

**Nagaraja Vs. The State of Karnataka**

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**Court :** Karnataka

**Decided On :** Feb-12-2018

**Judge :** Ravi Malimath and K.Somashekar

**Appeal No. :** CRL.A 1124/2012

**Appellant :** Nagaraja

**Respondent :** The State of Karnataka

**Judgement :**

- 1 - R IN THE HIGH COURT OF KARNATAKA AT BENGALURU DATED THIS THE12H DAY OF FEBRUARY, 2018 PRESENT THE HONBLE MR. JUSTICE RAVI MALIMATH AND THE HONBLE MR. JUSTICE K. SOMASHEKAR CRIMINAL APPEAL No.1124 OF2012... APPELLANT BETWEEN NAGARAJA S/O CHIKKAGUDI GANGAPPA, 25 YEARS, HINDU, NAYAK, COOLIE, SINGANAHALLI, HOSUR HOBLI, GOURIBIDANUR TALUK (NOW IN THE JAIL CUSTODY AT BELLARY DISTRICT JAIL) (BY SRI JAINAPUR P V, ADVOCATE) AND THE STATE OF KARNATAKA REPRESENTED BY ITS STATE PUBLIC PROSECUTOR, HIGH COURT BUILDINGS, BANGALORE-560001, THROUGH GOURIBIDANUR RURAL POLICE STATION. (BY SRI VIJAYAKUMAR MAJAGE, ADDL. SPP) ... RESPONDENT THIS CRIMINAL APPEAL IS FILED UNDER SECTION3742) CR.P.C BY THE ADVOCATE FOR THE APPELLANT PRAYING THAT THIS HON'BLE COURT MAY BE PLEASED TO SET ASIDE THE JUDGMENT

AND

ORDER

OF SENTENCE DATED 13.08.2012 PASSED BY JUDGE, CHIKKABALLAPUR IN S.C.No.24 OF 2008- CONVICTING THE APPELLANT-ACCUSED FOR THE OFFENCES PUNISHABLE UNDER SECTIONS 302 & 201 OF IPC. THE DISTRICT SESSIONS BY & - 2 - THIS CRIMINAL APPEAL COMING ON FOR HEARING THIS DAY, K. SOMASHEKAR J., DELIVERED THE FOLLOWING:-

JUDGMENT

This appeal is directed against the judgment of conviction and sentence dated 13.08.2012 passed by the District & Sessions Judge, Chikkaballapur, in S.C.No.24 of 2008 whereby, the accused was convicted for the offence punishable under Section 302 of IPC and sentenced to undergo imprisonment for life and to pay fine of Rs.5,000/-, in default to undergo simple imprisonment for a period of one year. Further, the accused was convicted for the offence punishable under Section 201 IPC and sentenced to undergo imprisonment for a period of five (05) years and to pay fine of Rs.3,000/-, in default to undergo simple imprisonment for a period of one year. The above substantive sentences were ordered to run concurrently.

2. The case of the prosecution briefly stated is as under; That a complaint came to be filed by Mudduramappa being the husband of the deceased Muddugangamma. She had three sons. They were living in Singanahalli of Gowribidanur Taluk. The accused was also residing in the same village. The deceased Muddugangamma used to go - 3 - everyday to the land for the purpose of bringing hay or grass. This being the situation, on 29.11.2007, in the morning, the accused approached and met the deceased in her house saying that he would come and cut the grass from the Jolada (maize) land of Gangadharappa and asked her to come. The deceased agreed for the same and left the house and within 5 minutes, the accused also left his house. Both the accused and the deceased joined in the land of Gangadharappa. This was under the guise of cutting grass and giving it to the deceased. By about 12 noon on 29.11.2007, both of them left the house for the said land. At about 12.30 p.m., the accused with an intention to have sexual act with the deceased, tried to advance against her. When the deceased refused to

