

# SUPREME COURT OF INDIA

Ningappa Yallappa Hosamani

Vs.

State of Karnataka

Crl.A.No.495 of 2006

(Dr. Arijit Pasayat J.)

08.05.2009

## JUDGEMENT

### **Dr.Arijit Pasayat, J.**

1. Challenge in these appeals is to the order passed by a Division Bench of the Karnataka High Court. The High Court by the impugned judgment allowed the appeal and set aside the conviction of appellants 3, 4 and 5 (accused No.3-Sri Giriyappa @ Gireppa, A-4 Sri Yallappa S/o Arjunappa Yaraddi, A-5 Sri Vithal S/o Kalakappa) before it. The compensation of Rs.50,000/- awarded to Girijabai (PW-4) was reduced to Rs.20,000/-. The present appeal is by A1, A6 and A7.

2. Seven accused persons had faced trial for alleged commission of offences punishable under Sections 143, 148, 341, 109, 302 and Section 201 read with Section 149 of the *Indian Penal Code, 1860* (in short the `IPC').

The occurrence took place in the intervening night of 31.1.2005 around midnight.

3. Prosecution version in a nutshell is as follows:

“Namadev Muralidhar Huvvannavar (the deceased) resided in Bommanabudni village along with his wife-Girijabai (PW.1) and his five children, out of whom Panduranga (PW.5) is one. He was in politics and due to his activities, he had incurred enmity of many persons. He was an accused in a session case on the allegation of having committed about ten years prior to 2005, the murder of Arjunappa Yaraddi (father of accused No.4) having set on fire the sugarcane crop of Yallappa Yaraddi. He was later acquitted in the said case. Due to that, he had enmity towards accused No.4, and for certain other reasons towards other accused also. On 30.1.2005 he left for Mudhol at about 4.00 p.m., on his CD Don motorcycle bearing Reg.No.KA- 48/E-1688 (M.0.15). In Mudhol, he met Kallanagouda Timmanagouda Patil of Utturu (P.W.12) at about 8.00 p.m., and told that he was returning to Bommanabudni via Halki. Later at 9.00 p.m. he was seen at Halki by Gyaneshwar Ramappa Manemmi (P.W.11) going

on the motorcycle towards Bommanbudni. He did not return home on that day and on the next day as well. Therefore, Girijabai (P.W.1) and Panduranga. (P-W.5) started the search for help. They traced the movement of Namadev till he left Halki and thereafter they could not get any trace of Namadev. In the meantime, they learnt that there were certain motorcycle marks in the land of Vijaya Mandandappa Sutar of Mingapura and when they went there, they found certain tyre marks of a motor cycle corresponding with the tyre marks of Namadev's motor cycle. Therefore suspecting possible abduction of Namadev, P.W.1 lodged a complaint against Yallappa Arjunappa Yaraddi (accused No.4) and Vital Kalakappa Navi (accused No.5). That complaint was received by Sri Malakappa, P.S.I. of Lokapur Police Station (P.W.21), who registered a case at Crime No.16/2005 and forwarded F.I.R. (Ex.P.27) to the JMFC, Mudhol. He went to the place i.e., the land of Vijaya Manadappa Sutar as shown by P.W.1 and conducted the spot mahazar as per Ex.P.2. He also collected information in the neighbouring villages. He learnt that on that night i.e., at 8.00 p.m. of 30.1.2005, P.W.10-Vishnu Tulasigeri had seen the accused Nos.1, 2 and 4 to 7 near Bommanabudni bus stand talking to each other and later P.W.16-Laxmappa Mullaauru having seen the accused No.2 and 7 going on one motor cycle and accused Nos.1 and 6 going on another motor cycle towards Belgaum road. He also learnt that at that time the accused No.7 was on the motorcycle with a gunny bag and when P.W.16 had asked him about the same, the accused No.7 had replied that it contained a jaggery block intended to be given to his relative. The police also learnt that on the same night i.e., at about 3.00 a.m. on 30.1.2005, the accused Nos.1, 2, 6 and 7 had been seen by P.W.7-Hanamath Gouda Patil near the canal and two motor cycles parked on the road. That was further confirmed by the information given by P.W.8-Bhimappa Maleguddi.

