



IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 29TH DAY OF JANUARY, 2024

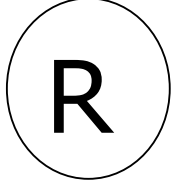
PRESENT

THE HON'BLE MR JUSTICE SREENIVAS HARISH KUMAR

AND

THE HON'BLE MR JUSTICE VIJAYKUMAR A. PATIL

CRIMINAL APPEAL NO.97 OF 2017



BETWEEN:

State of Karnataka
By the Police Inspector,
Thilaknagar Police Station,
(SE, COD), Bengaluru,
Rep. By State Public Prosecutor
High Court Building, Bengaluru - 1

...Appellant

(By Sri B.N.Jagadish, Addl. SPP)

AND:

1. Nagendra Reddy
S/o Late Nanjunda Reddy,
Aged About 54 Years,
Real Estate Business,
C/o Y.B.Shivashankara Reddy,
Yamare Grama, Sarjapura Hobli,
Bommasandra Post, Anekal Taluk,
Bengaluru Rural District - 562 106.
2. Afrose @ Afrose Babu
S/o Sultansaab,





Aged About 49 years,
Real Estate Business,
R/a No. 44/7b, 8th Main,
Old Gurappanapalya,
Bengaluru - 560 076.

...Respondents

(By Sri M.T.Nanaiah, Sr. Adv.
& Sri M.R.C.Manohar, Adv. for
Smt. Rachitha Nanaiah, Advocate)

This Criminal Appeal filed u/s.378(1) & (3) Cr.P.C., by the State P.P., praying to grant leave to appeal against the judgment and order of acquittal dated 24.09.2016 passed by the LI Additional City Civil And Sessions Judge, Bengaluru city (CCH-52) in S.C.No.705/2008 - acquitting the respondents/accused No.1 and 2 for the offences P/U/S 342, 346, 347, 364, 368, 384, 392, 420, 465, 467, 468, 506 and 201 r/w 34 of IPC.

This Criminal Appeal, coming on for **hearing**, this day, **Sreenivas Harish Kumar J.**, delivered the following:

JUDGMENT

The State has preferred this appeal challenging the acquittal judgment in S.C.No.705/2008 on the file of LI Additional City Civil and Sessions Judge, Bengaluru.



2. The prosecution case is like this:

PW1-M.G.Shantha Kumar gave a report dated 12.07.2006 to the Inspector of Police, Tilaknagar police station, Bengaluru stating that on 10.07.2006 accused No.1 and others kidnapped him from a place near Adiga's Hotel situated at 4th Block, Jayanagara, Bengaluru, took him to Anekal and obtained his signatures on a sale deed by putting threat. He was taken to the office of Sub Registrar, Anekal for getting the sale deed registered. Since registration was not possible on that day, he was taken to the house of accused No.1 and detained there overnight. On the next day he was again taken to Anekal under threat to his life and the sale deed was presented for registration. Though he cried for help, nobody helped him at the Sub-Registrar's office. He was physically weak and mentally disturbed and therefore he could not protest strongly. The



demand draft for Rs.63 crores which was given to him was taken back by the accused forcibly. He was released around 11.00pm on 11.07.2006. He also stated that he was prevented from contacting his people by making telephone calls. Based on this report, FIR in Crime No.174/2006 was registered on 14.07.2006 at 10.30am for the offences punishable under Sections 364, 342 and 506 read with Section 34 of IPC. Investigation led to filing of charge sheet against two accused persons and ultimately they faced trial for the offences punishable under Sections 342, 346, 347, 364, 368, 384, 392, 420, 465, 467, 468, 506 and 201 read with Section 34 of IPC.

3. After assessing the entire evidence both oral and documentary, the trial court found that the prosecution failed to bring home the guilt against the accused for the offences charged



against them and thereby acquitted them of all the offences. Hence this appeal.

4. We have heard the arguments of Sri B.N.Jagadish, learned Additional SPP for the appellant/State, Sri M.T.Nanaiah, learned Senior Advocate and Sri M.R.C.Manohar, learned Advocate who argued on behalf of Smt. Rachitha Nanaiah, Advocate for respondents/accused No.1 and 2.

