

Karnataka High Court

Prabhakar Kumar vs State Of Karnataka By Chikpet ... on 19 November, 2008

Author: S.R.Bannurmamth & K.Ramanna

IN THE HIGH COURT OF I-{ARXATAKA AT BANGALORE

Dated : This the 19"! of November, 2%

PREEENT

THE HOIVPBLE MR. JUSTICE 8.8. BAKNURMATH

THE I-ION'BLE MR. JUSTICE K. .. 3 A

CRIMINAL APPEAL No. 3.o:«:Q12..\_oos \*\_."\_' V V

BE'l"WEEN:

1. Prabhakar Kumar,  
S/o Abid Singh,  
Aged abcm 24 yeazs,  
R/atBabanvillage, \_ . \_  
Lalckisaradistxict,

2. Mohan Kumar, V

S] 0 Rs:-zjendra Si'a'g11,"

Aged about 24 yca.:\*':5\_ ' ' \_

R/a Hindupu.r.vil}agc, ' \_

Thana Pcast, " ¢ V

I A. ....

Lal(kisaJ\*ay'i.,di:2!;t1Qt, -- < ' V. V

Bihar. " V , .. APPELLANTS.

P-1. Padiilavafil1;vz;iciv.)

' \_ \_

Felice Station. RESPONDENT.

Sxfj Hhlawaz, Max SPF)

This Criminal Appeal is flied under Section 374(2)

{3r.P.C.:., by the advocaie far tlm appellants against the §udgme\_z\_1\_t

dated 8.4.2005 passed by the ?residillg oat-car, Fast

C-o'u1't~IX, Bangalore City, in SI}-.No. 517/2002 ~

appellants/accused Nos. 2 and 3 for thtif',.Qfi'fi1'1Cf:Sh:31ff#iLf'i'J¥éh1E:,



t°\*Mohan 19 --- Srinivas came to his house and ~ .t.tig3tfo□hed thaLt\_N"avaram has been murdered in the mom he was visiting the spot, he saw the dead body of h bearing injuries on his person and as such, he goes to 4' jurisdictional police at Chickpet and gives a written complaint as per Ex.P.7 at about 9.45 3.111. On receipt of the same, P'.W.5 --- the S.H.O. and 19.8.1. registers a case in Czrfgme □"" found in the 3rd □oor of the premises No.1S4/ 155 belonging tp P.W.7 who had a shop on ground □oor at AS. Char Bangalore. The evidence of the autopsy doctor cleaxflfj" that the deceased Navaram had received a\_s.\_z..n1any and stab injuries on his entire body' asjjsetr ijf doctor and his repoit, these i11juIieS'--.\_V}n7er'eA'~.etnte' nature, which could be caused by ectge like M.Os. 16 and 17 and the to sahoek and }:1eme:rrhage as a result. {if mjxl□□e. by the deceased. Hence, the said Navamm met K Veetablished beyond any doubt. us is ~ whether the pm-secutioti reasonable doubt that it is these; "Nos. 2 and 3} with juvenile 1;)' and have caused the death crf It is also to be seen Whether the . »""pVmsecutio.;1V hae.esjtat)□shed that the object of this murder was " 'reb».the suiuie-f Rs. 134,000] - said to be in passession of the 4: ~-tieee"@e\_ed\_bet'A\_the relevant point of time. Ga peruse} of the entire gmsecu□□ease 311:1 the evidence led, it is to be nested that them are no eye Witnesses; to the actual -assault and as such, the entrixe case of the □e, 'ex E1 proseeutti-mi is baseei on evidence of circumstantial in nature. These CiI'C11}33.SU;'3I1CES are as follows:

3) bi

61) Motive;

Robbery of large sum ef Rs.1,34,({o{)/--- ' homicidal death of Navaramg Accused Nos} and 3 were empieyeee.

with the deceased, P.W:-3.8' P.W.7 - Bavar1a1@ 'DeepchaIi{i;~.. ' Accuses} Nos. 3 and floor of the businevssj 'premises' 'tc:l;e1eeeV\_ □egdeceased was si:ayfing\_ l'J,;11 .' \_ ' O11 tlle, eirenieg 'bf 25.5.2002 large cash of Rs. \$;34,(\$OO,L{--'ieas ¥:\$;}e custody of the deceased and

- \_ had 'kept "" Sam ' e in a cup board in the mom relevant time of the incident.

V 4{\$a\$\_1.staying;

A the .ae,-□ised Imew about the deceased having in cu9;te@?;y such a large amount;

. \_'The accused were near the scene of offence during the Infaet it is accused No5.

