

(2005) 09 SC CK 0040

In the Supreme Court Of India

Case No : Criminal Appeal No. 564 of 1999

Sanganagouda A. Veeranagouda and Others

APPELLANT

Vs

State of Karnataka

RESPONDENT

Date of Decision : 29-09-2005

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 56
Penal Code, 1860 (IPC) — Section 201, 302, 330, 348

Citation : (2005) 3 ACR 3067 : (2005) 2 ALD(Cri) 949 : (2006) 1 ALT(Cri) 293 :
(2005) 12 JT 253 : (2005) 8 SCALE 7 : (2005) 12 SCC 468

Hon'ble Judges : P. P. Naolekar, J;H. K. Sema, J

Bench : Division Bench

Advocate : K.N. Bhat, Mohan V. Katarki and Javed Mahmud Rao, for the Appellant; Siddhartha Dave and Sanjay R. Hegde, for the Respondent

Final Decision : Disposed Of

Judgement

H.K. Sema, J.—Heard the parties.

2. Six accused all police personnel, A1 Sanganagouda Ayyanagouda Veeranagouda, Sub-Inspector of Police and A2 Chandrappa Basappa Komara, A3 Basavaraj Kadiyappa Aramani, A4 Kalakappa Gulappa Hosamani, A5 Eswarappa Rainappa Gowari, A6 Virupakshappa Shidramappa Narthi, Constables were put to trial before the trial court for the offence under Sections 330/348/201 IPC. The trial court after concluding the trial acquitted all the accused. On appeal being preferred by the . State, the High Court acquitted one of the accused and convicted the five appellants before us u/s 330 and sentenced them to six months RI. The High Court also found all of them guilty u/s 348 IPC and sentenced them three months RI. Both the sentences were directed to run concurrently. Aggrieved thereby, this appeal has been preferred by special leave.

3. The prosecution case in brief is that in connection with FIR case Crime No. 168 of 1988 for an offence u/s 302 IPC the deceased Guddappa was arrested on 19.10.1988 on the direction of AI by A2 to A5 and deceased expired by hanging

in the Police Station on 20.10.1988. He was taken to hospital and died on the way. An enquiry was conducted by SDM with regard to the cause of death of the deceased and the report was submitted on 31.10.1983. Pursuant to the report an FIR was lodged on 6.11.1988 where all the accused were named. Thereafter, charge was framed against the appellants under Sections 330/348/201 as aforesaid. PW.17 Dr. Devadas P.K. conducted the postmortem and found the following injuries :

1. There is an oblique ligature mark present on the neck over front at the level of Adams apple 0.5 cms below the upper border/ measuring 19 cms in length and 2 cms in width. Situated 10 cms below the chin. The right end of the ligature mark is situated 5.5 cms below the right ear lobe and the left end of the ligature mark is situated 5 cms. below the left angle of lower jaw. Edges are not abraded, no echmosis is present.
2. Abrasion measuring 2.5 cms X 1 cm, present over the right side of forehead situated 4 cms. above the middle of right eye brow, reddish in colours.
3. Abrasion measuring 0.5 cms. 0.5 cms. present over left alae of nose reddish in colour.
4. Abrasion measuring 0.5 cms. X 0.3 cms. present over upper lip 0.5 cms. below the left alae of nose reddish in colour.
5. Abrasion measuring 4 cms X 1.5 cms. present over the top of right shoulder at the root of neck reddish in colour.
6. Abrasion measuring 2.5 cms. X 0.5 cms, present over the front of right shoulder over outer third of clavicle reddish brown in colour.
7. Oblique linear abrasion two in number 0.5 cms. apart measuring 1 cms. X 0.2 cms. and 8 cms. X 0.2 cms. respectively present over the left side front of chest situated 4 cms. below the left nipple and 12 cms. above the umbilicus reddish in colour.
8. Abrasion measuring 5 cms. X 3 cms. present over inner side of right abdomen 5 cms. above the base of sacrum measuring 14 cms. X 11 cms. X 1 cm. bluish in colour.
9. Contusion present over upper lumbar region over the back of the abdomen 5 cms. above the base of sacrum measuring 14 cms X 11 cms. X 1 cm bluish in colour.
10. Abrasion measuring 12 cms. X 4 cms. present over left side. of abdomen situated 5 cms. coastal margin reddish in colour.
11. Contusion measuring 7 cms. X 2 cms. X 1 cm. situated 15 cms. below the iliac crest over the left buttock bluish in colour.
12. Contusion measuring 12 cms. X 6 cms. X 3 cms. present over the right buttock at its center bluish in colour.

13. Contusion measuring 7 cms. X 8 cms. X 2 cms. present over the right buttock at its center bluish in colour.
14. Abrasion measuring 4 cms. X 3 cms. present over upper, part of right buttock 3 cms. below the iliac crest reddish in colour.
15. Contusion present over the outer side of left thigh 15 cms. below the greater trochanter measuring 9 cms. X 6 cms. X 2 cms. bluish in colour.
16. Contusion present over the front of left thigh measuring 9 cms. X 4 cms. X 3 cms. situated 5 cms. above the left patella bone (knee cap) bluish colour.
17. Contusion present over outer side of right thigh 6 cms. below the greater trochanter measuring 6 cms. X 5 cms. X 2 cms. bluish in colour.
18. Abrasion measuring 1 cm. X 0.5 cm. present 1 cm. below the left patella bone (knee cap) reddish in colour."

On the basis of the complaint lodged an FIR Cr.No. 181/1988 was registered in which all the accused were named.