5. It is the argument of Sri B.N.Jagadish that the trial court has utterly failed to appreciate the evidence of PWs.1 to 7, 9, 10, 13, 16 and 17. What he argued was that PW1 was the victim of the entire incident. He possessed certain extent of land near Anekal. Accused No.1 came forward to buy his lands and there came into existence an agreement of sale. The sale consideration agreed was Rs.650/- per square foot. Accused No.1 took out a paper publication in Kannada daily *Vijaya Karnataka* about his intention to purchase the land



belonging to PW1. Thereafter since accused No.1 did not come forward to purchase the property before 31.12.2005, which was the date agreed for payment of the entire consideration, PW1 had to look for other purchasers and in that course one M/s. Magna Warehousing and Distribution Pvt. Ltd., showed interest to purchase the property for consideration @ Rs.825/- per square foot. They also took out a paper publication in English daily *Times of India*. When it so happened, accused No.1 again called PW1 for discussion. When PW1 went near Adiga's Hotel situated at 4th Block, Jayanagara on the request of accused No.1, he was kidnapped from that place on 10.07.2006, taken to Anekal where he was forced to put his signatures on the sale deed. Thereafter he was taken to Sub Registrar's office, Anekal. For some reasons the sale deed was not registered and therefore accused No.1 wrongfully confined PW1 in his house on that night and on the next day i.e., on



11.07.2006, PW1 was again taken to Sub Registrar's Office Anekal for completing the registration process. The signatures of PW1 was forcibly taken near obliterated portion in the sale deed. Even the demand draft which was given to him was snatched. PW1 was let free around 11.30pm on that day. PW1 has given clear account of the entire incident. He himself lodged FIR on 12.07.2006. But the police did not register it immediately and that they registered FIR on 14.07.2006. After the examination-in-chief, the defence counsel did not cross examine PW1. Cross examination was deferred to another date and by that time PW1 was killed and therefore he was not available for cross examination. His argument in this regard is that since PW1 was available for cross examination and that the defence counsel did not cross examine him, the entire testimony of PW1 can be relied upon in accordance with Section 33 of the Indian Evidence Act.



5.1. He also submits that PW2 and PW3 are the brothers of PW1. Both of them went to the house of PW1 on 12.07.2006 and saw their brother looking tired. Accused No.1 and 2 came to the house of PW1 when PW3 was there. Accused No.1 went to the extent of threatening PW3 stating that he would get him killed by accused No.2. PW4 has given evidence that he too had been to Anekal along with PW1 and accused. The evidence of PW4 is believable to this extent. PW6 was a maid servant in the house of PW1. Her evidence also discloses that PW1 was not present in his house on 11.07.2006. The evidence of PW9 and PW10 establishes the fact that PW1 and both the accused had come over to Sub Registrar's Office, Anekal for registration purpose. PW13 who was the Sub-Registrar also speaks about registration of the sale deed. Therefore it gets established by these witnesses that PW1 was found in the office of Sub Registrar, Anekal. About the threat given to PW1



by the accused, the evidence of PWs.1 to 3 has to be believed. That apart in the sale deed a paragraph has been obliterated. PW17, the FSL expert has given evidence that he deciphered out the obliterated sentence written by PW1 that he was receiving the DD subject to realization. Even that DD was taken back by the accused. The fact of obtaining of DD is spoken by PW16. Ex.P33 is the challan drawn in the name of PW1 for purchasing DD for Rs.63 crores. Therefore these circumstances clearly support the prosecution case. This being the evidence placed by the prosecution, the trial court has wrongly come to conclusion that the evidence is not believable. Therefore the impugned judgment has to be set aside and accused No.1 and 2 must be convicted and punished appropriately. In support of his arguments he placed reliance on the judgment of the Supreme Court in the case of **MULKH RAJ**