In furtherance of the same, the police suspected the accused Nos.1, 2 6 and 7 in the matter and launched a search for them. The accused Nos.1 and 2 were apprehended on 3.2.2005. On interrogation by P.W.20-Basavareddi Lingadal, C.P.I. of Mudhol circle (investigating officer), the accused Nos.1 and 2 volunteered information to show the place where Namadev had been murdered and also the place where his dead body had been buried. In furtherance of that information, police officer in-charge went to the place near the land of Vijaya Manandappa Sutar and later to a place as shown by accused Nos.1 and 2. There the place near the canal shown by the accused Nos.1 and 2 was dug up resulting in the discovery of a gunny bag (M.0.9), which contained a dead body. That dead body was identified by Namadeva's wife-P.W.1-Smt.Girijabai and Namadev's son-Sri Pandurganga (P.W.5) as that of Namadeva. In furtherance of the information furnished by the accused Nos.1 and 2 regarding involvement of other accused, a search was launched and accused Nos.4 and 5 were arrested on 7.2.2005. In furtherance of the voluntary information furnished by them, sticks M.Os.11 and 12 allegedly used by them to beat Namadev were recovered. The accused No.6 was arrested on 11.2.2005. The interrogation of accused No.6 resulted in leading them to the river and showing the place where, according to him, they had drowned the motorcycle (M-0.13) of Namadev after his murder. A swimmer-Lavappa Laxmappa Nagaral (P.W.15) was sent to that place, who brought up the said motorcycle (M.0.13). That was recovered under panchanama. Later the accused No.7

was arrested on 26.2.2005 at Panchagavi village and in furtherance of the information furnished by him, the pick-axe (M.O.14) allegedly used for burying the dead body was recovered. After further investigation, a charge sheet was placed against the accused.

The accused pleaded not guilty and claimed to be tried. The prosecution examined 23 witnesses and closed its case. About the deceased having been seen by the persons for the last time, the prosecution examined the deceased's wife (PW.1), the deceased's son (P.W.5) and P.W.s 10, 11 and 12. About the movements of the accused to connect 5 them with the murder of Namadev, prosecution has examined P.Ws.10, 13 and 16. Though P.W.13 has not supported the prosecution and P.W.16 only partially supported, the evidence of these two witnesses shows the movement of the accused Nos. 1, 2, 6 and 7. As regards the motive for murder, P.Ws 6, 17 and 18 have been examined. P.Ws. 2, 3 and 4 are panchas. P.W.14 dug up the land from where the gunny bag containing the dead body of Namadev was recovered. According to the prosecution, extra judicial confession had been made by the accused before P.W.9 and the drowned motorcycle was recovered after P.W.15 went down into the river and brought up the motorcycle. P.W.18 is the junior engineer, who has drawn the sketch of scene of the offence. Post mortem examination on the dead body was done by P.W.19 doctor. P.Ws. 20 to 23 are police officers.

The trial Court on the basis of the cumulative effect of the circumstantial evidence concluded that the prosecution had proved that it was the accused who had committed the murder of Namadev and had disposed of the dead body by putting it in a gunny bag and burying it near the canal of Chickakhandi village and throwing motor cycle in the river. In appeal, conviction of A-3 to A-5 was set aside as noted above. A-6 and A-7 were acquitted of all charges relating to Section 302 and 109 read with Section 149 IPC. The conviction of A-1 and A-3 under Sections 302 and 6 109 read with Section 149 IPC was converted to Section 302 read with Section 34 IPC. The conviction of A-1, A-2, A-6 and A-7 under Section 201 read with Section 149 IPC was converted to under Section 201 read with Section 34 IPC while the sentence is maintained.

4. Learned counsel for the accused appellants submitted that the circumstances relied on clearly established the accusations and the only case is recovery under Section 27 of *Indian Evidence Act, 1872* (in short the 'Evidence Act'). The present appellants are A-1, A-6 and A-7 so far as these appeals are concerned.

