

State Vs. Balakrishan and Others

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Court : Chennai

Decided On : Apr-11-1991

Reported in : 1992CriLJ1872

Judge : Pratap Singh and ;T.S. Arunachalam, JJ.

Appeal No. : C.A. No. 82 of 1985

Appellant : State

Respondent : Balakrishan and Others

Advocate for Def. : Mr. A. Balguru, Adv.

Advocate for Pet/Ap. : Mr. I. Subramaniam and ;Mr. A. Shanmugham, Addl. Public Prosecutors

Judgement :

T.S. Arunachalam, J.

1. The state represented by the learned Public Prosecutor has chosen to challenge the sustainability of the acquittal of the respondents of offences punishable under Sections 342, 352 and 302 read with 34 Indian Penal Code recorded in S.C. No. 42 of 1983 by the learned Sessions Judge, West Thanjavur. The first respondent was the Inspector of Police, Tirukkattupalli Circle within whose jurisdiction Budalur Police Station was situated. The 2nd respondent was

the then Sub-Inspector of Police. Budalur. The 3rd respondent was the head-constable; 4th respondent the writer and the 5th respondent a police constable attached to the Budalur police station.

2. This prosecution relates to the alleged illegal custody of one Durairaj of Kadambakudi between 6-6-1981 and 11-6-1981 at Budalur Police Station and Manaiaripatti Beggars Rehabilitation Home and the ultimate death of Durairaj by hanging in the lock up of the Budalur Police Station, in the early hours of 11-6-1981.

3. The first charge was framed against all the respondents under Section 342 Indian Penal Code on the allegation, that on the instigation of the first respondent, the 3rd respondent and another had taken into custody the deceased Durairaj on 6th June, 1981 and kept him in illegal custody at the Budalur Police Station during which custody the deceased was beaten. The 2nd charge was framed against respondents 1 to 3 under Section 352 Indian Penal Code for having used criminal force otherwise than on grave and sudden provocation. The last charge was against all the respondents for having caused the death of deceased Durairaj by hanging him with a dhoti inside the lock up room. The indication was under Section 302 read with Section 34 Indian Penal Code.

4. The prosecution had examined 18 witnesses and marked Ext. P. I to P. II to substantiate its case. The defence did not examine any witness, but marked Ex. D. 1 to D. 5. The learned trial Judge on a consideration of the oral and documentary evidence felt that the guilt of the respondents had not been proved beyond reasonable doubt and therefore they were entitled to an acquittal.

5. We have to narrate the prosecution case in detail for the disposal of this appeal. P.W. 6 Kannan and P.W. 8 Thangaraj are elder brothers of the deceased Durairaj. P.W. 4 Pichaiammal is the wife of P.W. 8 and P.W. 5 Ranganayaki is the wife of the deceased. P.W. 6 and the deceased Durairaj were residing at Kadambagudi village while P.W. 5 along with her husband P.W. 8 was residing at Budalur. P.W. 8 was constructing a new house in a ground adjacent to the Budalur railway station. The deceased and his group were Kallars by caste. In the village of Kadambagudi only two families belonged to Kallar caste, while it was dominated

by Odayars otherwise. There were 40 Odayars' houses at Kadambakudi. The deceased was a handsome man with enough means. He was a spendthrift and had illicit intimacy with several Odayar girls. This led to frequent quarrels between Odayars and the deceased and his group. Two or three years ago on a particular night deceased returned home fully drunk. Ten or fifteen persons belonging to Odayar group under the leadership of Durairaj Odayar caught hold of the deceased and tied him. One Paramasivam untied the deceased and kept him in custody at the residence of Ex-President of the village. Pitchai Odayar a police informant and Durairaj Odayar, brought to the scene, the then Sub-Inspector of Police, Budalur, in a car. The Budalur Police foisted cases against the deceased without taking action against the Odayars though they were the real culprits. P.W. 2 Ramamoorthy an Advocate of Thanjavur filed a private complaint against Muthu Odayar and Velu Odayar regarding this incident before the Judicial II Class Magistrate, Tiruvaivaru. The accused therein were convicted and sentenced. However the crime registered against the deceased and his brothers after trial ended in an acquittal. In 1980, period not clear, P.W. 6 was beaten by Odayars after tying him up. P.W. 8 took P.W. 6 to the Thangavur Hospital for treatment. The Head constable of Sengipatti obtained a statement from P.W. 6 at the Hospital. The next day P.W. 8 was asked to go over to meet Circle Inspector of Budalur Police Station. When P.W. 8 went over to the police station on the next day, he found the Odayars of the village surrounding the first respondent. The first respondent abused P.W. 8 in filthy language. P.W. 8 was constrained to leave the police station. The complaint preferred by P.W. 6 was referred, but Budalur Police chose to charge-sheet P.W. 6, P.W. 8, the deceased, the father of the deceased and senior paternal uncle of the deceased, on the complainant of the Odayars. Even a day prior to the occurrence, the Odayars of the village tied, P.W. 6 and his brother-in-law Dhandayuthapani and beat them. The next morning while releasing them, the Odayars threatened to beat them again similarly, if they chose to complain about this occurrence. However, P.W. 8 took P.W. 6 to the hospital.

6. In this background of animosity between the deceased and his brothers on the one hand and the Odayars who were supported by Budalur Police, on 6-6-1981 at or about 11 or 11.30 a.m. when P.W. 4 was standing near her new house being constructed at Budalur, the deceased came in a cart with sand and was attempting

to unload the same. At or about that time the third respondent and another constable Duraisami asked the deceased to accompany them to the police station, since the Inspector of Police the first respondent. wanted him in connection with an enquiry on a complain filed by Durairaj Odayar and Pitchai Odayar of Kadambagudi village. P.W. 4 told the third respondent that the deceased could be taken in the evening since her husband was not available then. Not heeding to the request of P.W. 4 the 3rd respondent insisted that the deceased must accompany them immediately with a promise that he can return home the same evening. The deceased sent a boy to the residential house of P.W. 4 to bring his shirt. Wearing the shirt so brought, the deceased accompanied the third respondent and the other constable in their cycle and went towards north. P.W. 4 then saw Durairaj Odayar standing near the railway gate at Budalur.

7. P.W. 3 Manichettiar who resides near Budalur railway station also noticed the deceased being taken by the third respondent and another constable. It was P.W. 3 who told P.W. 4 the names of head-constable and the constable who took away the deceased.

8. In the evening when her husband P.W. 8 returned home, P.W. 4 informed of the deceased having been taken away by police men, to the Budalur Police Station. P.W. 8 promised to take action. Thereafter P.W. 4 did not see the deceased alive.

9. P.W. 17 Srinivasan, a resident of Budalur was proceeding to the panchayat Union office between 12.30 and 1 p.m. on 6-6-1961. At the junction of four roads, he found the deceased being taken by the 3rd respondent on the carrier of his cycle. He also noticed another police constable in yet another cycle. When he was returning from the Panchayat Union Office, 10 to 20 persons were crowding before the Budalur Police Station. When he questioned them, they stated that some person had been kept in custody and he was shouting 'Ayyo. Amma'. While he was before the police station, constable Durairajsamy came out and dispersed the crowd. P.W. 17 also went back to his house.

