

A.N. Venkatesh And Anr vs State Of Karnataka on 8 August, 2005

Equivalent citations: AIR 2005 SUPREME COURT 3809, 2005 AIR SCW 3914, 2005 AIR - KANT. H. C. R. 2231, 2005 CRILR(SC MAH GUJ) 2 623, 2005 (6) SCALE 348, 2005 SCC(CRI) 1938, 2005 (6) SLT 39, (2005) 3 RAJ CRI C 721, 2005 (100) CUTLT 782, 2005 (7) SCC 714, 2005 CRILR(SC&MP) 2 623, (2005) 100 CUT LT 781, (2005) 83 DRJ 299, (2005) 3 CURCRIR 501, 2005 WLC(RAJ)(UC) 568, (2005) 4 EASTCRIC 289, (2006) 1 EFR 138, (2005) 1 CRILR(RAJ) 764, (2005) 2 RAJ CRI C 879, (2005) 4 EASTCRIC 141, (2005) 5 KANT LJ 321, (2005) 5 SUPREME 746, (2005) 6 SCALE 348, (2005) 3 CRIMES 231, (2005) 3 ALLCRIR 2518, (2006) 1 MAD LJ(CRI) 135, (2005) 32 OCR 393, (2005) 6 SCJ 470, (2005) 3 CHANDCRIC 229, (2005) 4 ALLCRILR 321, 2005 (3) ANDHLT(CRI) 264 SC, (2005) 3 ANDHLT(CRI) 264

Author: P.P. Naolekar

Bench: P. Venkatarama Reddi, P.P. Naolekar

CASE NO.:

Appeal (crl.) 482 of 2003

PETITIONER:

A.N. Venkatesh and Anr.

RESPONDENT:

State of Karnataka

DATE OF JUDGMENT: 08/08/2005

BENCH:

P. Venkatarama Reddi & P.P. Naolekar

JUDGMENT:

J U D G M E N T P.P. NAOLEKAR, J.

This appeal is preferred by the accused A.N. Venkatesh (A-1) and Ezaz (A-2) challenging their convictions under Section 363 IPC (RI for 1 year), Section 384 IPC (RI for 2 Years), Section 201 IPC (RI for 6 months) and Section 302 IPC (Life Imprisonment) awarded by the High Court, reversing the order of acquittal, passed by the Sessions Court.

In brief, the prosecution case is that on 19th of May 1996 at about 9.00 AM, a minor boy named Madhu left his house for going to his father's shop. It was vacation time for the Schools. In the afternoon when the father, M.K. Krishnamurthy, PW-7 returned home for lunch and enquired about his son, as he had not come to the shop, till evening family waited for return of the boy and thereafter the search began. Various telephone calls were made to the relatives and enquiries were made from other places where the boy was expected to have gone. Again in the next morning search was made for Madhu but he was not traced and as such at about 1.00 P.M. on 20th May 1996, PW-2, M.K. Prakash, uncle of Madhu lodged the first missing complaint in Hosadurga Police Station. The police registered the complaint as Crime No.99/96 on the same day. Thimmanna, PW-1, another Uncle of Madhu went to the house of Prakash, whose house is near the house of Krishnamurthy, PW-7. At about 2.30 PM or 2.45 PM, a telephone call was received on Telephone No.8537 at the house of PW-2 M.K. Prakash which was picked up by PW-1 Thimanna. He heard one male voice saying that he knew that they are in search of Madhu and that Madhu is in their custody, he will be released if the ransom amount of Rs.50,000/- is paid. It was said that the ransom amount of Rs.50,000/- is to be thrown in a bundle on the tracks of the railways running between Arasikere and Beerur before 5.00 P.M. After receipt of this telephonic call, PW-1 immediately rushed to the Police Station and lodged a complaint at about 3.00 PM. On this, the P.S.I. Shri B.S. Rajashekhar, PW-16, deputed A.S.I. Shri M.G. Gangadharappa, PW-17. and one P.C. Constable Rudriah to make a search of the missing boy. PW- 2, Prakash along with his brother Srinivas and the police officials proceeded in a Taxi to Arasikere in search of the boy. They reached Arasikere at about 5.00 PM. Thereafter enquiries were made at the S.T.D. Booths at Arasikere for finding out from where the call was made and to trace the person who made the call to Hosadurga. Two STD booth owners informed that the calls were made from their booth to Hosadurga by two boys and one of the S.T.D. Booth owners informed the police party that the telephone to Hosadurga was made by two boys from his telephone booth at about 2.30 O' clock. Thereafter the police party along with PW-2 went to Arasikere Railway Station and proceeded towards Beerur along the railway track. When they proceeded about two and a half to three kilometers, they saw two boys coming in their direction along the railway track at about 6.30 or 6.40 PM. When the boys reached near them, it was noticed by PW- 2 that one of them Venkatesh, A-1, is his relative. On seeing the police party along with other persons those two boys started running away. However, they were chased and caught. Those accused persons, according to PW-2, volunteered that they had kidnapped Madhu and that they would show the place from where the dead body can be recovered. From there they were brought to police station when it was about 10.00 P.M. Both the accused persons were put up in the police lock up. During the night intervening 20th/21st May 1996 they were interrogated and their disclosure statements were recorded which are Exhibits P-15 and P16 in which they volunteered to take the police and others to the place where they have buried the dead body of Madhu. The police party along with accused and others proceeded towards Vedavathi river bank wherefrom dead body of Madhu was exhumed from the sand at the bank of the Vedavathi river from the spot pointed out by the accused persons. The post mortem was conducted by PW-3 Dr. Ravikar on 21st May who found the following injuries on the body :