oblige and threatened him that she would disclose this aspect to the elders in the village and also to the members of the respective house, the accused thinking that he may be put in trouble at the instance of the deceased, decided to do away with her life. Accordingly, the accused caught hold of her and with the help of the thread that she was wearing around her neck for putting keys, strangulated her and - 4 - having killed her, put the dead body into a gunny bag and kept it in the land where Jola(maize) was grown to the height of 6 feet. It is further transpired that that on the very day night, the accused with a view to screen himself from the offence, wanted to destroy the legal evidence appearing against him in committing the murder of the deceased. Accordingly, he reached the said land of Gangadharappa where the dead body of the deceased Muddugangamma was kept in a gunny bag, physically lifted the same and buried the dead body of Muddugangamma into Kumudhwati river basin. It is further transpired that about 12 noon, the deceased having told her youngest son Gowthamkumar that she would be going out for brining hay, did not turn up during that night. This made Gowthamkumar being the son of the deceased to inform about this aspect to his father Mudduramappa, who is the complainant. Thereafter, he along with his two sons and other villagers went in search of the deceased Muddugangamma. He visited the places like Bangalore, Koratagere and Hindupur and being unable to trace the deceased Muddugangamma, came back, on the following - 5 - day by 7.00 p.m. and the complainant happened to meet PW.2-Lakshmipathy, PW.4-Hemanthakumar, CW.3- Gangadharappa (dead) who in turn informed him about the alleged involvement of the accused and asked him to go and file a complaint. Thus, PW.1-complainant went to the Police Station and filed a complaint at about 9.15 p.m. and the Police registered the case in Crime No.115 of 2007 under Section 302 of IPC and submitted the FIR on the same day at 11.30 p.m. to the concerned committal court. Subsequent to registration of the crime against the accused, the case was taken up for investigation by the Investigating Officer, who was successful in tracing the accused and after interrogating the accused relating to the act of murder committed by him recorded his voluntary statement also. In the voluntary statement, the accused confessed the offence of committing the murder of the deceased Muddugangamma and burying the dead body in Kumudhwati river basin and offered to show the place of burial of the dead body in

Kumudhwati river basin, if he is taken to the spot. Accordingly, the Police, Sub-Divisional Magistrate, Panchayatdars came to the spot, where, in the - 6 - sand, the accused has shown the place and extracted only to find something in the gunny bag and the Sub-Divisional Magistrate got opened it, which contained the dead body of a woman. It was in the presence of Sub-Divisional Magistrate, the dead body of the woman was exhumed. PW.1 and his sons identified the dead body as that of Muddugangamma. The inquest panchanama, spot panchanama, recovery panchanama were drawn at the spot at the instance of the accused. Subsequently, Post Mortem was conducted over the dead body of the deceased. The Investigating Officer recorded the statements of various witnesses during the course of investigation relating to circumstantial nature as there were no eyewitnesses to the incident of committing the murder of the deceased Muddugangamma. After collecting the Post Mortem Report, the sketch of place of occurrence that was drawn through PWD Engineer were collected and on completion of the investigation, charge sheet came to be filed against the accused for the offence punishable under Sections 302 and 201 of IPC.-. 7 - 3. The prosecution in order to substantiate the case got examined in all 22 witnesses namely PWs.1 to 22 and got marked the documents at Exs.P.1 to P.12 apart from M.Os.1 to 5.

4. The Trial Court heard the arguments advanced by the learned Public Prosecutor appearing for the prosecution and the counsel for the accused. The trial Court has held that the prosecution has proved the guilt of the accused beyond all reasonable doubt that the accused committed the murder of the deceased Muddugangamma on 29.11.2007 so also screening himself from the legal punishment, destroyed the legal evidence of murder by burying the dead body secretly in the Kumudhwati river basin. The aforesaid points framed by the trial Court were answered in the affirmative by assigning reasons which is challenged in this appeal.

