

IN THE HIGH COURT OF KARNATAKA CIRCUIT BENCH AT
DHARWAD

DATED THIS THE 28TH DAY OF JANUARY 2011

PRESENT

THE HON'BLE MR.JUSTICE K. SREEDHAR RAO

AND

THE HON'BLE MR. JUSTICE C.R.KUMARASWAMY

CRL.APPEAL NO. 2819/2009

BETWEEN:

1. Siddappa Appayya Aganappanavar,
Age: 26 years, Occ: Agriculture.
2. Adivappa Yellappa Dasappanavar,
Age: 21 years, Occ: Agriculture.
3. Siddappa Bhimappa Aganappanavar,
Age: 26 years, Occ: Agriculture.
4. Siddalinga Laxman Sanadi,
Age: 22 years, Occ: Agriculture.
5. Chennpa Fakirappa Aganappanavar,
Age: 21 years, Occ: Agriculture.
6. Yallapa Kallappa Aganappanavar,
Age: 22 years, Occ: Agriculture.

All are R/o Karalkop, Tq: Gokak,
Dist: Belgaum.

...Appellants

(Sri. Ashok R. Kalyanashetty, Advocate
for A.1 and A.2,
Sri. Srinand A. Pachhapure, Advocate
for A.3 to A.6)

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AND:

The State of Karnataka,
By its State Public Prosecutor,
High Court Building, Dharwad.

...Respondent

(By : Sri. V.M. Banakar, ASSP.)

This criminal appeal is filed U/s. 374(2) of Cr.P.C., by the Advocate for the appellants seeking to set aside the Judgement passed by the learned Pri. Sessions Judge, Belgaum in S.C.No.196/2007 dated: 14-10-2009 / (15-10-2009) and acquit the appellants from the charges leveled against them.

These appeal coming on this day for final hearing, Sri. C.R. Kumaraswamy, J., delivered the following: -

JUDGMENT

1. This Criminal Appeal is filed U/s.374(2) of Cr.P.C., by the Advocate for the appellants seeking to set aside the Judgment passed by the Principal Sessions Judge, Belgaum in Sessions Case No.196/2007 dated 14-10-2009 and acquitting them from the charges levelled against them.

2. The brief facts of the prosecution case is that one Revappa Yallappa Duradundi, aged about 28 years, resident of Kalarakoppa, Taluk: Gokak gave a complaint before the PSI of Gokak Police Station on 03-10-2006 at 11.00 hours.

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3. The contents of the complaint is that one Satteppa, Yallappa, Gurusiddappa and deceased-Basappa are all his brothers. They are living separately. His elder brother Basappa was carrying on milk vending business. He has purchased the land belonging to Fakirappa Siddappa Agasappanavar and Bheemappa. In that land he has constructed a house and he was residing along with the family. Hanumantappa Siddappa Aganapa's lands were adjacent to the land of Fakirappa. It is alleged that A.1 has illicit connection with Ningavva, wife of Hanumantappa Siddappa Aganappa and the complainant's brother-Basappa has also developed illicit connection with Ningavva. The said illicit connection was known to Siddappa Appayya Aganappanavar.

4. It is also stated in the complaint that yesterday there was annual festival. The complainant's brother-Basappa wanted to go to Mill to prepare Kari powder and he went on a Motor Cycle bearing Reg.No.KA-30-H-3341 and said Basappa took A.1-Siddappa Appayya Aganappanavar

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and A.2-Advappa Yallappa Dasappanavar on his Motor Cycle and they were followed by A.3 to A.6 in a different Motor Cycle. Today on 03-10-2006 Tuesday, the complainant's mother-Ningavva went to sell the curd to Gokak and when she returned back to the Village she was crying and she narrated that near the land situated at Kalaburgi she saw the dead body of Basappa on the road and a Motor Cycle was lying on his dead body. Immediately, neighbours and their family members went to the spot and they saw that the complainant's brother-Basappa has sustained injuries and his private part was also severed. Then they discussed about who might have committed this crime. PW.19-Siddappa Kallappa Goudappanavar narrated about the incident. He has stated before them that on 03-10-2006 in the night at about 1.00 am, the accused Nos.1 to 6 formed an unlawful assembly with common intention to commit murder, assaulted the deceased-Basappa by means of Chopper and Axe and committed murder of Basappa. Then he proceeded to Gokak. Since the deceased was having illicit connection with Ningavva and due to sexual jealousy,

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this crime was committed. In this regard PW.5-Revappa Yallappa Durdundi lodged a complaint. On the basis of this complaint Crime No.205/2006 was registered against the accused Nos.1 to 6 for the offences punishable under Sections 143, 147, 148, 302 r/w 149 of IPC. The incident occurred at 1-00 hour on 03-10-2006. The crime was entered in the general dairy on 3-10-2000 at 11-00 hours.

