is that if two views are possible on the evidence adduced in the case, one pointing to the guilt of the accused and the other to his innocence, the view which is favourable to the accused should be adopted. The paramount consideration of the court is to ensure that miscarriage of justice is prevented. A miscarriage of justice which may arise from acquittal of the guilty is no less than from the conviction of an innocent. In a case where admissible evidence is ignored, a duty is cast upon the appellate court to reappraise the evidence even where the accused has been acquitted, for the purpose of ascertaining as to whether any of the accused committed any offence or not. (See Bhagwan Singh v. State of M.P.) The principle to be followed by the appellate court considering the appeal against the judgment of acquittal is to interfere only when there are compelling and substantial reasons for doing so. If the impugned judgment is clearly unreasonable, it is a compelling reason for interference. These aspects were highlighted by this Court in Shivaji Sahabrao Bobade v. State of Maharashtra, Ramesh Babulal Doshi v. State of Gujarat and Jaswant Singh v. State of Haryana."

We fail to understand how in the present case, the learned Trial Court could arrive at such a finding that two views are possible on the evidence adduced in the case. Further a plea raised in defence by the accused is considered on par with evidence when no evidence on this count is led by the defence. Not only the Trial Court failed to assess the evidence in proper perspective, but it also opted

to give benefit to the police personnel, who were accused of serious charge of murder without any justification and for untenable reasons and without examining the veracity of the defence raised by the accused persons in the trial.

34. So far as other eye-witness, namely Krushna son of Bapurao Varhade (PW 7), is concerned, he has not wholeheartedly supported the prosecution case. He is a person, who is a driver by occupation and at the relevant time was in police lock-up having been arrested in prohibition case. He supported the prosecution case to the extent that there were 17 to 18 persons in the police lock-up. He also identified the original accused No. 2, 1, 9, 13, 15 and 10 and stated that the police were assaulting the Pardhi people in the night by taking them out one by one. He also stated that it was between 12 night and 1 a.m. and the Paradhis were assaulted by stick and fist and kick blow. The witness also stated that out of two Paradhis, one was put in the lock-up and the other was taken to the hospital. He is declared hostile and in his cross-examination, he has accepted that he did depose before the police that Dilip fell unconscious due to beating and he was dragged by catching his hair and accused No. 1 was saying that let him die but the property should be recovered. He has also stated before the police that after some time he heard the noise of the jeep and after that Dilip did not return to the police lock-up. Much credence cannot be given to the evidence of this witness except for fact that even in his cross-examination, he has stated that victim Dilip had become unconscious and was taken in a jeep, which is consistent with the evidence given by all other witnesses on this count.

35. As regard Dhanraj son of Wasudeorao Kadave, the Rickshaw Puller (PW 20), and Sadashiv son of Mahadeo Uike, the Machine Mechanic (PW 21), who were other two witnesses examined by the prosecution, they have turned hostile and did not support the prosecution case. One more witness, who happens to be a Police Constable, that is Narayan son of Jangluji Madavi (PW 8), has only stated about the presence of original accused No. 4 Kulkarni.

36. These are the only witnesses examined by the prosecution on the point of custodial torture of victim Dilip by the accused persons in police custody, resulting in his death and further to establish that he was taken away in jeep and thereafter nothing was heard of him.

37. In our opinion, the nature of evidence brought in the case will have to be examined in the backdrop of the prevailing facts and circumstances when the incident took place. There is no manner of doubt that in the midnight of 5th and 6th November, 1987 between 12 night and 2 a.m., except for the suspects, accused and police personnel, there were no independent witnesses present at Arvi Police Station. So expecting from the prosecution to examine any independent witness - in a sense who may be present in the Police Station without any business - belies the very theory of the best evidence, which the prosecution could have produced. The best evidence in this set of circumstances can only be of inmates, who were in the custody of the Police Station or the police personnel, who were on the duty. The only thing which remains is who is

to be believed. Before we dwell on the reasons as to why we find that the witnesses examined by the prosecution, who have supported the prosecution case, are reliable and their evidence should be accepted, let us see whether their evidence stands corroborated by the other evidence brought on record and the attending circumstances, which would go a long way in proving or disproving the prosecution case.