I and 3 who have inforaeed about the □nding of the dead body to P.W.6;

K54, E2

h) Recovery of the cash, blood stained az□ies Weapons at the instamres of and the ' statements made by the accused;

i) Finding of a shirt button « ~ M.C.); » 14 \_\_\_ oz 1 one of the shirts I\ e" i.O. 18 seized E311 irifl accused No.2, was found oi'v-a'b11ttcr»:s'Aé:1\_1a<§ button found at the spot mafC:l1ecY..\_»\_wit.li the Inissing button on M.C).18. V

7. At the £ov%b.e éits""i;7e have already helei that the e'ec§;aé.φd Navaram is not much in dissufe by the pmseeution thmugh \$he e□dgeice of [inciuding mahazar witnesses] -the poice officials as well as the e□deiee bf autopsy deetar,

8. A .\_\_\_'IV'he 'eircumstance mo□ve is aiieged to be for ~ .T.Ti§?.b}:\$i:1g the dveeeased of large sum in his possession. It is the V¥:l\_ze""Aprosec.13tio11 that accused Nos. 1 and 3 as Well as the H V'V:éeeVesseq:1 were working in the shop of P.W.'? siong with P.W.8

19. In this regard, the a;rgume11t of the learned .VCi<)unse1 fer the accused is that there is absaluteiy no documentazy eviéence produced to show such employment of the accused by P.W.'?. On peruse} of the entire evidence, itis □he that no documentary evidence in respect employment of accused Noe. 1 a:t:t{i 3 by P.W.7 : " regarding their stay in the premises is prc>\_d.;.1eed. .:<L5weg;φ: should not deter us from accepting the ;ee--.:§:1éncφ-> ef if witnesses in this regard, if thee'j\_sa;x11e 'is. acrceptabie. In this regard, the the employer himself. He has tesmts that Saketh Kama}: 3"uvenile.\_ (acettseri No.3 Mohan Kumar aioug and P.W.19 -

Srinivas were wori;i;.1gi:\_"t1i; stated that the premises coneiste the ground □twr was the shop W h e r e a s t i e t i t i e e e a s e d w a s s t a y i n g a n t i o 3 : 1 t h e 4 & 1 o'E4.;I'é)..Vt':J.€\*:V'|AiA!£V7V()1;kII1.t-iI3L'.t'!...1011g with accuseé Nos. 3. and 3 a sugges□on to this witness that the ' " u.fiet:'.:~working and he is falseiy deposizag, 44iéib'so1uteIy,t1Vo material is elicited from this Wimess. It ~ --té.jV»-net->as if it Witness alone who speaks about tile said 'jg;;.ep1e§%;ag;§t;\_« Infact, P.W.6 the brother-ix3,--1aW of 1=.w.7 and h i?' .Ws.8 and 3.9 the Ccwemployees of accused 'E%Q\_s\_;f1 and 3 have éeposed to this e□ect. Their evidence is net cormborated to each other but in the absence of any cross- exaznationien as to why they are faieely imp□ta□hg these f employer. No doubt, he was not pzeent. on 25.5.2002 but had gone to Rajasthan one month eariier but his evidence had learnt this amount from Naresh Kumar --- P.W.8, j" found fault with. Admittedly and undisputedly, employer and he would be a1:1x:ious ':a.boi\_i1A. it 1" mandatory transactions of his shopV\_\_vth;t)u\$hv.

Manager and employees ae t\_ the consideration of the dd 19 that on 25.5.2002 P.W.8 gave aeash ttie deceased which he kept in the Vt □bor. it is also estabiished he was handing were present infact seen the deceased keeping the meneét' There is nothing strange Gt the' 'accused as they were also co~ employeee in the eame buiiding on the 4&3 \_1f□-or.

'ti t""If\_1:1e presence of accused Nos. 1 and 3 while Navaram V. and also just immediately after his dead body was ~V.gj1;i;ee:overed, they are spoken to by P.W.8 eonnbomted by the evidence of P.W.6. Apart from them, there is umlmpeachable evidence of P.W.17 the Security Guard who had just taken □g/.

circumstances against them as false. But they have not tried to explain or show that they were not employed by P.W.7 or that they were staying somewhere else falsifying the case .. prosecution that they were residing on the 431 premises and the murder did take place there on re-appreciation. of the evidence in Wé. V the prosecution has established the truth of the evidence only at the time of P.W.8. of Rs.1,34,000/- to the deceased till the body of the deceased was found.