5. After the investigation, the Police laid a charge sheet. It is stated in the charge sheet that accused No.1 was having illicit connection with CW.19, i.e. PW.17-Ningavva, and said CW.19/PW.17 was also having illicit connection with deceased-Basappa. Due to this illicit connection and also due to financial transaction, the accused Nos.1 to 6 took the deceased-Basappa on a Motor Cycle bearing Reg.No.KA-30-H-3341 and also another Motor Cycle bearing Reg.No.KA-23-H-4453 towards Gokak, where the accused assaulted Basappa by means of Chopper and axe and severed his private part and thereby they alleged to have committed the offences punishable under Sections 143, 147, 148, 364, 342, 120(B) and 302 r/w 149 of IPC.



6. PW.19-Siddappa Kallappa Goudappanavar, is the material witness and he is an eye witness to the incident. He has stated in his evidence that he was working as a coolie and his native place is Kalarakoppa Village. When there is annual festival in the Village, his brother used to visit the house. That on 03-10-2006 there was annual Chamundeshwari Festival at about 8-45 pm., he came from Goa to Gokak. Since there was no bus facility he borrowed a Motor Cycle belonging to Maruti Gudagannavar then he proceeded on the said Motor Cycle and was stopped the same at Ram Bhavan Hotel in order to consume water. He saw accused Nos.1 to 6 were sitting in the Hotel along with deceased-Basappa. He asked Basappa to accompany with him, for that he stated that Siddappa, Adaveppa are all with him. When he came out, he saw Siddappa Appayya Aganeppanavar, Adaveppa Yallappa Dasappanavar and Basappa Yallappa Duradundi were there and other four accused came in a Motor Cycle from behind. He also went behind them near Kalaburgi, there was a channel and Motor Cycle was stopped and Basappa started screaming and the

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accused assaulted him by means of Chopper and Sickle and he fell on the ground. Thereafter the accused saw him, he turned his Motor Cycle and returned. The motor Cycle was made to fall on Basappa. It was 1-30 am and there was moonlight. In that moonlight, he saw the accused persons and he knows accused Nos.1 to 6. He also knows Basappa. He identified the Sickle and Axe and they were marked as M.Os.1 to 4. When Police showed the Sickle and Axe, the accused Nos.1 to 4 were present and accused Nos.5 and 6 showed to him on the next day and he identified them.

During his cross-examination he has stated that after he came from Gokak, he took Motor Cycle at 11-30 pm, and went to Ram Bhavan Hotel to have water. He also states at para 6 of cross-examination that he saw the accused assaulting the deceased-Basappa at about a distance of 15 to 20 feet. When he followed the accused, at that time he was proceeding on a Motor Cycle at a distance of 200 feet. In the night the accused assaulted the deceased. He turned the Motor Cycle and came back and heard Basappa was

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shouting. When he reached the Village, it was 1-45 am. The witness has voluntarily stated that at 1-45am he went to Gokak and slept in Yallamma's Temple. In para 8 of his cross-examination when he returned from Gokak, he did not think he should report the matter to the Police. He did not also narrate this incident to Maruti Gudagannvar or to any other person. When he went to his house at 8-30 am he narrated about the death to one of his family member. The Police met him at 3.00 pm. He also stated during his cross-examination that all the four accused went in another Motor Cycle.

7. The evidence of PW.5-Revappa Yallappa Duradundi is in the same line as of the contents of complaint. PW.5 has stated in para 10 of his cross-examination that rests of five accused were sitting at Kalarakoppa cross. He has not enquired Siddappa Aganappanavar about where they were taking his brother-Basappa. During his cross-examination he has stated that the Police themselves written the complaint. PW.2 is the

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scribe of the complaint. He has stated in his evidence that as per narration of complainant-PW.5, he wrote the complaint, which is marked at Ex.P.3. Though this witness was cross-examined, but nothing is elicited to disbelieve his evidence. PW.3 is the Photographer, who has taken the photographs of the dead body of the deceased-Basappa. Ex.P.4 to 7 are the photographs.