38. The first of its Kind to our mind is the trail, which led to the tracking of the tracking of the dead body of an unknown person found by Rural Police of Adilabad. It is a matter of record and taking judicial notice of the fact that initially this crime was investigated by the local police itself till it was handed over to the State CID and till the investigation was handed over to the State CID, a lot of valuable time was lost, which could have helped in collecting crucial evidence. The Investigating officer of the State CID Bhagwangir son Chaingir Goswami (PW 28) took over the investigation of this case on 25-10-1987. He was required to work out a strategy for the purpose of investigation and obviously so when he was required to investigate serious case of murder against the police personnel, his first task was to track down the missing person, that is Dilip Ghosale and the witnesses, who can assist him. It appears that before the investigation was handed over to the State CID, Paratya (PW 5), the brother of Dilip, and his widow Shobha (PW 6), were taken for identifying the dead body within the jurisdiction of Sewagram Police Station, but they appeared to be hesitant about it. Though in the course of investigation the police could gather material about the complicity of the accused police personnel in the form of statements of witnesses, they were yet to make major breakthrough. The State CID got the track as it is evident from the deposition of ACP Goswami that on 26-5-1989 the original accused No. 15 Tryambak Punaji Satote, who is supposed to have accosted Dilip when he escaped along with the original accused No. 9 Uttamrao Keshavrao Watkar, came to be arrested. On 2-6-1989, he made a statement in the presence of panchas, which came to be recorded vide memorandum Exhibit 105, and led the Investigating Agency and the panchas to the place known as Valni Shivar and showed the spot of which panchanama was made vide Exhibit 103. But nothing was discovered from there. Subsequently he further stated about the spot where the dead body of deceased was abandoned, which came to be recorded vide memorandum Exhibit 106. But there also, the police could not trace out anything and a panchanama of spot was drawn vide memorandum Exhibit 104. This actually gave a lead to the Investigating Officer that the dead body of the deceased being abandoned under the bridge No. 184/1 on National Highway No. 7, which was in Adilabad District. Probably he could get some information from Adilabad Rural Police Station in Andhra Pradesh. So on the very day, that is on 2-6-1989, he went to Adilabad Rural Police Station in order to investigate whether any dead body was found under the bridge and what transpired was that the dead body of an unknown person was found by the police from the spot and the case for enquiry came to be registered by the concerned Police Station vide Crime No. 87 of 1987 u/s 174 of Cr.P.C. No doubt this part of

the evidence led by the prosecution cannot be considered as one u/s 27 of the Evidence Act as whatever statement was made by accused No. 15 did not lead to any discovery but the same can be considered as a conduct of the accused which can be taken into consideration u/s 8 of the Evidence Act, as the same facilitated the discovery of an unknown body. In the meantime, the Investigating Officer had already procured a receipt executed by deceased Dilip in favour of Baraku Wadi (Carpenter) bearing the thumb impression of Dilip. This fact has been deposed by Paratya son of Kusmya Ghosale (PW 5), the brother of the deceased.

39. On further investigation, it was found that B. Shantikumar, Circle Inspector, (PW 26), who was at the relevant time working as Sub-Inspector of Police at Adilabad Rural Police Station, had received a report from Meshram Nago, Kotwal of Pusai Village, on 9-11-1987 through his Head Constable, Buckle No. 231, stating that an unknown body of male was found under the culvert, on which Police Head Constable registered a case vide Crime No. 87 of 1987 u/s 174 Cr.P.C. According to the evidence given by B. Shantikumar (PW 26), as it was night time he did not visit the spot. So on the following day he took up the investigation and visited the scene of offence. He held the inquest over the dead body of the deceased in the presence of panchas, which is at Exhibit 158. Thereafter he also prepared the panchanama of the place where the dead body was lying and it is at Exhibit 59. He then called the local photographer, who took out 2 or 3 photographs of the dead body. He has stated that one of the photographs shown to him before the Court is the same. He has deposed that he sent his Police Constable to call finger print expert along with his requisition. Accordingly, the finger print expert was called on the spot and he took finger print of the deceased. The Medical officer was also called and he visited the scene of offence and performed the post mortem examination on the dead body of the deceased there. Thereafter the dead body was buried by the side of the culvert. On learning this, ACP Goswami (PW 28) took Paratya (PW 5), the brother of deceased Dilip, as well as Shobha (PW 6), that is the widow of the deceased, to Adilabad Police Station and showed them some photographs. On going through the evidence of Paratya on this count, it will not be possible for us to hold that Paratya could identify the photograph as that of Dilip - his younger brother, who, according to him, was taken away by the accused persons in the jeep and was never found or returned. Though the evidence of Paratya (PW 5) and Shobha (PW 6) does not help the prosecution in establishing the identity of the unknown dead body found in the jurisdiction of the Adilabad Rural Police Station, but the other evidence collected by the prosecution and placed before the Court, in our opinion, is sufficient to arrive at such a conclusion.