***SIKKA V. DELHI ADMINISTRATION [(1975)3
SCC 2J.***

6. Refuting the arguments of Sri B.N.Jagadish, Sri MRC Manohar and Sri M.T.Nanaiah argued that Section 33 of the Indian Evidence Act cannot be applied in the facts and circumstances for the reason that the testimony of PW1 found in the examination-in-chief is apparently unbelievable. PW1 was a businessman. His evidence is nothing but self serving testimony. The same does not find corroboration from any other witnesses or circumstances. PW1 was unmarried. If he died the property would be succeeded by PW2 and PW3, the brothers of PW1. They submit in this regard that while assessing the evidence of PW2 and PW3, this aspect should be kept in mind. Though they were not the eye witnesses, PW3 has stated that when he went to the house of PW1 on 12.07.2006, accused No.1



came to that place with his wife, driver and accused No.2. PW3 has spoken about threat put to him by accused No.1. The evidence PW3 has given like this is an improvement which does not find place in the statement given before the investigating officer. It is clearly shown that the evidence of PW3 is unreliable. This contradiction by way of improvement is duly proved through the investigating officer. Moreover PW3 has clearly admitted in the cross examination that PW1 had filed suit against the other purchasers in respect of other lands alleging that the sale deeds were obtained forcibly by putting threat. This admission speaks much about the conduct of PW1 and therefore a conclusion can be drawn that the allegations that he had made against accused No.1 and 2 herein are also for the same reasons. PW2 is not an eye witness. He has just spoken about what he came to know from PW3. Then referring to the evidence of PW4 they submitted that his



evidence is significant in the sense that it was through PW4 that accused No.1 contacted PW1 and asked him to come near Adiga's hotel. The evidence of PW4 discloses that he was also present at the Sub Registrar's office. He does not speak about any threat being given to PW1. Since he did not support the prosecution, he was treated hostile and cross examined. But the prosecutor was not able to discredit him in any way. In this view the testimony of PW4 cannot be discarded. Moreover the other witnesses who were present at the Sub Registrar's office have clearly stated about presentation of sale deed for registration on 10.07.2006 and they too did not find any abnormality in PW1. The Sub Registrar was also examined. He too did not testify the prosecution case. Therefore the entire evidence given by PW1 does not find corroboration from the other witnesses. They further argued that if the threat was put to PW1, nothing prevented him from



bringing it to the notice of Sub Registrar that the sale deed was being obtained from him under threat and coercion and in that event, the Sub Registrar would not have registered the sale deed. Rather PW1 kept quiet all the way. This conduct of PW1 cannot be ignored. Looking in this view, since there is inherent improbability in the evidence of PW1, Section 33 of the Indian Evidence Act cannot be applied. The trial court has rightly come to conclusion to acquit the accused for all these reasons. Since appeal is against acquittal judgment this court cannot take a different view unless it is found that the trial court has perversely appreciated the evidence. They argued for dismissal of the appeal.

7. We have considered the points of arguments and perused the material on record.

8. Though the prosecution examined 36 witnesses to establish its case, it is not necessary



for us to refer to the evidence of all the witnesses, it is enough if we re-appreciate the evidence of PWs.1 to 7, 9, 10, 13 and 14.

9. In the examination in chief of PW1 it is found that he wanted to sell his agricultural lands spread over in different survey numbers of Hebbagodi village, Anekal Taluk. Accused No.1 wanted to purchase his lands. Though PW1 offered to sell his lands for Rs.700/- per Sq.ft., accused No.1 told that he was ready to purchase @ Rs.650/- per Sq.ft. Accused No.1 took out a paper publication before entering into the agreement. But the consideration amount had not been fixed and therefore he had given time till 31.12.2005 for finalization of the deal. Since accused No.1 did not come forward for sometime, PW1 had to approach a real estate agency called M/s. Colliers International (India) Property Services Pvt. Ltd. PW4 was the Manager of that real estate agency.



That agency also took out a paper publication. Seeing the paper publication taken out by the real estate agency, accused No.1 again showed interest to purchase his land. On 10.07.2006 accused No.1 asked him to come near Adiga's Hotel situated at 4th Block, Jayanagara as he wanted to have discussion with him about the sale transaction. By that time PW4 also telephoned and asked him to come near Adiga's Hotel. When PW1 went near that place accused No.1 was seen sitting in the car. PW4 was also sitting in the car. He was asked to sit in the back seat. As soon as he sat, two persons got into the car and sat beside him. As PW1 wanted to get down from the car, those people did not allow him to get down and put threat to him. One of them had a revolver. He cried for help, but nobody helped him. The car proceeded towards Anekal. The car was stopped at a place which was half kilometer away from Sub Registrar Office, Anekal. Accused No.1 gave a sale



