

IN THE HIGH COURT OF KARNATAKA
CIRCUIT BENCH AT DHARWAD
DATED THIS THE 30TH DAY OF SEPTEMBER, 2011

PRESENT:

THE HON'BLE MR JUSTICE SUBHASH B ADI
AND
THE HON'BLE MR. JUSTICE K.N.KESHAVANARAYANA

CRIMINAL APPEAL No.162 OF 2007 (A)

BETWEEN:

STATE OF KARNATAKA BY
THE CIRCLE INSPECTOR OF POLICE,
SANDUR CIRCLE, THORANAGALLU POLICE STATION,
THORANAGALLU.

....APPELLANT

(BY SRI.V.M.BANAKAR, ADDITIONAL SPP)

A N D

1. CHAPE GOVINDAPPA S/O RUDRAPPA,
AGED ABOUT 43 YEARS, NEVVAR,
R/O HALI DAROJIVILLAGE.
2. RAMESHA K.P., S/O SHIVAMURTHY,
AGED ABOUT 19 YEARS, NEVVAR,
JAMBUNATH ROAD, HOSPET.
3. VEERANNA (a) VEERESH,
S/O RAJASHEKAR,
AGED ABOUT 19 YEARS, LINGAYATH,
WORKING IN GARMENTS SHOP,
R/O UKKADAKERI, HOSPET.

...RESPONDENTS

(BY SMT.C.SUNANDA & SRI.P.K.SANNINGAMMANAVAR,
ADVS.)

* * * *

THIS CRIMINAL APPEAL IS FILED UNDER SECTION 378 (1) AND (3) OF CR.P.C. BY THE STATE P.P. FOR THE STATE PRAYING THAT THIS HON'BLE COURT MAY BE PLEASED TO GRANT LEAVE TO FILE AN APPEAL AGAINST THE JUDGMENT AND ORDER OF ACQUITTAL DT.28.09.2006 PASSED BY THE DIST. & S.J.(P.O), F.T.C-III, HOSPET IN S.C.NO.66/2005 ACQUITTING THE RESPONDENTS-ACCUSED FOR THE OFFENCE P/U/SS 302 AND 201 OF IPC R/W SEC.34 OF IPC.

THIS APPEAL COMING ON FOR FINAL HEARING THIS DAY, SUBHASH B ADI, J., DELIVERED THE FOLLOWING:-

J U D G M E N T

This appeal by the State against the judgment and order of acquittal dated 28.09.2006 in S.C. No. 66/2005 on the file of the District and Sessions Judge (P.O.) FTC-III, Hospet.

2. Accused No.1-Chape Govindappa, accused No.2-Ramesha K.P. and accused No.3-Veeranna (u) Veeresh were charge sheeted by the C.P.I. Sandur Circle for the offence punishable under Sections 302 and 201 of IPC r/w Section 34 of IPC.

Sd/-

3. Accused No.2-son-in-law of accused No.1. Accused No.3 is the friend of accused No.2. P.W.6 is the daughter of accused No.1. Deceased Naresh is the son of P.W.1.

4. The case of the prosecution in short was that, about six months prior to the incident there was a quarrel between deceased-Naresh and accused No.1 as the accused No.1 suspecting the deceased that, he is having illicit relationship with P.W.6 and in this regard he had assaulted the deceased. On 26.12.2004, at about 7.00 a.m. deceased-Naresh went to Kampli town in order to get their tractor repaired. P.W.1-complainant had followed him in a bus and thereafter, P.W.1 sent back his son deceased-Naresh to Hali Daroji village by paying Rs.20/-. When the complainant returned in the evening at 4.00 p.m., he did not find his son at home. Thereafter, next day morning complainant went to Kampli and enquired about his son in the workshop. In the evening at about 6.00 p.m. he



received a phone call informing that, dead body of his son found floating in a well situated near Eshwar temple. The complainant came back from Kampli to his house at 9.00 p.m. and found his son's body in the well and he identified the dead body. He filed complaint before the Toranagallu Police Station, Sandur Circle, which was registered in Crime No.234/2004 inter alia suspecting that the accused No.1 and others might have assaulted and thrown the dead body of the deceased in a well. The complaint was registered for the offence punishable under Sections 302 of IPC r/w Section 34 of IPC.

