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Cr1.A.No. 1242 OF 2001

.UP 10 2; Draft, smtst; -n -PA4 -dFX-NORMAL -y -e; dumbp

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Item No.102

Court No.7

Section II

S U P R E M E C O U R T O F I N D I A  
R E C O R D O F P R O C E E D I N G S

CRIMINAL APPEAL NO. 1242 OF 2001.@@  
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Narayan Rangappa Dasar ...Appellant(s)

Vs.

State of Karnataka ...Respondent(s)

[With office report]

Date:12/03/2003 This matter(s) was called on for hearing today.

CORAM:  
HON'BLE MR.JUSTICE Y.K. SABHARWAL  
HON'BLE MR.JUSTICE H.K. SEMA

For the appellant(s) : Ms.CK Sucharita,Adv. (AC)

For the respondent(s) : M/s Siddharth Dave, Sanjay R.Hegde,  
Satya Mitra, Advs.

UPON hearing counsel the Court made the following  
O R D E R

.SP2  
.....L.....I.....T.....T.....T.....T.....T.....T.....T.....J.  
Heard the learned counsel for the parties for about  
15 minutes.  
For the reasons indicated in the signed order, the  
appeal is allowed. The appellant is directed to be set  
free forthwith, if not required in any other case.

.SP1

[Naresh Kumar]  
Court Master

[ VP Tyagi ]  
Court Master

[Signed order is placed on the file.]

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.UP 10 2; Draft, smtst; -n -PA4 -dFX-NORMAL -y -e; dumbp  
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.PL57

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO. 1242 OF 2001@@  
CCCCCCCCCCCCCCCCCCCCCCCCCCCCCCCCCCCC

Narayan Rangappa Dasar ...Appellant

Vs.

State of Karnataka ...Respondent

O R D E R@@  
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.SP2

The appellant has been convicted by the trial court for the offence of murder of one Gurubai, with whom, it is a case of the prosecution, he had illicit intimacy. The conviction has been maintained by the High Court. On grant of leave, the appellant is in appeal challenging the impugned judgment.

The case of the prosecution in nutshell is that on 2nd January, 1996, the complainant (PW2) and the deceased left their house together. The complainant in his police statement stated that he saw the appellant assaulting the deceased. PW3 and other witnesses came on scene later. There was profuse bleeding from the ear and chest of the deceased and she died in the hospital same day. The investigation was conducted on complaint being filed by PW2. The charge-sheet was filed against the appellant for offence under Section 302, IPC, for having committed the murder of Gurubai.

It is established that it is the case of homicidal death. The prosecution, besides the medical evidence, examined PWs 2,3,4,5,6 & 7. They are all relatives of the

2

deceased. The main prosecution witness was complainant (PW2), at whose instance the police machinery was set at motion. When examined in court, PW2, who is nephew of the deceased, deposed that the complaint was made to the police at the instigation of others and that he had no personal knowledge. Similarly, PW3 and PW4 -- nephews of the deceased were declared hostile. They did not support the prosecution. PW5 denied having made any statement that the appellant had committed the murder. Similar is the statement of PW6, a distant relative of the deceased. PW7 is the husband of the sister of the deceased. He also resiled from his police statement and denied having made any statement before the police that the appellant had assaulted the deceased. So much for the witnesses who are near relatives of the deceased.

We would now advert to other evidence. PW8 is a panch witness. He denied that the appellant was present at the time of producing of knife. The incident had occurred, according to the case of the prosecution, on the land of PW9, whose deposition in court was that he did not know as to who had murdered the deceased.

Besides the aforesaid witnesses, police officers were examined as PWs 10 & 11. They had conducted the investigation and on their testimony the conviction of the appellant was based by the court of sessions and affirmed by the High Court. PW10, a Police Officer who conducted

3

investigation, deposed that he was told by PW2 that the appellant had assaulted the deceased with knife. When PW2 has made a statement that the complaint was made on instigation of others and he had not seen the appellant assaulting the deceased, no reliance could have been placed on PW10 to connect the appellant with the commission of offence. The only other evidence led by the prosecution was of PW11, a Police Inspector. He deposed to have recovered from the pocket of the appellant a knife. His deposition was that upon being informed about the accused having committed the crime he ran after him and made the recovery. We have already noticed the statement of PW8 being a panch witness of recovery of knife.

The verdict of conviction was made against the appellant on the basis of the alleged illicit intimacy between him and the deceased and the cumulative effect of the contents of the FIR, the medical evidence corroborated by the two police witnesses -- PWs 10 & 11.

We are surprised at the approach of the court of sessions and the High Court while dealing with a case involving the offence of murder. The question of motive would come into consideration if there is any legal evidence at all to prove the charge against the appellant. The approach of the courts below, we are constrained to observe, is wholly contrary to well settled canons of criminal jurisprudence. The appellant has been convicted

4

without any evidence whatsoever to prove his guilt. There cannot be any question of conviction as a result of the so called cumulative effect of the contents of the FIR as found by the High Court. In so far as medical evidence is concerned, in facts and circumstances, that only establishes factum of homicidal death and no more. We have noticed earlier the testimony of PWs 10 & 11. Clearly the conviction of the appellant, on the circumstances in hand, could not be based on their testimony. PW 10 deposed as to what he was told by PW2. The testimony of PW2 did not connect the appellant with the commission of crime. In respect of PW11 the recovery itself is doubtful in view of the statement of PW8, the panch witness. Even otherwise mere recovery of a knife from the pocket of the appellant, would not connect the appellant with the commission of the offence for which he was charged. The conviction of the appellant is based on no evidence.

For the aforesaid reasons, we set aside the impugned judgment and acquit the appellant. The appeal is accordingly allowed. The appellant is directed to be set free forthwith, if not required in any other case.

.SP1

.....J.  
[ Y.K. SABHARWAL ]

New Delhi,  
March 12, 2003.@@  
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.....J.  
[ H.K. SEMA ]