deed and asked him to put his signatures. When he refused, accused No.2 threatened him by showing the revolver. Accused No.1 gave him a DD for Rs.63 crores drawn on State Bank of Mysuru, Hosur Branch. Besides DD he also gave him 5 cheques for Rs.17 crores. Since the DD bore a old date, PW1 entertained suspicion and therefore endorsed in the sale deed that '*subject to realization of DD*'. He stated that all his signatures were obtained by putting threat. Ex.P16 is the sale deed. Thereafter the paragraph where he had endorsed in his hand, '*subject to realization of D.D.*' was scored out by applying white fluid. He was forced to put the signature beside that obliterated portion. He was taken inside the Sub Registrar Office and before that he was threatened that he would be killed if he would shout there. After going inside the office, he met a person by name Sada i.e., PW5 and requested him for help. His voice was very feeble and



nobody could hear him. Thereafter he was again dragged till the car and taken to the house of accused No.1 situated at BTM layout, Bengaluru and confined there that night and on the next day he was brought to Sub Registrar's office, Anekal. He could not protest because of weakness. He tried to say something, but nobody could hear his feeble voice. Around 11.30pm, he was let free. He went back to his home and slept. On the next day his sister telephoned him. Since he could not speak properly, she entertained a suspicion and telephoned PW3, and asked him to go and see PW1. When PW3 came to his house, he revealed everything before him. By that time accused No.1, his wife and driver came to his house. Accused No.2 came with them. PW1 has stated that when PW3 questioned accused No.1 as to why they did so, accused No.2 assaulted PW3. When PW3 shouted loudly, his neighbors came there. Seeing



the neighbours both the accused and others who had come with them left that place.

10. PW2 is the brother of PW1. He was not the eye witness to the incident. His evidence discloses that he came to know about confinement of PW-1 and threat put to him for obtaining sale deed from PW1. Therefore, his evidence is not of much consequence.

11. PW3 has stated that he received a call from his sister viz., Rukmini from Chennai, and came to know that there was something wrong with PW1 and therefore he went to the house of the latter. When he saw PW1, he found PW1 being not able to speak properly and learnt from him about the entire incident that had taken place on the previous days. He has stated that when he was in the house of PW1, both the accused came there. The wife of accused No.1 also came. When he questioned accused No.1 about the entire incident,



the latter reacted very sharply stating that he should not interfere. At that time, accused No.1 showed accused No.2 and told him that accused No.2 would not hesitate to kill him. Further evidence of PW3 is that he came out of the house to give information to another brother i.e., PW2, and at that time, he noted down the car number in which the accused had come. When he was noting down the numbers of the car, driver of accused No.1 saw him and informed the same to the wife of accused No.1, who in turn asked the driver to snatch the slip in which the car numbers were written. At that time, since PW3 stated that he had already informed the matter to his another brother and that the police would be coming, all of them went away from that place.

12. The evidence of PW4 is important because he was the Manager of Real Estate Agency which was contacted by PW1 when accused No.1



laid back for sometime without contacting PW1. According to PW1, PW4 was also very much present when he was taken to Anekal. The evidence of PW4 shows that it was PW1 who introduced accused No.1 to him stating that accused No.1 was the buyer of his land. Thereafter they met 2-3 times. He has stated that he too went to Anekal to be present at the time of registration of the sale deed, but he does not speak anything about the threat put to PW1 and taking the signatures of the latter forcibly on the sale deed. As he did not support the prosecution he was treated hostile and cross-examined. He denied all the suggestions given to him by the Public Prosecutor.

13. PW5 was working as an agent at the Sub-Registrar's office, Anekal. What he has stated is that about 4 years prior to the date of his giving evidence in the Court, PW1 came to the Sub-



Registrar office around 04.00 or 04.30 p.m., spoke to him and held his hand and then went inside the office. He did not come to know whether registration was over or not. On the next day, he came to know that there was some problem in the registration process. He did not identify accused Nos.1 and 2 in the Court. His clear evidence is that when he saw PW1 at the office of the Sub-Registrar, he did not notice any abnormality on the face of PW1.