10. P.W. 11 Sultan is the owner of a tea shop situated on the northern side of the Budalur Police Station. From his tea shop the police station would be visible and he could be in a position to notice the persons coming in and going out of the

police station. He knew the deceased Durairaj. On 6-6-1981 at or about 1 p.m., he noticed the third respondent and constable Durairajsamy taking the deceased Durairaj inside the police station. The next day P.W. 8 the elder brother of the deceased told P.W. 11 that the deceased had to be bailed out since he had been taken into custody on a complaint of Kadambagudi Mirasudars and Durairaj Moopnar.

11. P.W. 8 on hearing from P.W. 4 about the deceased having been taken away to the Budalur police station, went over to the police station accompanied by P.W. 14 Rangarajan his neighbour P.W. 8 and P.W. 14 noticed the 4th respondent writer of the of the police station seated inside. Near the 4th respondent the clothes worn by the deceased were found. P.W. 8 expressed his desire to the 4th respondent to meet his brother. 4th respondent told P.W. 8 that he cannot see his brother. Being helpless P.W. 8 returned home along with P.W. 14.

12. P.W. 5 the wife of the deceased who knew from her father-in-law the taking away of her husband by the Budalur police, meet P.W. 8 on the next day. P.W. 8 promised to get the deceased released on bail. P.W. 5 insisted that she had to meet her husband. P.W. 8 asked P.W. 5 to go to the Budalur Police Station and see the deceased. At the police station, she found Durairaj Odayar and Pitchai Odayar seated on a bench, at the threshold of the police station, she was able to hear the cries of her husband '*' P.W. 5 asked the policemen not to beat her husband since he had not committed any crime. She also wept. At that time, the third respondent who had beaten the deceased with a cane, commented as follows :-

'*'

The grieved P.W. 5, returned to the house of P.W. 8. Even after that P.W. 8 attempted to get the deceased released on bail, but he could not succeed.

13. P.W. 10 Kaveri Ammal, a resident of Marameri village had gone to the Budalur Police station 2 1/2 years prior to her deposition in Court, to complain about theft of her cow. At that time she noticed the deceased Durairaj, whom she knew earlier, at the police station, in the lock up. Even on the next day she went to the

police station over again, when she happened to meet P.W. 8. P.W. 8 requested P.W. 10 to give food to the deceased. The food purchased by P.W. 8 was handed over by P.W. 10 to the deceased. The deceased wanted P.W. 10 to purchase beedies for four annas. P.W. 10 complied with the request of the deceased. Even at 4.30 p.m. on the next day. P.W. 10 found the deceased at the Budalur Police station. Thereafter she did not see Durairaj.

14. P.W. 12 noticed the 3rd respondent taking away the deceased in the company of 2 or 3 police men out of the police station between 9 a.m. and 10 a.m. on 6-6-1981. The deceased was wearing only his undergarment (Vernacular omitted).

15. On the morning of 7-6-1981, P.W. 8 was proceeding to the Budalur police station. He met on the way Murugesan (not examined) a leader of All India Anna D.M.K. Party. P.W. 8 informed him of the illegal detention of his brother. Murugesan asked his friend Selvam (not examined) to see the deceased and offer him iddies. Selvam informed Murugesan and P.W. 8 that the police informed him not to interfere in this matter since the crime was one of theft. Selvam asked P.W. 8 to meet a lawyer and take further steps to get his brother released. At or about 10 a.m. when P.W. 8 was standing on the road, he met P.W. 9 Thangavelu, an advocate from Thanjavur known to him. P.W. 8 told P.W. 9 all about the illegal detention of his younger brother. P.W. 9 told him that he was proceeding to his native place and on his return the matter can be talked over. While so, P.W. 8 noticed a car coming fast from the northern direction. He was standing near a river bridge. In that bridge only one vehicle could pass at a time. A cart loaded with hay was proceeding on the bridge from south to north. The car stopped near him. On peeping into the car, he found Durairaj Odayar; the deceased and the second respondent seated in the back seat. In the front seat the first respondent who had tonsured his head was seated near the driver. The meeting of P.W. 9 was subsequent to P.W. 8 having seen the deceased in the company of respondents 1 and 2 and Durairaj Odayar. P.W. 9 asked P.W. 8 to meet him at Thanjavur on the next day. P.W. 8 told P.W. 14 who was near him of the deceased sitting on the back seat of the car. P.W. 14 was also able to see the deceased on the back seat of the car.

16. On the next day as directed by P.W. 9, P.W. 8 and P.W. 14 went over to Thanjavur and contacted him. P.W. 9 phoned up to the first respondent at Tirukkattupalli, but there was no response. P.W. 9 also phoned up Budalur and Tirukkattupalli police stations and enquired about the deceased having been detained in illegal custody in the lock up of the Budalur Police Station. P.W. 9 was unable to get any reply. On the evening of 8-6-1981 P.W. 9 along with P.W. 8 and P.W. 18 went in a taxi to the Tirukkattupalli police station. Neither the first respondent nor the deceased was available there. No information was forthcoming about both of them. Thereafter they went to the Budalur Police Station, and P.W. 9 enquired the second respondent if any crime had been registered against the deceased. The second respondent told P.W. 9 that no case was pending against the deceased and the latter had not been taken into custody. Since P.W. 9 had some work a Madras, he did not take any further steps.

17. P.W. 15 Thangaraj a resident of Parambagudi village is a milk vendor. He knew the deceased. The Beggar Home situated at Maniaripatti is near his village. About 2 1/2 year prior to his deposition in Court while he was taking tea in a tea shop opposite to the Beggar Home, he heard some shouting from the Home. A crowd rushed towards the Beggar Home. Adjacent to the gate, the room of the warden is situate. From that room he heard the noise 'Ayyo, Appa - Ayyo Appa;'. A little later he saw the first respondent along with some other police officials coming out of the Home and getting into a car, in which Durairaj Odayar of Kadambagudi was seated. The deceased Durairaj and one Siva Sangu were brought out from inside the Home and the deceased alone was taken away in the car, southwards.

18. P.W. 16 Kaliaperumal a resident of Kovilpatti village is a whole time worker of Marxist Communist Party. He knew the deceased, P.W. 6 and P.W. 8. On 8-6-1981 he had information from P.W. 6, that the deceased had been taken away to Budalur police station on 6-6-81. On the request of P.W. 6, he gave food to the deceased. P.W. 16 went to the police station at or about 9 a.m. on 8-6-1981. He noticed the deceased Durairaj in the lock up. He also saw the third respondent. P.W. 16 told the 3rd respondent that he wanted to serve food to the deceased Durairaj, but the latter declined to given permission.

19. P.W. 1 Mani Arasu is the Secretary of Thanjavur Marxist Communist Party. At 10 a.m. on 8-6-1981, he was supervising the hunger strike organised by his party men at Thanjavur Bus stand. At that time Constable Duraisami told him that they had apprehended Durairaj who was required in a theft case and was absconding, two days ago. The next day at 6 a.m., P.W. 8 met P.W. 1 at the Communist Party Office and informed him of the deceased having been detained illegally at the Budalur police station for about 2 or 3 days. P.W. 8 had also stated, that the deceased was being ill-treated. P.W. 8 requested P.W. 1 to help him to have the deceased released. P.W. 1 told P.W. 8 that the crime was one of theft and therefore he should consult P.W. 2 at Thanjavur and take his help. P.W. 1 was not inclined to go to the police station to secure the release of the deceased, since the latter was stated to be involved in a case of theft.

