

IN THE HIGH COURT OF KARNATAKA AT BANGALORE  
DATED THIS THE 31ST DAY OF JULY 1998

PRESENT

THE HON'BLE MR. JUSTICE B. PADMARAJ

AND

THE HON'BLE MR. JUSTICE CHIDANANDA ULLAL

CRIMINAL APPEAL NO. 725/1995

BETWEEN:

Chinna Shaikanna,  
S/o. Basappa,  
Aged about 22 sdyears,  
R/o. Cowl Bazaar,  
Bellary.

...APPELLANT

(Accused before Trial Court,  
Now in Judicial Custody)

(By Sri. R.B. Deshpande, Adv.)

A N D:

The State of Karnataka.

(By Sri. N.B. Vishwanath, HCGP.)

This Criminal Appeal filed under Section 374(2) Cr.P.C. by the Advocate for the appellant-accused against the Judgment dated 18-10-1995 passed by the Principle Sessions Judge, Bellary in Sessions Case No.58/90 convicting the appellant-accused for the offence under Section 302 IPC and sentenced to undergo life imprisonment.

This Criminal Appeal having been reserved for orders, coming on for pronouncement of Judgment, this day, B. PADMARAJ, J., delivered the following:

J U D G M E N T

This appeal under Section 374 of Cr.P.C. is directed against the Judgment and Order of the Principal Sessions Judge, Bellary, dated 18-10-1995 in S.C.No.58/90, whereby the learned Sessions Judge has convicted the appellant/accused for having committed the offence punishable under Section 302 IPC and sentenced him to suffer imprisonment for life.

2. The appellant, who is the sole accused in this case, took his trial before the learned Sessions Judge on the allegation that he on 27-09-1990 at about 7.30 p.m. at Belgal cross, near the Octroi Gate in Bellary, committed the murder of his wife Anjinamma by pushing her into the water of the high level canal and thereby committed an offence punishable under Section 302 IPC.

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3. As the facts of this case are well set out in the judgment of the Trial Court, we feel that it is not necessary for us to reiterate the same except mentioning certain salient features. The deceased was the wife of the accused. PW.1 Honnurappa is the father-in-law of the accused and the deceased Anjinamma was his 2nd daughter, who was married to the accused. The first daughter of PW.1 was married to PW.3 Sannanarasappa. It appears that the accused had intended to marry the daughter of PW.4 Bheemappa and in that regard, there were frequent quarrels between the accused and the deceased. The deceased was working as a coolie under a contractor and Smt. Sarojamma and Nagamma-PW.2 were her co-workers. On 27-07-1990, the accused took the deceased along with him on a bicycle to go over to Bandihatti to visit the shrine of 'piraladevaru' from her work spot and thereafter, she did not return alive to her house. When the deceased did not return from her work to the house, on that evening till about 6.30 p.m., the father of the deceased PW.1 called on Sarojamma and Nagamma-PW.2 and enquired about the deceased

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and they informed him that the deceased had been taken away from the work spot by her husband, the accused, on a bicycle at about 7.00 p.m., in order to go to the shrine of 'peeraladevaru' at Bandihatti Village. Though the deceased declined to go along with the accused on the pretext of having not taken bath, the accused persuaded her to ~~go~~ along with him saying that she can take bath in the canal <sup>on the way</sup> water. While so saying, the accused took her on the bicycle. Then PW.1 went to the hut of the accused but he found both the accused and the deceased were absent from the hut. PW.3 visited the house of PW.1 on that night at about 8.15 p.m. and he was informed by PW.1 about the non-returning of the deceased, whereupon, PW.3 ~~tried~~ to console PW.1 by saying that she might have gone to her relatives house and asked him to wait for sometime. Even on the following day, <sup>when</sup> the deceased did not return to her house and the efforts made by PW.1 to search for her were unsuccessful, he lodged a missing complaint in respect of his deceased daughter with the police. On the next day of this, PW.3 came and informed to him that the accused who