4. The High Court, on re-appraisal of the evidence on record and particularly after examining the evidence of PW.13 the Police Driver and of the eye-witness PW.1 Parasappa @ Parasurama came to the conclusion that the prosecution case against the appellants was found well established and convicted the appellants as aforesaid.

5. Mr. K.K. Bhat, learned senior, counsel contended that the Investigating Officer in connection with FIR case Crime No. 168/1388 u/s 302 IPC was one Circle Police Inspector, M.K. Patil and there is no case diary or record which would disclose that the Circle Police Inspector authorised the appellant to arrest the accused since deceased. He further contended that the evidence established that the arrest has been made on 19.10.1988 and the deceased is said to have been expired by hanging on 20.10.1988 and, therefore, no wrongful confinement is established against the appellant in terras of Section 348 IPC, inasmuch as it was bounden duty of the Circle Police Inspector as an Investigating Officer to produce the accused before the Magistrate without unnecessary delay exceeding 24 hours excluding the time necessary for the transportation from the place of arrest to the Magistrate Court. Learned counsel also contended that from the evidence of PW.1 it appears that he lodged a complaint before the Assistant Commissioner but the complaint has not been brought on record. We are not at all impressed by the contention of the learned counsel for the appellants.

6. In this case the High Court relied upon the evidence of PW.13 and the evidence of PW.1 who is an eye-witness. PW.13 is the Police Driver. He has categorically stated that at the relevant period of incident appellant No. 1 was acting as the PSI, Ranebennur Police Station and the appellant Nos. 2 to 5 were acting as the Police Constables under appellant No. 1 at the said Police Station. He has also stated that on the direction of appellant No. 1 the Police Constables

went along with PW.13 in a jeep driven by PW.13 and arrested the deceased. He has specifically stated that the appellants who were directed by accused No. 1, are the Police Constables A2 to A5 went along with jeep driven by PW.13 to bring the deceased Guddappa in the jeep to the Police Station. He further stated that the appellants/Constables thereafter got down from the jeep and after about 15 minutes they brought the deceased Guddappa along with them and put him in the jeep and after that he brought the deceased Guddappa and above-said Constables to the Police Station in the jeep driven by him at 9.30 a.m. He categorically stated that when he brought the deceased accused to the Police Station at about 9.30 a.m. accused No. 1 was working as PSI in the town Police Station at Ranebennur. He further stated that later about 2.00 p.m. the PSI took him to Devargudda in the jeep and when they returned from Devargudda at 5.30 p.m. he saw deceased being brought by the Police Constable by name Patil from the Hospital to the Police Station in the auto rickshaw.

7. The undisputed fact remains that at the relevant time A1 was in-charge of Police Station. A2 to A5 were acting as Police Constables in the said Police Station. The injuries sustained by deceased Guddappa leading to his death were caused in the said Police Station.

8. The High Court also heavily relied upon the evidence of PW.1 Parasappa @ Parasurama. PW.1 specifically stated that his brother was working as a cooli in Guttal Bus-stand whereas he was working as hamali work. When PW.1 returned from working his wife told him that his brother had not come back from work and, therefore, he went to Guttal Bus-stand where he came to know that the police had taken away his brother and then next day that is on 19.10.1988 at about 12 noon he went to the Police Station but the police had not allowed him to enter in the police station. The accused No. 5 at that time was present in front of the police station and he had not allowed him to enter in the police station. While standing in front of the police station he saw the police were assaulting his brother in lockup room. He named the Police Constables namely Aramani, Krishna, Hosamani and Madival and accused No. 1 Veeranagouda as assailants of his brothers with sticks. He further stated that they were assaulting his brother all over the body. Later on he heard that his brother had died. The witnesses were subjected to a lengthy cross-examination but nothing could be elicited to discredit the creditworthiness of the statement in chief. The substance with regard to the factum of the beating and arrest have remained unimpeached. Further, the statement of PW.1 as referred above is well corroborated by the medical evidence in material particular. Similarly, the contention of the counsel for non-production of the complaint said to have been lodged by PW.1 is inconsequential having regard the evidence of PW.1 and PW.13 as referred above.

9. We also do not find any substance in the argument of the learned counsel for the appellants that there was no wrongful confinement. In this case it is established that the accused was arrested on 19.10.1988 at 9.30 a.m. and he expired at about 5.30 p.m. on the next day that is 20.10.1988. The argument of

the counsel that it was the duty of the Circle Police Inspector who was the Investigating Officer to have produced the accused before the nearest Magistrate within 24 hours and since A1 was not an Investigating Officer the burden of producing accused before the Magistrate cannot be fastened on AI and for that reason no case of wrongful confinement u/s 348 IPC has been established against him. In our view, this contention has also no force. Section 56 of the Code of Criminal Procedure does not speak about the Investigating Officer, it simply speaks about the Police Officer making an arrest without warrant. As the evidence discloses that the arrest was made by appellant No. 1 and, therefore, it was his bounden duty to produce the accused before the Magistrate next day within 24 hours. The death of the deceased has since occurred beyond 24 hours it would amount to the wrongful confinement as contemplated u/s 348 IPC.

10. In the reasons afore-stated, we find no infirmity in the impugned order passed by the High Court. This appeal is, accordingly, failed and dismissed.

11. The appellants are on bail, their bail bond and sureties stand cancelled. The appellants are directed to be taken into custody forthwith to serve the sentence as awarded by the High Court. Compliance within one month.