Nagesh vs State Of Karnataka on 8 May, 2012

Equivalent citations: AIR 2012 SUPREME COURT 1965, 2012 (6) SCC 477, 2012 AIR SCW 3051, AIR 2012 SC (CRIMINAL) 977, 2012 (4) AIR JHAR R 218, 2012 (3) AIR KAR R 14, 2012 CRILR(SC&MP) 511, (2013) 1 KANT LJ 1, 2012 (3) SCC(CRI) 168, 2012 (5) SCALE 584, 2012 CRILR(SC MAH GUJ) 511, (2012) 114 ALLINDCAS 120 (SC), 2012 (114) ALLINDCAS 120, (2012) 3 ALLCRILR 72, (2012) 2 DLT(CRL) 834, (2012) 2 ALLCRIR 1776, (2012) 2 CHANDCRIC 35, (2012) 3 MAD LJ(CRI) 525, (2012) 52 OCR 653, (2012) 3 CURCRIR 5, (2012) 5 SCALE 584, (2012) 77 ALLCRIC 900

Author: Swatanter Kumar

Bench: Swatanter Kumar, A.K. Patnaik

REPORTABLE

IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPEAL NO. 671 OF 2005

Nagesh … Appellant

Versus

State of Karnataka … Respondent

J U D G M E N T

Swatanter Kumar, J.

1. A Bench of the High Court of Karnataka at Bangalore vide its judgment dated 19th December, 2003 while rejecting all the contentions raised by the accused Nagesh, confirmed the judgment of conviction and order of sentence passed by the trial court vide its judgment dated 18th January, 2000 convicting the accused for an offence under Section 302 of the Indian Penal Code, 1860 (IPC) and sentencing him to undergo imprisonment for life and pay a fine of Rs.2000/- in default to undergo further rigorous imprisonment for six months. Aggrieved from the judgment of the High Court, the accused has preferred the present appeal.

2. We may, at the very outset, briefly refer to the facts as per the case of the prosecution. The deceased, Smt. Nagaratna, was a student of second year Pre-University College (PUC) at the relevant time. Her parents, namely Smt. Sumitra, PW4 and Shivarai Shetti, PW9, had six daughters. PW9 was running a small tea shop at Gokarna. The deceased was earlier staying with her parents. The accused No.1, Anant, was a close relative of Nagaratna and was unmarried at the relevant time. Accused No.1 also was the resident of Gokarna but at that time was residing at Belgaum. The other two accused, namely, Venketesh, Accused No.1 and Nagesh, Accused No.3, were brothers-in-law of

Anant. All of them were residents of village Gokarna. Anant had pressed upon the parents of Nagaratna for sending her to Belgaum with him. During the Ganapathi festival, she had visited her parents at Gokarna and was very reluctant to go back to Belgaum. However, Anant again persuaded her parents to send her to Belgaum promising them to secure her a good job at Belgaum. Her parents, thus, had sent her back with him to Belgaum. Hence, at the relevant time, she was staying with Anant at Belgaum.

3. PW1, Smt. Roopa, is the owner of the building called 'Sai Prasad', bearing No.304/31 and CCB No. 18 situated at Shastri Nagar, Goodshed Road, Belgaum comprising of three blocks. She herself was staying in one of the blocks with her husband and children while Anant was staying in the second block along with the deceased, Nagaratna. Chotubhai, PW2, was also residing in the upstairs portion of the same block. In other words, PW1 and PW2, both were the immediate neighbours of Anant.

4. On 7th October, 1993 at about 5.00 p.m. in the evening, Anant had gone to the temple leaving Nagaratna alone in the house. The accused Nagesh, appellant herein, came to the house of Anant and tried to outrage the modesty of the deceased and have sexual intercourse with her. But when she resisted such attempts then Nagesh assaulted her and is stated to have murdered her by administering poison.

5. Smt. Roopa, PW1, saw Anant returning to the house at about 8.30 p.m. and taking the deceased Nagaratna along with him outside the house by holding her hands. On her enquiry, she was told by Anant that Nagaratna was not well and was being taken for treatment to the doctor. PW1 also tried to enquire from Nagaratna as to what had happened to her but she was unable to give any reply except that she was producing or making some groaning/moaning sound of "huhu huhu". Upon this, PW1 gave some saline water to Nagaratna. In the meantime, Venketesh came there with an Ambassador car. By then, some persons from the neighbourhood had also gathered there. Even a police jeep had come there. Thereafter, the deceased was put into the car and the police jeep as well as the car left from the place.