5. In this appeal, during the course of arguments, learned counsel for the appellant has vehemently contended that in Ex.P.11 voluntary statement said to be given by the accused before the Investigating Officer during - 8 - the course of investigation, wherein he has narrated the incident and offered to show the place where the

dead body was buried by him, the Investigating Officer has given evidence before the trial Court based upon the voluntary statement of the accused at Ex.P.11. It has been recorded by the Trial Court that based upon the voluntary statement of the accused that he committed the murder and screened the evidence for burial of the dead body from legal punishment. PW.21-Investigating Officer is said to have recorded the voluntary statement-Ex.P.11, which bears the signature of the accused, but the entire material facts relate to Ex.P.11. Though it is inadmissible, the same has not been properly appreciated by the Trial Court. It requires re-consideration of the relevant facts. PW.11, Medical Officer who conducted autopsy over the dead body and issued Ex.P.6-Post Mortem Report has not supported the case of the prosecution to prove the guilt of the accused beyond all reasonable doubt. Therefore, it requires re-consideration of the entire evidence on record in a proper perspective manner. It is further contended that the Trial Court was misdirected and it has also misread the evidence.-. 9 - It is no doubt true that it was elicited in the cross- examination of the Investigating Officer about the gunny bag containing the dead body of Muddugangamma and burial of dead body, but no evidence is forthcoming in the prosecution in order to prove the guilt against the accused, no enmity is alleged against the accused or proved and the accused is falsely implicated in the alleged crime merely because the accused had accompanied the deceased Muddugangamma for the purpose of bringing grass from the Jolada(maize) land of Gangadharappa on 29.11.2007. The last seen theory stated by the prosecution has not proved by the evidence of PW.1 and also PW.4. PW.4 is the son of the deceased. As PW.4 who is said to have seen his mother, who had accompanied the accused for the purpose of bringing grass. But no evidence is forthcoming on the part of the prosecution to prove the last seen theory of deceased and the suspicion against the accused, that he committed the murder of the deceased. The evidence of PWs 1 to 3 requires to be appreciated in proper perspective manner. PW.4, son of the deceased who has specifically stated in the evidence that the accused who used to visit - 10 - the house of the deceased and he also visited the house on the previous day of the incident. The evidence adduced by the prosecution has not been properly appreciated by the Trial Court in order to substantiate the case of the accused. PW.4, though being the son of the deceased and the complainant filed complaint, but the evidence of

PW.4 is not helpful. PW.3 Gangadhara S.N, S/o Nanjappa who has been examined for the purpose of prosecution wherein who was waiting for auto near the bus-stand he noticed that the deceased was holding sickle in her hand in order to go with the accused for the purpose of bringing grass. Later, the accused had gone towards that direction. However, the evidence of PWs.2 and 3 has not been appreciated by the Trial Court in a proper perspective. Therefore, it needs re-appreciation of the entire evidence regarding last seen theory. To bring home the guilt of the accused, that the accused and deceased had gone together to the land of Gangadharappa to bring grass. There is no evidence forthcoming to substantiate the case against the accused. It is further contended that the evidence of PW.1 insofar as the contents of Ex.P.1 said to be given by him is based upon - 11 - the complaint which came to be registered and during the investigation, the Investigating Officer who has traced the accused as he was arrested on 01.12.2007, subsequently recorded his voluntary statement as per Ex.P.11 based upon the investigation taken up, exhumed the dead body in the presence of Executive Magistrate. But a closer look at the entire evidence on record, it is found inconsistent and discrepant and the same has not been appreciated by the Trial Court in a proper perspective manner.

6. The counsel has vehemently contended with respect to Section 27 of the Indian Evidence Act insofar as admissibility of the voluntary statement given by the accused before the Investigating Officer PW.21 who recorded voluntary statement at Ex.P.11. It has not been elicited and also recovery and discovery of the evidence and Ex.P.11 has not been properly appreciated by the Trial Court in coming to the conclusion that the prosecution has proved the guilt of the accused beyond all reasonable doubt, whereas the entire case rests on circumstantial evidence relating to the last seen theory of the deceased and the accused. PW.1 though he did not turn out till 8.30 - 12 - p.m. which is the natural conduct, the contention taken by the prosecution is unreasonable and requires to be appreciated in a proper perspective manner. The learned counsel for the appellant whereas he placed reliance on a decision of the Supreme Court reported in (2008)2 SCC (Cri) 264 and contended that the entire voluntary statement is not admissible. On considering the said judgment, we are of the view that there is no dispute with the said law laid down. Even otherwise we examined the voluntary

statement of accused. The same will indicate that on the basis of the voluntary statement made by the accused, recovery has been effected. Therefore, that portion of the voluntary statement is admissible as envisaged under Section 27 of the Indian Evidence Act.