8. PW.4 is the medical officer, who conducted P.M. examination on the dead body of deceased Basappa. He has stated in his evidence that the deceased Basappa is aged about 35 years. He conducted P.M. examination on the dead body at Mortuary of General Hospital, Gokak between 4-00 pm and 5-00 pm. On examination he found seven injuries on the dead body, which are as under:-

1. Penis was amputated and scrotum was ruptured, both testicles were present.
2. Lacerated injury over the left side of face measuring 4" x ½"
3. Lacerated wound over right ear measuring ½", and bone depth.
4. Lacerated wound over the right eyebrow.

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5. Lacerated wound over left elbow, measuring 8" x 3" and bone depth.
6. Lacerated wound over the right elbow, measuring, 4½ x 2½" and bone depth.
7. Lacerated wound over left leg, measuring 2"x1" and bone depth.

9. PW.4 also stated in the evidence that the cause of death of deceased-Basappa is due to severe hemorrhage, due to multiple injuries. Time since death was 10 to 12 hours prior to P.M. examination. He has issued P.M. Report as per Ex.P.12.

10. He further deposed that on 22-11-2006 he examined two sickles and two axes, which are marked as M.O.Nos.1 to 4. The injuries mentioned in Ex.P.12 might have been caused by M.O.Nos.1 to 4. He has issued opinion report of weapons as per Ex.P.14.

During his cross-examination PW.4 has stated that semi digested food particles found in the stomach within 2 to 3 hours, after consuming food. He also states in his cross-examination that M.O.Nos.1 and 2 have got sufficient

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bends. Injuries 1 and 2 present on thorax and injuries 2 to 7 i.e., lacerated wounds over face and left leg have not been caused with the edges of M.O.Nos.1 and 2 and they might have caused by the tip of those sickles.

11. PW.6-Shivananda Tippanna Nayak is the Manager of the Hotel. He has turned hostile to the side of prosecution. PW.7-Siddappa Kallappa Kanavi is the panch witness for five panchanamas namely inquest, spot, seizure of apparels of the deceased, seizure of diary, and seizure of Motor Cycle produced by PW.8.

12. PW.8 is the owner of the Motor Cycle bearing Reg.No.KA-23-H-4453. He has turned hostile to the side of prosecution. PW.9 is the son of the deceased. He has deposed that he knows all these accused and on 03-10-2006 his father was murdered. He further deposed that at 10-00 pm, his father-Basappa went on Motor Cycle along with Siddappa and Adivappa and 4 members namely Siddalingappa, Channappa, Yallappa, and Sanna Siddappa went in another Motor Cycle. He also shouted to stop the

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vehicle, in spite of it, they did not stop the same. His mother came at 10-30 pm. During his cross-examination he has stated at para 10 that his house is situated, adjacent to his house. There were sugarcane crops grown. In front of his house there are thorny trees. The distance between his house and Kalarakoppa is half km. There are no streetlights in front of his house.

13. PW.9 is a minor son of the deceased. He is a child witness. He has deposed that accused No.1 to 2 took his father on the motor cycle. The motor cycle belongs to his father.

14. PW.10 is the seizure panch witness for M.O.Nos.1 to 4, which were used for commission of offence.

15. PW.11 is mother of the deceased. She has deposed that she saw dead body of her son at about 7-00 pm., when she went for selling curds. She also stated about loan transaction taken place between the accused and deceased and also stated about illicit intimacy between PW.17-Ningavva and deceased and due to this the accused

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suspected and committed murder of her son-Basappa. She has omitted to state before the Police that Ningavva was a mistress of her son.

16. PW.12 is the wife of the deceased. She speaks about the loan transaction between the deceased and accused. She has produced three diaries, which are pertaining to statement of accounts maintained by the deceased.

17. PW.13 is the elder brother of the deceased. He deposed that Siddappa and Adivappa took his younger brother-Basappa on Motor Cycle of his brother. During his cross-examination he stated that he has omitted to state before the Police that Siddappa Appayya Aganappanavar were having illicit connection with Ningavva-PW.17.

18. PW.14 has deposed that in Basavanna Temple, the accused-Siddappa Appayya Aganappa and other five persons were discussing that they were fed up with giving interest to Basappa, therefore, they decided to kill him and accused No.1 threatened him that if he discloses this fact

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his life will be in danger. Then Basappa came there, then Siddappa and Adivappa went along with Basappa on Motor Cycle belonging to Basappa. During his cross-examination he has admitted that he is close relative of PW.5 and PW.13 and also deceased.