40. The first witness on this issue is Head Constable Gangadhar son of Shankarayya Maykal (PW 19). In his evidence before the Court, he deposed that on 9-11-1987, he was working as House Station Officer at Adilabad Police Station. On that day one person named as Meshram Nago son of Pocha of Pusai came to Police Station and informed that one unknown dead body was lying on a culvert of Village Pusai. So he prepared the F.I.R. and told the concerned police

officer. He handed over the F.I.R. to P.S.I. Shantikumar for investigation. The copy of the report is at Exhibit 129. The witness deposed to the effect that the petition was brought by Village Kotwal by name Meshram Nago and the original petition was in the Mandal Revenue office, Jayanat, the contents thereof were written on the back of Exhibit 129. So far as this witness is concerned, there is no reason to disbelieve him on the fact of receipt of the report made to him of one unknown dead body lying on the culvert of Village Pusai.

The second witness on this count is Dorshetti son of Rajeshwar Gangaram (PW 24), the Labourer of Village Pusai, Adilabad. He is a person, who was first to cite the dead body and also a panch to the inquest panchanama. In his evidence, he has stated that about 5/6 years, while he was proceeding by the side of bridge, he experienced foul smell and when he went near the bridge, he noticed one dead body of a male in decomposed condition. He accordingly told this fact to Village Kotwal of Pusai. On the next day, the police came there and drew the panchanama. Circle Inspector B. Shantikumar (PW 26) has already stated that he had requisitioned the services of the Finger Print Expert as well as the Medical Officer to the spot.

41. The prosecution has examined G. Vyankappa, the Finger Print Expert, (PW 22). In his evidence, G. Venkappa has stated before the Court that on 10-11-1987 he had gone to Village Pusai, which is in Adilabad in District Andhra Pradesh. That area comes under the Rural Police of Adilabad. This was on the basis of the requisition of the police. He noticed that there was an unknown male dead body lying. He examined that dead body and found that it was highly decomposed. He applied spoon method of right hand thumb impression and left hand thumb impression of the deceased. Both these thumb impression prints were taken on the paper and they were pasted on white paper. Thereafter both the thumb impression prints were supplied to the police. Then on 13-6-1989, the CID police from Maharashtra came to Adilabad Police Station. The CID police requested to supply the finger prints which were obtained by him and accordingly he handed over one specimen sheet to Rural Police, Adilabad and other to the CID Police in 1989 and kept three thumb impressions with him. In his cross-examination, except for pointing out that he has not obtained the finger prints on the prescribed form and that there are no time, date and signature seen on that pasted pieces of thumb impressions of Exhibits 133 and 134, no evidence has been brought on record to show that the finger prints obtained by him and supplied to the CID Police were not of the dead body, which was found in highly decomposed condition of which he has obtained five thumb impression prints of both right hand and left hand. There is a challenge to this evidence by the defence on the ground that the evidence of G. Venkappa (PW 22) cannot be relied upon for the very reason that there is a report Exhibit 135 in which he specifically mentioned that on the outskirts of Village Pusai on 10-11-1987, he obtained the finger prints of an unknown dead body, which was in highly decomposed condition, and as the dermis and epidermis of fingers were not found, he, therefore, obtained the finger prints by way of spoon method on the

sheet of white paper and prepared the finger print slip of the dead body in Crime No. 87 of 1987. It is said that if the dead body was in highly decomposed condition and the dermis and epidermis of fingers were not found, then how G. Venkappa could obtain the finger prints by applying the spoon method on a sheet of what paper, which subsequently have been supplied by him to the State CID. Unfortunately, this has not been put to the witness in his cross-examination, nor he was confronted with this aspect by the defence. Though on a plain reading the report Exhibit 135 may appear to be self-contradictory that if the body was in highly decomposed condition, the dermis and epidermis could not have been found, then how could the Finger Print Expert obtain the finger prints by using the spoon method, it appears that the defence in their own interest has not confronted the witness with this. Otherwise, the witness could have explained as to how he could have taken five thumb impressions of left hand and five thumb impressions of right hand, unless he was capable of doing so and they were available. Further his evidence has to be read in the light of the post mortem examination report, which is not at all disputed. The post mortem examination report of deceased unknown male is at Exhibit 82. From the report, it can be gathered that it was conducted by Dr. Syed Ishaq Ahmad, Civil Asstt. Surgeon, District Hospital, Adilabad. Initially he could not express any opinion as to the cause of death and had reserved it pending report of the Chemical Analyzer. But in his report Exhibit 82, the approximate time of death is given as 4 to 5 days, which is in close proximity when the victim was in police custody and interrogated by the accused persons. After the receipt of the Chemical Analyzer's report, Dr. Syed Ishaq Ahmad on 25-7-1989 again issued a report Exhibit 84 in which he has stated that he had received the report from the Director of Forensic laboratory, Hyderabad, regarding the viscera preserved, stating that no poisonous substance was found in the viscera and, therefore, according to him, the cause of death to the best of his knowledge is given as "Unknown dead body was highly decomposed and the viscera preserved did not contain any poisonous substance. Hence no opinion can be given as to the cause of death". This assumes importance. If one reads the post mortem examination report Exhibit 82, which is not challenged by the defence, one can see the particulars mentioned in the post mortem examination report, which record the post mortem changes, which are as under:

"Maggal-Crashing all over the body, upper and lower eye-lids eaten away. Upper lip also eaten away exposing upper jaw teeth and gums. Eye balls dried with small mass. Skin of forearm and legs of both side peeled off and dried. Rest of the skin blackened. Oral orifice NAD. Nosal, Urethral anal and anural origier NAD Penis not circumerised, Scrotum and penis swollen due to putrefying gasses."

This sufficiently shows that the body was not only highly decomposed, but even a part of it was eaten away, which was specified in column No. 9 of the post mortem examination report and skin of forearm and legs of both the sides was peeled off and dried and in such a condition, it was difficult to ascertain the cause of death and any injuries of the nature caused to the victim would not be

visible or could be assessed. So far as the skull NAD is concerned, it was eaten away by maggots. So the evidence of any injuries was lost.

42. It would be appropriate to mention here that in the post mortem report, no definite cause of death of victim Dilip has been given, as the body was highly decomposed. If the prosecution case is to be accepted that the deceased was assaulted by kick and fist blows, which could have caused bruises/contusions, then it is an accepted proposition in the medical jurisprudence that such bruises/contusions, though trivial, individually, may cause death. There is one more thing that if the victim was tortured in police custody, then the police personnel in all probability would have taken necessary precaution in the sense that the bruises/contusions do not appear on the body. Normally, the third degree methods are adopted with such care and caution, for example the beating if given by the article like rubber patta, it is on such part of the body of the victim which may not cause bruises/contusions. In the present case, while performing the post mortem examination, the Medical officer probably could not notice injuries on the dead body for two-fold reasons. Firstly, that the victim was assaulted by the accused persons by taking necessary precaution, that means they did not leave any sign of custodial torture, and secondly, the body was highly decomposed. This may appear to be an inference drawn on conjecture, but such a fact situation cannot be overlooked. Another important aspect which requires to be noted while dealing with the post mortem report Exhibit 82, is that in the said post mortem report, there is no mention of the fact that the body was dismembered of its limbs, that is hands and palms, and legs so as to eliminate any possibility of obtaining finger prints. Further the inquest panchanama Exhibit 158 also does not mention of this fact and so also the sketch Exhibit 159 shows how the body was found lying besides culvert No. 184/1 at the outskirts of Pusai Village.

43. The evidence relating to the finding of a dead body of an unknown person by Rural Police Station Adilabad, registering Crime No. 87 of 1987 u/s 174 of Cr.P.C. and the steps taken by PSI B. Shantikumar (PW 26), preparation of inquest panchanama, requisition of the Finger Print Expert in the matter and conducting a post mortem examination, which reveals the condition of the dead body, because of which the Medical officer, who conducted the post mortem examination could not give any definite opinion as to the cause of death, is totally independent. The enquiry conducted by Rural Police Station Adilabad and all the steps taken in the enquiry u/s 174 of Cr.P.C. are based on contemporaneous record prepared in the course of enquiry and, therefore, this forms part of the evidence, which can be said to be independent and it inspires confidence of the Court and can safely be relied upon as one of the material evidence collected in the course of investigation by the prosecution.

44. The only question, which is required to be scrutinized, is whether this independent evidence collected in the enquiry by Rural Police Station Adilabad can be connected to victim Dilip. We have already observed so before dwelling

upon this part of the evidence. It was possible only because one of the accused in the case could reveal information which led the Investigating Agency to Rural Police Station Adilabad.

45. So far as the witnesses on the point of identification of the dead body is concerned, the prosecution has examined Paratya (PW 5), the brother of the deceased, and Smt. Shobha (PW 6), the widow of the deceased. Their oral evidence does not conclusively prove that the photograph shown to them, after a period of 11/2 years from the time Dilip was missing, at Adilabad Police Station has been identified by Paratya and the same is marked as Article 1. Smt. Shobha (PW 6), on the other hand, even denied seeing the said photograph. This has to be appreciated in the background that the dead body was found in highly decomposed condition after 4/5 days and part of it was even eaten away. Paratya was justified in saying that he was not in a position to definitely say that it was that of Dilip.