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had visited his house, had told him that since the deceased did not agree to go along with him to the shrine of 'peeraladevaru' on the ground of her having not taken bath, he 'perusaded' her to take bath in the canal and thus he took her along with him on the bicycle on the pretext of going over to the shrine of 'peeraladevaru' and he pushed her into the canal water. On learning such news from PW.3, it appears that PW.1 went to the police station and lodged a complaint with the police as per Ex.P1. On the basis of such complaint, the police took up investigation and during the course of investigation, they arrested the accused and pursuant to a voluntary statement made by the accused, they recovered the broken bangle pieces of the deceased from the occurrence spot. On being told by PW.1 to go and search for the deceased by going near the canal side, the brother of the deceased PW.5 went in search of the deceased and found the dead body of the deceased floating in the canal near Yettinabudihal Village and the same was dragged to a side. The Doctor-PW.11, who held atopsy over the dead body of the deceased had

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opined that the death of the deceased was due to asphyxia as a result of drowning. In order to prove its case, the prosecution examined PWs. 1 to 16 and got marked in evidence Exs. P1 to P12 and produced MOs. 1 to 10. At the conclusion of the trial, the learned Sessions Judge found that the established circumstances unequivocally point to the guilt of the accused as being the murderer of his wife and accordingly convicted the appellant and sentenced him as above. Hence, this appeal.

4. Learned counsel for the appellant has contended before us that the motive suggested by the prosecution for the commission of the offence by the appellant is not established. He also contended that the extra judicial confession is a weak type of evidence and it cannot be made the basis for conviction. He further contended that the accused and the deceased being the husband and wife and their being found together is not unnatural and hence it cannot be considered as an incriminating circumstance. With regard to the recovery at the instance of the accused, learned

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counsel for the appellant has contended that when the accused was taken into custody on suspicion soonafter the death of the deceased, the alleged recovery is farce and no significance could be attached to such recovery. Regarding the conduct of the appellant, it was contended by the learned counsel for the appellant that when there was already a missing complaint filed by the father of the deceased PW.1, there was nothing more that was required to be done by the appellant. He also relied upon a decision reported in ILR 1994 KAR., Page 491 in support of his contentions.

5. Per contra, the learned HCGP has contended that the case of the prosecution rests entirely on circumstantial evidence and in the instant case, the circumstances proved against the accused are more than sufficient to convict him for an offence under Section 302 IPC. While elaborating this submission, he contended that the accused and the deceased were seen going together on bicycle and thereafter, the deceased did not return alive to the house, which circumstance

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according to the learned HCGP is a very strong circumstance, especially when there is <sup>no</sup>/reasonable explanation offered by the appellant as to when he parted with the company of his wife. He also contended that the circumstances regarding extra judicial confession made by the accused before PW.3 is believable and has been rightly accepted by the Trial Court. With regard to the motive, learned HCGP has contended that the accused had started a dis-liking for the deceased and he had intended to marry the daughter of PW.4 and that being so, he wanted to eliminate the deceased. He therefore contended that the appellant has been rightly convicted by the Trial Court, which order of conviction warrants no interference in the appeal.

6. The short question that would arise for consideration is whether the order of conviction and sentence passed by the Trial Court is sustainable in law.

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7. It is not in dispute that there is no direct evidence implicating the appellant. Prosecution case rests on circumstantial evidence. As the case of the prosecution rests or depends on circumstantial evidence, at the outset, the well established principles governing the appreciation of evidence in a case dependent on circumstantial evidence may be borne in mind. Briefly the principles are that each circumstance relied on by the prosecution must be established by cogent, succinct and reliable evidence; that the circumstances relied upon must be such as cannot be explained on any hypothesis except the guilt of the accused. In other words, the circumstance must be of an incriminating character. All the proved circumstances must provide a complete chain, no link of which must be missing and they must unequivocally point to the guilt of the accused and exclude any hypothesis consistent with his innocence. It may be stated in this context, that for a crime to be proved, it is not necessary that the crime must be seen to have been committed and must, in all circumstances, be proved by direct

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ocular evidence by examining before the Court those persons, who had seen its commission. The offence can be proved by circumstantial evidence also. The principle fact or factum probandum may be proved indirectly by means of certain inferences drawn from factum probans, i.e., the evidentiary facts. To put up differently, circumstantial evidence is not direct to the point in issue, but consists of evidence of various other facts, which are so closely associated with the fact in issue, that taken together, they form a chain of circumstances from which the existence of the principle fact could be legally inferred or presumed. The circumstances from which an inference as to the guilt of the accused is drawn have to be proved beyond reasonable doubt and have to be shown to be closely connected with the principle fact sought to be inferred from those circumstances. In BHAGATRAM Vs. STATE OF PANJAB reported in AIR 1954 S.C. 621, it was laid down that where the case depends upon the conclusions drawn from circumstances, the cumulative effect of the circumstances must be such as to negative the innocence of the accused and

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bring the offences home beyond any reasonable doubt. What is important is that the possibility of the conclusions being consistent with the innocence of the accused must be ruled out altogether.