6. It is stated that Chotubhai, PW2 who was watching television in his house at about 8.45 p.m., came out of his house upon hearing some commotion outside the house. He saw the arrival of the Ambassador car and the deceased being put into the car by the accused persons. He was also told that Nagaratna was not well. Later, it was learnt that Nagaratna had expired.

7. On 8th October, 1993, at about 7.30 a.m. in the morning, the deceased Nagaratna was brought to the house of PW9 in the Ambassador car. By that time, she is stated to have already died. Her father, PW9, noticed some marks of violence on the body of the deceased when she was brought inside the house. It is stated that on seeing the dead body of Nagaratna, PW9 fainted and when he regained consciousness, he enquired from the accused Anant, as to how his daughter died. Thereon the accused Anant jumped into the well but was rescued by some persons. Despite resistance, the body of the deceased was cremated. Thereafter, the accused including Nagesh did not stay in the village and they immediately returned to Belgaum. The father of the deceased, PW9, lodged a complaint with the police, Ex.P6 on the basis of which the First Information Report (FIR) Exhibit P10 was registered and the investigative machinery was set into motion. The Investigating Officer, upon

completing the investigation, filed charge- sheet stating that the five accused, namely, Anant Ramanna Kudatalkar, Venkatesh Shesha Revankar, Nagesh Shriniwas Raikar, Prabhakar Ramnath Raikar, and Veerbhadra Purshottam Shetty had committed the offence. Accused No.3 Nagesh was charged with an offence under Section 302 IPC while all others were stated to have committed an offence punishable under Sections 201 and 202 read with Section 34 IPC. All the accused stood the trial and vide judgment dated 18th January, 2000, the Trial Court acquitted all the accused for all offences except Nagesh, accused No.3 who was convicted for the offence under Section 302 IPC and, as already noticed, awarded imprisonment for life and a fine of Rs.2,000/, in default, to undergo rigorous imprisonment for six months. As already noticed, the High Court has confirmed the judgment of the Trial Court, giving rise to the present appeal.

8. The learned counsel appearing for the sole appellant-accused No.3 argued with some vehemence that this is a case of circumstantial evidence and the prosecution has failed to establish the complete chain of events pointing towards the guilt of the appellant. As in the peculiar circumstances of the case two views are possible, the Court should take a view which is favourable to the accused.

9. It is further contended that the story of the prosecution is based upon conjectures and surmises. There are serious and patent discrepancies in the case of the prosecution. The conduct of the appellant is such that absolves him of any liability under the criminal law because he had throughout participated in taking the deceased to the hospital, attended her funeral and never ran away. If the appellant had committed the offence, the first thing he would have done was to disappear. The statements of the witnesses do not establish the offence under Section 302 against the appellant.

10. In response to this submission, the counsel appearing for the State argued that the prosecution has been able to establish its case beyond any reasonable doubt, not only by circumstantial evidence but also by the statement of the witnesses who saw the deceased and the accused immediately prior and after the occurrence in question.

11. This Court in the case of Kali Ram v. State of H.P. [(1973) 2 SCC 808], held as under :

> "25. Another golden thread which runs through the web of the administration of justice in criminal cases is that if two views are possible on the evidence adduced in the case, one pointing to the guilt of the accused and the other to his innocence, the view which is favourable to the accused should be adopted. This principle has a special relevance in cases wherein the guilt of the accused is sought to be established by circumstantial evidence. Rule has accordingly been laid down that unless the evidence adduced in the case is consistent only with the hypothesis of the guilt of the accused and is inconsistent with that of his innocence, the Court should refrain from recording a finding of guilt of the accused. It is also an accepted rule that in case the Court entertains reasonable doubt regarding the guilt of the accused, the accused must have the benefit of that doubt. Of course, the doubt regarding the guilt of the accused should be reasonable; it is not the doubt of a mind which is either so vacillating that it is incapable of reaching a firm conclusion or so timid that is is

