

Karnataka High Court

Venkataramu vs State By K R Police on 10 March, 2008

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IN THE HIGH COURT OF KARNATAKA AT BANGALORE

DATED THIS THE 10TH DAY OF MARCH, 2008

PRESENT:

THE HON'BLE MR. JUSTICE K.SREEDHARHr2\$A0f'j.:''Iv..

AND . . .

THE HON'BLE MR. JUSTICE

CRL. A. No.

BETWEEN: : _

1 VENKATARAMU, S/O THH1.T\$ {i'MAIAH"~._f"

CON--NO.13686,,.CENTRAI_"PRI-SON *

MYSORE =~ : *.. z

__ 4' ~ . APPELLANT

(BY SRI.;B._v.PINT0;yADv.... --'*LE'GAL AID)

AND: , = V * "

1 : 'STATET'VBVv%<_:R.P0LfC.E-- I

__ RESPONDENT

(By. SR1 c';'H.3'.A'DWav, S.P.P.)

THIS".. CRIMINAL APPEAL IS PREFERRED BY THE

» APPEL.LA«NT[CQ_NVICT/ACCUSED THROUGH SUPRDT.,

" CE.N'3*R__A~L_ PRISON, MYSORE, AGAINST THE JUDGMENT DT.

8A.'i--0'.20GA4?--._ PASSED BY THE PRL. S.J.,MYSORE IN

S.r.;.N0,,.7,/ _2'_o03 --C0Nv1CT1NG THE APPELLANT / CONVICT /

AccUS'E_D'F0R THE OFFENCES P/U/S 302 OF IPC AND

SENTE.N{3IING HIM TO UNDERGO R.I. FOR LIFE AND TO PAY

FINE OF RS. 2000/-- AND I.D., TO UNDERGO R.I. FOR 6

A' MONTHS FOR THE OFF-"ENCE P/U/S. 302 OF IPC, ETC.,

THIS APPEAL IS COMING ON FOR HEARING THIS DAY,

WAHJAWAD RAHIM. 3., DELIVERED THE FOLLOWING:--

ix)

JUDGMENT

The convicted accused has questioned the judgment of conviction against him passed by the Principal Judge, Mysore in S. C. No.7/2003 on it

2. Heard. 'A'

3. The prosecution case against the accused Accused had befriended a girl, white as a Nurse in and took care of his mother. Later, the acquaintance fortified into love and married her with the consent of his parents. Marriage was performed and thereafter Nalini lived in his house and out of birth to girl child.

-For confinement she had gone to her parents. Then the relationship between the accused and Nalini was cordial. However, the accused had before the delivery itself compelled her to resign and give up the job of nurse, suspecting her character.

5. Initially she resisted but later gave up. However, after the delivery of the child, she accused to allow her to rejoin her work. She continued to persuade.

continued to refuse. In this relationship seriously strained. Parents and other members of the family, to this aspect. However, the accused started drinking heavily at night and harass Nalini.

6. The prosecution, the accused decided to kill and on 29-08-2002 on the pretext of child examined by doctor took Nalini on his visit. He proceeded towards Chamundi Hills and then took a deviation. When Nalini questioned him, he told her before visit to hospital he wants to have darshan of Goddess Chamundeshwari. But, he took different route from the foot of the hill and deviated near Nandi statue towards Uttanahalli Road. On the road he met CW 25 - Shivkumar of Shivapura village and when he questioned him, he said he wants to see Nandi Statue.

7. It is alleged at a distance of about from Uttanahalli circle, the accused stopped. He asked her to remove mangalsutra, questioned her fidelity and so saying stabbed her with a knife. He then crushed her with a bulldozer and took the child from the spot and to the house of his sister CW14 - Puttachennamma. The child met CW22 - Nagaraj and the clothes were stained with blood and blood stains were found on the cheek of the child. When questioned, Puttachennamma and Nagaraju, he did explanation but later he made extra judicial confession of killing Nalini. Meanwhile, CW1 - Nagarasimha, the Police Constable attached K.R. Police Station who was on duty noticed a dead body lying. He examined and found the dead body was of a woman and head crushed with stone. He appeared before CW3 - Hanumantharayappa and submitted a written report. On which, further action was taken by registering a case in Cr. No. 112/2002.

9. Inquest was conducted on the presence of CW2 - Somashekara, CW3 - Manu, CW4 - Vinodini by CW34 - Hanumantharayappa. Bloodstains, jewelry, and other items were

seized from the scene' of occurrence. In the meanwhile, CW15--Thin1.nnaiah, "father of two" accused; went making enquiries as to whether the accused had returned with his daughter--in-law, knew about her whereabouts. "3: 'fV\$?iow'ever, CW17--Vijayan, is said to have informed of a body and accordingly he went there"=and identified the body as of his daughter--in-law in this main identity of the dead body was also 1Q. "i: '?:'; iii:nce the accused had no explanation and he was a person with whom the deceased had gone before her "if" death, investigation was directed against him. During the investigation accused gave voluntary statement, showed /as'-'-;:/ /i - v Q/' \ place of occurrence, lead to recovery of the stone and clothes were also seized.