11. as to the guilt of the accused to the investigating officer, of accused Nos. 1 and 3 on

that they gave voluntary statement to accused No.2, had two shirt as "elader Shirt" at Sudhamanagar.

accused No.2 - Prabhakar stating that they had 'V. Jh\_2; jttied'; over the cash of Rs.1,34,000/- to him for safe keeping. VV"---C)iiVjttellogat:ion of said accused No.2, it is stated that he took the police and the mahazar witnesses to the place where he was residing in the same premises and from the plastic bag which fee.

contained rice, the cash of Rs. 1,34,000/- was recovered. £1; is also alleged that the accused also produced two blood clothes said to have been used in the crime and evidence; "witnesses to the 4th. cross of Lz-Jlbaghl \_ja'7g=:di<:'I,V' \_ plastic bag is pointed out. On recovery of Vli.e:'saB3e, pants axe recovered. it is significant that the shirt ~ M.O.s had one button; 'z3is§:iiisg; '..evidence" of the I.O. has been corroborated ", v mahazar witnesses P.Ws. 9, cross examination, evidence in this respect has been In this regard, it is mainly contended by the prosecution has not established the guilt of accused Nos. 1 and 3 and more importantly it is alleged that involvement of accused No.2 and his alleged involvement leading to discovery is of false. The ~ for the accused pointing out to Ex.D.1 - the 4'V'l.I3.'l' \_ }£'. Ii§1tiO11 given to the accused, vehemently contended ' iflhel arrest in Ex.D. 1, the arrest of all the accused is shown 'at, em. However, it is argued that the recovery' mahazar, which is drawn at about 5.45 p.m. stating that it is only after accused Nos. 1 and 3 who gave voluntary statement and led the police and pambhas to the spot, they found Prabhakar -- accused No.2 Working at the factory premises. it is contended , per Ex.[]. 1 when accused No.2 was in custody of the could not have been present at the V-fa'c'tory Vttatj.

Sudhamanagar so as to lead the 3 recovery of cash, the weapons and statement - alleged ...:i this regard, on perusal of the, Station...:cti'ouse..LADieiy;t~ is seen that the mention of 'emf along with accused Nos. 1 and 3 in statement given.

by the I.O and S.H.D., of the relevant dates arrested around 7 13.11. it appears - as a routine, while giving the arrest i.3:itatioi1V.\_toVs1f1d 3, have also mentioned the name of 'a' as such there is possibility that he was also arrested along with accused at 4.30 pm. But we are satisfied after of, t11ev \_S~. that at the relevant point of time the fact , \_t:No doubt the police have not produced any the alleged friendship or link between Nos. 1 and 3 on one hand and accused No.2 on

the But that fact has been practically established through the evidence of P.Ws. 8 and 19. These co-employees of accused Nos. 1 and 3 have as already noted categorically stated that We

12. The Trial Court has carefully considered all these aspects at length and in our view, has arrived at a proper conclusion.