19. PW.15 is formal witness. He has deposed that he has carried PW.11-Ningavva to Gokak. PW.16 is the carrier of FIR. PW.17 has stated that she was not having any illicit connection with Siddappa Appayya Aganappanavar and she does not know about accused Nos.1 to 6 and Basappa. She has further stated that the Police have not recorded her statement. This witness has turned hostile to the side of prosecution.

20. PW.18 is the author of the contents of diary-Ex.P.19. He has turned hostile to the side of prosecution. PW.20 is the Police Constable, who carried the articles to FSL belonging to Crime No.205/2006. PW.21 is the Police Officer, who registered the case in Crime No.205/2006 for the offences punishable under Sections 143, 147, 148, 302

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r/w 149 of IPC. He has conducted inquest panchanama as per Ex.P.16. He also inspected the spot after securing panch witness and drew spot panchanama as per Ex.P.17. He also drew sketch of scene of offence as per Ex.P.32. In his cross-examination, nothing is elicited to disbelieve his evidence.

21. PW.22 is the panch witness along with PW.1. He has turned hostile to the side of prosecution. PW.23 is the Investigating Officer, who laid charge sheet against the accused after completion of investigation. During his investigation he has recorded the voluntary statements of accused Nos.1 to 4 and seized M.O.Nos.1 to 4, which are the weapons used for the commission of offence.

22. The statements of accused were recorded. The accused denied the prosecution allegations.

23. The sum and substance of the finding of the Trial Court is as under :-

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"The Trial Court has observed that even though PW.19, who is as per prosecution is said to be eye witness, failing to report to the police with regard to the incident upon seeing the incident on 3-10-2006 at 1 am or so, in view of decision of the Hon'ble Apex Court reported in 1985 Cri.L.J. 1862 is of the opinion that it is not unnatural on the part of the person who witnessed the ghastly incident not to set the criminal law in motion. It is but proper to extract Head Note (A) of the above decision, which reads thus":

" (A) Evidence Act (1 of 1872), Sec.3 – Eye-witness Evidence of – Appreciation.

It is not uncommon for persons when they see a ghastly and dastardly murder being committed in their presence that they almost lose their sense of balance and

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remain dumb-founded until they are able to compose themselves".

"Merely because, therefore, the sole eye witnesses did not immediately disclose the names of the accused to the inmates of the family of the deceased when he went to the house, it could not be said that there was fatal defect in the prosecution case,"

"The trial Court has observed that with regard to the motive for the commission of the offence, according to the prosecution, it was to- fold in nature. The first motive, as per prosecution, is that accused No.1 had taken loan Rs.50,000/- from the deceased Basappa and it was to be repaid with interest at 3% per month and that accused No.1 was paying interest on the said amount of loan and in view of the deceased demanding accused No.1 to repay the

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amount of principal, accused No.1 had become angry, and accused No.1 in furtherance of the conspiracy with accused Nos.2 to 6 took steps to finish off the deceased".

"The trial Court has further observed that the second motive for the accused to commit the offence, as per the prosecution, is that accused No.1 had illicit intimacy with PW.17 and deceased Sri.Basappa Durdundi also had illicit intimacy with PW.17 and in that back drop, accused No.1 was angry with deceased Basappa Durdundi, and accused No.1 along with accused Nos.2 to 6 hatched conspiracy to finish off the deceased Sri Basappa Durdundi".

"The trial Court has also mentioned in its judgement that PWs, 5, 9, 11, 12, and 13 have spoken regarding loan transaction of

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the deceased Basappa Durdundi with accused No.1. PW.5 has spoken regarding illicit intimacy of the deceased with PW.17, with whom accused No.1 had also intimacy”.

“The trail Court has also observed that M.O.2, M.O.3, M.O.1 and M.O.4, namely, sickle, axe, sickle and axe, respectively, were seized by PW.23 from accused Nos.1 to 4, as per panchanamas at Exs.P.24, P.26, P.25 and P.23, in pursuance of voluntary statements made by accused Nos.1 to 4 Exs.P.33, P.34, P.35 and P.36, respectively, in the presence of panchas PW.10 and another”.