1. There was haemorrhage in the sub-tutaneous tissue and in the muscles of the neck in the region of hyoid and thyroid cartilage;
2. There was haemorrhage in the retro pharyngeal tissue at the base of the tongue;

3. There was sub-mucus haemorrhage in the larynx; and

4. Sheath and intima of the carotid artery are lacerated with effusion of blood in the walls.

The doctor opined that the death was due to asphyxia as a result of throttling.

The accused persons faced trial and were acquitted by the Sessions Court. In appeal, the acquittal of the accused was set aside by the High Court and they were, as aforementioned, convicted.

It is urged by the learned counsel for the appellant that according to the prosecution the FIR was lodged on 20.5.1996 at 1.00 P.M. by PW-2. However, the said FIR has not disclosed any offence. It is only a complaint regarding missing boy Madhu and therefore it could not have been registered as a crime. More so, the said complaint reached the Magistrate's Court only on 17.8.1996 and thus it gives a reasonable apprehension that the actual complaint made on 20th of May 1996 at 1.00 P.M. contained something different than what it contained in a complaint sent to the Magistrate on 17th August 1996. Therefore, the whole genesis of the prosecution case is belied and cannot be relied upon. It is true that the complaint Exhibit P-4 lodged by PW-2 on 20th of May 1996 at about 1.00 P.M. was sent to the Magistrate on 17th August 1996 but at the same time we cannot lose sight of the fact that there was another complaint made at 3.00 P.M. on 20th May 1996, after receipt of the telephonic call, demanding ransom which was sent to the Magistrate's Court the very next day i.e. on 21st May 1996. It is this complaint on the basis of which the prosecution started investigation. While it is true that Section 157 Cr. P.C. makes it obligatory on the Officer Incharge of the Police Station to send the information to the Magistrate's Court forthwith but that does not mean and imply to denounce and discard an otherwise positive and trustworthy evidence on record. The first complaint of missing person although was sent late, in fact, has not moved the investigating agency to real investigation except informing various other police stations regarding disappearance of Madhu. The complaint which was taken note of was Exhibit P-1 which was sent in due time to the Magistrate. Unless we find that the evidence led by the prosecution is not reliable, the delay in sending the first complaint would not lead to the inference that the complaint lodged of missing person contained some other facts that may have revealed some other story which is not consistent with the prosecution case.