> hesitant and afraid to take things to their natural consequences. The rule regarding the benefit of doubt also does not warrant acquittal of the accused by report to surmises, conjectures or fanciful considerations. As mentioned by us recently in the case of State of Punjab v. Jagir Singh a criminal trial is not like a fairy tale wherein one is free to give flight to one's imagination and phantasy. It concerns itself with the question as to whether the accused arraigned at the trial is guilty of the offence with which he is charged. Crime is an event in real life and is the product of interplay of different human emotions. In arriving at the conclusion about the guilt of the accused charged with the commission of a crime, the Court has to judge the evidence by the yardstick of probabilities, its intrinsic worth and the animus of witnesses. Every case in the final analysis would have to depend upon its own facts. Although the benefit of every reasonable doubt should be given to the accused, the Courts should not at the same time reject evidence which is ex facie trustworthy on grounds which are fanciful or in the nature of conjectures."

12. The Court also cautioned that wrongful acquittals are undesirable and shake the confidence of the people in the judicial system much worse, however, is the wrongful conviction of an innocent person. In the case of Amarsingh Munnasingh Suryawanshi v. State of Maharashtraa [(2007) 15 SCC 455], this Court, while dealing with a situation where the accused-husband was absconding and the husband and wife were living together and at the time of death they were alone in the room, observed that it was for the accused-husband to explain as to how the deceased met her death. Again, while dealing with a case based upon circumstantial evidence, this Court, in a recent judgment in the case of Birendar Poddar v. State of Bihar [(2011) 6 SCC 350], held as under :

> "7. It is obviously true that this case rests solely on circumstantial evidence. It is true that in cases where death takes place within the matrimonial home, it is very difficult to find direct evidence. But for appreciating circumstantial evidence, the court has to be cautious and find out whether the chain of circumstances led by the prosecution is complete and the chain must be so complete and conclusive as to unmistakably point to the guilt of the accused. It is well settled that if any hypothesis or possibility arises from the evidence which is incompatible with the guilt of the accused, in such case, the conviction of the accused which is based solely on circumstantial evidence is difficult to be sustained. {See Hanumant Govind Nargundkar v. State of M.P. [AIR 1952 SC 343], Bhagat Ram v. State of Punjab [AIR 1954 SC 621]and Eradu v. State of Hyderabad [AIR 1956 SC 316]}"

13. It is neither possible nor prudent to state a straight-jacket formula or principle which would apply to all cases without variance. Every case has to be appreciated on its own facts and in light of the the evidence led by the parties. It is for the Court to examine the cumulative effect of the evidence in order to determine whether the prosecution has been able to establish its case beyond reasonable doubt or that the accused is entitled to the benefit of doubt.

14. In the present case, there is no eye-witness to the actual scene of crime that resulted in the death of the deceased. To that limited extent, it is a case of circumstantial evidence. Certain enough, the

statement of the parents of the deceased, PW4 and PW9, the neighbours, PW1 and PW2 and the Investigating Officer, PW15 clearly establishes the case of the prosecution. PW1 has stated that the accused Anant had gone to the temple and the deceased was in the room along with the appellant. At 8.30 p.m., Anant came and he brought the deceased by holding her hand and, upon enquiry from PW1, she was told that the deceased was not feeling well. Seeing her condition and the moaning sound made by the deceased, PW1 gave her saline water. Then, the accused Venkatesh also came there in the Ambassador car. Even other people gathered by that time. The Police also came at the spot and the deceased was taken to the hospital in the Ambassador car. Later, it was learnt that the police had come to the spot and informed that Nagaratna had died. Similarly, PW2 is the other neighbour who had been watching TV at about 8.45 p.m. on that day but after hearing the commotion, had come out of his house saw that Nagaratna was being taken away in the Ambassador car and he was told by the accused that they were taking her to a doctor as she was not well. PW4 is the mother of the deceased while PW9 is the father of the deceased. Both of them have stated that Anant had pressurized them to send their daughter to Belgaum with him. On 8th October, 1993, the accused brought her dead body in the car and at that time her nose was bleeding and there were blood clottings on the cheeks as well. Anant and Nagesh had informed the parents that she died as a result of consuming poison. They did not give any further information. Further, the father of the deceased, PW9, had objected that her body be not cremated but despite his protest, the dead body was cremated in the village. PW11, Praveen, who was running a tea shop at Belgaum, stated that he had seen the accused persons in the Ambassador car and he even knew the driver. He was standing near the taxi stand when the driver brought the three accused persons in the car and there was a girl sleeping in the car. The statement of these witnesses examined in light of the statement of the Investigating Officer, PW15, provides a complete chain as to how the deceased was brought to Belgaum and was last seen with accused Nagesh, whereafter she died and her body was cremated in the village despite protest by her parents.