20. On 10-6-1981 C.C. No. 53 of 1981 in which the deceased; P.W. 6; P.W. 8 and others were accused, came up for hearing before the Sub-Divisional Judicial Magistrate, Thanjavur. Except the deceased and Raghpathy, the other accused were present in Court. P.W. 2 was informed by P.W. 8, that Durairaj had been apprehended and kept in remand at Budalur Police station and therefore he could not be present in Court. Thereafter P.W. 2 prepared Ex. D. 5, a petition under Section 317, Cr.P.C. praying for the condonation of the absence of deceased and another. This petition was allowed and the hearing was adjourned.

21. At or about 5 p.m. on 10-6-1981, when P.W. 11 Sultan was in his tea shop, P.W. 6 requested the help of the former to serve meals to the deceased. P.W. 11 asked one Pitchai Raj (not examined) to serve iddies to the deceased at the police station. A little later Pitchai Raj returned with iddly packet and informed P.W. 11, that the third respondent stated that the deceased was not at the police station and asked him to place the iddly packet there himself, but not willing to do so, he had brought back the food packet. A little later P.W. 6, P.W. 11; one Selian and Srinivasa Nadar went to the police station taking the iddly packet. The 3rd respondent asked them not to trouble him. Thereafter the group returned with the tiffin packet to the tea shop. Some time later a noise was heard from inside the police station and at the instance of P.W. 11, Rajendran went over to the police station. On his return, he stated that the deceased was being beaten by the police.

22. At or about 2.30 p.m. when P.W. 16 was taking tea in the shop of P.W. 11, he was taken to the police station by a constable. P.W. 16 saw the first respondent at the police station. In confidence P.W. 16 was told by the first respondent, that the deceased had committed suicide by hanging and the former should tell about that to the relatives of the deceased. The first respondent also told him that the matter could be settled by giving some money. The first respondent also wanted P.W. 16 to be one of the Panchayatdars, since the higher authorities had already arrived. On request, the first respondent showed the dead body to P.W. 16, P.W. 18 the Revenue Divisional Officer was inspecting the dead body. P.W. 16 noticed bleeding injury on the fore-head of the deceased. He felt that the death of the deceased could not be suicidal, but could be one homicide. He refused to act as a panchayatdar and on coming out, he told P.W. 11 all that had happened inside the police station. Thereafter P.W. 16 proceeded to Thanjavur and informed P.W. 1 of the death of the deceased at the police station. P.W. 1 came along with P.W. 16 to Budalur police station. There was a big crowd before the police station. The crowd told P.W. 1 that the deceased who had been kept in the lock up, had been beaten to death. When P.W. 1 asked for furnishing of information by any one in the crowd, Budalur Rajendran told him, that it was on the previous night he had heard the noise of beating at the police station. He along with some others peeped through the window of the police station. Third respondent came out of the lock up room and directed them to disperse. P.W. 12 also told P.W. 1 of his having seen the deceased being taken out of the police station by some constables on 7-6-1981. At that time, the deceased was limping and had injuries on his person, P.W. 12 and Rajendran put in writing all that they knew, and handed them over to P.W. 1. Those petitions were passed on P.W. 18.

23. P.W. 18 Thangavelu, Revenue Divisional Officer, Thanjavur received a phone message at 11.45 a.m. on 11-6-1981 from he District Superintendent of Police, Thanjavur stating that one Durairaj, an accused, had committed suicide inside the Budalur Police station. P.W. 18 immediately left Orathanadu, where he was conducting Jamabanthi and reached Budalur at 1.30 p.m. At the Budalur Police station the first respondent handed over Ex.P. 3 the first information report in Crime 56/81. The first respondent is the informant and the information related to the commission of suicide by the deceased who was in lock up in connection with

Crime No. 57/81 registered under Section 41(1) and Section 102, Cr.P.C. The deceased is stated to have committed suicide during the night of 10-6-1981. The dead body was found hanging at Budalur lock up at 6 a.m. on 11-6-1981. P.W. 18 inspected the police station before holding inquest. He noticed the body of the deceased hanging from a hinge of the iron door in the lock up room by tying of the neck with a dhoti. The body was just bending forward and the left knee was touching the floor while the right knee was just 2' above the floor. Both the legs were bending towards back and only the fingers of the legs were touching the floor. A (Vernacular omitted) alone was found on the body. Some blood stained fluid was oozing out from the corner of the (Vernacular omitted) P.W. 18 conducted inquest over the body of the deceased between 2.30 p.m. and 5.45 p.m. The verdict of the panchayatdars was that it was a case of suicide. Ex. P. 4 is the inquest report. After inquest, P.W. 18 sent the dead body to the Thanjavur Medical College hospital along with a requisition Ex. P. 1 for the conduct of post mortem. At the police station he seized general diary; prisoners search register; arrest card book etc., (Ex. P. 6 to P. 9). Ex. 10 is the para duty book and Ex. P. 11 relates to entries in the general diary between 6-6-1981 and 9-6-1981.

24. After the body was taken to the Government Hospital, Thanjavur for post-mortem P.W. 8 would have it, that he was standing before the room of the medical officer. When the Doctor arrived he told him the details of this case. About thirty minutes later the medical officer received a phone call and was conversing in English. Sometime later Sub-Inspector of Police, Tirukattupalli came to the hospital and talked to the Doctor. Both of them went to the place where the dead body had been kept and an hour later when the Doctor returned to his room, P.W. 8 went inside the room along with the Doctor. The Doctor shouted at P.W. 8 and asked him to go away. Thereafter P.Ws. 1, 6 and 8 saw the dead body. They found one deep injury on the fore-head with blood clots. Similarly an injury on the shoulder with bleeding was noticed. One eye of the deceased was completely missing. The skin of the private part was found peeled. Blood clots were seen on both the hands. On the inner portion of the things scalded injuries were noticed.

25. P.W. 7 Doctor Vadivelu conducted autopsy on the dead body at 9 a.m. on 12-6-1981. He noticed that the tongue was bitten between the teeth. In the underwear

worn by the deceased blood stains were found. He noticed the following injuries.

1) An oblique ligature mark measuring 33 cms. x 3 cms. seen over the front of neck below the chin running obliquely upwards towards left ear 5 cms. below the right ear and 2 cms. below the left ear and interrupted below the left ear. Dissections of the base of ligature mark was pale and white.

2) Ant bite marks were seen over the tip of penia. No other injuries were seen on the body.

Finger nails were cyanosed. The chambers of the Heart were empty. Coronaries were patent, and both lungs were congested. Hyoid bone was intact. Stomach contained 20 ml of coffee coloured fluid. Other internal organs liver, spleen, kidneys and brain were congested. In the opinion of the Doctor, the deceased would appear to have died of asphyxia due to hanging. In the viscera preserved there was no poison or alcohol. The death would have been instantaneous. Hanging was fatal. Injury No. 1 was ante-mortem while injury No. 2 was post-mortem. The death would have occurred about 30 hours prior to autopsy. The Doctor was unable to express his opinion whether the death was suicidal or homicidal, though the points available were more in favour of suicidal death rather than homicidal death. Ex. P. 2 is the post-mortem certificate.

