

**IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION**

CRIMINAL APPEAL NO. 1487 OF 2005

BHARAMA PARASRAM KUDHACHKAR APPELLANT

VERSUS

STATE OF KARNATAKA RESPONDENT

WITH

CRIMINAL APPEAL NO. 739 OF 2006

AMIT RAMA NAIK APPELLANT

VERSUS

STATE OF KARNATAKA RESPONDENT

CRIMINAL APPEAL NO. 1135 OF 2006

RAMA APPELLANT

VERSUS

STATE OF KARNATAKA RESPONDENT

JUDGMENT

O R D E R

1. This judgment will dispose of the three criminal appeals noted above.

2. The facts have been taken from Criminal Appeal No. 1487 of 2005 which is the lead case. They are as under:

2.1 Sudhakar and his wife Shilpa aged 52 and 50 years

respectively both deceased in this matter were running a business in stones and slabs at 224, Railway Goodshed Road, Belgaum. The factory was on the ground floor whereas the couple were residing on the first floor of the premises. On the 10th of June, 2000, the couple attended a tea party in the house of their acquaintance one Parth Deshpande, and after the party was over at about 6:00p.m. P.W. 6 Mohan Ramnath, who had also attended the party, dropped them off at their residence in his car. As per the prosecution story, at about 8:30p.m., P.W. 1 Parasram and his wife heard some knocking on their door and on opening the same they saw Shilpa aforesaid lying on the ground. On enquiry she disclosed that three persons had attacked her husband and her and had caused them severe injuries. On receiving this information, P.W. 1 and his wife immediately summoned P.W. 16 Dr. Ramesh who had a hospital close by and on his advice they first took Shilpa to his hospital and she and her husband were later shifted to the K.L.E. Hospital. The doctor pronounced Sudhakar as having been brought dead on arrival whereas Shilpa died three days later while under treatment. P.W. 1, who was the business Manager of the couple, also informed the relatives of the victims including P.W. 9 the son of the deceased and P.W. 17 Sudhakar's brother also reached the spot. The latter thereupon lodged a First Information

Report for offences punishable under Sections 302 and 397 of the Indian Penal Code against unknown persons. During the course of the investigation, some finger prints were lifted from a window pane as per the scientific procedure prescribed. A search was also conducted in the neighbourhood and the accused were ultimately arrested on the 22nd June, 2000 by a police party as they were behaving in a suspicious manner. They were brought to the police station and interrogated by P.W. 28 to whom they made disclosure statements under Section 27 of the Evidence Act. Pursuant to the disclosure statements, recoveries of gold ornaments alleged to have been taken from the deceased couple as also the blood stained clothes of the accused were recovered in the presence of P.W. 24. On the completion of the investigation, the accused were charged for offences punishable under Section 302 read with Section 34 of the IPC on two counts and under Sections 392 and 397 of the IPC. They denied their culpability and were accordingly brought to trial.

2.2 The prosecution produced 29 witnesses in evidence and also a large number of exhibits including the recovered articles on disclosure as also those that had been picked up from the spot. The trial court on an appreciation of the evidence held the accused guilty on all counts and convicted and sentenced them to undergo

various terms of imprisonment. The trial court noticed that all the witnesses including P.Ws. 3 and 5 who were the neighbours of the deceased and who were alleged to have seen the accused running away after the crime, had been declared hostile as they had not supported the prosecution. Likewise, P.W. 7, the jeweller who had been brought by the investigating agency to verify and weigh the ornaments, did not support the prosecution and he too had been declared hostile. Even more significantly P.W. 8 to whom the stolen ornaments had been allegedly sold backed away from supporting the prosecution. The matter was thereafter taken in appeal to the High Court and the High Court while noticing that the only evidence against the appellants were the recoveries made from them pursuant to their statements under Section 27 of the Evidence Act (as all the other material witnesses referred to above had not supported the prosecution) dismissed the appeal. It is in this situation that the matter is before us after the grant of special leave.

3. We have heard the learned counsel for the parties and have gone through the record carefully with their assistance. Several judgments have also been cited by the learned counsel on which we do not intend to dilate as they are basically on the facts and circumstances of each case.