15. All the three accused had put the deceased into the car and never took her to the doctor but instead they went to the village Gokarna where they reached next morning and handed over the dead body of the deceased to the parents.

16. A contention has also been raised to argue that the First Information Report (FIR), Exhibit P10, is an afterthought as it was lodged after deliberation and planning, that too, after a considerable time. The Court cannot ignore the fact that young daughter of PW4 and PW9 had died allegedly by consuming poison. No other details were brought to their notice, they had other daughters present in the house and the dead body of the deceased was cremated against their wish. After the cremation, the FIR was lodged. The delay, if any, in the circumstances of the case, thus, stands properly explained. The Court has to examine the evidence in its entirety, particularly, in the case of circumstantial evidence, the Court cannot just take one aspect of the entire evidence led in the case like delay in lodging the FIR in isolation of the other evidence placed on record and give undue advantage to the theory of benefit of doubt in favour of the accused. This Court, in the case of Sucha Singh & Anr. v. State of Punjab [(2003) 7 SCC 643] has stated :

> “20. Exaggerated devotion to the rule of benefit of doubt must not nurture fanciful doubts or lingering suspicion and thereby destroy social defence. Justice cannot be

made sterile on the plea that it is better to let hundred guilty escape thatn punish an innocent. Letting guilty escape is not doing justice according to law. (See Gurbachan Singh v. Satpal Singh & Ors. (AIR 1990 SC 209). Prosecution is not required to meet any and every hypothesis put forward by the accused (See State of U.P. v. Ashok Kumar Srivastava (AIR 1992 SC 840). A reasonable doubt is not an imaginary, trivial or merely possible doubt, but a fair doubt based upon reason and common sense. It must grow out of the evidence in the case. If a case is proved perfectly, it is argued that it is artificial; if a case has some flaws inevitable because human beings are prone to err, it is argued that it is too imperfect. One wonders whether in the meticulous hypersensitivity to eliminate a rare innocent from being punished, many guilty persons must be allowed to escape. Proof beyond reasonable doubt is a guideline, not a fetish. (See Inder Singh and another v. State (Delhi Admn.) (AIR 1978 SC 1091. Vague hunches cannot take place of judicial evaluation. 'A Judge does not preside over a criminal trial, merely to see that no innocent man is punished. A Judge also presides to see that a guilty man, does not escape. Both are public duties.' (Per Viscount Simen in Stirland v. Director of Public Prosecutor 91944 AC (PC 315) quoted in State of U.P. v. Anil Singh (AIR 1988 SC 1998). Doubts would be called reasonable if they are free from a zest for abstract speculation. Law cannot afford any favourite other than truth."

17. Firstly, we are unable to find any major discrepancy or even an iota of real doubt in the case of the prosecution and secondly, despite clear irresponsible attitude on the part of the Police officials who were present at the residence of the accused persons when the deceased was brought to the car on the pretext of taking her to a doctor for treatment but her body was taken away, still the prosecution has been able to establish the complete chain of events pointing undoubtedly towards the guilt of the appellant. Another very important aspect of this case is that the accused in their statement under Section 313 of the Code of Criminal Procedure, 1973 (Cr.PC) took up the stand of complete denial of their involvement in the crime and offered no explanation before the Court. As noticed above, the law required the accused Nagesh in particular to provide some explanation as he was last seen in the room with the deceased. Rather than providing some explanation of the circumstances under which the deceased died, the appellant offered complete denial. But strangely when PW4, the mother of the deceased, was cross-examined by the defence, they put the suggestion to her that the deceased was having a love affair with a student from her college and her parents had sent her to Belgaum to ensure that the said love affair failed. The deceased had become desperate at Belgaum and had taken poison and died. If this be the stand of the accused, then there was no occasion for the accused to deny every material piece of evidence as well as not to give any explanation when the accused were specifically asked for. The purpose of a statement under Section 313 Cr.PC is to put to the accused the material evidence appearing in the case against him as well as to provide him an opportunity to explain his conduct or his version of the case. This Court in the case of Asraf Ali v. State of Assam [(2008) 16 SCC 328] has observed as follows :