26. The District Collector directed P.W. 18 conduct an inquiry over the death of Durairaj while he was in police custody. P.W. 18 also received petitions from the Public. Between 30-6-1981 and 6-8-1981 P.W. 18 conducted a detailed inquiry during the course of which he had examined 44 witnesses including P.Ws. 1 to 17 and respondents 1 to 3 and 5 P.W. 18 submitted a report on 23-1-1981 to the District Collector in which he had stated that he had arrived at a conclusion that Durairaj should have been done to death and that all the 5 respondents were responsible for that offence. The Government by G.O.Ms. 1215 dated 29-7-1982 (Ex. P. 5) directed the Collector to launch a prosecution. Thereafter P.W. 18 filed a complaint before the Sub-Divisional Judicial Magistrate. Thanjavur. After committal SC 42 of 1983 was taken up for trial by the learned Sessions Judge, resulting in the impugned judgment.

27. When the respondents were questioned under Section 313, Criminal Procedure Code by the trial Court, on incriminating circumstances appearing against them in evidence, they denied their complicity in the crime. The first respondent had also filed a written statement. According to him this case had been concocted by P.W. 1 who is the Secretary of the Communist (Marxist) Party and his party people, since he had initiated several prosecutions against them. The first respondent had acted as Inspector of Police, Tirukattupalli from 1980 to 1982. On 6-6-1981, he had attended the monthly meeting of the Superintendent of Police, Thanjavur West and on 7-6-1981 and 8-6-1981, he was at Tirukkattupalli investigating certain crimes. On 9-6-1981 and 10-6-1981 he was at Vishnampatti in connection with the investigation of Crime No. 128/81 registered under Sections 302 and 379, IPC. He did not inspect Budalur Police Station before 11-6-1981. On hearing about the death of Durairaj, he went to the Budalur Police Station on 11-6-1981. P.W. 6, P.W. 8, P.W. 11, P.W. 12, P.W. 16 and P.W. 17 are members of Marxist Communist Party. He had initiated a prosecution against P.Ws. 11, 12 and 16 in C.C. 118 of 1981 on the file of Sub Divisional Judicial Magistrate, Thanjavur, alleging that they had attacked him on 8-11-1980. The said case was pending. All the witnesses were interested and were against the police. P.W. 10 was enimically disposed towards the police-men at Budalur police station.

28. Respondents 2, 4 and 5 did not choose to add anything other than their denial. However third respondent chose to file a written statement. According to him this case has been falsely foisted at the instance of Communist party, which party is ill-disposed towards him. He was working as a Head constable at Budalur police station from 29-12-1979 to 11-6-1981. From 3-6-1981 to 7-6-1981 he was on causal leave and he was not at Budalur Police Station. During that period he was at Mannargudi and Kumbakonam. On 6-6-1981 and 7-6-1981 he was staying with his wife at Ambal Lodge, Kumbakonam. He has also stated about C.C. No. 118/81 pending against P.Ws. 11, 12 and 16. He had come to know on his return, that interested witnesses and P.W. 10 who had ill-feeling against Budalur police, had falsely foisted this case against him.

29. Though respondents did not examine any defence witness, they filed Ex. D. 1 to D. 5 which are respectively the entry in the General Diary of Budalur police

station on 10-6-1981 at 7-30 p.m.; entry in the general diary at 9-30 p.m. on the same day; entry in the general diary at 7 a.m. on 7-6-1981 showing that third respondent was on leave from 3-6-1981 to 7-6-1981; entry in the general diary on 7-6-1981 at 7 a.m. showing that the third respondent was on causal leave and the petition filed by P.W. 2 on behalf of the deceased u/S. 317, Cr.P.C. in C.C. No. 58 of 1981 on the file of the Sub Divisional Judicial Magistrate, Thanjavur, on 10-6-1981.

30. The learned trial Judge chose to acquit all the respondents of all the charges mainly on the ground, of the medical evidence not disclosing any other injury, except injury No. 1 though the prosecution witnesses had deposed of their having seen several other injuries on the dead body. The learned Judge also took note of evidence of P.W. 18, of absence of injuries on the dead body except two of them mentioned in the postmortem certificate. In the opinion of the learned trial Judge the absence of injuries on the deceased negated torture at the police station and therefore on presumptions conviction cannot be recorded, though the offences alleged were quite grave in nature.

31. Mr. A. Shanmugham, learned Additional Public Prosecutor strenuously contended that there was overwhelming evidence about the detention of the victim in illegal custody by the respondents from 6-6-1981 till he was found dead on the early morning of 11-6-1981. He submitted that the position in which the body of the deceased was seen by P.W. 18, would be sufficient to conclude that this cannot be a case of suicide. He also contended that the respondents had not established the plea of alibi put forth by them, and the trial Court ought to have discarded their claim of alibi.

32. Rebutting the contentions of the learned Additional Public Prosecutor Mr. A. Balaguru, learned counsel appearing on behalf of the respondents contended that the medical evidence would positively exclude homicide. He also pointed out Figure No. 55 in Modis' Text book on medical jurisprudence and toxicology, 19th Edition, 1975 at page 144, to contend that the hanging as found in this case could well be suicidal. He strenuously urged that the inaction of the brothers of the deceased and P.Ws. 2 and 9 for several days when all of them knew of Court

proceedings should (sic) to justify a finding against wrongful confinement of the deceased at the police station. He also added that in the absence of medical evidence conviction under S. 352, IPC cannot be recorded.

32A. We have carefully considered the rival contentions of the opposing Counsel. An unfortunate episode where the deceased was found dead while he was in the custody of the police had unfurled itself through the evidence of several prosecution witnesses. Merely because death had occurred of a person in police custody, an immediate inference of murder cannot be drawn against the respondents, as rightly observed by the learned trial Judge. Be it a police-man or an ordinary citizen, the cardinal principle of criminal jurisprudence would come into play. On mere suspicion, convictions cannot be recorded and the guilt of the respondents will have to be proved beyond reasonable doubt on legal and acceptable evidence. Since there are several charges evidence in respect of each one of the charges has to be culled out and carefully scrutinised before arriving at a conclusion of guilt or otherwise of the respondents. In *Awadesh v. State of M.P.* : 1988 CriLJ1154 , the Supreme Court observed as hereunder (at page 1156; of Cri LJ) :

'Although the powers of the High Court to reassess the evidence and reach its own conclusion are as extensive as in an appeal against the order of conviction, yet, as a rule of prudence, the High Court should always give proper weight and consideration to matters e.g. (i) the views of the trial Judge as to the credibility of the witnesses; (ii) the presumption of innocence in favour of the accused, a presumption certainly not weakened by the fact that he has been acquitted at the trial; (iii) the right of the accused to the benefit of any doubt, and (iv) the slowness of an appellate Court in disturbing a finding of fact arrived at by a Judge who had the advantage of seeing the witnesses. If on appraisal of the evidence and on considering relevant attending circumstances it is found that two views are possible, one as held by the trial Court for acquitting the accused, and the other for convicting the accused in such a situation the rule of prudence should guide the High Court not to disturb the order of acquittal made by the trial Court. Unless the conclusions of the trial Court drawn on the evidence on record are found to be unreasonable, perverse or unsustainable, the High Court should not interfere with

the order of acquittal.'