7. PW.11-Dr. Seshagiri conducted autopsy over the dead body of Muddugamma and the post mortem was held at the spot itself in between 3.30 to 5.00 p.m. Dr.Seshagiri, was also present at the time of conducting post mortem over the dead body as the dead body was examined by a lady doctor. All observations were made in the post mortem report Ex.P.6. The doctor has given final opinion - 13 - after noticing ligature mark over the neck of the deceased at 10 inch length. The final opinion was cause of death is due to asphyxia as a result of strangulation. However, the medical evidence which has been placed by the prosecution has not been established by putting-forth other corroborative evidence with regard to ligature mark found around the neck of the deceased. It is the contention of the learned counsel for the appellant during the course of his arguments that in the cross-examination of this medical witness, it is elicited that he could not find any basis of forcible sexual intercourse during her life time with the accused when she was alive. It is further contended that the motive for the crime was that when the deceased refused to have sexual intercourse with the accused, he got anger and committed her murder by way of strangulation. But no evidence is forthcoming by the prosecution to prove the guilt against the accused. This aspect is very much requires to be appreciated in the appeal by considering evidence of PW.11, the Doctor who conducted autopsy and issued Post Mortem Report as per Ex.P.6. Thus, the Trial - 14 - Court was misdirected and it has misread the entire evidence of the prosecution and requires fair consideration.

8. In order to Controvert the arguments of the learned counsel for the appellant, learned SPP has taken through the entire evidence of the prosecution relating to PWs. 1 to 4 as these evidences very much requires to be appreciated in the case on hand which is against the accused, who committed murder of the deceased and were last seen together and also accompanied the deceased to the Jolada(maize) land shows the accused tried to have sexual intercourse with the deceased and when she refused, the accused strangled her neck by means of

a thread which was found around her neck and murdered her and in order to conceal the evidence from legal punishment, the dead body was kept in a gunny bag and on 29.11.2007 at night, again the accused went to the Jolada(maize) land of Gangadharappa where the gunny bag of the dead body was kept, physically lifted the same and buried the dead body in the Kumudhwati river basin for the purpose of screening the evidence. Though, the prosecution has placed much reliance on the evidence PWs.1 to 4 relating to inquest - 15 - panchanama and spot panchanama conducted by the Investigating Officer, it is in the presence of the witnesses and so also 33 photographs have been subjected during investigation. Ex.P.12 makes it clear the case of the prosecution that it is not suicidal or accidental but it is homicidal death. The dead body of the deceased which was found buried in the Kumudhwati river basin was by the accused, who had committed the murder of the deceased and thereafter buried the dead body for the purpose of screening the evidence. It was further contended, spot mahazar, inquest panchanama conducted of the Investigating Officer in the presence of witnesses supported the case of the prosecution and the same has been appreciated in proper perspective manner including the evidence of PW.21, who is said to have recorded the voluntary statement at Ex.P.11. It is based on the voluntary statement of the accused there was discovery and recovery. According to PW.11, it is homicidal death. Therefore, the Trial Court has appreciated the evidence on record and has rightly come to the conclusion that the prosecution has proved the guilt of - 16 - the accused, who has buried the dead body of deceased and also it is homicidal death. It is further concluded that the evidence let in by the prosecution in order to prove the circumstances of the last seen theory, it has been projected by the prosecution that the accused accompanied the deceased to fetch grass from the land of one Gangadharappa. The prosecution which has established that the deceased left her husband's house and there was material witness for the accused accompanying her. PW.4- Hemanthkumar is the son of the deceased and PW.1. The case of the prosecution is that the accused and deceased were together had been to the Jolada(maize) land of Gangadharappa for the purpose of bringing grass. PW.1 deposed that PW.2 said that it is accused who might have done some overt act like murder, which made PW.1 to go the house of the accused, where he was not found, as a result, he filed