14. PW6 was a maid servant in the house of PW1. Her evidence is that when she went to the house of PW1 in the morning at 07.00 a.m. on 11.07.2006, nobody opened the door. She waited for 10 minutes and then went back to her house. When she again went to the house of PW1 on the next day morning PW1 was present in the house. She asked him where he had gone the previous day and to that PW1 replied that since he was little



bit upset, he was inside the house. She has stated that she did not question him anything more.

15. Actually the prosecution wanted to establish from her that when she questioned PW1 about his absence in the house on the previous day, he revealed before her the entire incident. But the prosecution has failed to elicit from her all the details of the incident.

16. PW7 is an advocate. His evidence is that about 3 months before 10.07.2006, the accused No.1 visited his office and showed the documents of the land which he was about to purchase and asked him to verify the same. On 10.07.2006 he went to Anekal on the request of accused No.1 to attend the registration. His evidence in this regard is that since the computer system struck down on that day, no document was accepted for registration and everybody was asked to come on the next day. Therefore, he returned to Bengaluru.



On the next day i.e., 11.07.2006 at 11.00a.m. again he went to Anekal. He gave the sale deed to the parties and asked them to put their signatures, he has stated that at that time PW1 told that he wanted to effect some corrections in the sale deed. Accordingly, PW1 struck off some sentences. Thereafter whitener was put on the scored out portion and PW1 put his signature beside the scored out portion. He also states that he saw PW1 returning a cheque for Rs.63.00 lakhs to accused No.1.

17. PW8 is another advocate who has also spoken about scrutinizing some documents given to him by accused No.1. He further speaks about accused No.1 requesting him to come over to Anekal for registration purpose but he sent PW7 for getting the sale deed registered. He came to know that registration was not possible on the first day. He also came to know that PW7 had been to



Anekal on the next day and attended to registration work. Registration was kept pending because the Sub-Registrar wanted translated copy of RTC which accused No.1 had produced. His clear evidence is that the market value of the property which accused No.1 purchased from PW1 was Rs.7,00,00,000/-.

18. PW9 is an attester to sale deed. The prosecution tried to establish from him that accused No.1 obtained sale deed from PW1 forcibly by putting threat. PW9 did not establish the same and simply stated that accused No.1 had already given Rs.2,00,00,000/- and then gave him another sum of Rs.5,00,00,000/- in the month of June 2006. He stated that at the time of registration PW1 issued a receipt to accused No.1 for having received the cheque for Rs.5,00,00,000/-. He speaks about the presence of one Sri Bhanu Prakash along with the complainant and accused



No.1 at the time of registration. In the examination-in-chief itself he has stated that the facial appearance of PW1 was normal on the date of registration.

19. PW10 was the real estate agent. His evidence also shows that he attended the registration. He speaks about the presence of PWs.7 & 8 along with PW1 and accused No.1. His clear evidence is that registration was over by 04.00 or 05.00p.m. and after registration, PW1 took back the agreement of sale from accused No.1 and passed a receipt for Rs.7,00,00,000/- in favour of accused No.1. He further stated that on the same day, PW1 took accused No.1 to the land and delivered its possession. Therefore, from this witness also prosecution wanted to establish that accused No.1 obtained sale deed forcibly from PW1, but the said attempt of the prosecution did not become successful.



20. PW13 is the Sub-Registrar who speaks about attending to the registration of the sale deed on 11.07.2006. His evidence is that when he verified the documents, he noticed that accused No.1 did not possess the pahani in his name. When he enquired accused No.1 in that regard, the latter produced a pahani written in Tamil language and therefore, he requested accused No.1 to bring its translated version. He has stated that since accused No.1 wanted time, the registration was kept pending. In the cross-examination it was elicited from him that the sale consideration was Rs.7,00,00,000/- and that he noticed the said consideration amount being shown in the sale deed. His clear evidence is that the registration was kept pending because accused No.1 failed to produce a document and there was no other reason for the same.



21. PW14 was the Manager in the office of the Sub-Registrar, Anekal. He speaks about registration of the sale deed.

22. PW16 was the Deputy Manager of State Bank of Mysore. His evidence is that on 05.12.2005 somebody purchased a Demand Draft for Rs.63/- from his bank. He identified Ex.P.33 the challan submitted at the bank for purchasing the DD bearing No.551036.