11. Considering the evidence on record tendered by the prosecution through its witnesses PW1_g,:to_p*--28, documents at Ex.P1 to P30 and Mo5 1 to D6, the learned trial judge convicted the accused; *~:a'gainst". which he is before us.

3.2. Accused has assailed contending that the prosecution case was based on circumstances "evident" and §;herefore, each circumstance alleged by the 'prosecution'--«was required to be established to show it implicates accused and brings nexus between his acts and the death of his wife--Nalini. It is urged that no evidence is adduced by the prosecution to establish any of the "circumstances" alleged. In this regard, he contends that the decision of the trial judge is more influenced by the alleged V. extra-judicial confession said to have been made by the "accused before his sister, whereas the same was retracted if "by him and proved to be a falsity. He has also disputed the identity of the dead body as also cause of death, while the prosecution contends that every circumstance which it canvassed finds favour from the evidence on record. VVm_ 'i~.V_

13. Keeping in mind what is examined the evidence on record. It is in evidence that the dead body was recovered by P\fi.{3--\f'og.anarasi'n1ha'iVa'h.. the report of PW3, a case was registered at: v.i{,,R.iJaaar:i' police station, and inquest was "-,c_onyducted..f_by the Taluka Executive Magistrate tEf_ief'.p--r_es.e'nce of Somashekar (PW4), Manu (CW3) and the f:i_n'od' inquest, TEM has recorded..i{d_iscd}very of a of a female with head crushed}. "They-also j~s\eized..blood stained mud, boulder and other articles found at the scene of occurrence. The body sent for post mortem to be conducted by PW8-- in his report, has clearly recorded the injuries found on the body and its devastating effect. Nine injuries found are described as ante-mortem in nature A had caused instantaneous death of the victim. Post mortem report bears testimony that the death of the woman whose body was recovered, was homicidal. We have no hesitation in accepting the finding of the trial court that the death of the woman was homicidal in

14. The next question is regarding the body. We have noticed from the report that the body was recovered by 'Pvt/'3--Yogarajasingh; a.i"ahV,: "by PW10--father of the accused '(i'h:ir1rnaia"h)V_ :i's..the':sone who has identified the raised any question about identification: _o'ff'the by his father Thimmaiah. tofg:oTi'iit.o.Tth'e other incidental issues raised the accused about the Identity/of'the victim's body. Q'h' Henfcféyyéwe affirm the finding of the trial: |»~.,J4:oti_rt' of the woman found by PW3 was that of N=ali'ni,wife~. _of*the accused. us to the other circumstance.

that accused along with his wife and _ daughter_ "left the house on the pretext of taking the child to PW10--Thimmaiah has spoken to this aspect. the dispute raised by the accused is with regard to time. During investigation, PW10 states that accused Z1 \ 2/ 3 V-

ix' /:

9.36 evening, the whereabouts of the accused had been traced. In this regard, prosecution case is that Vfwtraveiling when he was seen by PW23~Shivai<umar. and the deceased left the house at 7.30 a.m., but during evidence, he states they left at 9.30 am. The discrepancy in his statement with regard to time is highlighted, the accused to show he left the house only at date of the incident and not 7.30 am.

PW10 being father of the animus to the prosecution and tactful in his with regard to time. Even the accused left along With: 'L' ~! Ti_E3 it will be of no avail. However, that the fact that accused, ai'i'd. __, Nalin __ i left with the T"t. hei, r __, daughter together is fully established. The hostile testimony of PW10-- Thimmaitah *Wh"at later is of importance. 16; Prosecution evidence shows accused had travelled with the deceased on motorcycle and thereafter returned to elder sister-PW9 (Puttachenamma). From accused having taken a deviation to Chamundi Hills, was 45' -.-" \ 3 . » ' 4' / ' V 5 it w » v Io Therefore, PW23's version that he had seen the accused is one circumstance, but Shivakumar turned hostile. However, the evidence of PW2--Rajesh pawn broker, is important. Prosecution has proved that the pledged mangalsutra of Nalini with Rajeshphalindv V' Rs.5,00G/-. While the prosecution alleged after committing the murder of Nalini, accused went to the shop of Rajesh and pledged the 'v' *' ¥l: "éi--n9a | su'tf.5'l" > a.nd7, "collected Rs.5,000/-, the content on over the 'j4aVc"cu. _Sed is "th'at he had gone to the shop of Rajeshpeihgi'ig; a'li_s':ii and the child. In other words, it is alleged that after killing Nalini, V" a: cuse'd < _: "removed her mangalsutra and pledged it with 'Raj'esh. If this is sought to be negated by point, in fact, the accused had actually gone with Nalini hence, she was alive. In fact, Rajesh-PW2 is alleged to have accepted the pledge of mangalsutra for Rs.5", (OO f)/F- from the accused, but he tried to change his 3 _ "version" by saying accused had come along with a woman child. The prosecution declared him hostile and he