It is then submitted by the learned counsel for the appellant that it is wholly unnatural that when the accused persons were arrested in between Arasikere and Beerur and they volunteered about having kidnapped Madhu and buried his body under the sand, near the bank of Vedavathi River, and that they can show the exact place, the accused persons were not immediately taken to that place. Instead thereof, they were produced in the police station at about 10.00 P.M. and on the next day morning they were taken to the spot from where the dead body was recovered on their pointing out the place where it was buried. It is also argued that instead of complying with the ransom demand as demanded by the kidnappers to save the boy, it looks unnatural that the police party and relatives of the deceased spent time in making enquiries from the STD Booth owners about the telephone calls and thereafter they have proceeded towards the railway track.

PW-1 has deposed that on 20.5.1996 at about 3.00 P.M. he and his brother, PW-2 went to the Police Station to lodge report. PW-17, ASI M.G. Gangadharappa has deposed that he along with Constable and PW-2 and others went to Arsikere in a Car and reached Arasikere by about 5.15 PM, thereafter enquiries were made from STD booth owners of Arasikere of the telephone call made to Hosadurga. Two booth owners have informed that the telephone calls were made from their STD Booths by two boys to Hosadurga. All of them thereafter went to the railway station and since nothing was found at the railway station, they proceeded along the railway track. While they were proceeding along the railway track towards Banawara and when they covered the distance of about 3 Kms. they saw two boys coming towards them. Complainant identified one of them being his relative. The boys tried to flee but they were chased and apprehended and were taken to the police station where they reached at about 10.00 PM. Evidence of PW-2, M.K. Prakash, uncle of the deceased is on the same lines except with the addition that both the accused persons volunteered that they had kidnapped Madhu and buried his body near Hosadurga and they can discover the same. From this evidence it is apparent that after the accused persons were apprehended near the railway track and by the time the party reached Hosadurga, it was almost 10.00 PM. The spot where the body of the boy was said to be buried was the long stretch of the bank of Vedavathi River covered with sand, where every place looks alike and in the absence of sufficient facility of light, it would have been difficult, rather impossible for the accused persons to locate the place where they have buried the dead body. Apart from this, the Investigating Officer must be apprehensive and justifiably, that the important piece of evidence may be destroyed if the search party reached the spot at the night for recovery of the dead body. Therefore, there is nothing strange or unnatural that the police party along with the witnesses proceeded early in the morning next day for recovery of the body from the spot disclosed by the accused persons. It has come in evidence of PW-7, father of the deceased and the Panch Witness PW-4 that the accused persons pointed out a particular spot near the riverain from where the dead body of Madhu was exhumed from the sand. We find that the evidence of these witnesses does inspire confidence and is worthy of credence. As regards police party making inquiries at STD booth and not rushing towards the spot where the amount was to be paid it may be seen that the party was not aware by that time, as to who were involved in it. They came to apprehend the accused and not to pay the ransom amount. It is clear from the evidence of I.O. PW-16 that when the complaint, Exhibit P-1 for the demand of ransom was lodged, he dispatched the police party along with the complainant to Arasikere and instructed the ASI that the accused persons be apprehended from the place where they are supposed to collect the ransom amount. PW-2 has also said that after reaching Arasikere railway station, he along with his brother and the two police officials proceeded towards Banavara and Beerur along the railway track in order to find out if they could get any clue in respect of Madhu or his kidnappers. After the boy was missing, the complaint was lodged in the police station. The complainant also informed the police immediately after the call for ransom was made. Thus, it is apparent that they have decided not to pay the ransom but apprehend the kidnappers. With this intention, the complainant along with the police party have reached Arasikere. It is not surprising that they made enquiries from the STD Booth owners whether any phone calls were made to their knowledge to Hosadurga to trace and identify the accused persons instead of rushing towards the spot where the ransom amount was to be thrown. That apart, by the time they reached Arasikere, it was almost 5. O' clock and it was not possible for them to reach the spot where the money was to be paid before 5.00 P.M. as instructed on phone. In the circumstances, the behaviour of the police party or that of the complainant cannot be said to be unnatural so as to discard their

evidence.