23. PW17 is the FSL Expert whose evidence shows that when he subjected the obliterated portion in the sale deed to examination through Video Spectral Compilator, he deciphered out that the obliterated portion contained the wordings "THE PURCHASER has paid a sum of Rs.63,00,00,000/- (Rupees Sixty Three Crores only) by way of D.D. bearing No.551036 dated 15.06.2006 drawn on State Bank of Mysore, Hosur Branch in favour of the Vendor towards partial sale



consideration subject to realization of the above D.D."

24. Now if we assess the entire evidence, though we find that PW1 has given a narration of the incident of putting threat to him by accused Nos.1 and 2 for the purpose of obtaining sale deed, his evidence cannot be accepted by applying Section 33 of the Indian Evidence Act. Section 33 reads as below:

33. Relevancy of certain evidence for proving, in subsequent proceeding, the truth of facts therein stated.—Evidence given by a witness in a judicial proceeding, or before any person authorized by law to take it, is relevant for the purpose of proving, in a subsequent judicial proceeding, or in a later stage of the same judicial proceeding, the truth of the facts which it states, when the witness is dead or cannot be found, or is incapable of giving evidence, or is kept out of the way by the



adverse party, or if his presence cannot be obtained without an amount of delay or expense which, under the circumstances of the case, the Court considers unreasonable:

Provided –

"that the proceeding was between the same parties or their representatives in interest;" that the adverse party in the first proceeding had the right and opportunity to cross-examine; "that the questions in issue were substantially the same in the first as in the second proceeding."

Explanation. - A criminal trial or inquiry shall be deemed to be a proceeding between the prosecutor and the accused within the meaning of this section.

25. In the case of **MULKH RAJ SIKKA VS. DELHI ADMINISTRATION** supra, the Hon'ble Supreme Court has held in paragraph No.20 as below:



"20. Section 33 of the Evidence Act provides to the extent material that evidence given by a witness in a judicial proceeding is relevant for the purpose of proving in a later stage of the same judicial proceeding the truth of the facts which it states when the witness cannot be found, provided that the adverse party in the first proceeding had the right and opportunity to cross-examine."

26. No doubt Section 33 of the Evidence Act states that if a witness is dead or cannot be found or is incapable of giving evidence or is kept out of the way by adverse party or his presence cannot be obtained without an amount of delay or expense, his evidence in a judicial proceeding or before any person authorized by law to take it, can be considered relevant in a subsequent judicial proceeding or at a later stage of the same judicial proceeding to prove the truth of the facts. But it is to be stated that such kind of evidence is only relevant, not that it can be relied upon without



looking for corroboration. According to Section 158 of the Indian Evidence Act, all matters either to contradict or corroborate the statements under Section 32 or 33 may be proved in order to impeach or confirm the credit of the person who made such statement. The expression, "for the purpose of proving the facts which it states" in Section 33 does not imply a meaning that absolute reliance can be placed on the previous evidence given by a witness whose presence cannot be secured at a later stage of the proceedings.

27. In the case on hand, merely for the reason that PW1 was not cross-examined by the defence counsel, it cannot be said that the evidence of PW1 is fully reliable. It is true that PW1 was very much available for cross-examination soon after conclusion of examination-in-chief. The evidence of PW1 must be subjected to scrutiny, and it must appear to be truthful. It



must find corroboration from other evidence which the prosecution has placed before the Court. In this case, PW1 may have given evidence about the entire incident but if we look at the evidence of PW3, in particular, and the other witness to whose evidences we have referred above, it is found that the testimony of PW1 is unreliable. It is elicited from PW3 that PW1 had earlier sold other lands to somebody and against them also PW1 filed suits on the allegations that his signatures were obtained on the sale deeds by putting threat. PW3 has given clear admission in the cross-examination that his brother i.e., PW1, had filed a suit against Zahir Khan alleging that he was taken to the Sub-Registrar office and sale deed was obtained forcibly. This answer of PW3 reflects on the conduct of PW1 which gives an inkling to draw inference that the present case was not the first initiated by PW1 against accused No.1 alleging that his signature was obtained by putting threat.