-could not stand the test of cross examination, as he could not reveal who was the woman who had accompanied the accused, nor could he describe her or testify it was the deceased. Since accused has admitted having pledged mangalsutra with Rajesh, prosecution has incriminating circumstance and we also find that the evidence of PW2--Rajesh substantiates the prosecution case regarding pledge of mangalsutra and so with regard accused being accomplice and her daughter.

17. The evidence of PW9; Pu'st, acc. henamma was brought in accused had, after committing the murder of Nalini, taken his daughter to the house. of PW9 ..h"ad questioned him after seeing the blood stains on his face and on his clothes. It further alleged by the prosecution that accused had made a confession before PW9--Puttachenamma about confession of the murder of Nalini. However,

PW9 : "rescinded" the statement and denied accused had made such statement. But the fact remains, he had visited the house .';

"\./ of PW9 with the child and not Nalini. To this extent, PW9's evidence supports the prosecution case.

18. We do not wish to deal with the circumstances which are incidental. However, the fact that the accused left the house in the company of the wife, failed to explain what transpired, is important. His explanation is: he visited the house along with Nalini and after pledging her mangalsutra, gave her Rs.5,000/- and then parted company. If we believe such version, then the accused has explained how it came to his possession he visited the house of his sister. PW9 : 'he said: 'therefore, no explanation as to where Nalini had gone after the alleged parting of company. The accused is contending he had parted the company of Nalini, but it is on him to establish this aspect. VA 19. However, this version has to be tested from other attending circumstances. The other attending circumstances are, clothes of the accused were found to be blood stained; his clothes along with blood stained boulder and wearing apparel of the deceased were seized by the investigating officer. Knife--M.O.5 is said to have been recovered at the instance of the accused. The samples were sent for chemical analysis by PW28--Dr. Nandappa. He has in his report at Exs. P29 and P30 affirmed serology report that M.O.1--size stone, saripalle; rifud; gharree, = blood; brassier of the deceased and shirt of the accused rapart : 'from the undergarments marked as to have human blood stains. "Others were found to be stained with blood group O.f. that the blood group of the accused; rgase: -ewias "Of and the same group was found on the blood shirt of the accused. This was a clincher to bring into nexus between the acts of the accused and the death of Nalini. If the accused was not the author of the same group as that of his wife Nalini were found on his shirt. Though the accused tried to put defence, it was found evasive and not of the nature to negate incriminating aspect emerging from

-the serology test performed on the blood samples. The 1".

learned trial judge has accepted this part of the prosecution evidence to bring nexus between the acts of the accused and homicidal injuries found on the person of the deceased.

20. We do not find any error in assessing the evidence discussed by the trial court to the accused. However, the contention of the accused is that he was a loving husband and their marriage was a consequence of love affair which could not make him the assailant. We have examined and found that also at length.

21. It is in evidence that Nalini was a nurse in a hospital and hereafter the accused was undergoing treatment, the relationship resulted in love affair and

uatingjavteiy in marlrvilage. Nalini ws compelled to give up her ,Aje._bg' and_ later when she wanted to re-join, accused su's_peCté'c;..V,VV____he;'r-~""fidelity and kept a constant vigil. The ev'i"den:ie"vtendered by Leelamma PW12--sister of the . deigeased and K.K.Vijayan (PW11) speak to the fact that the ""rdece'ased had, during heriifetime, after the birth of the " "child, kept telling them that the accused had developed U1 suspicion about her chastity and was constantiy harassing her. We do not find any reason to disbelieve their version that the deceased had spoken about the suspicionfjin the mind of the accused.

22. Viewed from any angle, we do _not:"f.i.nd.A_f.:rn.ateri,g_|I substance in the defence of the agccusleéd 3th~at'lhe:_.:had.__;parted company of the victim and Vsomebodyelse death. Accused has not poiisnited ouf~.a'ny-atciturstance indicating who that V some pviérsgon who had nurtured ii|--wi|i of such out of Nalini.

,23M."HF'or?v5t_he":.}jeas'OriS di\$çu's's'ed above, we do not find any merit' inthe"a'p~peva.|_:"*and find no reason to differ from the View taY<e'n by. thveiefarned trial judge. The impugned ».dated"8';'1'O.2004 in S.C."7/O3 passed by the Pri,n'Ci.p'a«!._aSessions Judge, Mysore, is affirmed. Sd/4 EUDGE Sci/'-3 JUDGE % .!..fK/vgh*