5. P.W.13- Investigating Officer removed the dead body with the assistance at about 8.30 a.m. on 28.12.2004 and conducted inquest panchanama as per Ex.P13. He noticed an injury measuring 4 inch in brown colour around the neck of the deceased and also injury on the back and on the hand and thereafter sent the dead body to the Govt. Hospital for postmortem and



handed over the matter for further investigation to P.W.15.

6. P.W.15 continued the investigation. During the investigation he arrested the accused and on the basis of the voluntary statement of accused No.1 recovered the cloth of the deceased as well as M.Os.1 to 4 and thereafter on completion of the investigation, filed the charge sheet. The learned Sessions Judge after securing the presence of the accused, framed the following charges:

- 1) ಆರೋಪಿ 1 ರಿಂದ 3 ನೀವುಗಳು ಮೃತ ನರೇಶನನ್ನು ಕೊಲೆ ಮಾಡುವ ಉದ್ದೇಶ ಹೊಂದಿದ್ದೀರಿ, ಒಂದನೇ ಆರೋಪಿ ಮಗಳಾದ ಶಿಲ್ಪಳನ್ನು ಚುಡಾಯಿಸಿ, ಮದುವೆ ಮಾಡಿಕೊಳ್ಳುವಂತೆ ಅಂತ ಹೇಳಿ, ಮತ್ತು ಅವಳಿಗೆ ಬರುವ ಸಂಬಂಧವನ್ನು ಕೆಡುಸುತ್ತಿದ್ದೆ ನೀವುಗಳು ಅವನನ್ನು ಕೊಲೆ ಮಾಡುವ ಪೂರ್ವ ಉದ್ದೇಶವನ್ನು ಹೊಂದಿ ಆ ಎಕೋದ್ದೇಶದ ಸಾಧನೆಗಾಗಿ ಆರೋಪಿ 1 ರಿಂದ 3 ನೀವುಗಳು ದಿನಾಂಕ 26.12.2004 ರಂದು ರಾತ್ರಿ 11.30 ಗಂಟೆಗೆ ಹಳೇ ದರೋಜಿ ಗ್ರಾಮದಿಂದ ಸ್ವಲ್ಪ ದೂರಿನಲ್ಲಿರುವ ಈಶ್ವರ ದೇವಸ್ಥಾನದ ಹತ್ತಿರ ಗುಡಿಯೊಳಗೆ ಎಳೆದುಕೊಂಡು ಹೋಗಿ ಹಗ್ಗದಿಂದ ನರೇಶನ ಕುತ್ತಿಗೆಯನ್ನು ಬಿಗಿದು ಅವನನ್ನು ಕೊಲೆ

SPW.

ಮಾಡುವ ಉದ್ದೇಶ ಹೊಂದಿದ್ದೀರಿ. ಆರೋಪಿ ರಮೇಶ ಮತ್ತು ವೀರಣ್ಣ ಕೈಕಾಲು ಹಿಡಿದರು, ಆರೋಪಿ ಗೋವಿಂದಪ್ಪ ಕುತ್ತಿಗೆಗೆ ಉರುಲು ಹಾಕಿದ್ದೀರಿ, ಆದ್ದರಿಂದ ನೀವುಗಳು ಮೃತನನ್ನು ಪೂರ್ವೋದ್ದೇಶದಿಂದ ಕೊಲೆ ಮಾಡಿದ್ದೀರಿ, ಆದ್ದರಿಂದ ಈ ನ್ಯಾಯಾಲಯದ ಸಂಜ್ಞೆಯಲ್ಲಿ ಬರುವ ಭಾ.ದಂ.ಸಂ.ವಿಧಿ:302 ಜೊತೆ ವಾಚಕ 34 ರನ್ವಯ ಅಪರಾಧ ಮಾಡಿರುತ್ತೀರಿ ಅಂತ ನಿಮ್ಮ ಮೇಲೆ ದೋಷಾರೋಪಣೆ ಹೊರಿಸಿದ್ದೇನೆ.