8. Let us now delve into the merits of the case. In paragraphs 11 to 22 of the judgment, the Trial Court has summarised the circumstances relied upon by it, which in the opinion of the Trial Court unquestionably point to the guilt of the accused. It is better to reproduce them so that the examination becomes pertinent, pinpointed and confined within narrow limits. Says the Trial Court:-

"11. The prosecution evidence consists of two sets of circumstances, one through which the last seen of theory is said to have been established, the other set is with regard to the other circumstance like motive, extra judicial confession and discovery of fact under Section 27 of the Evidence Act.

12. It has come in the evidence of PW.1 that he had seen his daughter going for coolie work in the morning along with other lady workers at the place, where Anjinappa, Contractor had taken up a contract of construction of the building

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near the octroi gate of Belagal. He had not seen her alive again after she left the house in the morning. The PW.5 is the brother of the deceased, who has also spoken that on the morning of the incident, he had seen his sister Anjinamma going for coolie work along with Sarojamma and Nagamma and thereafter she was not seen by him alive. The deceased was seen alive on that evening while she was working along with other coolie persons. PW.2 one of such coolie persons who has spoken about she, Anjinamma and Sarojamma going together for coolie work everyday under the contractor Anjinappa. According to her statement, while they were still working, the accused came there at 6.00 p.m. on the bicycle and took Anjinamma. They also further stated that the accused took her on the ground that want to go to Peeraladevaru of Bandihatti and subsequently she was not seen by her alive. The evidence of PW.2 is not shaken in the cross examination. There is nothing in her evidence which tends, her testimony unbelievable. She being one of the colleagues, who used to go together with Anjinamma under the contractor Anjinappa for work, there was no reason for her to speak lie against the accused person.

13. Besides the evidence of PW.2, there is evidence of PW.10 Ramadu, a rickshaw puller. He claims to have seen the accused and the deceased going towards Bandihatti on bicycle at 7.00 p.m. He is the person who stays at Belagal cross at Bellary and PW.3, the relative of the accused was the immediate neighbour. He had seen the deceased and the accused visiting the house of Narasappa PW.3 and therefore, he had the reason to identify the accused and the deceased going together. Merely because

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he had not visited the house of the accused at any time and he had not talked with the accused on that evening, his statement cannot be disbelieved. He claims to have seen the accused going along with his wife on the bicycle on earlier occasion also and therefore, no suspicion had arosed so as to make enquiry with the deceased and the accused by him. As per his statement, the deceased was sitting on the carrier of the bicycle and the accused was pedling the same. He had seen them when passing on the road, as he himself was pedling his cycle rickshaw. The only suggestion put out to PW.10 is that at the instance of PW.3, who is known to him, he is deposing falsely. Except this, nothing has been elicited in his cross-examination so as to render his testimony as that of an interested witness.

14. The accused going on the bicycle on that evening is corroborated by other material on record. The PW.9 Nazeer Sab is the owner of the bicycle, who had lent the bicycle to the accused in the evening at about 6.30 p.m. As per his statement, the accused returned the bicycle at about 8.30 p.m. subsequently after four days. The said bicycle has been seized by the police by drawing the mahazar. As per his statement, the accused has taken the bicycle from his shop five/six times earlier and therefore, he knew the accused. He had not made any entry in the register and he had not maintained any register, as he was only a small cycle shop owner and he used to give the bicycle to the persons/customers who are known to him. Subsequently, at the instance of the police, the bicycle has been attached from his shop and the panchanama drawn as per Ex. P4, the same has been seized in

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the presence of the panchas. One of the panchas has been examined before the Court is PW.13 Siddappa. According to him, from the shop of PW.9 the police had seized the bicycle and the said bicycle is at MO.9. Merely because his house is situated about one and half kilometer from the shop of Nazeer Sab, his statement to that effect cannot be disbelieved. He has spoken about the seizure of the bicycle after the lapse of about more than four years. Therefore, it cannot be possible for him to remember the date on which the seizure of the bicycle had been effected by the police. Considering the evidence adduced in this respect, it can be said that the prosecution has established the fact that the deceased Anjinamma was seen alive in the company of the accused on that evening and both there seen going on the bicycle towards Bandihatti Village. This circumstance relied upon by the prosecution has been established satisfactorily by acceptable evidence.