"21. Section 313 of the Code casts a duty on the court to put in an enquiry or trial questions to the accused for the purpose of enabling him to explain any of the circumstances appearing in the evidence against him. It follows as a necessary

> corollary therefrom that each material circumstance appearing in the evidence against the accused is required to be put to him specifically, distinctly and separately and failure to do so amounts to a serious irregularity vitiating trial, if it is shown that the accused was prejudiced.
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> 22. The object of Section 313 of the Code is to establish a direct dialogue between the court and the accused. If a point in the evidence is important against the accused, and the conviction is intended to be based upon it, it is right and proper that the accused should be questioned about the matter and be given an opportunity of explaining it. Where no specific question has been put by the trial court on an inculpatory material in the prosecution evidence, it would vitiate the trial. Of course, all these are subject to rider whether they have caused miscarriage of justice or prejudice. This Court also expressed a similar view in S. Harnam Singh v. State (Delhi Admn.) while dealing with Section 342 of the Criminal Procedure Code, 1898 (corresponding to Section 313 of the Code). Non-indication of inculpatory material in its relevant facts by the trial court to the accused adds to the vulnerability of the prosecution case. Recording of a statement of the accused under Section 313 is not a purposeless exercise."

18. Again, in its recent judgment in Manu Sao v. State of Bihar [(2010) 12 SCC 310], a Bench of this Court to which one of us, Swatanter Kumar, J., was a member, has reiterated the above-stated view as under :

> "12. Let us examine the essential features of this Section 313 CrPC and the principles of law as enunciated by judgments, which are the guiding factors for proper application and consequences which shall flow from the provisions of Section 313 of the Code.

13. As already noticed, the object of recording the statement of the accused under Section 313 of the Code is to put all incriminating evidence against the accused so as to provide him an opportunity to explain such incriminating circumstances appearing against him in the evidence of the prosecution. At the same time, also to permit him to put forward his own version or reasons, if he so chooses, in relation to his involvement or otherwise in the crime. The court has been empowered to examine the accused but only after the prosecution evidence has been concluded. It is a mandatory obligation upon the court and besides ensuring the compliance therewith the court has to keep in mind that the accused gets a fair chance to explain his conduct. The option lies with the accused to maintain silence coupled with simpliciter denial or in the alternative to explain his version and reasons for his alleged involvement in the commission of crime. This is the statement which the accused makes without fear or right of the other party to cross-examine him. However, if the statements made are false, the court is entitled to draw adverse inferences and pass consequential orders, as may be called for, in accordance with law. The primary purpose is to establish a direct dialogue between the court and the accused and to put to the accused every important incriminating piece of evidence and grant him an opportunity to answer and explain. Once such a statement is recorded, the next question that has to be considered by the court is to what extent and consequences such statement can be used during the enquiry and the trial. Over the period of time, the courts have explained this

concept and now it has attained, more or less, certainty in the field of criminal jurisprudence.

14. The statement of the accused can be used to test the veracity of the exculpatory nature of the admission, if any, made by the accused. It can be taken into consideration in any enquiry or trial but still it is not strictly evidence in the case. The provisions of Section 313(4) explicitly provides that the answers given by the accused may be taken into consideration in such enquiry or trial and put in evidence against the accused in any other enquiry or trial for any other offence for which such answers may tend to show he has committed. In other words, the use is permissible as per the provisions of the Code but has its own limitations. The courts may rely on a portion of the statement of the accused and find him guilty in consideration of the other evidence against him led by the prosecution, however, such statements made under this section should not be considered in isolation but in conjunction with evidence adduced by the prosecution."