“The trail Court has also observed that PW.9 who is minor son of the deceased and who is as a child witness, has deposed with regard to accused Nos.1 and 2 taking his father on the motorcycle of his father.

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PW.13 has deposed that accused Nos.1 and 2 took the deceased on the motorcycle".

"The trial Court has also observed that according to Ex.P.41, items SI No.2,3,4 and 5 were stained with human blood, stains in item No.1, namely, mud, was disintegrated, hence their origin could not be determined, and stains in items No. 6,7,8 and 9, which are 2 sickles and 2 axes, were not sufficient for serological examination".

"The trial Court has mentioned in its judgement that evidence of PW.19 to the effect that he was coming to his village from Goa to attend the Jatra, and there being Jatra on 3-10-2006, is not disputed by the defence. What the defence contends is that the presence of PW.19 at the alleged time and at the place of occurrence is doubtful. But on perusal of evidence of

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PW.19, who is neither relative of the complainant nor of the deceased, there is no reason for PW.19 to falsely implicate accused Nos. 1 to 6".

"The Trial Court has observed at para 230 of its Judgment that PW.5, who is the complainant and brother of the deceased-Basappa, has deposed that at 7-00 am, on 03.10.2006, his mother Smt. Ningavva-PW.11, told to him and others with regard to the death of her son Basappa. She saw the dead body while she was proceeding in Jeep to Gokak for the purpose of selling of curds, the jeep was driven by PW.15."

"At para 234 of its Judgment the Trial Court observed that even though PW.19, who is as per prosecution is said to be an eye witness, failing to report to the Police

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with regard to the incident upon seeing the incident on 03-10-2006 at 1-00 am".

"The Trial Court has also observed that the accused No.1 was taken loan of Rs.50,000/- from deceased-Basappa and it was not paid with interest at 3% per annum. One of the motive for the crime is accused No.1 is having illicit connection with PW.17, and deceased also having illicit connection with PW.17 and in this background the accused No.1 angry with deceased-Basappa and accused No.1 has conspiracy to finish Basappa. The Trial Court has also observed that PW.5, PW.9, PW.11, PW.12 and PW.13 speak with regard to loan transaction between deceased-Basappa and accused No.1".

"The Trial Court has also observed at para 255 of its Judgment that "PW.5 who is



complainant, has deposed that on 02-10-2006, during night, accused Nos.1 and 2 took the deceased-Basappa on Motor Cycle, and on another Motor Cycle, accused Nos.3 to 6 left the place following the Motor Cycle on which accused Nos.1 and 2 and the deceased-Basappa were proceeding. M.Os.5 and 6 are the Motor Cycles of the deceased and PW.8." The Trial Court has also observed at para 264 of its Judgment that "It is for the accused to explain as to how and in what manner the deceased, who was in the company of accused Nos.1 to 6, disappeared or sustained such severe injuries as is depicted in Ex.P.12." It is also observed at para 265 that "Evidence of PW.19 to the effect that he was coming to his Village from Goa to attend the Jatra, and there being Jatra on 03.10.2006, is not

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disputed by the defence." PW.19 is the circumstantial witness".

"The Trial Court considered the evidence of PW.5, PW.9, PW.13, PW.14 and PW.19 and came to the conclusion that the evidence of PW.9 is consistent with the medical evidence i.e., P.M. Report-Ex.P.12."

"The trial Court held that accused No.1 to 6 guilty of the offences under Sections 143, 147, 148, 363, 342, 302 read with Section 149 of I.P.C. and under Section 120-B of IPC".

24. Feeling aggrieved by the same, the accused Nos.1 to 6 preferred this appeal.

25. We have heard both the counsel for the appellants as well as Additional State Public Prosecutor for the State and perused the Trial Court records.

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26. The learned counsel for the appellants submits that the motive for the commission of crime is inconsistent. In the complaint, the transaction regarding loan has not been mentioned. The motive has not been established. The contents of the diary has not been spoken by any of the witnesses, even who acquainted this fact have turned hostile. The evidence of PW.5 is that the accused No.1 alone came to the Village and other accused Nos.2 to 6 were waiting at Kalarakoppa cross about 2 Kms away from Kalarakoppa Village. This version is inconsistent with the contents of complaint. The version of complainant-PW.5, the brother, PW.12-wife of the deceased, and PW.9-the son of the deceased are not consistent. There were no streetlights from Kalarakoppa Village to Kalarakoppa Cross. There are no lights in the house of the deceased and his house is situated 30 feet away from the street, it is covered with sugarcane crop. In and around the house of the deceased there were thorny trees. Therefore, the version of PW.9-son of the deceased that he has seen the accused proceeding with the deceased is not believable. PW.22 has