15. When the deceased did not return back to the house, PW.1 her father had made search for her firstly contacting the lady workers with whom the deceased Anjinamma had gone for coolie work. Both have stated about the deceased having been taken by the accused. He went to the house of the accused, but he was not present there. Therefore, he informed this fact to his other son-in-law who had consoled him that the deceased might have gone to other relatives house. On the next day when she did not return back, he along with his family members searched for her and could not trace her, he has filed a complaint of 'man missing' with the police as per Ex.P11. The PW.3 has also corroborated the evidence of PW.1 about he having made search for Anjinamma, but

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could not trace for the second day. It is only after finding the dead body near the High Level Canal on Yattinabudihal road, the complaint has been filed by him with the police again.

16. The incident in question had taken place on 27-07-1990 at about 7.30 p.m. The dead body has been found at Yettinabudihal canal on 29.7.1990 by the son of the complainant and thereafter the information has been lodged. It can be seen from the sketch map prepared about the place where the dead body has been found that the body was found to have been kept at the steps of the canal near the 16th Distributory and the water level in the canal was upto 10'-6". This fact has been spoken by the PW.14 the concerned Engineer who based upon the records given the information to the police as per Ex.P3.

17. The motive for the offence alleged to be against the accused is that the accused developed disliking towards the deceased and wanted to have a second marriage. He is said to have illicit connection with the daughter of one Bheemappa. PW.3 has deposed in his evidence before the court that since the accused had developed illicit connection with Bheemappa's daughter, he used to quarrel and assault his wife Anjinamma. In spite of the advice made, the accused not correct himself and led the happy married life. The said Naikar Bheemappa has been examined before the Court as PW.4. According to his evidence, his daughter Eramma had told him that the accused her as if she is his wife. He had taken the accused to task. He has also spoken to the effect that the accused made an offer to marry his daughter even after the marriage of the accused with the deceased Anjinamma and

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he has refused the said offer. Suggestion put to him that his daughter has not developed illicit intimacy with the accused has been admitted, but it can be seen that no lady who is unmarried will admit about the illicit intimacy with any one and PW.4 being the father of such a lady cannot be expected to admit the existence of such relationship between the accused and his daughter. PW.5 is the son of the complainant. He has also spoken about the illicit intimacy of the accused with Bheemappa's daughter and the illtreatment meted out to his sister in this connection by the accused. All these materials go to show that the accused used to illtreat the deceased and wanted to get rid off. He was having some connection with Bheemappa's daughter and even had made offer to marry her. This can be said to be the motive, which has been established by the prosecution by satisfactory evidence.

18. The third circumstance relied upon by the prosecution is the extra-judicial confession made by the accused. On the day of disappearance of the deceased, search was made but she could not be traced by visiting various places and, therefore, the 'man missing' complaint was given by PW.1 to the police. It is alleged by the prosecution that the accused has made extra judicial confession before the PW.3 who happens to be a co-brother of the accused. The eldest daughter of PW.1, namely, Sarojamma has been married with PW.3 and, therefore, she happens to be the co-brother of the accused. He has also spoken about the differences having cropped up between them. According to him when on second day they did not find Anjinamma, he had returned to his house and on the 3rd day morning which was

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subsequent to the filing of the 'man missing' complaint by PW.1, the accused had met him and as per his statement, the accused has made extra judicial confession to the effect that he had taken Anjinamma under the pretext of going to peeraladevaru at Bandihatti and when she did not agree on the ground that she had not taken the bath, he had taken her to canal and where he pushed her into the canal water and the deceased had drowned. The fact of refusal of the deceased to accompany the accused is corroborated by the evidence of PW.2 Nagamma. After she came to know this fact has been disclosed by him to PW.1, then they went in search of the dead body by the side of the canal. The PW.5 Nagaraj, the son of PW.1 has detected the dead body near Yettinabudihal floating on the canal water. They removed it and kept it on the steps of the canal and informed this fact to PW.1. Therefore, the PW.1 again had given the complaint as per Ex.P1 before the police. It was tried to be made out in the cross examination of PW.3 that there was no occasion for the accused to make any extra judicial confession. He claims that in the morning the accused had met him but he did not see the accused on the second day of the incident. At the time when this disclosure had been made to the accused, he was alone present in the house, but his brother's wife was also present but she is no more alive. Merely because he has not taken the accused to the police and handed over him, his statement cannot be brushed aside. He, after the disclosure has been made, had gone in search found the dead body in the canal. Nothing has been elicited in the cross examination of this PW.3 that he has no grudge against the accused so as to implicate him falsely in the instant case.