In *Rajendra Prasad v. State of Bihar* : 1977 CriLJ613 the Apex Court observed (at pages 616 & 617 of Cri. LJ) :

'..... it will be essential for the High Court, in an appeal against acquittal, to clearly indicate firm and weighty grounds, from the record, for discarding the reasons of the trial Court in order to be able to reach a contrary conclusion of guilt of the accused. The High Court should be able to point out in its judgment that the trial Court's reasons are palpably and unerringly shaky and its own reasons are demonstrably cogent. As a salutary rule of appreciation of evidence, in an appeal against acquittal, it is not legally sufficient that it is just possible for the High Court to take a credibility of witnesses but it is absolutely imperative that the High Court convincingly finds it well-nigh impossible for the trial Court to reject their testimony.'

33. Keeping these principles in mind we will analyse the recorded evidence.

34. Taking away of the deceased by the third respondent and another was seen by P.W. 4, the sister-in-law of the deceased. She was able to notice this apprehension, since the deceased was unloading sand before her house at Budalur, which was in the process of being constructed. She had also pleaded with the 3rd respondent and another constable to take the deceased later in the evening, since her husband was not then present. She has also deposed that the taking away of the deceased was in respect of a complaint given by Durairaj Odayar and Minor Pitchai Odayar of Kadambagudi village. She has also graphically described that the deceased sent a boy to fetch his shirt from her residential house, since he was then bare-bodies. She had also noticed Durairaj Odayar standing near the Railway gate at or about the time when the third respondent and another took away the deceased. She has stated that P.W. 3 Manichettiar, whom she used to call uncle, gave out the names of third respondent and another as Veeraiyan and Duraisamy. It was argued by Mr. Balaguru, learned counsel appearing on behalf of the respondents, that the identify of the persons, who had allegedly taken away the deceased on 6-6-1981 at or about 11 or 11-30 a.m. was known to P.W. 4 only because P.W. 3 told her of their identity. He

submitted that if the evidence of P.W. 3 cannot be accepted, the version of P.W. 4 should also be rejected for she had seen the 3rd respondent only in Court after 6-6-1981 and identification in Court for the first time nearly three years after the incident cannot be easily accepted. This argument overlooks the positive evidence of P.W. 4 that irrespective of the third respondent and Duraisamy being in mufti or uniform she knew them as policemen. It can easily be comprehended that P.W. 4 had known the names of the third respondent and another either from P.W. 3 or others who came to the scene but as far as their identity is concerned, she was herself fully aware. The evidence clearly shows, that on a number of occasions on complaints lodged by Odayars of the village, the deceased, P.W. 6 and P.W. 8 have been prosecuted by the Budalur police. As far as the identity of the third respondent is concerned, we have no manner of doubt that P.W. 4 had correctly fixed the third respondent as one who had taken away her brother-in-law the deceased at 11-30 a.m. on 6-6-1981.

35. P.W. 3 Mani Chettair has also spoken about the third respondent and another constable Duraisamy taking away the deceased at or about noon, from near the newly constructed house of P.W. 4, adjacent to his house. We are not able to attach any importance to his evidence for, when he was examined during investigation by P.W. 18 the Revenue Divisional Officer, he had not stated that the deceased was taken away by policemen. On the contrary he has stated that he was not aware if the police had taken away the deceased Durairaj.

36. The evidence of P.W. 4 is corroborated by P.W. 17 Srinivasan. P.W. 17 a resident of Budalur had seen the deceased in the company of the third respondent and constable Duraisamy between 12-30 p.m. and 1 p.m. on the road leading to the panchayat union office from his residence. He had also seen the deceased seated in the carrier of the cycle of the third respondent while Duraisamy was riding another cycle. Sometime later on his return, he found a crowd opposite to the Budalur police station. On enquiry he was informed that some persons in custody was shouting. He also saw constable Duraisamy coming out of the police station and dispersing the crowd. Except a suggestion that he was a kallar by caste and belonged to Marxist Communist party, his version has not been assailed in any other manner. It is possible to hold, that soon after taking the deceased

from near the residence of P.W. 4, the 3rd respondent and Constable Duraisamy had taken him to the Budalur police station.

37. In the time sequence, the next witness who had seen the deceased at the Budalur police station is P.W. 11 Sultan, a tea shop owner who has his shop opposite to the Budalur police station. He claims to have seen the third respondent and another Constable Duraisamy taking the deceased inside the Budalur police station at or about 1 p.m. on 6-6-1981. He has also spoken about P.W. 8 having contacted him the next day with the object of getting the deceased released on bail. He was also present on 10-6-1981 in the Court of the Sub Divisional Judicial Magistrate, Thanjavur when P.W. 8 was instructing P.W. 2 to file a petition u/S. 317, Cr.P.C. to condone the absence of the deceased Durairaj in C.C. No. 53 of 1981, since he had been taken into custody by Budalur police. He has also deposed of his having attempted to send iddlies to the deceased through Pitchairaj (not examined) at or about 5 p.m. on 10-6-1981 on the request of P.W. 6 and his again attempting to take the returned food packet to the police station, when the 3rd respondent directed him and his group not to cause nuisance to them, since they would themselves supply food to the victim. He has further deposed about Rajendran (not examined) informing him about the police-men having beaten Durairaj on the same night. The cross-examination of this witness shows that he had been prosecuted at least in ten cases by Budalur Police. In one of such cases, he has been charged for having attacked the first respondent, the Inspector of Police. It is quite possible that he has animosity against the Budalur Police. Admittedly he belongs to Marxist Communist Party. Though it is quite possible that P.W. 11 had seen the deceased being taken inside the police station at or about 1 p.m. on 6-6-1981, we would not have attached much weight to this evidence, if we did not have the versions of P.Ws. 4 and 17 on this aspect. However, we are totally ignoring his evidence in respect of other facets spoken to by him since he did have animosity against the Budalur police officials. Even if we reject the evidence of P.W. 11, of his having seen the deceased being taken to the police station by the 3rd respondent and constable Duraisamy on 6-6-1981, the prosecution has still established that the deceased was so taken on the evidence of P.Ws. 4 and 17, which we have accepted.

38. On the same evening P.W. 8 and P.W. 14 went to the police station on information from P.W. 4, but admittedly they had not seen the deceased inside the police station. All that they had been able to see was the apparel of the deceased having been kept near the 4th respondent. The request of P.W. 8 to see the deceased was turned down by the 4th respondent. Though P.W. 8 and P.W. 14 had not seen the deceased inside the police station on the evening of 6-6-1981, the fact that they had seen the clothing of the deceased at the police station certainly lends assurance to the evidence of P.Ws. 4 and 17.