13. In the result and for the reasons that the appeal filed by accused Nos. 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, 51, 52, 53, 54, 55, 56, 57, 58, 59, 60, 61, 62, 63, 64, 65, 66, 67, 68, 69, 70, 71, 72, 73, 74, 75, 76, 77, 78, 79, 80, 81, 82, 83, 84, 85, 86, 87, 88, 89, 90, 91, 92, 93, 94, 95, 96, 97, 98, 99, 100, 101, 102, 103, 104, 105, 106, 107, 108, 109, 110, 111, 112, 113, 114, 115, 116, 117, 118, 119, 120, 121, 122, 123, 124, 125, 126, 127, 128, 129, 130, 131, 132, 133, 134, 135, 136, 137, 138, 139, 140, 141, 142, 143, 144, 145, 146, 147, 148, 149, 150, 151, 152, 153, 154, 155, 156, 157, 158, 159, 160, 161, 162, 163, 164, 165, 166, 167, 168, 169, 170, 171, 172, 173, 174, 175, 176, 177, 178, 179, 180, 181, 182, 183, 184, 185, 186, 187, 188, 189, 190, 191, 192, 193, 194, 195, 196, 197, 198, 199, 200, 201, 202, 203, 204, 205, 206, 207, 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608, 609, 610, 611, 612, 613, 614, 615, 616, 617, 618, 619, 620, 621, 622, 623, 624, 625, 626, 627, 628, 629, 630, 631, 632, 633, 634, 635, 636, 637, 638, 639, 640, 641, 642, 643, 644, 645, 646, 647, 648, 649, 650, 651, 652, 653, 654, 655, 656, 657, 658, 659, 660, 661, 662, 663, 664, 665, 666, 667, 668, 669, 670, 671, 672, 673, 674, 675, 676, 677, 678, 679, 680, 681, 682, 683, 684, 685, 686, 687, 688, 689, 690, 691, 692, 693, 694, 695, 696, 697, 698, 699, 700, 701, 702, 703, 704, 705, 706, 707, 708, 709, 710, 711, 712, 713, 714, 715, 716, 717, 718, 719, 720, 721, 722, 723, 724, 725, 726, 727, 728, 729, 730, 731, 732, 733, 734, 735, 736, 737, 738, 739, 740, 741, 742, 743, 744, 745, 746, 747, 748, 749, 750, 751, 752, 753, 754, 755, 756, 757, 758, 759, 760, 761, 762, 763, 764, 765, 766, 767, 768, 769, 770, 771, 772, 773, 774, 775, 776, 777, 778, 779, 780, 781, 782, 783, 784, 785, 786, 787, 788, 789, 790, 791, 792, 793, 794, 795, 796, 797, 798, 799, 800, 801, 802, 803, 804, 805, 806, 807, 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1006, 1007, 1008, 1009, 1010, 1011, 1012, 1013, 1014, 1015, 1016, 1017, 1018, 1019, 1020, 1021, 1022, 1023, 1024, 1025, 1026, 1027, 1028, 1029, 1030, 1031, 1032, 1033, 1034, 1035, 1036, 1037, 1038, 1039, 1040, 1041, 1042, 1043, 1044, 1045, 1046, 1047, 1048, 1049, 1050, 1051, 1052, 1053, 1054, 1055, 1056, 1057, 1058, 1059, 1060, 1061, 1062, 1063, 1064, 1065, 1066, 1067, 1068, 1069, 1070, 1071, 1072, 1073, 1074, 1075, 1076, 1077, 1078, 1079, 1080, 1081, 1082, 1083, 1084, 1085, 1086, 1087, 1088, 1089, 1090, 1091, 1092, 1093, 1094, 1095, 1096, 1097, 1098, 1099, 1100, 1101, 1102, 1103, 1104, 1105, 1106, 1107, 1108, 1109, 1110, 1111, 1112, 1113, 1114, 1115, 1116, 1117, 1118, 1119, 1120, 1121, 1122, 1123, 1124, 1125, 1126, 1127, 1128, 1129, 1130, 1131, 1132, 1133, 1134, 1135, 1136, 1137, 1138, 1139, 1140, 1141, 1142, 1143, 1144, 1145, 1146, 1147, 1148, 1149, 1150, 1151, 1152, 1153, 1154, 1155, 1156, 1157, 1158, 1159, 1160, 1161, 1162, 1163, 1164, 1165, 1166, 1167, 1168, 1169, 1170, 1171, 1172, 1173, 1174, 1175, 1176, 1177, 1178, 1179, 1180, 1181, 1182, 1183, 1184, 1185, 1186, 1187, 1188, 1189, 1190, 1191, 1192, 1193, 1194, 1195, 1196, 1197, 1198, 1199, 1200, 1201, 1202, 1203, 1204, 1205, 1206, 1207, 1208, 1209, 1210, 1211, 1212, 1213, 1214, 1215, 1216, 1217, 1218, 1219, 1220, 1221, 1222, 1223, 1224, 1225, 1226, 1227, 1228, 1229, 1230, 1231, 1232, 1233, 1234, 1235, 1236, 1237, 1238, 1239, 1240, 1241, 1242, 1243, 1244, 1245, 1246, 1247, 1248, 1249, 1250, 1251, 1252, 1253, 1254, 1255, 1256, 1257, 1258, 1259, 1260, 1261, 1262, 1263, 1264, 1265, 1266, 1267, 1268, 1269, 1270, 1271, 1272, 1273, 1274, 1275, 1276, 1277, 1278, 1279, 1280, 1281, 1282, 1283, 1284, 1285, 1286, 1287, 1288, 1289, 1290, 1291, 1292, 1293, 1294, 1295, 1296, 1297, 1298, 1299, 1300, 1301, 1302, 1303, 1304, 1305, 1306, 1307, 1308, 1309, 1310, 1311, 1312, 1313, 1314, 1315, 1316, 1317, 1318, 1319, 1320, 1321, 1322, 1323, 1324, 1325, 1326, 1327, 1328, 1329, 1330, 1331, 1332, 1333, 1334, 1335, 1336, 1337, 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