- 2) ಎರಡನೇಯದಾಗಿ ಆರೋಪಿ 1 ರಿಂದ 3 ನೀವುಗಳು ಕೊಲೆಯ ಸಾಕ್ಷ್ಯವನ್ನು ನಾಶಪಡಿಸುವ ಉದ್ದೇಶ ಹೊಂದಿ, ಆ ಎಕೋದ್ದೇಶದಿಂದ ಮೃತನನ್ನು ಅಂದರೆ ನರೇಶನನ್ನು ಕೊಲೆ ಮಾಡಿ ಅವನ ಶವವನ್ನು ಬಾವಿಯ ನೀರಿನಲ್ಲಿ ಹಾಕಿ ಸಾಕ್ಷ್ಯವನ್ನು ನಾಶಪಡಿಸಿದ್ದೀರಿ ಆದ್ದರಿಂದ ಈ ನ್ಯಾಯಾಲಯದ ಸಂಜ್ಞೆಯಲ್ಲಿ ಬರುವ ಭಾ.ದಂ.ಸಂ.ವಿಧಿ:201 ಜೊತೆ ವಾಚಕ 34 ರನ್ವಯ ಅಪರಾಧ ಮಾಡಿರುತ್ತೀರಿ ಅಂತ ನಿಮ್ಮ ಮೇಲೆ ದೋಷಾರೋಪಿಸುತ್ತೇನೆ.

7. Before the trial Court, the prosecution has examined P.Ws.1 to 15 and Exs.P1 to P22 and marked M.Os.1 to 6. On the defence side one witness was examined as D.W.1 and Exs.D1 to D5 were marked. The trial Court disbelieving the evidence of P.Ws.2 and 3 and also circumstantial evidence of P.W.4 held that the prosecution has failed to prove the charges beyond all



reasonable doubt and acquitted the accused. As against the judgment of acquittal, the State is in this appeal.

8. Heard Sri.V.M.Banakar, additional SPP for the State and Smt.C.Sunanda for the accused.

9. The entire prosecution case is based on the evidence of P.Ws.2 and 3 and eyewitness P.W.4. P.W.1 is the complainant and in Ex.P1-complaint, he alleged that on 27.12.2004 at about 6.00 p.m. he received a phone call informing that the body of the deceased-Naresh is found and his wife Smt.Parvatamma has identified the dead body. He reached Hali Daroji village from Kampli at about 9.00 p.m. and filed the complaint at 11.00 p.m. at Thoranagallu Police Station, wherein he alleged that about six months prior to the incident accused No.1, his sister and brother-in-law of the accused No.1 have tried to murder his son on the ground that, his deceased son had a illicit relationship



with the daughter of accused No.1. They had also beaten the deceased severely. Therefore, he suspects that, accused No.1 and others might have committed the murder of his son. The police recorded the statement of P.Ws.2 and 3 on 29.12.2004 wherein they state that, they have seen the accused Nos.2 and 3 holding the deceased and accused No.1 tying the rope around the neck of the deceased. As per the statement of P.Ws.2 and 3 and also on the basis of circumstantial evidence, the deceased stated to have been last seen in the company of accused at Kampli at about 8.00 p.m. by P.W.4. P.Ws.2 and 3 are shown as eyewitness in this case. P.W.2 in his evidence has stated that, on the date of incident around 11.00 to 11.30 p.m. while he was going to his land for the purpose of discharging the canal water to his land and as it was a full moon day, he saw three persons namely accused Nos.1 to 3 at the spot near well and accused No.1 tying the rope around the neck of the deceased and other two accused holding



the deceased-Naresh. Further, he returned home and on the next day evening at 4.00 p.m. he came to know that the dead body of the deceased-Naresh is found in the well near Eshwar temple. In the cross-examination, P.W.2 admits that, his land bearing Sy.No.177 measuring 1 acre 40 cents and his land is on the eastern side of the village. He also admits that, on every Saturday and Sunday, water will not be discharged to the canal for the irrigation and supervision of discharging the water is done by one Gurumurthy, who is called as laskar, and the lock and key of water canal is always remain with the said person. He also admits that, no water will be discharged to any canal on Saturday and Sunday. He further admits that, on 27.12.2004 at about 8.00 p.m. itself he had informed P.W.1 that, accused committed the murder of the deceased.