39. All that had happened on 7-6-1981 will have to be now looked into. P.W. 8 was proceeding to the police station on the morning of 7-6-1981 when he happened to meet Murugesan (not examined) a leader of all India Anna D.M.K. party. P.W. 8 informed Murugesan of the illegal custody of his younger brother, who thereafter directed his friend Selvam to find out details from the police station. Selvam offered break-fast to the prisoner and was then told not to interfere in this case, since the crime was one of theft. P.W. 8 was directed to contact a lawyer and take steps through Court to have his younger brother released. On this facet we have the evidence of P.W. 8 alone. However this fits in with the normal course of human conduct, in P.W. 8 having taken steps through all possible sources to have his younger brother released from custody. This evidence of P.W. 8 certainly has sanctity. This possibility of the efforts taken by P.W. 8 on the morning of 7-6-1981 is further affirmed for soon thereafter he had seen at or about 10 a.m. the deceased in the company of Durairaj Udayar of Kadambagudi and respondents 1 and 2, in a car. He had also met P.W. 9 his advocate that morning and had requested for his help to get his brother released. The evidence of P.W. 14 corroborates the presence of the deceased in the car.

40. The evidence of P.W. 9, an Advocate practising at Thanjavur also affirms the truth of P.W. 8 having met him on a particular morning though he was unable to give the date of such meeting. It will naturally be different for P.W. 9 to remember the date, though the fact of his having met P.W. 8, had an impression in his mind. The place of his meeting P.W. 8 fits in with the evidence of P.W. 8. This is not all. As directed by P.W. 9, the next day (8-6-1981), P.W. 8 had met P.W. 9 at Thanjavur and P.W. 9 had gone in a taxi to Tirukkattupalli and Budalur police

stations, to find out ways and means, for getting Durairaj released. However the second respondent had informed him that there was no crime pending against Durairaj and he had not been taken into custody. The attempts made by P.W. 9 at Tirukkattupalli and Budalur police stations to get the deceased released had not been challenged. P.W. 9 has not been cross-examined and his evidence stands un rebutted. This only indicates that P.W. 8 who knew of the wrongful confinement of his younger brother, had been taken steps to get him released. This presupposes the fact of the deceased having been illegally detained from the afternoon of 6-6-1981.

41. Even on 7-6-1981, P.W. 5 the wife of the deceased, with the concurrence of P.W. 8 had gone to Budalur police station. She had noticed Durairaj Odayar and Pitchai Odayar seated on a bench, in the police station. She heard the cries of her husband 'do not beat, do not beat'. She then questioned the police, the reason for attacking her husband, when the 3rd respondent stated. This evidence fixes the presence of her husband inside the police station on 7-6-1981, to the knowledge of the 3rd respondent whom she had seen during her visit and who had directed catching hold of her as well. The evidence of P.W. 5 is quite natural and fits in completely, in the grove of other evidence referred to earlier.

42. We have also the evidence of P.W. 6 another brother of the deceased, who had actually seen the beating administered on the deceased by the 3rd respondent and Constable Duraisamy inside the police station, with cane at or about 12-30 p.m. on 6-6-1981. On the afternoon of 7-6-1981 he had seen respondents 1 to 3 and Kadambagudi Durairaj Odayar at the police station. He has also heard the cries of his younger brother, requesting the first respondent not to beat him, since he was almost on the verge of death. At 3 p.m. on 7-6-1981 he had seen in a taxi his younger brother the deceased in the company of Durairaj Odayar, the first and second respondents. The car went away southwards. P.W. 6 had also seen the first respondent at the residence of Durairaj Odayar on 8th and 9th June, 1981. It is quite true that P.W. 6 is an interested witness and he has also been arrested by the Budalur police in a few cases. Mere interestedness will not suffice to throw away his evidence. If on scrutiny with care and caution, his evidence is acceptable, there can be no impediment in acting upon it. It was

argued that in chief examination, P.W. 6 had stated that he was an inpatient in the hospital from 5th June, 1981 for six days and if that be so, his evidence of having seen his brother at the police station or in the custody of respondents 1 to 3 cannot be true. This argument obviously overlooks, that reference by P.W. 6 of the 5th night he was beaten by Pitchai Odayar and Durairaj Odayar was in 1980, when he was taken by his brother P.W. 8 and admitted in the hospital. On the night of 5th June, 1981 again P.W. 6 was beaten and P.W. 6 had stated that he did not sustain any serious injuries on that day. He has also specifically denied that he was an inpatient in the hospital between 6-6-1981 and 11-6-1981. That P.W. 6 must have been inpatient in the hospital only in 1980, is affirmed by the evidence of P.W. 8. It is obvious that the defence had confused a date in 1980, to the relevant dates in June 1981, which connect respondents 1 to 3 with wrongful confinement and torture of the deceased.

43. P.W. 10 Kaveriammal, is another witness who had not only seen the deceased inside the Budalur Police station on 8-6-1981, 9-6-81 and 10-6-1981, but had also supplied food on 9-6-1981 offered by P.W. 8 to the deceased and on the request of the deceased supplied him beedies for four annas. Her presence at the police station was necessitated, since she had to prefer a complaint of her missing cow. She has denied of having been prosecuted by the Budalur Police under the Tamil Nadu Prohibition Act. It was argued that P.W. 10 had not clearly spoken about the date or month in which she had gone to the Budalur police station, but such non-mention does not affect her version for, P.W. 8 had fixed her presence at the police station on 9-6-1981. The evidence of P.W. 8 fully corroborates the version of P.W. 10 and we accept her evidence as true.

44. We also have the evidence of P.W. 12 Chellaian of his having seen the deceased in the company of the 3rd respondent and 2 or 3 other police-men between 9 a.m. and 10 a.m. on 6-6-1981. We are not attaching any importance to his evidence for, the definite case of P.W. 4 is that the deceased was taken by the 3rd respondent and a Constable Duraisamy only at 11 a.m. or 11-30 a.m. on 6-6-1981 from near her house.

45. Similarly the evidence of P.W. 13 Selvam, that he had seen the deceased in the company of P.W. 8, two years ago at the police station does not appear to be useful. P.W. 8 has not spoken about his having seen the deceased at the police station and more so in the company of P.W. 13. We reject the evidence of P.W. 13.

46. The evidence of P.W. 15 has some significance to affirm the illegal custody of the deceased. P.W. 15 had seen the deceased being taken out of Manaiaripatti Begger Home on a particular morning in a taxi by the 1st respondent and some more police officials. He fixes the day as Sunday. 7-6-1981 was a Sunday and it is on that date that P.W. 6, P.W. 8 and P.W. 14 had seen the deceased in the company of respondents 1 and 2 and Durairaj Odayar in a car or taxi. The evidence of P.W. 15 certainly lends credence to the evidence of P.W. 6, P.W. 8 and P.W. 14.

47. P.W. 16 Kaliaperumal had attempted to see the deceased at or about 9 a.m. on 8-6-1981 on the request of P.W. 8, but the 3rd respondent did not permit such a course. He claims to have been called as a panchayatdar to declare the death of the deceased Durairaj as suicide, by the first respondent. His evidence does not appear to be true for, the first respondent had prosecuted him along with P.Ws. 11 and 12 in a case, for having assaulted him on 8-11-1980. It will be odd for the first respondent to call him to be a panchayatdar and confide him, that the matter could be settled by payment of some money to the family of the deceased. We are eschewing from consideration the evidence of P.W. 16.