5. The basic challenge is that on the basis of statement made under Section 27 of the Evidence Act the conviction cannot be maintained because it cannot be said that the circumstances have been established.

6. Learned counsel for the respondent-State on the other hand supported the judgment.

7. As regards the involvement of the other accused, the prosecution relied on the recovery of the motorcycle in furtherance of the voluntary information furnished by the accused No.6.

The said accused was arrested on 11.2.2005 and as spoken to by P.W.20 investigating officer, in furtherance of the voluntary information furnished by him, they went to the river near Chickakhandi where a place in the river was shown by the accused No.6 as the place, where motor cycle had been drowned. P.W.15-Lavappa Laxmappa Nagaral had been taken there and he went into the river at the place shown by the accused No.6 and brought up the motorcycle M.0.15. The said motorcycle was later identified as that of Namadev. The cross-examination of P.W.15 does not show anything to doubt his version.

8. It was submitted by the appellants that according to P.W.16, the accused Nos.1 and 6 were seen in the police station on 3.2.2005 and this theory of the accused No.6 being arrested on 11.2.2005 and on his voluntary information furnished on that day, the motor cycle having been recovered in presence of P.W.15, cannot be believed. Of course P.W.16 in the cross-examination says that when he went to the police station, he saw the accused Nos. 1 and 6. It was submitted by the State that perhaps it may be a typographical mistake and it may be the accused Nos.1 and 2 since the records show that it is the accused Nos.1 and 2, who had been arrested on 3.2.2005. The possibility of typographical mistake is possible. However, even then taking into consideration the contention of the learned counsel for the appellants, at the most it may amount to an illegal custody by the police till 11.2.2005, thereafter recovering the motorcycle on 11.2.2005. That may create some doubt regarding the claim of the police with regard to the recovery. But considering the evidence of P.W.15, we find that this suspicion is unfounded. It is quite possible that the police detained accused no.6 unnecessarily from 3.2.2005 to 11.2.2005. We find no reason to discard the alleged recovery of motorcycle in furtherance of the information furnished by accused No.6. As regards the accused No.2, the prosecution relies on the deposition of P.W.7 who saw the accused Nos.1, 2, 6 and 7 near the canal at about 3 a.m. of 31.1.2005. In addition P.W.12 saw the accused Nos.1, 2, 6 and 7 near the bridge. Earlier on 30.1.2005 at about 11.00 p.m. all those four persons had been spotted by P.W.16. All these depositions conclusively show that from 11.00 p.m. on 30.1.2005 till about 4.00 a.m. of 31.1.2005, the accused Nos.1, 2, 6 and 7 were seen together. On complete perusal of the evidence, we find that on 30.1.2005 Namadev left his house at 4.00 p.m. and went to Mudhol on his motorcycle bearing No.KA-28/A 1688 (M.0.15). He was seen at Inspection Bungalow, Mudhol, at 8.00 p.m. by P.W.12-Kallanagouda Patil of Utturu village. Namdeva told P.W.12 that he was returning to Bommanabudni via Halki. At 9.00 p.m. he was seen at Halki by Jnaneshwara (P.W.11) going on the motorcycle towards Bommanabundi. Thereafter nobody saw him alive.

9. The accused Nos. 1, 2 and 4 to 7 were seen by Bommanabudni bus stand at about 8.00 p.m. of 30.1.2005 by P.W.10 Vishnu Tulasigeri. The evidence of P.W.16 Laxmappa Mullurur shows that the accused Nos.2 to 7 were seen at 11.00 p.m. on that day on the motor cycle. That witness also saw the accused Nos. 1 and 6 on another motorcycle along with other. His evidence further shows that the accused No.7 was riding the motorcycle along with the accused No.2 on that motorcycle and another motorcycle was driven by the accused No.6-Hanamant Ramappa Kivudi on which the accused No.1-Ningappa Yallappa Hosamani was sitting with a gunny bag. When he enquired from the accused No.1, about the gunny bag, the accused No.1 is stated to have replied that it contained jaggery block, which was to be given to his relative's house. It is submitted by the appellants that even if this is accepted as true,