the complaint as per Ex.P.1 to the Police. It is based upon his complaint, the case was registered and the prosecution thereafter proceeded with investigation. This Evidence is very much required to be appreciated and the same has been appreciated by the Trial Court. Based - 17 - on the voluntary statement as per Ex.P.11, investigation has been taken up, also conducted spot mahazar in the presence of various witnesses, inquest over the dead body was conducted. All these evidence has been appreciated by the Trial Court and the Trial Court has rightly come to the conclusion holding the accused guilty for the offence punishable under Section 302 and 201 of IPC. The evidence of PW.1 is helpful, as his wife for the purpose of bring grass had gone with the accused as noticed as PW.2. He has stated in his evidence, prior to the death of Muddugangamma, she left the house and after 5 minutes, the accused also proceed in the same direction. The same has been deposed by PW.2 which supports the case of the prosecution in order to prove the guilt against the accused. The evidence of PWs.21 and 22 who did their part of investigation has been appreciated by the Trial Court and the Trial Court has rightly come to the conclusion that the accused had committed the murder of the deceased by strangulating the neck of the deceased with the thread which was found around her neck. Therefore, it cannot be said that the accused had been falsely implicated. That on - 18 - 29.11.2007, the deceased went to the land of Gangadharappa for the purpose of bringing grass and the accused accompanied her and the same has been reflected in the evidence of PW.1, the husband of the deceased and PW.4, the son of the deceased as they are the important witnesses to prove the guilt against the accused. Therefore, the learned SPP submits that the appeal is devoid of merits and it deserves to be rejected by upholding the judgment of conviction and sentence held against the accused.

9. Keeping in view the contention of learned counsel for the appellant so also learned SPP relating to Ex.P.11 voluntary statement which has been given by the accused and the same has been recorded by PW.21, which is the basis for recovery and discovery; and Ex.P.1-complaint, based on which a crime came to be registered and thereafter the case was set for investigation; PW.4 has stated that his mother was killed and buried on the Kumudhwati river basin and it was removed in the presence of the Police, has been stated in the prosecution in the cross-examination. It was further stated that the accused - 19 - is not the relative,

but he was frequently coming to their house and on the previous night of the incidence, the accused visited the house of the deceased.

10. PW-4, Hemanthkumar is the son of the deceased. He has stated in his evidence that he never saw the accused going in the company of the deceased for the purpose of bringing grass from the land of Gangadharappa. But there is also an explanation by PW-4, that he saw the deceased and the accused. As per Exhibit-P1, it is stated that he left the house along with his father by 9.30 a.m. But in the evidence, he has stated that he came to know about the incident through Lakshmipathi and Gangadhar. His evidence was relied by the prosecution to prove the guilt of the accused. However, not much importance could be given to the evidence of PW-4.

11. As contended by the learned counsel for the appellant, it is relevant to state that PW-4 in his evidence deposed that about 10.30 or 11.00 a.m., when the police came, CW-2 and CW-3 did not disclose about the accused killing the deceased. But this admission is not helpful to the case of the prosecution to any extent why because - 20 - Lakshmipathi and Gangadhar had no clear idea about the said murder that has been committed by the accused. Therefore, on a cursory glance of the evidence relied on by the prosecution of PWs-1, 2, 3 and 4, it is relating to the search of the accused, wherein the accused has committed the murder of the deceased Muddugangamma by strangulating her with a black thread, which was found around her neck.

12. PW-4, Hemanthkumar is a vital witness for the prosecution. He has specifically stated in his evidence that by 7.00 p.m., he visited the house of the accused, only to find the brother and father of the accused, but not the accused at all.

13. PW-2 and PW-3 had occasion to see the deceased Muddugangamma and also the accused going towards the land of Gangadharappa in order to bring grass, within a span of five minutes, while they were waiting in the bus stand. Wherein PW-2, Lakshmipathi, PW-3 Gangadharappa and CW-1, another Gangadharappa, must have been waiting other part of the bus stand. Wherein - 21 - they saw the deceased holding sickle in her hand going towards land of one Gangadharappa (PW-10) for the purpose of bringing grass and the accused also

going towards the same direction. Therefore, the evidence of PW- 4 has been appreciated by the trial judge as having seen the deceased and the accused.

14. It is relevant to state that PW-3 Gangadharappa has specifically stated in his evidence that when he was waiting for an auto in the bus stand, he had noticed the deceased holding the sickle in her hand, in order to go to the land of PW-10, for the purpose of bringing the grass and also saw the accused who was also proceeding in the same direction. Thereafter, both of them got into an auto went to another village, returned on the following day. That PW-3 in his evidence has specifically stated for the purpose of prosecution, that the deceased was found missing in the village.