48. The fact remains that on the information furnished by P.W. 16 or from some other source, P.W. 1 a leader of the Communist party had known of the death of the deceased in police custody on 11-6-1981. He has positively deposed that on 8-6-1981 when he was near the Thanjavur bus stand supervising the hunger strike organised by his party at or about 10 a.m. Constable Duraisamy had informed him of apprehension of the deceased who was wanted in a crime and was absconding for quite some time, two days ago. This certainly fits in with the apprehension of the deceased on 6-6-1981, spoken to by a few witnesses listed earlier. It was argued, that there would be no need for the policeman to inform P.W. 1 of the

apprehension of the deceased. This argument prima facie did look attractive, but on a careful consideration it deserves rejection. P.W. 1 had deposed that he had helped the deceased in coming out on bail earlier and P.W. 8 had also approached him to get his brother released in this case. In view of the close association of the deceased and his family with P.W. 1 and P.W. 1 himself being a leader of a party, there is nothing unnatural in Constable Duraisamy having told P.W. 1 that the person whom P.W. 1 had bailed out earlier and was absconding had been apprehended in another case. The evidence of P.W. 1 is one more link in the chain of evidence to affirm the deceased having been taken into custody by the 3rd respondent and another on 6-6-1981.

49. The evidence of P.W. 2 and Ex. D. 5 certainly falsify the defence case of arrest of the deceased at or about 8-30 p.m. on 10-6-1981. In Ex. D. 5 a petition u/S. 317, Cr.P.C. filed before the Sub Divisional Judicial Magistrate, Thanjavur in C.C. No. 53/81 on 10-6-1981, P.W. 2 has stated that the second petitioner therein, namely the deceased in this case was unable to appear before that Court since he had been taken into police custody. This petition filed before the Sub Divisional Judicial Magistrate, Thanjavur during Court hours on 10-6-1981 certainly falsifies the alleged arrest of the deceased at 8-30 p.m. as claimed by the defence. We have carefully considered the defence case. Plea of alibi based on self serving documents deserves rejection.

50. We are quite satisfied that P.Ws. 5, 6 and 8 had been taking steps through P.Ws. 2 and 9 to have Durairaj released and on legal advice they were waiting, before a petition u/S. 97, Cr.P.C. could be filed. Unfortunately the deceased died, meanwhile. It was argued that P.Ws. 6 and 8 who knew Court procedure should have acted faster to get the deceased released. Practical experience will show that legal advice is always taken in such matters and abided to, even by persons who normally frequent Courts. On that score the clinching evidence of illegal detention cannot be thrown out as unacceptable.

51. The wealth of evidence referred to by us positively shows that the deceased had been taken into custody by the 3rd respondent at or about 11-30 a.m. on 6-6-1981 and had been kept in illegal custody with the active connivance of the first

and second respondents, till he met with his death in the early hours of 11-6-1981, without being produced before a Court within 24 hours of his apprehension, as ordained by law. The victim had been seen in the company of the first and second respondents as well in a car. Some evidence is available of beating of the victim by the 2nd and 3rd respondents, but we are not attaching serious significance to such beating in view of lack of medical evidence. The fact remains that respondents 1 to 3 had individually, jointly and severally wrongfully confined the deceased at the Budalur Police station between 6-6-1981 and 11-6-1981. They are certainly liable to be punished u/S. 342, IPC, for wrongful confinement, under Charge No. 1. As far as the 4th and 5th respondent are concerned, their acquittal of this charge will have to be confirmed.

52. There is no evidence whatsoever against the 5th respondent and the only evidence available against the 4th respondent is that P.W. 8 and P.W. 14 had seen the clothes of the deceased near the 4th respondent on the evening of 6-6-1981, when he did not permit both of them to see the deceased. This piece of evidence alone will not be sufficient to hold the 4th respondent guilty. The 4th respondent and 5th respondent shall have their acquittal confirmed.

53. As far as the other two charges u/Ss. 352 and 302, IPC are concerned, we are constrained to confirm the acquittal. The medical evidence does not indicate any injury other than the ligature mark on the neck of the deceased. The second injury was post-mortem. The absence of any other injuries on the deceased, prima facie, as held by the trial Court negatives torture.

54. Even as far as the hanging is concerned, the medical evidence is not clinching. P.W. 7 has stated that the death may be suicidal or homicidal and the points available were more in favour of suicide than homicide. The figure in Modis Medical Jurisprudence pointed out by the learned counsel for the respondents probabalises suicidal hanging in the posture found by the Revenue Divisional Officer. The Revenue Divisional Officer (P.W. 18) had also not noticed any other injury other than that had been noticed by the Medical Officer, P.W. 7. It is rather unfortunate that though several witnesses had claimed to have seen injuries on different parts of the body of the deceased before postmortem, such evidence

does not have medical corroboration. The evidence of P.W. 8 indicates that before P.W. 7 conducted postmortem, there was some interference over the phone and through a police officer. If that were to be true, it shocks our conscience. Anyhow on surmises we cannot find the respondents guilty either u/S. 352 or 302, IPC. It is quite possible that the beating had not left any impact on the body of the victim, since the custody had been for quite a long time, but again this will be more on presumption, when clinching evidence is not available on this facet of the prosecution case. Though we have a strong suspicion that the victim must have been beaten in police custody, suspicion cannot take the place of proof and therefore we agree with the learned trial Judge and confirm the acquittal of all the respondents of charges 2 and 3.

55. We have carefully kept in view, the settled law on this subject, relating to interference in an appeal against acquittal. The learned trial Judge had not independently discussed the inherent merits of the evidence of so many witnesses referable to the wrongful confinement of the victim at the Budalur Police Station. In para 53 of his judgment, the learned trial Judge after arriving at a conclusion that murder had not been proved, judging the evidence by the yard-stick of probabilities, its intrinsic worth and animus of witnesses, had abruptly acquitted the respondents of an offence u/S. 342, Indian Penal Code also. We have carefully analysed the evidence with absolute care and caution, keeping in view that the acquittal of the respondents of the offence u/S. 342, IPC had certainly put them on a better pedestal than they were before the trial Court. Even then we hold that there has been miscarriage of justice and on no proper reasoning regarding wrongful confinement when wealth of evidence was available, the respondents had been erroneously acquitted of the charge u/S. 342, IPC. It is not a case where two views are possible on the evidence adduced. We convict respondents 1 to 3 alone of an offence u/S. 342, IPC. Since an opportunity has to be furnished to respondents 1 to 3 on the question of sentence, we direct the production of respondents 1 to 3 before this Court on 4-3-1991. Acquittal of respondents 4 and 5 shall stand confirmed. On 4-3-1991 Mr. A. Balaguru, learned counsel appearing on behalf of the respondents wanted further time for production of respondents 1 to 3 before this Court, for being questioned on sentence. Acceding to his request, the matter stood adjourned to 11th March, 1991. As there was no sitting of the

Division Bench on 11-3-1991, this appeal was reposted to 25-3-1991. On 25-3-1991, only the second respondent T. P. Natarajan appeared before us, Since respondents 1 and 3 were absent on the past occasions also and the Counsel was unable to have them produced, bailable warrants for production of respondents 1 and 3, through the learned Public Prosecutor were issued. To-day (8-4-91) respondents 1 to 3 appeared before us. We questioned all the three respondents in seriatim, as to what they had to say on the question of sentence, since we have decided to convict them u/S. 342, IPC. The answers of the respective respondents were recorded separately and they read as hereunder :

'Court question : Balakrishnan we have decided to convict you u/S. 342, IPC for wrongful confinement. What do you want to say on the question of sentence

Balakrishnan, the first respondent :

I was holding charge of Tirukattupalli Circle during the time of alleged occurrence. I was engaged in the investigation of a murder case which was concerned with Tirukattupalli Circle. I never visited Boothalur Police Station, the alleged place of occurrence from 1-6-1981 till I received information through the Sub Inspector of the concerned police Station. On receipt of information I came to the police station. I registered the information u/S. 174, Criminal Procedure Code and informed the concerned Officers for taking further investigation. That was the part which I had played in this case.