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stated in the evidence that there was big luggage tied to the Motor Cycle, but this has not been mentioned in complaint. If that is the case, three persons going on the Motor Cycle with luggage is not believable. PW.14 speaks about conspiracy and stated about proceeding deceased-Basappa along with accused, but thereafter, he does not narrate this fact to any person. The conduct of eye witness-PW.19 creates a doubt. The evidence of PW.19 is that he waited at Ram Bhavan Hotel between 11-30 pm and 1-45 am without proceeding to his Village, though he has came from Goa to visit his Village for the purpose of attending Jatra. This also creates doubt.

27. The learned Additional State Public Prosecutor submits that he supports the impugned Judgment of conviction passed by the learned Prl. Sessions Judge, Belgaum. The Trial Court has carefully appreciated and analyzed the evidence placed on record. The conclusion reached by the learned Prl. Sessions Judge, Belgaum is proper and correct.



28. The credibility of a witness depends upon his knowledge of the facts, his intelligence, his disinterestedness, his integrity, his veracity proportion to these degree of credit, his testimony deserves from the Court. In Ganesh K. Gulve v. State of Maharashtra, AIR 2002 SC 3068, the Hon'ble Supreme Court laid down broad principles for the appreciation of evidence that the Court is required to bear in mind the set up and the environment in which the crime is committed. The level of understanding of the witnesses. The over zealousness of some of near relations to ensure that every one even remotely connected with the crime be also convicted. Everyone's different way of narration for same facts. In Harijana Narayana v. State of A.P., (2003) 11 SCC 681 the Hon'ble Supreme Court has observed that it is only when the Courts are unable to shift the grain from chaff and find out the truth and falsehood so inextricably got mixed together in a given case it will be really difficult to separate them the question of rejection of such evidence may arise.

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29. In this case, the eyewitness is one PW.19- Siddappa Kallappa Goudappanavar has stated in his chief examination that on 03-10-2006 at 8-45 pm he came from Goa to Gokak and there was no vehicle facility. He borrowed vehicle from Maruti Gudagannavar and he took the vehicle and went to Ram Bhavan Hotel and he went inside the Hotel in order to drink water. He saw accused Nos.1 to 6 and also deceased-Basappa and deceased Basappa was sitting with accused Nos.1 to 6. Then he came outside, at that time he saw that Siddappa Appayya Aganappanavar, Adivappa Yallappa Dasappanavar and deceased-Basappa Yallappa Duradundi came out and they went on one Motor Cycle and in an another Motor Cycle other four accused followed them. He also followed them. Near Kalburgi there is land and channel and he heard scream of Basappa and accused assaulted him. Thereafter accused saw him and then he turned his Motor Cycle and it was night at 1-00 am. During his cross-examination he clearly admits at para 8 that he did not think that he should report the matter to the Police and he did not think that he should narrate the

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incident to Maruti Gudagannaavar. He also did not think that he should narrate the incident to any other person. In the morning at 8-30 am he went to his house and told to his family members that one person has been murdered. Though this witness has seen the incident at 1-45 am, he simply goes to Yallamma Temple and sleep there peacefully, without informing the same to any person or to his close relatives including Police. The normal conduct of human being is as soon as occurrence of ghastly crime, he will narrate the incident to their family members or to Police or to his well-wishers. But in this case, PW.19, who is an eye witness to the incident, has not narrated the fact of crime to any other person. This creates a doubt about the presence of PW.19 and also witnessing the incident. The Trial Court has not carefully appreciated the evidence and materials placed on record correctly. Even though PW.19 came to know about the death of the deceased-Basappa, but the complaint was lodged after four hours. In this case, PW.19 who has seen the incident in the night has not reported the said matter to the Police and slept in the



temple peacefully and even though the mother of the deceased came to know about the death of her son-Basappa, the complaint was lodged at 1-00 hours. In Ex.P 3-complaint it is mentioned that mother of the deceased and family members were discussing who committed the crime. Ex.P.3 also discloses that there is delay in lodging the complaint. Since there is a deliberation while lodging the complaint, in addition to this there is a delay in lodging the complaint this creates a doubt regarding the very genuinity of the prosecution case. The last seen circumstance narrated by PW.5, PW.9, PW.13 and PW.14 are not consistent. Their evidence is not straightforward and cogent. PW.6, the Manager of the Hotel has also not supported the case of prosecution. This creates missing link in the evidence of PW.19 and also evidence of other witnesses.