19. It is also possible and permissible that an accused may remain silent but in that circumstance and with reference to the facts and circumstances of a given case, the Court may be justified in drawing an adverse inference against the accused. PW5, Smt. Pushpa, is another vital witness who had seen the deceased when she was brought to the Ambassador car and, according to her, lips of the deceased were blackish and her neck had black marks on two sides and when she enquired about her from the accused, she was told that the deceased had taken poison. The statements of PW1, PW4 and PW9 read with the statement of this witness, establish the facts which form the very basis of the case of the prosecution and they have been proved in accordance with law. The trend of cross-examination on behalf of the accused implies admission of the death of the deceased having taken place in the premises in question by taking poison, however, the accused have failed to offer any explanation therefor which was least expected of him.

20. Lastly, we may also notice the contention of the appellant that learned courts below have not appreciated the evidence in its proper perspective and in accordance with law. The findings are based upon surmises and conjectures. Resultantly, the findings are incorrect in law and unsustainable.

21. When the evidence is legally admissible and has been appreciated by the Courts in its correct perspective then merely because another view is possible, this Court, in exercise of its powers under Article 136 of the Constitution, would be very reluctant to interfere with the concurrent findings of the Courts below. Of course, there are excpetions but they are very limited ones. Where upon careful appreciation of evidence, this Court finds that the courts below have departed from the rule of prudence while appreciating the evidence in a case or the findings are palpably erroneous and are opposed to law or the settled judicial dictums, then the Court may interfere with the concurrent findings. Still, it is not possible to exhaustively state the principles or the kind of cases in which the Court would be justified in disturbing the concurrent findings. It will always depend upon the facts and circumstances of a given case.

22. While noticing the caution expressed by Baron Alderson with regard to the possibility of our minds getting swayed by the tragic facts of the case and our assessment of the case being influenced by the preconceived notions, the Court in the case of Mousam Singha Roy & Ors. v. State of W.B.

[(2003) 12 SCC 377 held as under :

> "Appropos what was observed by this Court in the case of Hanumant Govind (supra), it will be useful to note the warning addressed by Baron Alderson to the jury in Reg. V. Hodge 1838 2 Lewin 227 which is also quoted with approval by this Court in the case of Hanumant Govind (supra) :
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> 'The mind was apt to take a pleasure in adapting circumstances to one another, and even in straining them a little, if need be, to force them to form parts of one connected whole; and the more ingenious the mind of the individual, the more likely was it considering such matters, to overreach and mislead itself, to supply some little link that is wanting, to take for granted some fact consistent with its previous theories and necessary to render them complete."

23. In view of the above factual matrix and upon appreciation of evidence, the Court found itself unable to concur with the findings recorded by the courts below. It was primarily for the reason that the courts had departed from the Rule of Prudence in appreciation of evidence. In the present case, the evidence is admissible evidence and has been appreciated in consonance with the rules of prudence and law. These findings can neither be termed as perverse or so improper that no person of common prudence can arrive at that conclusion. In light of the above noted principles of appreciation of evidence, we would not interfere merely because it is possible to take another vie on the same evidence.

24. Before we close our judgment, we will be failing in our duty if we do not direct the Director General of Police/Commissioner of Police, Karnataka to take disciplinary action against the police officers/officials at Belgaum, whether in service or not, who were present at the place of occurrence when Ms. Nagaratna was brought from her room downstairs where the car was parked, and failed to take appropriate action and register the case despite the fact that it was openly stated that Ms. Nagratna had consumed poison. Further, we direct disciplinary action to be taken against the police officers/officials, whether in service or not, at village Gokarna who were present when the body of the deceased was cremated and they failed to take charge of the dead body and proceed in accordance with law, it being an unnatural death. They did not discharge their public duty and mandatory obligations under the provisions of the Police Manual and the Code of Criminal Procedures. We further direct that the Director General of Police shall view the matter seriously and ensure completion of the disciplinary proceedings within six months from the date of this order.

25. In view of the above discussion we find no substance in the submissions made on behalf of the accused-appellant. They merit rejection and are hereby rejected accordingly.

26. We find no merit in the present appeal, the same is dismissed accordingly.

.....J. (A.K. Patnaik) .....J. (Swatanter Kumar) New Delhi May 8, 2012