Boothalur Police Station is situated 15 Kms. away from Tirukkattupalli Circle. Totally I do not have any knowledge over this incident. Further I am a recipient of President Medal for life saving. The State Government had awarded a sum of Rupees 5,000/- for my good work. I am having four or five years to be retired from my service. I have got four children. I state My lord that I am suffering from a disease which I pray, should not come even to my enemy. I am taking treatment for the last five months. I state by lord that I have not committed any crime u/S. 342, IPC as charged. If I am punished, my children, myself and my wife will come to street for not committing any offence by me. Therefore, I request that I may be awarded no punishment for the charge against me.'

'Court question : T. P. Natarajan, we have decided to convict you u/S. 342, IPC for wrongful confinement, what do you want to say on the question of sentence

T. P. Natarajan, the 2nd respondent : 'I did not commit any mistake. He was arrested on property case and on suspicion. I have not committed any offence. My wife died two years before. I have two children to be married. I have no brother, no sister. I have not been allowed to retire. I have not committed any mistake.'

'Court question : Veeraivan, third respondent, we have decided to convict you u/S. 342, IPC for wrongful confinement. What do you want to say on the question of sentence

Veeraivan, third respondent : I have committed no mistake. I am solely depending on my present job. I have no other source of income. I have got four children. I do not have anything to say except this. If I am punished, I will be on the street with my family.'

56. After respondents 1 to 3 had answered our questions as to what they had to state on sentence, the learned Counsel filed written statement on behalf of respondents 2 and 3 and produce the proceedings dated 24-1-1991 of Deputy Superintendent of Police, police training centre, Madras 83, granting leave to the first respondent for two months for taking treatment for tuberculosis with which he was stated to be suffering.

57. In the proceedings referred to above, filed on behalf of the first respondent, it is seen that from 14-12-1990 the first respondent had asked for special medical leave for two months by producing a medical certificate from the Madurai Rajaji Hospital.

58. In the written statement filed by the second respondent, he has stated that he was placed under suspension on 26-7-1988 and was not allowed to retire on the date of his superannuation on 31-7-1988. He lost his wife on 7-6-1988. He has unmarried daughters aged about 26 and 25 years respectively and there is no other male member in his family to take care of them. He has further added that the part played by him in the episode of arrest, detention and death of deceased

Durairaj was minimal and almost innocuous. Apart from making entries in the arrest report card and prisoner's search register, he had not done anything with regard to the arrest and detention of the deceased Durairaj. According to this statement, he had acted according to the direction of the first respondent, who was his Inspector at that time. He had no personal interest in the arrest or detention of the deceased. He did not actually participate in the interrogation of the deceased. He is aged 61 years and had already attained superannuation. If any sentence of imprisonment were to be imposed on him, that would result in the deterioration of his health, which had already become bad. He would plead that his advanced age and the already deteriorated physical condition may be considered as mitigating circumstances and therefore a sentence of fine may be imposed. He has also added that his detention in prison will jeopardise the further of his two unmarried daughters and spoil their chances of being married respectably.

59. In the written statement of the 3rd respondent, he has stated that he is now working as Sub-Inspector of Police (Law and Order) at Papanasam police station. He is on medical leave from 23-2-1991 for his ailment namely severe chest-pain. He is aged 42 years and has four children (2 girls and 2 boys) aged 18, 16, 12 and 5 years respectively. His wife is aged 39 years. He hails from a poor family. He has put in 22 years of service in the department, with a large number of rewards and commendations to his credit. He has an unblemished record of service of 22 years. In the occurrence, which is the subject matter of this case, he had been made a scape-goat or victim of circumstances, than a willing partner in committing any unlawful act. He had to act under the instructions of his superiors and unfortunately he had no other option except to carry out the orders of his superiors, believing in good faith that the deceased had to be arrested in a case of theft. He had no personal animosity or grievance against the deceased Durairaj and he did not interrogate or beat the deceased at the police station. He was not personally responsible for any wrongful confinement, except that he had arrested and kept the deceased at the police station for the purpose of interrogation by his superior officer, on their direction. He would add that if he had to be sentenced to any term of imprisonment, it would result in his dismissal from service. His wife and young children would become destitutes and would be deprived of their daily-bread. They would be driven to face untold misery and hardship on account of a

total financial breakdown. He does not possess any ancestral property worth the name to fall back upon, to eke out his livelihood in case of his dismissal from service. He would plead that the fact of his not having had any personal animosity or motive against the deceased and that he had acted only on the direction of his superior officers may be taken note of and treated as mitigating circumstances in his favour, while awarding punishment. He has pleaded for the imposition of fine and to recommend for severe departmental action like stoppage of increments or even promotion, if deemed fit.

60. We have carefully considered all that respondents 1 to 3 had stated on the question of sentence. Since we have already decided on the recorded evidence, that these respondents are guilty of an offence punishable u/S. 342, IPC, their denial of non-involvement in this occurrence can have no significance. It may be that the first respondent had been the recipient of a Medal from the President of India for saving a life and the State Government had awarded a sum of Rs. 5,000/- for his good work. Even if it be that the first respondent is suffering from Tuberculosis, we are unable to hold that his suffering would be mitigating circumstances. The hardship to which the families of each of these respondents may be put to, cannot reduce the gravity of the offence, these respondents had committed. As much as the families of these respondents may have to suffer, due to the offence committed by these respondents, one cannot overlook the suffering that had been inflicted by these respondents, on the family of the deceased. We have considered with anxiety the sentence to be awarded on these three respondents. We have no hesitation whatsoever in holding that these three respondents deserve to be punished with the maximum sentence prescribed for the offence u/S. 342, IPC. Any sympathy for these respondents will be misplaced. Therefore we sentence each one of these respondents (R. 1 to R. 3) to undergo rigorous imprisonment for one year each and to pay a fine of Rs. 1,000/- each, in default to undergo three months rigorous imprisonment. The fine, if paid, in its totality, shall be paid as compensation to P.W. 5 Renganayaki, the wife of deceased Durairaj. Time for payment of fine shall be 8 weeks from today. This appeal is partly allowed as indicated above as against respondents 1 to 3 while it will stand dismissed as regards respondents 4 and 5.

61. Appeal partly allowed.

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