46. Therefore, we are left with the thumb impression on the receipt executed by Dilip Ghosale in a transaction of selling of cow and calf to Barkaji Carpenter (PW 9). Barkaji (PW 9) in his evidence has stated that he knew Dilip Ghosale belonging to Pardhi community and that he was residing by the side of his house at Maradi, but he did not purchase anything from Dilip, neither there was any writing for purchasing. Barkaji was confronted with Article No. 2. This witness has denied the transaction and even denied the fact that the CID Police recorded his statement. Thus Barkaji, has turned hostile for the reasons best known to him.

47. The next witness on the point of proving the receipt is Ramdas son of Raoji Rathod (PW 10). He is the scribe of receipt (Exhibit 98) and a signatory. According to him, one Pardhi lady by name Zakashi came to him and told that she wanted to effect one transaction and he should write the receipt. He was shown the receipt marked as Article No. 2 and it is in his handwriting and also bears his signature. According to him, he has written this receipt as per the say of that lady. He did not obtain the thumb impression on the receipt. But he has merely scribed the receipt. He has denied the fact the Dilip Ghosale came and he got executed the receipt from him by putting his left thumb impression. He has also denied the fact relating to the transaction and the manner which took place in his presence.

48. Similarly, Anna son of Miragaji Choudhari (PW 11), who is one of the witnesses, has admitted that he has signed the receipt Exhibit 98, but he does not know about the transaction between Dilip and Baraku. He has deposed before the Court that the mother of Dilip came to his house with one paper, and told that their transaction had taken place and he should sign. Accordingly, he signed the paper. Exhibit 98 is the same paper. Anna Choudhari is a person, who was Village Kotwal of Village Maradi and he knew Baraku, Ramdas as well as deceased Dilip belonging to Pardhi community. He deposed that Dilip Ghosale was possessing some she-goats and cows, but denied that any transaction had taken place in his presence.

49. This shows that none of the witnesses on the point that the thumb impression on the receipt Exhibit 98 came to be prepared and executed by deceased Dilip in favour of Barkaji (PW 9) regarding the transaction purchase of cow and calf, has supported the prosecution, but the fact that such a receipt did come into existence out of a transaction is sufficiently established by the evidence of the scribe Ramdas Rathod (PW 10), who has identified his handwriting as well as his signature, below it the date given as is 25-8-85. This, in our opinion, is the best evidence of the transaction, which took place between deceased Dilip and Barkaji (PW 9). It is a fact that on 25-8-1985 when this receipt was executed, Dilip Ghosale was very much alive. The receipt Exhibit 98 came to be executed in favour of Barkaji (PW 9), who had purchased the cow and calf from deceased Dilip. It was scribed by Ramdas Rathod (PW 10), who has admitted the fact and also affirmed that it bears his signature, though he has resiled from the fact that any such transaction took place in his presence. The receipt Exhibit 98, therefore, in the given facts and circumstances by itself goes to establish that the transaction recorded in the receipt did take place and is the best evidence of the fact recorded in the receipt Exhibit 98, though the purchaser, scribe and the witnesses to the transaction have resiled. We have no hesitation to accept this as a receipt executed by Dilip Ghosale in favour of Barkaji (PW 9). So far as the source from which it was procured is concerned, the same has been procured from Paratya (PW 5), the brother of the deceased, who has deposed in his evidence that about two years back from the incident, his brother Dilip has sold his cow to Baraku Wadi (Carpenter) and for that purpose, Dilip had executed the receipt and the same was seized by the police from him. He deposed that he had handed over the receipt to Police Officer of Yeotmal. Dilip was illiterate and the receipt was bearing his thumb impression. In his cross-examination, it has come on record that Goswami Saheb and Thakur Saheb and come to maradi for receipt. They had come to Maradi by jeep. Article No. 2, i.e. the receipt, was with his mother and the police seized that receipt from his mother. The police did not make any seizure panchanama of that receipt. On that day, the police did not obtain his thumb impression or that of his mother. It has further come in cross-examination that his mother and Shobha told him that they handed over Article No. 2 to police by taking it from Baraku Carpenter and, therefore, the source from which the receipt came to be procured is well established and though Barakaji (PW 9) has denied the transaction, the Investigating Officer has been able to lay his hand on the document Exhibit 98, which had the thumb impression of victim Dilip Ghosale. Therefore, it cannot be said that this document, that is receipt Exhibit 98, is a manufactured document and according to us, the prosecution has procured this thumb impression of Dilip Ghosale with the object and purpose of identification of the victim. We propose to discuss at appropriate place the manner in which the Trial Court has dealt with this part of the evidence, that is relating to identification of the dead body on the basis of comparison of finger prints of thumb impressions obtained by G. Vyankappa (PW 22) and the receipt Exhibit 98. But at this stage, we would like to mention that the Trial Court has doubted the very factum of execution of