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19. It cannot be disputed that the extra judicial confession is the very weak pice of evidence. In Makhan Singh Vs. State of Punjab ( Criminal Law Reporter (S.C.) 1988 at Page 501), it has been held that:

"Extra judicial confession is a very weak piece of evidence and is hardly of any consequence."

In that case, there were other circumstances which had made the case of the prosecution suspicious. Therefore, the benefit of doubt has been given and reliance has not been placed on extra judicial confession alleged to have been made by the accused. In the instant case, the extra judicial confession gets importance, as it is only on the basis of such information not only the dead body was detected at Yettinabudihal canal but also subsequently the place of offence has also been found, where some piece of evidence was noticed that the bangle pieces lying there at the canal. The statement of PW.3 cannot be disbelieved or rejected as that of an interested witness. The facts disclosed by way of extra judicial confession having been corroborated by other evidence on record.

20. Subsequently, after the arrest of the accused, the place of offence has been pointed out by him. According to the evidence of PW.15, the accused person after arrested, has interrogated on 30-07-1990. As per his statement, the accused has led the police and panchas to HLC. Km.No.87.4 which was the place of occurrence. This was not within the knowledge of the police or other authorities before it was pointed out so by the accused. So, the facts disclose,

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which makes the statement of the accused made before the police admissible under Section 27 of the Evidence Act is the discovery of the place where the offence had been committed. At that place, the bangle pieces where MO.10 have been found lying which have been identified by the other witnesses. This place of offence being near the canal at Km.87.4, as disclosed from the sketch prepared by the Junior Engineer discloses that there was a sufficient flow of water in the canal and there is possibility of drawing a person if forcibly pushed in the canal water by any one.

21. It was urged by the learned counsel for the accused that the Investigating Officer had not examined the material witnesses immediately and therefore, the doubt arises about the statement so made by the witnesses. At the time when the man-missing complaint was filed, enquiry was being held by the police but subsequently when the PW.3 has furnished the information to PW.1, he has again given the complaint and the investigation was taken up by the police. The inquest was held over the dead body and the body was subjected to post mortem examination. There cannot be said to be any inordinate delay in examining the important witnesses, i.e., PWs.3 and 1 who have given the name of the accused as the person responsible for the death of the deceased. It can be seen from the records of the case that firstly the man-missing complaint Ex.P1 was sent to the police along with the complaint given by PW.1. The said complaint was given at 7.30 p.m. on the next day of the incident. Subsequently on 29-07-1990 at 4.15 p.m., after the inquest was held on finding the dead body, the complaint has been given. The same has reached the Court on 30-07-1990 at about 11.00 a.m.

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It was urged that though the Cowl Bazaar Police, which had registered the case on 29-07-90 at 5.00 p.m. could have sent the same to the Court earlier and the delay occurred till it is received next day at 11.00 a.m., it gives rise to the suspicion about the due deliberation having been made before sending the FIR. It is not every delay which tends the FIR suspicious. It has been held in the State of U.P. Vs. Gokaran and others. 1985 Criminal Law Journal, Page 511 that:

"It is not that as if every delay in sending a delayed special report to the District Magistrate under Section 157 Cr.P.C., would necessarily lead to the inference that the FIR has not been lodged at the time stated or has been ante-timed or antedated or that the investigation is not fair and forthright."

It has been observed further that:

"Where the steps in investigation by way of drawing inquest report and other panchanamas started soon which could only follow the handing over of FIR, the delayed receipt of special report by District Magistrate would not enable the court to dub the investigation as tainted one nor could FIR be regarded as antetimed and antedated."

In another case Zehoor and others Vs. State of U.P. reported in 1991 Criminal Law Journal, Page 56, the Hon'ble Supreme

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Court has held that the delay in filing the FIR was not consequence and since the offence was proved beyond reasonable doubt against some of the accused. From this it is evident that in every case of delay of FIR, does not render the investigation unfair or unjust. After the dead body had been found, the first information was lodged by PW.1 and the case has been registered. The inquest and post mortem was held subsequently. In my view, there is no unreasonable delay in sending the FIR to the Court and, therefore, it cannot be said that the investigation made by the police was unfair.