It is contended by the learned counsel for the appellant that when the kidnappers made a demand for the ransom amount of Rs.50,000/-, and the manner in which the demand was to be fulfilled, was also indicated, in the natural course of conduct it was expected of the police and the complainants to have traveled by train, from Hosadurga to Arasikere and onwards instead of travelling by road in a motor vehicle to comply with the direction given. The argument of the learned counsel is built upon the premises that the complainant party had decided to pay the ransom and to follow the instructions of payment of ransom amount by throwing it at the identified spot from the train. We have already discussed the evidence of the witnesses from where we find that the complainant party and the police have already decided not to pay the ransom amount but to apprehend the accused persons at the spot indicated by them for payment of amount. When the decision was taken there was no reason at all, to travel by train and follow the instructions. The course adopted by the complainants and the police party by travelling in a vehicle was in conformity with the decision taken by the police party and the complainant, was in natural course of conduct. It is further submitted by the learned counsel that one more important aspect about M.Os 1-3 and, more particularly, M.O.s 1 and 2 viz., the baniyan and the pant said to be found on the dead body, had no stains at all, in spite of the fact that when the body of Madhu was exhumed, it was in a badly decomposed condition, and that even the colour of the clothes removed from the body has not changed, which clearly indicates that the baniyan and the pant were subsequently planted by the police, was not taken into consideration by the High Court. It has come on evidence that when the dead body was exhumed from the river bed, M.Os 1-3 were seized from the dead body. PW-3 Dr. Ravikar, clearly stated that after the postmortem examination was over, he handed over the dead body along with M.Os 1-3 back to the police. PW-4 Ramakrishanappa and PW-5 B.V. Anjan Kumar who are the panch witnesses have deposed that M.Os 1- 3 were found on the dead body. PW-7, the father of the deceased has stated in his evidence that he identified the dead body on the basis of the physical description and also on the basis of the clothes worn by the deceased. M.Os 1-3 were on the dead body of Madhu and in this regard the spot mazhar as per Exh.P2 was drawn up. None of these witnesses have been cross-examined on the question of clothes found and removed from the dead body. Even when the question was put to the accused, in the examination under Section 313 of the Cr.P.C., no case has been put forth by the accused that the alleged M.Os 1 and 2 were not recovered from the dead body. When there is a reliable ocular version of the witnesses which has gone un-challenged, there is no reason as to why these witnesses should not be believed by the Court, merely because stains were not found on the clothes. It may be for various reasons which necessarily does not lead to the inference that the clothes were not removed from the dead body. The effort of the criminal court should not be to prowl and to find out imaginative doubts. Unless the doubt is of a reasonable dimension, which the judicial mind thinks, require consideration with objectivity, no benefit can be claimed by the accused on the basis of some hypothetical proposition.

The accused persons were apprehended near the spot where the ransom amount was supposed to be paid. The accused person's presence at the place where they were arrested is a strong circumstance against the accused appellants. There was no apparent plausible reason for their presence alongside the railway track, loitering around a place which is quite far away from the place where they were residing viz., Hosadurga. Their conduct in running away when they saw the police party is also

indicative of their guilty mind and is an important piece of evidence showing their conduct. No plausible explanation was given by the accused appellants for their presence at the spot where they were arrested, which was nearby the place indicated in the demand for payment of the ransom amount.

By virtue of Section 8 of the Evidence Act, the conduct of the accused person is relevant, if such conduct influences or is influenced by any fact in issue or relevant fact. The evidence of the circumstance, simplicitor, that the accused pointed out to the police officer, the place where the dead body of the kidnapped boy was found and on their pointing out the body was exhumed, would be admissible as conduct under Section 8 irrespective of the fact whether the statement made by the accused contemporaneously with or antecedent to such conduct falls within the purview of Section 27 or not as held by this Court in *Prakash Chand Vs. State* (AIR 1979 SC 400). Even if we hold that the disclosure statement made by the accused appellants (Ex. P14 and P15) is not admissible under Section 27 of the Evidence Act, still it is relevant under Section 8. The evidence of the investigating officer and PWs 1, 2, 7 and PW4 the spot mazhar witness that the accused had taken them to the spot and pointed out the place where the dead body was buried, is an admissible piece of evidence under Section 8 as the conduct of the accused. Presence of A-1 and A-2 at a place where ransom demand was to be fulfilled and their action of fleeing on spotting the police party is a relevant circumstance and are admissible under Section 8 of the Evidence Act.