receipt Exhibit 98 by the executant of the receipt whose identity has been fairly established as victim Dilip Ghosale in the evidence of Paratya (PW 5), as his own brother and in para 31 of the judgment, the Trial Court has discussed about the genuineness of the receipt Exhibit 98. It has observed, "It further appears very doubtful as to why the greeze of the bullock cart was taken for affixing the thumb impression on the sale receipt. If really Dilip wanted to execute the sale receipt, a simple ink was sufficient and available in the village". It appears that the Trial Court is not conversant with this common practice which is prevalent in the Villages where normally the greeze applied to the wheels of the bullock-carts is used as stamp-pad and this fact is accepted that the thumb impression Exhibit 98 is by applying the said greeze. If the thumb impression is affixed by applying the said greeze on the receipt Exhibit 98, then how it affects the genuineness merely because the ink has not been used. For this reason, the Trial Court has drawn an inference that the prosecution has produced receipt Exhibit 98, which is a gorged document, because it was too late for the prosecution to have forged the thumb impression of Dilip Ghosale of a date in 1985. Therefore, we have no hesitation to conclude that the cow sale receipt furnished to the Finger Print Bureau, CID, Pune, was obtained from Barkaji Carpenter (PW 9), who in ordinary course would be in possession of the same as he had purchased cow from Dilip, which has been established by the prosecution by examining Paratya (PW 5) and this cow sale receipt Exhibit 98 when compared with the disputed prints, that is Exhibits 133 and 134, by the Hand-writing Expert, he was satisfied and give an opinion that the disputed left thumb print marked A1 is identical with the admitted print marked B, which goes a long way to establish that the unknown dead body found by Rural Police Station Adilabad was that of suspect Dilip Ghosale, who was found missing from police custody of Arvi Police Station.

50. On appreciating the evidence relied on the issue that deceased Dilip Ghosale died as a result of custodial torture, we have no hesitation to hold that the offence, which has been made out by the prosecution, is murder, as the act by which the death is done is with the intention of causing such bodily injury as the accused knew is likely to cause death, which is squarely covered by clause 2ndly of Section 300 I.P.C. which reads as under:

"If there is no intention to kill then it can be murder only if, (i) the accused knew that the injury inflicted would be likely to cause death, or (ii) that it would be sufficient in the ordinary course of nature to cause death, or (iii) that the accused "knew" that the act "must" in all probability cause death. If the case cannot be placed as high as that and the act is only "likely" to cause death and there is not special knowledge, the offence comes u/s 304 (Part II) of the Indian Penal Code.

This clause deals with acts done with the intention of causing such bodily injury as the offender knows to be likely to cause the death of the person to whom harm is caused. The mental attitude here is two-fold. There is first the intention to cause bodily harm and next there is the subjective knowledge that death will

be the likely consequence of the intended injury. English Common Law made no clear distinction between intention and recklessness but in our law the foresight of the death must be present. The mental attitude is thus made of two elements : (a) causing an intentional injury and (b) foresight of the offender that it would cause death.

The ambit and scope of this clause has been succinctly explained by Hidayatullah, J., (as he then was) in *Anda and Others Vs. The State of Rajasthan*, :

"The 2ndly in Section 300 mentions one special circumstance which tenders culpable homicide into murder. Putting aside the exceptions in Section 300 which reduce the offence of murder to culpable homicide not amounting to murder, culpable homicide is again murder if the offender does the act with the intention of causing such bodily injury which he knows to be likely to cause the death of the person to whom harm is caused. This knowledge must be in relation to the person harmed and the offence is murder even if the injury may not be generally fatal but is so only in his special case, provided the knowledge exists in relation be wanting, the offence would not be murder but only culpable homicide not amounting to murder or even a lesser offence."

In order to convict a person of the offence of murder under this clause it had to be found that he had the intention of causing the injury and also that he had the knowledge that the injury which he intended to inflict was likely to cause death. The word "knowledge" imports a certainty and not merely a probability."

51. This aspect is recently considered by the Supreme Court in the case of *Sahadevan @ Sagadevan Vs. State rep. by Inspector of Police*, . In the said case, one Vadivelu was apprehended and brought to Police Station and thereafter was never to be found and the Supreme Court has discussed the issue as under:

"24. 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*)

25. On behalf of Appellant 1, it is then argued that the said appellant was not the investigating officer in Crime No. 37 of 1985 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 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.