22. The learned counsel for the accused had urged that there is no sufficient or acceptable evidence to come to a conclusion that it is the accused who has caused the drowning of the deceased. As per the post mortem report and also the report of the Medical Officer who has conducted the post mortem is that the death was due to asphyxia as a result of drowning. Nobody has seen the accused having pushed the deceased into the canal. She has fallen accidentally in the canal water or has been pushed by some one else has to be determined by the other circumstance, as there is no direct evidence available in that record. The strained relationship of the accused with the deceased is evident. His motive was to take a second wife is also evident from the evidence on record. He has taken the deceased on the bicycle on that evening eventhough the deceased was refusing, as she had not taken the bath, took her to the canal water and thereafter she was not seen by any one, nor the deceased was found alive. If in fact she had fallen accidentally in the canal water, then the accused who had accompanied her on the

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bicycle could have made certain efforts to rescue her or could have informed this fact to her relatives, i.e., PWs.1, 2 and 3 and other neighbours and this has not been done so. If these facts are taken into account, the extra judicial confession which has been established, it merely indicate about the accused being responsible for causing the death of the deceased. The chain of circumstances established by the prosecution clearly leads to the conclusion point out the guilt of the accused and not his innocence in any way. In *Vithal Vs. State of Maharashtra*, 1994 S.C.C. (Cr.), Page 629, it has been held that:

"Where the accused after committing the murder of his brother's wife and inflicting injuries on his father and brother had taken the seven years old son of his brother inside the house and afterwards the boy was found dead and the cause of death being asphyxia due to strangulation, no explanation was offered by the accused as to how he has parted with the company of the boy. It was held in the circumstances that the only inference is that the accused alone caused the death of the boy."

In the instant case also, there is evidence adduced to the effect that the deceased was last seen alive in the company of the accused. The accused had not given any explanation as to when he had parted with the company of his wife. The case put forth by the accused is that of total denial. He has not given any explanation. The circumstance which has

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been relied upon by the prosecution in this case have all been established and the chain of links established clearly indicate about the accused being guilty. In my view, the prosecution has proved the offence of murder punishable under Section 302 of IPC against the accused. Therefore, I hold the accused guilty of the offence punishable under Section 302 of the IPC."

9. On these established circumstances, the Trial Court was of the opinion that no other view is possible except that the appellant was responsible for the murder of the deceased.

10. We propose to examine each one of the circumstances relied upon by the Trial Court in the order in which they have been set out.

11. It is alleged that the accused and the deceased left together on a cycle around 6.00 p.m. on 27-7-1990 on their way to the shrine of 'Peeraladevaru' of Bandihatti and subsequently she was not seen alive. There is the evidence of Smt. Sarojamma and Nagamma-PW.2, Honnurappa-PW.1, Nagaraj-PW.5, Nazeersab-PW.9 and Ramadu-PW.10. The evidence of PW.2 Nagamma would disclose that she was a co-worker of the deceased and they always

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used to go together for coolie work to their work spot. She has deposed that on that relevant day, when they were doing their work under the contractor Anjinappa at the work spot, the accused came there around 6.00 p.m. on a bicycle and took the deceased along with him to go over to the shrine of 'Peeraladevaru' of Bandihatti. On the same night at about 8.00 p.m., the father of the deceased PW.1 had called on her and enquired with her about the deceased Anjinamma and she had told or informed him that the accused had taken her along with him. Under the cross-examination, she has stated that the place where they were working was situated at a distance of about 2 to 3 furlongs away from Belagal naka (Octroi Gate). Apart from herself, the other co-worker Sarojamma and the deceased, no other person was present there when the accused took the deceased along with him. PW.1 is the father of the deceased. He has deposed that his daughter deceased Anjinamma used to go for coolie work under a contractor - Anjinappa, who had taken up construction work of a building near the octroi gate of Belagal. She used to go for coolie