The prosecution has examined PW-10, a building contractor who has seen the accused appellants with the deceased nearby the place from where the dead body of Madhu was exhumed. PW- 10, Ranga Reddy has deposed that he is engaged in construction business and he is doing that work for the last ten years. He knew the accused appellant and they are the residents of Hosadurga. He knew their parents also. He also knew the deceased and his father as also that the father of the deceased is related to A-1. On 19.5.96 at about 11.00 A.M. he had been to Vedavati River near Gollarahatty, about 6 kms. away from Hosadurga, in order to bring some sand for his construction work and at that time he saw both the accused persons and Madhu playing near the river bed. He did not speak to them and he left the place thereafter. After attending his work he went to Bangalore for his work and returned back to Hosadurga on the night of 20.5.96 about 11.30 P.M. He came to know from the members of his family about the kidnapping and murder of Madhu. Next day morning, i.e. on 21.5.96 he went to the police station to see the accused persons arrested and found that the two accused appellants were the same persons who were playing with Madhu near the Vedavati River. From the cross-examination of this witness nothing has been elucidated by the defence to disbelieve the statement of PW-10. PW- 10 has visited the river belt in connection with his business of construction which he was carrying on for the last 10 years. He knew the parents of the accused appellants and the accused themselves, the parents of the deceased boy and A-1's relationship with the father of the deceased, and thus it was quite natural for him not to report the matter immediately to Madhu's family that he saw the boy playing with the accused appellant no.1, he having been related to the deceased boy. There was no apparent reason for him to approach the family of the deceased and intimate them about his seeing the deceased with the accused. An argument was advanced by the counsel for the appellant on the basis of statement of the doctor who has conducted the postmortem, that the approximate time of death was 48-68 hours before the examination of the dead body and that if this timing is taken to be correct, then PW-10 would not

have seen the boy alive at about 11.00 A.M. on 19.5.96. The timing of death given by the doctor is broadly an estimated time and too much reliance cannot be placed on the time of death given by the doctor when the dead body was decomposed and examined after two days. We do not find any infirmity in the statement of PW-10 to disbelieve him. There is no apparent or specific reason for him to implicate the accused appellants in commission of crime. The estimated time given by the doctor would not shatter the evidence of PW-10 who has seen the boy playing with the accused persons before his death.

The other circumstance which prominently shed light on the involvement of the accused persons is the telephone call made by them from Arasikere from the STD booth to Hosadurga. To prove this fact the prosecution has examined three witnesses PW-12 Renuka, PW-13 Kumar and PW-14 Krishnamurthy. PWs-12 and 13 are the STD booth owners. Much reliance cannot be placed on the statement of PW-12 Renuka because of the timing at which he has stated the boys have contacted Hosadurga on phone from his telephone booth because there is no corresponding corroboration to his statement of such calls having been made at 9.00 A.M. or 10.00 A.M. from his telephone booth. But the statement of PW-13, the other STD booth owner is corroborated by the statement of PW-14 and further the statement of PW-2, the uncle who had received the call at Hosadurga whereby the ransom demand was made. This is further fortified by his lodging an FIR in the police station informing that the ransom demand has been made. PW-13 has deposed that he was running an STD telephone booth at B.H. Road, Arasikere. On 20.5.96 A1 and A2 had come to his telephone booth at about 2.30 P.M. and had telephoned to one telephone no.80347 at Hosadurga, which was later on corrected by him to be the telephone no.80537 on STD code no.08199, which is the STD code of Hosadurga. He has charged the bill of Rs.36.13 p. and the entry to that effect was made in his book. The book in which the entry has been made is not with him since he had disposed it off along with some newspapers. After the call was made he had asked for the bill amount and the accused informed him that they do not possess money and thus unable to pay. He insisted for payment. Thereafter, A-1 went to fetch the amount and he made A-2 to sit in his booth. As he was busy with another customer, he asked his neighbour, a cycle shop owner, Krishnamurthy (PW-14) to keep a watch over A-2 and at that time A-2 removed his shoes and threw them towards Krishnamurthy. PW-14 gave two slaps to A-2. Thereafter, A1 proceeded towards the house of SBM Cashier. A1 called out 'Wasim', S/o SBM Cashier and the amount was later on paid by Wasim. It has also come in evidence that Xerox copies of the book maintained by PW-13 was taken by the investigating officer and tried to be produced as an evidence. The sessions court did not permit the same as a secondary evidence and the matter got rested at that. The statement of this witness is corroborated by PW-14 who held a nearby cycle shop and who has said in his deposition before the court that both A1 and A2 on 20.5.96 came to the telephone booth approximately at 2.30 P.M. and he was in his cycle shop. There was some commotion on account of non-payment of the telephone bill by A1 and A2 and, therefore, he went near the telephone booth and heard A-1 and A-2 saying that they had telephoned to Hosadurga but they do not have money to pay. When he asked them why they are not paying the amount, A-2 threw a shoe towards him which landed on his right leg and he retaliated by giving one slap to A-2. Thereafter, A1 approached SBM Cashier and the cashier's son came and gave the phone bill amount to PW-13. The accused persons left the place and went towards the bus stand. On 20.5.96 the police officer of Hosadurga had brought both A1 and A2 and shown them to him and he identified them as the same persons who had made the call from the STD booth. The statement of