26. 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 case - that is the case of Bhagwan Singh v. State of Punjab 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: (SCC p. 255, paras 7-8)

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

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

In our opinion, the facts of the present case are almost identical and the findings of the Supreme Court in Sahadevan's case clearly govern the same. As regards

the accused sharing common intention to beat the deceased violently, it also stands sufficiently established and as that of the accused persons were present in the Police Station when deceased Dilip Ghosale was taken out for interrogation, they can be attributed both intention and knowledge that by inflicting injuries, they were likely to cause his death. This fact can be well concluded because in the evidence of two eye-witnesses, namely Gangadhar (PW 2) and Babarao (PW 3), who claimed to have actually seen the incident, it has been stated that P.I. Bhadikar and other members of the staff beat deceased Dilip Ghosale to such an extent that he became unconscious and as he became unconscious, original accused No. 2 P.I. Bhadikar told original accused No. 13 to bring water. Some water was put into the mouth of the deceased and some water on his face. As the police personnel felt that the deceased person was pretending, he was again subject to beatings by sticks, fist and kick blows and he became more unconscious. This clearly indicates that the police personnel, who were present, continued to beat the deceased till he died.

52. So far as the explanation offered by the accused persons that deceased Dilip Ghosale actually escaped from the police custody is concerned, it does not appear to be at all convincing. The police officers in their examination u/s 313 Cr.P.C. instead of making at least an attempt to explain or clarify the incriminating circumstances inculcating them, and connecting them with the crime by their adamant attitude of total denial of everything when those circumstances were brought to their notice by the Court, took up a false plea supplying the missing link in the chain of circumstances, which corroborates the evidence of the eye-witnesses, in addition to the fact that on further investigation, the Investigating Officer found that a false case came to be registered against deceased Dilip Ghosale u/s 224 of I.P.C. on the count that he escaped from the lawful custody. Even considering the probabilities, one cannot believe that the police officials, who were handling a dangerous criminal like deceased Dilip Ghosale, who, according to them, along with the co-accused, was involved in many cases of dacoity, robbery and theft, would allow him to be taken out of the police lock-up with handcuffing him. Further after so much of beating, it is quite impossible for a person to have run away by giving jerk to the police personnel on the pretext of being left for urinating, as the police officers would never take a chance in the case of such accused by allowing him to urinate without being properly secured. Therefore, we have no hesitation to hold that the fact of registering an offense against deceased Dilip Ghosale was nothing but an attempt to camouflage their crime of committing murder of the deceased. Such incriminating links of facts could, if at all, have been only explained by the accused/respondents, and by nobody else, they being personally and exclusively within their knowledge. That missing link to connect the accused/respondents in this case was provided by the blunt and outright denial of every one and all of the incriminating circumstances pointed out which, with sufficient and reasonable certainty on the facts proved, connect the accused with the death and the cause for the death of the deceased. Incidental to this that deceased Dilip Ghosale

escaped from the lawful custody, another important attending circumstance, which is of incriminating nature, which is brought on record by the prosecution, is that the wireless message came to be flashed by the police after more than 12 hours had passed and further that in the meantime they made all necessary attempts to search for the suspect, who had fled away from their custody, does not appeal to us. Therefore, according to us, we find that the prosecution has established beyond reasonable doubt that all the respondents/accused are guilty of having committed offence u/s 302 read with Section 34 of I.P.C.

53. Another important charge against the respondents/accused is for having committed offence u/s 201 read with Section 34 of I.P.C. On this count also, we have no hesitation to hold that the prosecution has sufficiently established that after the said Dilip Ghosale succumbed to torture inflicted upon him by the police officers, the accused being police officers were conscious of the fact that they had committed his murder and, therefore, not only they tried to shield their crime by registering a false complaint in the Police Station, which was within their control, but also took away the dead body of the deceased in the police jeep. This fact is established by the evidence of four eye-witnesses, that is Gangadhar (PW 2), Babarao (PW 3), Kamred (PW 4) and Paratya (PW 5), as well as by the circumstance, which is not disputed, that the suspect was in the custody of the police and thereafter he was not seen or heard of. This is enough to show that they have caused the death of the deceased and the corpus delicti which would have been the most important evidence of the commission of offence of murder to disappear. So they have done so, that is registering a false offence against the deceased after committing his murder - on the count that he had fled from the lawful custody - and thereafter throwing away his dead body by carrying it in a police jeep so that it cannot be traced out. This was done only with the intention of screening themselves from legal punishment. Such offence of which evidence was caused to be disappeared to punishable with death or imprisonment for life. As the respondents/accused had knowledge that they had committed capital offence, they deserve punishment under first clause of Section 201 of I.P.C. and, therefore, we hold them guilty of having committed offence u/s 201 read with Section 34 of I.P.C.