Added to this, the conduct of PW3 is also important. When he went to the house of PW1 after receiving a call from his sister Rukmini from Chennai, and having seen his brother, he did not take him to hospital immediately. Accused Nos.1 and 2 would come to the house of PW1 when he was there. At that time he would question accused No.1 and inturn accused No.1 would threaten him. His clear evidence is that when he came out of the house to make a call to PW2, he did not inform the police. Though Sri B.N.Jagadish would argue that the suggestions given to PW3 are in the nature of admitting the prosecution case, such an inference cannot be drawn. The answer of PW3 in the cross examination to which our attention was drawn was to the effect that by the time PW2 arrived to the house of PW1, accused No.1 and others had left that place. If PW3 has admitted a suggestion, it does not mean that the defence admitted the prosecution case. The meaning behind this



suggestion is that accused had left that place before the arrival of PW2. If it is assumed that accused Nos.1 and 2 went to the house of PW1 on 12.07.2006, it does not mean that the prosecution case would get established because what happened on 10.07.2006 and 11.07.2006 is important. The clear answer of PW3 is that he did not feel like telephoning to police immediately after coming to know of the entire incident from PW1.

28. The evidence of PW4 is very important because he was the person who asked PW1 to come over to Adiga's Hotel from where PW1 was said to have been kidnapped, but PW4 does not support this. His clear evidence is that PW1 looked normal in the Sub-Registrar's office. He has also stated in the examination-in-chief itself that he made a call to PW1 at 09.00 a.m. on the next day and at that time PW1 told him that the registration was not completed on the previous day



and it would be attended to on that day. If really there was a threat to PW1, he could have informed PW4 when the latter telephoned him. PW4 does not say anything about the threat put to PW1. He has clearly refuted the suggestion about threat put to PW1 inside the car for the purpose of obtaining the signature. Even PW5, whom PW1 met in the office of the Sub-Registrar, has clearly stated that PW1 looked normal at that time and did not accept the prosecution case suggested to him. PW7, an advocate, who went to Anekal to attend registration, does not speak of any kind of threat being put to PW1 and his evidence is that PW1 himself effected some corrections in the sale deed by putting white fluid. This evidence is contrary to the evidence of PW1.

29. PW9 has also stated that PW1 looked normal at the time of registration. More than that if really there was a threat to PW1, he could have



complained of the same before the Sub-Registrar. If it is brought to the notice of the Sub-Registrar that the sale deed is being obtained forcibly by putting threat or coercion, no Sub-Registrar will register the document. In this case, the Sub-Registrar examined as PW13 does not speak about any complaint being made by PW1. Therefore, if the entire evidence of PW1 in the examination-in-chief is subjected to scrutiny in the light of evidence given by other witnesses, we do not find that the testimony of PW1 is trustworthy.

30. Now if we consider the document Ex.P33 which the prosecution has produced to prove that a DD for Rs.63,00,00,000/- had been purchased in the name of PW1, it is to be stated that actually Ex.P33 does not indicate a DD for Rs.63,00,00,000/- being purchased. Ex.P33 is the challan dated 05.12.2005 for Rs.63/-. PW16 is the witness, who speaks about the challan marked as



per Ex.P33. Ex.P33 bears the date 05.12.2005 and the challan shows the DD being purchased for Rs.63/- only, not Rs.63,00,00,000/-. Moreover in the obliterated portion in Ex.P16, the sale deed, the date of DD is shown as 15.06.2006 but Ex.P33 is dated 05.12.2005 which in no way appears to be proximate to the prosecution case. Though it is true that FSL expert has deciphered out the obliterated portion, it does not in any way help the prosecution case because the evidence of the advocate who was examined by the prosecution clearly indicates that it was at the instance of PW1, a portion was obliterated by putting whitener and thereafter their signatures were obtained. The circumstances do not indicate any threat being put to him for obliterating or effacing a portion from the sale deed.

31. The conclusion therefore is that overall appreciation of the case takes us to concur with



the findings given by the trial Court. We do not find any merit in this appeal, therefore, the appeal is ***dismissed***.

**Sd/-
JUDGE**

**Sd/-
JUDGE**

KMV, BSR
List No.: 1 SI No.: 6