

(2013) 12 KAR CK 0205
Karnataka High Court
Case No: Criminal P. No. 6804 of 2013

Jayarama

APPELLANT

Vs

State of Karnataka

RESPONDENT

Date of Decision: Dec. 9, 2013

Acts Referred:

- Penal Code, 1860 (IPC) - Section 201, 302, 34

Hon'ble Judges: H.S. Kempanna, J

Bench: Single Bench

Advocate: Rajanna, for the Appellant; B. Visweswaraiah, HCGP, for the Respondent

Final Decision: Allowed

Judgement

@JUDGMENTTAG-ORDER

H.S. Kempanna, J.

Crl. P. No. 6804/2013 is filed by A3 and Crl. P. No. 6805/2013 is filed by A1, A2 and A4 respectively. The petitioners, who are arrayed as A3 and A1, A2 and A4 respectively in C.C. No. 585/2013 on the file of the Prl. Civil Judge (Jr. Dn.) & JMFC, Magadi, registered for the offences under Sections 302, 201 r/w 34 IPC, are before this Court praying for grant of anticipatory bail and regular bail respectively.

2. It is the case of the prosecution, the deceased Krishnappa is the husband of A2 and father of A1. A3 is the brother-in-law of the deceased and A4 is the sister of the deceased.

3. It is alleged that the deceased had become addicted to drinks. In his drunken state he was subjecting his wife and son to cruelty and harassment every day by assaulting and abusing them. On account of the same, they had become fed up with him.

4. Such being the position, on 28.05.2013, the deceased returned to the house in the evening at about 7.00 p.m. fully drunk. A1 and A2 in order to get rid of him, on that

day secured A3 and A4 to their house. Thereafter, at about 7.30 p.m., A3, who is the brother-in-law of the deceased assaulted him with a club on his head due to which he sustained injury on his head and died. Thereafter, the body of the deceased was buried in the land of A3 on the morning of 29.05.2013 at Bychaguppe. According to the prosecution, the accused buried the body to cause disappearance of the evidence of murder committed by them to screen themselves from legal punishment. A1, A2, A3 and A4 came to be arrested on 28.06.2013. Since then, they are in custody.

5. Learned counsel for the petitioners contends though the occurrence in the case has taken place on 28.05.2013, the complainant, who is the nephew of the deceased has taken steps to file the complaint before the police on 27.06.2013 i.e., nearly about a month after the occurrence. He, further submits, prior to this, A2-wife of the deceased herself had filed a complaint before the Superintendent of Police and Additional Superintendent of Police of Ramanagara District on 24.06.2013 and 25.06.2013 respectively. In the complaint filed by the complainant he has stated that he came to know through CWs. 2 and 3 that on the date of occurrence i.e., 28.05.2013 while they were passing in front of the deceased house, they heard the cries of the deceased. On hearing his cries, they went inside the house. At that time, they saw a quarrel going on between the accused on the one hand and the deceased on the other hand. In the said quarrel when A3 questioned the deceased of his acts, the deceased abused A3 and the other accused. At that juncture, A3 having lost his balance took a club which was in the house assaulted on his head, due to which he sustained serious injuries to which he succumbed at the spot. Though these witnesses claim that they had seen A3 assaulting the deceased on the back of his head, due to which he succumbed, they have allowed the body to be buried the very next day. None of them have filed complaint and above all these it appears they are related to the deceased. Since they have come out with a version that they have seen A3 assaulting the deceased and the deceased quarrelling with the accused on that night, after the arrest of A1, A2 and A4 in the case, their statements goes a long way to place any reliance on the same. Except the statements of these two witnesses, there are no other incriminating material pointing towards the guilt of the accused as submitted by the learned counsel for the petitioners. The body is exhumed on 19.07.2013 nearly about one month and three weeks after the commission of murder. In the facts of this case since the body is buried in the presence of the villagers on the morning of 29.05.2013 and if according to the prosecution the accused have been done to death, the villagers would not have ventured to bury the body more particularly, in the light of the statements of CWs. 2 and 3. Therefore, in these circumstances, the deceased having died under different circumstances, in the facts and circumstances of the case cannot also be ruled out. As no recovery has been made at the instance of the accused and since they are in custody since 28.06.2013, as they are no more required for the purposes of investigation, I do not find any justification to decline

the request of the petitioners as sought for by them. Accordingly, I proceed to pass the following:-

ORDER

i) Both the petitions are allowed;

ii) In Criminal Petition No. 6804/2013-The petitioner in the event of her arrest in Crime No. 420/2013 of Thavarekere police station or in pursuance of any coercive step directed against her in CC No. 585/2013 on the file of the Prl. Civil Judge (Jr. Dn.) & JMFC, Magadi, the said police or the Court are directed to release her on bail on her executing a personal bond in a sum of Rs. 50,000/- with one surety for the like sum to the satisfaction of the concerned police or the Court as the case may be, subject to the following conditions:-

1) She shall appear before the respondent/police or the Court for the purposes of her arrest and release on or before 15.01.2014;

2) She shall not tamper with the prosecution witnesses;

3) She shall make herself available to the Investigating Agency as and when required for the purposes of investigation.

iii) In Criminal Petition No. 6805/2013-The petitioners are ordered to be released on bail on their executing a personal bond in a sum of Rs. 50,000/- with one surety for the likesum to the satisfaction of the Committal Magistrate subject to the following conditions:-

1) They shall not tamper with the prosecution witnesses;

2) They shall attend the court on all the date of hearing.