54. Having held that the prosecution has proved that the respondents/accused have committed offences u/s 302 and 201 both read with Section 34 of I.P.C., we proceed to pronounce the judgment in the matter.

55. In this case, on conclusion of the hearing of the appeal against acquittal filed by the State, since the Court closed for vacation, we had reserved the case for pronouncement of judgment and directed the Registry to list the matter on 17-1-2005 at 2.15 p.m. for pronouncement of judgment.

17-1-2005 at 2.15 P.M. :-

56. We, therefore, hold the respondents/original accused guilty of having committed offences under Sections 302 read with Section 34 of I.P.C. as well as

u/s 201 read with Section 34 of I.P.C. and they stand convicted for the said offences.

So far as respondents No. 5 Gopalsing Ramlalsing Thakur and No. 6 Uttamrao Keshavrao Watkar, who were original accused No. 7 and 9 respectively, are concerned, they having died during the pendency of the appeal, the appeal against them stands abated.

57. Heard the learned counsel for the appellant/State as well as the learned counsel for the respondents/original accused, on the point of sentence.

58. It is submitted by the learned counsel for the respondents/original accused that this is not a case in which the Court should impose capital punishment, as it does not fall in the category of the rarest of the rare cases.

The learned counsel for the appellant/State submits that the Court should impose deterrent sentence in the matter and should also take into consideration to award compensation to the widow/legal heirs of the deceased, who was tortured to death, and this being a case of custodial torture and murder coupled with causing disappearance of evidence, the Court may impose appropriate sentence considering the principle of proportionality.

59. So far as the offence u/s 302 read with Section 34 of I.P.C. is concerned, after considering the facts and circumstances of the case, we are of the view that it does not fall within the category of the rarest of the rare cases and, therefore, it does not attract capital punishment.

So far as the offence u/s 201 read with Section 34 of I.P.C. is concerned, keeping in mind the principle of proportionality, we propose to pass the following order.

Respondents No. 1 Sadashiv Mundaji Bhalerao (Original accused No. 1), No. 2 Arun Hanumantrao Bhadikar (Original accused No. 2), No. 3 Shankarrao Krishnarao Shende (Original accused No. 3), No. 4 Ramrao Namdeorao Kudmethe (Original accused No. 6), No. 7 Madhukar Shrawanji Choudhari (Original accused No. 10), No. 8 Eknath Gopinath Pendam (Original accused No. 11), No. 9 Kishor Chhaganlal Shriwas (Original accused No. 13), No. 10 Tryambak Punaji Satote (Original accused No. 15), No. 11 Jwalamsing Bhimsing Dhamane (Original accused No. 16) and No. 12 Purushottam Vithobaji Khasbage are sentenced to suffer imprisonment for life and to pay a fine of rupees thirty thousand each by respondents No. 1, 2 and 3, rupees fifteen thousand by respondent No. 4 and rupees ten thousand each by respondents No. 7, 8, 9, 10, 11 and 12, for the offence u/s 302 read with Section 34 of I.P.C. In default of payment of fine, the respondents to suffer further rigorous imprisonment for five years.

So far as the offence u/s 201 read with Section 34 of I.P.C. is concerned, the respondents are sentenced to suffer rigorous imprisonment for five years and to pay a fine of rupees ten thousand by respondents No. 1, 2 and 3, rupees five thousand by respondent No. 4 and rupees two thousand five hundred each by

respondents No. 7, 8, 9, 10, 11 and 12. In default of payment of fine, the respondents to suffer further rigorous imprisonment for two years.

The substantive sentences u/s 302 read with Section 34 of I.P.C. as also u/s 201 read with Section 34 of I.P.C. are directed to run concurrently.

60. In case the fine of Rs. 2,15,000/-, which is in total, is paid by the respondents/original accused or recovered from them, the same be paid to the widow/legal heirs of deceased Dilip Ghosale.

61. The respondents/original accused are directed to surrender to their bail bonds by appearing before the Trial Court within a period of two weeks from the date of pronouncement of this Judgment. They are further directed to collect the certified copies of the Judgment free of cost from this Court on or before 19th January, 2005.

In case of the respondents/original accused surrender before the Trial Court, the Trial Court shall commit them to prison to undergo the sentence. On their failure to surrender, as directed by this Court, the Trial Court shall secure their presence and commit them to prison to undergo the sentence.

62. The appeal is allowed accordingly.