15. Exhibit-P11 is the voluntary statement of the accused recorded by the Investigating Officer. The entire case is based on the voluntary statement and also the - 22 - evidence of PW-1 to PW-4 and also inquest panchanama, spot panchanama and 33 photographs with negatives marked as Exhibit - P12. The same has been considered by the trial court in proper prospective.

16. Insofar as the evidence of PW-3 relating to the last seen theory as to whether the accused and the deceased were going to the land for the purpose of getting hay or grass, at 11.45 a.m. on 29.11.2007, certainly the evidence of PW-3 assists the prosecution to prove the fact. Exhibit-P2 is the mahazar, which was drawn by PW-21, in presence of pancha witnesses, wherein the pancha witnesses have subscribed their signatures as per Exhibit- P2(a).

17. During the course of the mahazar conducted by the Investigating officer, it was photographed and video graphed. 33 photos were marked as Exhibit-P12. On opening of the said gunny bag, the body of deceased was found and identified by her husband PW-1 and also her two sons. The Investigating Officer has conducted the mahazar, - 23 - the same has been established by the prosecution to put forth these evidence.

18. Further, on a cursory glance of the entire evidence of the prosecution witnesses stated supra, it is cogent and corroborative and to probabalise that the accused who has accompanied the deceased, in order to bring grass from the

land of Gangadharappa, where the accused intended to have sexual intercourse with the deceased. The deceased have declined, angered by the same, the accused strangulated her neck by means of thread, which is alleged to have been used by the accused.

19. Exhibit- P4 is the inquest panchanama, which was drawn in the river basin of Kumudwathi River at Singanahalli in the presence of the relatives of the deceased namely Sureshbabu eldest son of the deceased, Smt.Rajarajehwari, younger sister of the deceased, Smt.Jayamma, the relative cum villager, Nagaraj son of Narasimhappa the same village. Narasimhamurthy and Jayamma have attested the inquest as per Exhibit-P4(a) - 24 - and P(b) respectively. The Executive Magistrate has signed it, as per Exhibit-P4(c).

20. PW-8, Narasimhamurthy, who has signed as per Exhibit-P4(b) deposes that he was a member of Taluk Panchayat. Since, the Executive Magistrate and Police had come, he went there and came to know that it was a dead body of Muddugamma, it was taken out from the river basin, the police were untying the bag. The accused pointed out the said place of incident. This witness has been subjected to cross-examination by the defence counsel, nothing worthwhile has been elicited to disbelieve this witness.

21. PW-5, Jayamma, in her cross-examination admits that the deceased and the accused are relatives. She supports the inquest panchanama. All these persons were present at the time of inquest held over the dead body. Even though this witness was subjected to cross- examination nothing worthwhile has been elicited to disbelieve her evidence.-. 25 - 22. PW-19, Smt.Poornima, the Executive Magistrate, who has specifically stated in her evidence that on receipt of requisition from Gowribidanur Police, she went to Singanahalli and conducted inquest panchanama in the presence of accused and panchas, police removed the gunny bag in which the dead body of a lady was found. She identifies the saree, black thread and other articles marked as M.O.1 to M.O.5. The accused having committed the murder by strangulating the deceased with a black thread alleged to be used. The dead body was kept in a gunny bag and carried the same and buried the same on the river bank of Kumudwathi river at Singanahalli. PW-19 has been

subjected to cross-examination by the defence counsel. Nothing worthwhile has been elicited to disbelieve her evidence.

23. Insofar as the evidence of PW-12, Smt.Rajarajeshwari, younger sister of the deceased of Hindupura. She has specifically stated in her evidence that PW-1, being the Complainant and also the husband has filed the complaint as per Exhibit-P1. That PW-1 had come to her house in search of the deceased, who is the elder - 26 - sister. She told that the deceased did not come to her house. PW-1 being the author of the complaint, told that he would go to Koratagere and Bengaluru etc., she also searched for her elder sister. But did not find his wife. Subsequently, he has filed a complaint before PW-21 being the Investigating Officer, wherein it is based of the said complaint a case in Crime No.115 of 2007, at Gouribidanur Rural Police Station and thereafter investigation was taken up.