there was nothing wrong in Ningappa Yallappa Hosamani (accused no.1) taking a jaggery block to his relative's house and that cannot fasten the liability of transporting the gunny bag containing dead body. The time on which this incident is stated to have happened is at about 11 p.m. on 30.1.2005 and later the same persons were seen near the canal with both the motorcycles. Therefore the story of gunny bag containing the jaggery block is not believable. As held by the Courts below it must have contained the dead body of Namadev. Taking into consideration this factor, we find that the prosecution has conclusively proved that the accused Nos.1, 2, 6 and 7 had disposed of the dead body of Namadev by putting it in a gunny bag and burying it at a place near the canal, which was detected in furtherance of the voluntary information furnished by accused No.1 and 2. It is also proved that the motorcycle of Namadev was drowned in the river by the accused, which was later recovered in furtherance of the voluntary information furnished by accused No.6. As regards accused Nos.1 and 2, since the dead body of Namadev was recovered in furtherance of the voluntary information furnished by them, the natural presumption, in the absence of explanation by them is that it was those two persons, who had murdered Namadev and had buried the dead body.

10. As regards recovery of the dead body is concerned, the High Court noted as follows:

“As regards the second ground urged by the learned counsel for the appellants, there also what has been stated is that a rumour had been spread that four persons had committed the murder of Namadeva and his dead body had been buried near the canal and later he was called on 2.3.2005 by Lokapur police. The mahazars regarding the place of offence of murder conducted on 3.2.2005 and the place where the dead body of Namadev was recovered were conducted in the early hours of morning of 3.2.2005 and it is not unlikely that information immediately spread in the village and immediately Namadev's dead body had been placed near the place of canal. Therefore, this cannot be taken as indicating the knowledge the people about the burial of the dead body even before the dead body of Namadev was detected in furtherance of the voluntary information furnished by the accused Nos.1 and 2. For this reason, we do not accept the interpretation put forth by the learned counsel for the appellants with regard to the recovery of dead body of Namadev.

The evidence of P.W.20-investigating officer shows that the accused Nos.1 and 2 were arrested on 3.2.2005 at Mahalingapura and in furtherance of the interrogation, they furnished information and police and panchas were led by the accused Nos.1 and 2 to a place near the canal.

This claim of P.W.20 has been corroborated by the evidence of P.W.14-Basappa Ramappa Pujari, who says that he had accompanied the police and panchas to the place where the accused Nos.1 and 2 were taken and the accused Nos.1 and 2 showed a place as a place of burial of Namdev's body. Then, his deposition further shows that he and C.Ws 22, 24 and 25 were asked to dig the land and when they dug the land, they found a gunny bag. That gunny bag contained a dead body which was later identified by PWs 1 and 5 as the body of Nadadev.

We have very carefully gone through the evidence of PWs 14 and 20 in this regard and find no material to disbelieve the version of PW-14 that the place was shown by A-1 and A-2 and that when the place was dug up, they found a gunny bag containing Namadev's dead body.

This evidence conclusively shows that the accused Nos. 1 and 2 had buried the said gunny bag containing the dead body of Namadev and that it was detected in furtherance of the voluntary information furnished by them.”

11. In *State of Maharashtra vs. Suresh*<sup>1</sup> it was observed as follows:

"Three possibilities are there when an accused points out the place where dead body or an incriminating material was concealed without setting that it was concealed by him. One is that he himself would have concealed it. Second is that he would have seen somebody else concealing it. And the third is that he would have been told by another person that it was concealed there. But if the accused declines to tell the criminal court that his knowledge about the concealment was on account of one of the last two possibilities the criminal court can presume that it was concealed by the accused himself. This is because the accused is the only person who can offer the explanation as to how else he came to know of such concealment and if he chooses to refrain from telling the court as to how else he came to know of it, the presumption is a well-justified course to be adopted by the criminal court that the concealment was made by him. Such an interpretation is not inconsistent with the principle embodied in Section 27 of the Evidence Act."

12. Above being the position, we find no merit in these appeals which are accordingly dismissed.

<sup>1</sup>(2000 (1) SCC 471)