In Narayan Singh and others, Appellants v. State of M.P., Respondent. Reported in AIR 1985 Supreme Court

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1678. The Hon'ble Supreme Court of India at para 6 has observed as under:-

"The learned Sessions Judge was mainly swayed by the consideration that PW.11, who was the sole eye-witness and had seen the occurrence, did not immediately disclose the names of the accused to the inmates of the family of the deceased when he went to the house. On this ground alone, the Sessions Judge thought that his was fatal defect in the prosecution case from which an irresistible inference could be drawn that PW. 11 could never have seen the occurrence. We have gone through the evidence of PW 11 and we feel that the Sessions Judge was not at all correct. It was not the case that PW-11 never disclosed the details of the incident to the members of the family of the deceased but when he went to the house he immediately did not name the accused and the explanation given by PW11 was that as he was completely perplexed he could not disclose the details immediately. The evidence of PW 11 shows that within 15 minutes he disclosed the names of the

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accused and gave full details of the occurrence. The learned Sessions Judge seems to have taken a most unrealistic view of the evidence of PW11 by ignoring the fact that he (PW 11) being a guard of the deceased must have been shocked and stunned after seeing the whole incident and, therefore, he may not have been in a position to mention the names of the accused immediately but after composing himself within 10-15 minutes he mentioned the names and also gave all the details. The presence PW 11 at the scene at the time of the attack on the deceased was not challenged before us. Nor could it be challenged for the suggestion made to PW.11, which he has denied, that he himself had attacked the deceased. PW 11 appears to be a truthful witnesses as he himself admits that he could not immediately give the names because he was perplexed and it is quit a natural thing particularly in the case of a person coming from the strata of society of which PW 11 was a member. It is not uncommon for persons when they see a ghastly and dastardly murder being

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committed in their presence that they almost lose their sense of balance and remain dumb founded until they are able to compose themselves. This is exactly what may have happened to PW 11".

PW 19 resides at Goa on the date of incident he had come to the Karlakopa village and he is a chance witness. Even though he has seen the incident he will not report the matter to the Police or to any other villagers on the other hand he sleeps at Yallama Temple Gokak and in the morning he went to Karlakopa village. Further he clearly admits in his cross-examination he did not think that he should report the matter to the Police or to Maruthi Guddanavar. He also did not narrate the incident to any other person in the night. He did not thought in the night that he should narrate the incident to any person. Suggestions were put to PW.19 that he was tutored by brother of deceased but he denied the same. Applying the principles laid down in the case of Narayan Singh and others' case cited supra this witness has not narrated the incident from mid night to the next day morning. It is difficult to infer that he has lost

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sense of balance from night till morning therefore it is not safe to place reliance on the evidence of this eyewitness i.e., PW.19.

The prosecution case also rests on last seen circumstance and also on the evidence of eye witness. The eye witness has not reported the matter to the Police. Evidence pertaining to last seen circumstance is not clear, logical and convincing. Motive for the crime is sexual jealousy and borrowing of the loan by the accused No.1 from deceased. PW.17-Ningavva has turned hostile to the side of prosecution. There is no definite motive for the crime in this case. The prosecution has failed to establish the motive for crime. Even serology report does not link the accused with the crime. This case is based on circumstantial evidence. The chain of circumstance is not complete. There is missing link in the circumstantial evidence. The Trial Court has amended the charge after Judgement is pronounced. Taking into consideration of over all evidence and materials placed on record, we are of the

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view that the prosecution is unable to establish its case beyond all reasonable doubts. Therefore, the appellants/accused are entitled for benefit of doubt.

30. In view of the above discussion, we pass the following :-

ORDER

Criminal Appeal No.2819/2009 is allowed.

The Judgment of conviction passed in S.C.No.196/2007 by the Principal Sessions Judge, Belgaum is set aside.

The accused Nos.1 to 6, i.e., appellants are acquitted and they are set at liberty forthwith if they are not required to be detained in any other case.

Communicate operative portion of the Judgment to the Trial Court as well as to the jail authorities.

Sd/-
JUDGE

*HRN/-

Sd/-
JUDGE