24. Thereafter, the Investigating Officer recorded the voluntary statement of the accused as per Exhibit-P11. The entire case of the prosecution revolves around the voluntary statement, wherein the accused having admitted to have committed the murder of the deceased by strangulating her neck using a black thread, which was found on the dead body. When the deceased and the accused were proceeding towards the land of Gangadharappa, the accused disclosed his wish to have sexual contact with him. The deceased having refused to the same and threatened him that she would disclose this fact to the family members. Hence, the accused committed - 27 - the murder of Muddugangamma with means of a thread. Subsequent to committing murder the accused kept the dead body in a gunny bag and kept it in maize field where the maize crop was grown to the height of 6 feet in the land of Gangadharappa. Later on he came out of the land. Again on the same night at 10.00 p.m., he carried the gunny bag containing dead body and buried the same at Kumudwati river basin.

25. All these evidence has been appreciated by the trial court in proper perspective and rightly come to the conclusion that the accused alone committed the murder of deceased and that they were last seen together theory, has been established by the prosecution, as adduced by the evidence. Therefore, we are of the opinion that the trial court has not misdirected or misread the evidence put

forth by the prosecution, in order to prove the guilt of the accused. Even the aspect of certain portion of Exhibit-P11 as recorded by the Investigating Officer, it is admissible under Section-27 of Indian Evidence Act, as the relevant portion of the voluntary statement of the accused said to be admissible and the contention taken by the learned counsel - 28 - for the appellant, in this appeal it does not hold any water in effect.

26. Whereas in the impugned judgment, it is challenged in this appeal by the learned counsel for the appellant which indicates that the offence said to be committed on 29.12.2007 is a typographical error, the actual date was 29.11.2007. The accused was traced by the Investigating Officer on 02.12.2007. Subsequent to the arrest of the accused by the Investigating officer recorded the voluntary statement as per Exhibit-P11 and based on the voluntary statement, the investigation was taken up by conducting the spot mahazar and inquest over the dead body of Muddugangamma. Merely, because the date is entered as 29.12.2007 it cannot be said that the accused did not commit the murder of deceased, Muddugangamma. On scanning of the evidence put forth by the prosecution and also the evidence of PW-1, who has been the author of the complaint and evidence of PW-4, being the son of the deceased and also last seen theory as put forth by the prosecution, it is made clear that the offence was committed on 29.11.2007 not on 29.12.2007, and the - 29 - same is clarified, which has come through the entire evidence. Therefore, the contention as taken by the learned counsel for the appellant through the aforesaid aspects, we are of the view that it does not hold any substance.

27. We are of the opinion that on going through the entire evidence put forth by the prosecution, we understood that the offence has taken place on 29.11.2007 and not on 29.12.2007. That there is no prejudice to the any extent to the accused. We are of the view that the contention which is taken by the learned counsel for the appellant in this appeal all that aspect it does not hold any substance.

28. In support of his contention the learned counsel for the appellant places reliance on the judgment of the Hon'ble Supreme Court reported in (2005) 2 SCC211 in the case of GANGA KUMAR SRIVASTAVA VS. STATE OF BIHAR,

with reference to para-10 and contends that when there is a error in record and misreading of the evidence, the finding is vitiated by any error of law of procedure or found contrary to the principles of natural justice, errors of record and misreading of the evidence, or where the - 30 - conclusions of the High Court are manifestly perverse and unsupportable from the evidence on record. However, we are unable to accept the said contention. The relevant paragraph relied upon by the appellants counsel is with reference to exercise of power by the Hon'ble Supreme Court under Article-111 of the Constitution. It has no relevance of the contention being advance herein. Therefore, the said would not be applicable to the present case on hand.

29. Consequently, the appeal being devoid of merits is dismissed. The judgment and order of sentence dated 13.08.2012, passed by the District and Sessions Judge, Chikkaballapur in S.C.No.24 of 2008, is affirmed. Sd/- JUDGE Sd/- JUDGE JJ/MV

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