10. No doubt P.W.1 had filed the complaint at 11.00 p.m. on 27.12.2004. According to P.W.2, he given



information P.W.1 that the accused committed the murder of the deceased on 27.12.2004 at 8.00 p.m. itself. However, Ex.P1, which lodged after three hours of the information does not even disclose that P.W.2 had informed P.W.1 and even it does not disclose whether the murder was committed by the accused. P.W.1 only suspects that, accused No.1 might have committed the murder of the deceased on the basis of the earlier incident. On the defence side, D.W.1 who is village accountant has been examined. He has stated that, the land of P.W.2 is at the distance about 3 to 3 ½ k.m. from the temple and the land bearing Sy.No.176 and 177 are situated on the southern side of the bridge and also admitted that, to reach the land of P.W.2 from the village, one need not come from the road near the temple. In support, he has produced Ex.D5- sketch prepared by the Assistant Executive Engineer showing the location of the canal and the land of P.W.2. The land of P.W.2 is near Shivunchi canal and below the



Shivunchi canal, there is a Sugurappan canal and there is a bridge nearby and there the village Hali Daroji is located, whereas Eshwar Temple is on the other side of the village. The sketch it reveals that, P.W.2 go to the land from the village by crossing the bridge of the Shivunchi canal. He need not go to the temple side and temple is on the other side of the village. Further, P.Ws.1, 2, 3, 4 and D.W.1 have admitted that, on Saturdays' and Sundays' water will not be discharged to the canal and there will be no water on Saturdays' and Sundays' to any canal for the purpose of irrigation. The evidence of P.Ws.2 and 3 shows that, while they were going to their lands, they had seen the incident. Ex.D5 shows that, one need not come to the temple to reach Sy.Nos.176 or 177, as both the lands are near the Shivunchi canal and from which the water is flooded to the lands. Hence, there is no possibility to P.Ws.2 and 3 crossing the road near the temple. Both the witness have stated that, they had seen the incident around

S2W

11.00 to 11.30 p.m. that too while going to their lands. According to P.Ws.1 to 4, water is not discharged for the purpose of irrigation and there is no reason for P.Ws.2 and 3 to go to their lands for the purpose of discharging the water. Secondly, it is not explained as to why he could reach the temple to go to the lands. The temple is on the one side of the village and the land is on the another side of the village.

11. Learned Sessions Judge while considering the evidence of all these witnesses has come to the conclusion that, they are all chance witnesses and they have not seen the incident. The evidence of P.Ws.2 and 3 creates serious doubt as to whether they had really witnessed the incident. If the evidence of P.Ws.2 and 3 is disbelieved, the only evidence of P.W.4 remains. In his evidence, he has stated that, on 26.12.2004 at 8.00 p.m. he had seen the deceased in the company of the accused at Kampli. Thus, there is no evidence, which proves that the accused and the deceased were found in



village. In turn, the evidence of P.W.1 shows that, he sent back his son to the village by paying Rs.20/-, much before the alleged last seen at about 8.00 p.m. If P.W.1 had sent back the deceased much prior to 8.00 p.m. on 27.12.2004, the evidence of P.W.4 creates doubt as to whether he has seen the accused and the deceased together.

12. Apart from these witnesses, there is no other direct or circumstantial evidence and no strong motive is also alleged, except referring to the earlier incident, which has occurred six months prior to the incident. According to P.W.1, six months prior to the incident, accused attempted to commit murder of his son on the ground that the deceased having illicit relationship with the daughter of accused No.1. This is denied by P.W.6 the daughter of accused No.1. Thus, it cannot be said that there was any motive for the accused to commit the murder of the deceased. Hence, if the evidence of



P.Ws.1, 2, 3 and 4 is disbelieved, there is no evidence to prove the charges against the accused.

13. The trial Court on proper appreciation of the entire evidence has rightly held that the prosecution has failed to prove the charges and acquitted the accused. We find no grounds to interfere with the Judgment of acquittal.

Accordingly, the appeal is dismissed.

**Sd/-
JUDGE**

**Sd/-
JUDGE**

MBS/-