4. As already noticed the primary evidence against the accused is the recovery of the gold ornaments from them. These are a mangalsutra, a ring and a chain. In addition, a finger print of A3 Amit Rama Naik the appellant in Criminal Appeal No. 739 of 2006 had also been lifted from a window pane. The learned counsel representing Amit Rama Naik has, accordingly, argued that the specimen finger prints had not been taken from him in accordance with the procedure prescribed under the Identification of Prisoners Act, 1920 as it was incumbent on the investigating officer to have filed an application before the Magistrate before he could have taken the finger prints from him. We, accordingly, put it to the learned counsel if the fact as to whether such an order of the Magistrate had been taken or not had been raised in the cross examination of the investigating officer, P.W. 28. We have also gone through the evidence of P.W. 28 and have found that not a single question had been put to him doubting the correctness of the procedure prescribed. We must, therefore, hold that the finger print taken from the site had been identified as that of Amit Rama Naik. We must also record that the ornaments recovered were of common use and available to all and sundry and they were produced for identification in court only during the recording of the evidence and no attempt had been made by the police to have them

identified at any earlier point of time. It is also significant that A2 was alleged to have been an ex-employee of the deceased couple. If that had been so, Shilpa would ordinarily have been able to identify him as he had left employment only four years earlier. Admittedly, she did not name any person in her statement immediately after the incident. In this view of the matter, we find that the identification and involvement of A1 and A2 i.e. Rama appellant in Criminal Appeal No. 1135 of 2006 and Bharama Parasram Kudachkar appellant in Criminal Appeal No. 1487 of 2005, is doubtful. We, accordingly, allow their appeals and order their acquittal. The bail bonds of A2 i.e. Bharama Parasram Kudachkar shall stand discharged. A1 i.e. Rama is stated to be in jail. He shall be set forth immediately if not required in any other case. The appeal of Amit Rama Naik - appellant in Criminal Appeal No. 739 of 2006 is dismissed. He is said to be on bail. He shall be taken into custody forthwith to serve out his sentence.

The fee of the Amicus is fixed at ₹7,000/-.

.....J
[HARJIT SINGH BEDI]

.....J
[GYAN SUDHA MISRA]

NEW DELHI
JULY 12, 2011.



ITEM NO.106[PART-I]

COURT NO.7

SECTION IIB

S U P R E M E C O U R T O F I N D I A
RECORD OF PROCEEDINGS

CRIMINAL APPEAL NO(s). 1487 OF 2005

BHARAMA PARASRAM KUDHACHKAR

Appellant (s)

VERSUS

STATE OF KARNATAKA

Respondent(s)

(With office report)

WITH

CRIMINAL APPEAL NO. 739 OF 2006

AMIT RAMA NAIK

APPELLANT

VERSUS

STATE OF KARNATAKA
(With office report)

RESPONDENT

AND

CRIMINAL APPEAL NO. 1135 OF 2006

RAMA

APPELLANT

VERSUS

STATE OF KARNATAKA
(With office report)

RESPONDENT

Date: 12/07/2011 This Appeal was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE HARJIT SINGH BEDI
HON'BLE MRS. JUSTICE GYAN SUDHA MISRA

For Appellant(s)
In AR 1487

Mr. Sanjay Jain, Adv.
Ms. Priyanka singh, Adv.
Mr. Shekhar G. Devasa, Adv.
Mr. Dinesh Kumar Garg, Adv.

In 739

Mr. Shekhar G. Devasa, Adv.
Mr. Sanjay Mishra, Adv.

Mr. Somiran Sharma, Adv.

In 1135

Ms. Tanuj Bagga Sharma, Adv. (A.C.)

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For Respondent(s)

Mr. V.N. Raghupathy, Adv.

Dr. Rajeev Sharma, Adv.

Ms. Shipra Shukla, Adv.

Mr. Virendra Pal Singh tandon, Adv.

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

We have heard the learned counsel for the parties.

Vide our separate reasoned order, we have allowed the appeals filed by accused No. 1 Rama - appellant in Criminal Appeal No.1135 of 2006 and accused No. 2 Bharama Parasram Kudhachkar - appellant in Criminal Appeal No. 1487 of 2005 and dismissed the appeal filed by accused No. 3 Amit Rama Naik - appellant in Criminal Appeal No. 739 of 2006.

We order the acquittal of accused No. 1 and The bail bonds of A2 i.e. Bharama Parasram Kudachkar stands discharged. A1 i.e. Rama is stated to be in jail. He shall be set forth immediately if not wanted in connection with any other case.

A3 - Amit Rama Naik is said to be on bail. He shall be taken into custody forthwith.

The reasoned order shall be separately placed on record.

[KALYANI GUPTA]
COURT MASTER

[VINOD KULVI]
COURT MASTER

[SIGNED BRIEF ORDER IS PLACED ON THE FILE.]

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Appeal No. 1487 of 2005 and dismissed the appeal filed by accused No. 3 Amit Rama Naik - appellant in Criminal Appeal No. 739 of 2006.

3. We order the acquittal of accused No. 1 and 2. The bail bonds of A2 i.e. Bharama Parasram Kudachkar stands discharged. A1 i.e. Rama is stated to be in jail. He shall be set forth immediately if not wanted in connection with any other case.

4. A3 - Amit Rama Naik is said to be on bail. He shall be taken into custody forthwith.

5. The reasoned order shall be separately placed on record.

.....J
[HARJIT SINGH BEDI]

.....J
[GYAN SUDHA MISRA]

NEW DELHI
JULY 12, 2011.