these witnesses establishes that about 2.30 P.M. A-1 and A-2 came to the STD booth of PW-13 and thereafter an STD call was made to Hosadurga. This is corroborated by the evidence of PW-1, Thimmanna, one of the uncles of the deceased that he received the telephone call on telephone no.80537 on 20.5.96 at about 3.00 P.M. This is supported by the evidence of another uncle PW-2 MK Prakash who said that his brother Thimmanna received a call and told him that somebody from Arasikere had telephoned informing that they had kidnapped the boy and are demanding an amount of Rs.50,000/- to release the boy. The amount is to be paid by throwing it by the side of the railway track in between Arasikere and Beerur. Immediate lodging of the complaint at the police station at about 3.00 P.M. on 20.5.96 by PW-1 informing about the ransom demand made on the telephone, completely establishes that the telephone call was made at about 2.30 P.M. on 20.5.96 demanding the ransom amount. The statement of these witnesses clearly establishes that the accused appellants have made the STD call on 20.5.96 demanding ransom amount claiming that they have custody of Madhu.

Various circumstances in the chain of events established, ruled out the reasonable likelihood of innocence of the accused. The prosecution has been able to establish that a complaint was lodged with the police of Madhu missing from the house, after frantic search was made by the family members to find out his whereabouts. The ransom demand was made by the accused appellants from the STD booth of PW-13 over phone which was received by PW-1 and immediately thereafter complaint was made in the police station. The police party was dispatched to Arasikere to apprehend the persons who had telephoned. The accused appellants were arrested from a nearby place where the ransom demand was to be met. There is no apparent reason for the accused appellants to be present at the spot where they were arrested which is far away from the place of their residence, except for the purpose of materializing the demand made by them. The accused persons were taken to the police station of Hosadurga at about 10.00 P.M. Soon thereafter, in the morning they have taken the police party along with the family members of the deceased to the river bed of Vedavati river and on their pointing out a particular spot, the body was exhumed. Before the dead body was found they were seen in the company of the deceased nearby the place from where the dead body was exhumed. Above circumstances cumulatively taken together lead to the only irresistible conclusion that the accused appellants alone are the perpetrators of the crime. Each and every incriminating circumstance has been established by reliable and clinching evidence and we have reached to an irresistible conclusion that inference can be drawn from proved circumstances that the accused appellants were involved in the crime and are guilty. We do not find any infirmity in the judgment of the High Court and appreciation of the evidence led by the prosecution by it and the inference drawn there from. The acquittal by the trial court was rightly held to be unjustified. For the aforesaid reasons, we dismiss the appeal and the conviction of the appellants is maintained.