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work with the other co-workers Sarojamma and Nagamma-PW.2. She used to leave her house around 8.00 a.m. and was returning to the house from the work spot around 6.30 or 7.00 p.m. in the evening of each day. The deceased used to stand for a while and talk to him for about five minutes while going for work and also while returning to her house from the work, <sup>almost</sup> every day. On that relevant day, in the morning, the deceased while going for her work, she had talked to him and thereafter, he did not see her alive. On that evening, when she did not return from work as usual at 6.30 p.m., he had called on Sarojamma and Nagamma-PW.2 and enquired them about the deceased and on his enquiry, he learnt that the accused had taken the deceased Anjinamma at about 7.00 p.m. along with him saying that they are going to the shrine of 'Peeraladevaru' situated at Bandihatti Village. Thereafter, he visited the hut of the accused but he could **neither** find the accused nor the deceased in the hut. They were both absent. He has further stated that on that night at about 8.15 p.m., his another son-in-law-PW.3 had come to him and on his being

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informed about the non-returning of the deceased to the house, he told him to wait, saying that she might have gone to her relatives house. Even on the next day, when his daughter, the deceased Anjinamma did not return to the house, he searched for her by visiting places like Bandihatti, Kunitana Mazeed and Belagal cross area. The deceased could not be traced and ultimately, he went and lodged a missing complaint <sup>in respect</sup> of his deceased daughter to the police as per Ex.P11. After the lodging of such a complaint to the police, It appears that his son-in-law-PW.3 came and informed to him that the accused had told him about the pushing of the deceased by him into the canal and so he advised him to search for her in the canal area. Accordingly, on the next day, he asked his son Nagaraj-PW.5 and others to go and search for the body of the deceased in the canal area and accordingly, the said Nagaraj-PW.5 and others went searching for the body of the deceased and at about 3.00 p.m., they returned back and informed him that the dead body of the deceased was traced in the canal near Yettinabudihal Village, and that they

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had lodged the body of the deceased on the steps. Thereafter, he went and gave a complaint to the police, which is as per Ex.P1. Under the cross-examination he has stated that the place where the deceased was going for her work was located beyond the Belagal Octroi Gate. The distance from his house to the house of the accused was about four furlongs and in the house of the accused he was staying with his elder brother and mother. It has to be stated that normally when a person is accused of committing murder of another, the fact that the accused and the deceased were last seen alive in the company of each other and the failure of the accused to satisfactorily account for the disappearance of the deceased is considered to be a circumstance of an incriminating character. As discussed above, the evidence of PW.2 Nagamma would clearly indicate that on that relevant day at about 6.00 p.m. the accused came to the work spot of the deceased and took her along with him saying that they would go to the shrine of 'Peeraladevaru' at Bandihatti village. Her evidence would also disclose that subsequently at about 8.00

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p.m., the father of the deceased PW.1 had come <sup>to her</sup> /  
enquiring about the deceased and she had informed  
him about the accused taking the deceased along  
with <sup>him</sup> / on that evening. This evidence of PW.2  
Nagamma finds corroboration from the evidence of  
PW.1, the father of the deceased. The evidence of  
PW.1 would further disclose that the accused and  
the deceased were both found absent from their  
house. Undoubtedly thereafter the deceased was not  
seen alive by any one and it is only the dead body  
of the deceased that was traced in the canal water  
by PW.5 and the same was lodged by him on the  
<sup>by the side of the canal</sup> steps. This circumstance is of vital importance  
and it is of an incriminating character <sup>too</sup> / The  
accused has no explanation to offer for this  
circumstance. In the absence of any proper  
explanation by the accused, this circumstance that  
the deceased was seen last alive in the company of  
the accused would be a circumstance of  
incriminating character.

*B.K.*

11. It was pointed out by the learned counsel for the appellant that the evidence of PW.9 and PW.10 is not convincing and appears to be artificial and hence their evidence is not capable of being believed. Even if the statements of PW.9 and PW.10 are excluded, in our considered **view**, the prosecution case is still not affected on merits in as much as the fact that the accused had gone to the work spot of the deceased on that relevant day in the evening at about 6.00 p.m. and took the deceased along with him to go over to the shrine of 'Peeraladevaru' at Bandhinatti and that the deceased did not return alive to the house thereafter and that only her dead body could be traced in the canal water subsequently, is not affected and clearly spoken to by PW.2, PW.1 and PW.5. Whether the accused had hired the cycle from PW.9 and whether he had been seen by the witness PW.10 going along with the deceased on the cycle cannot be said to be so essential links in the chain of events leading to the conclusion that the appellant had committed the crime. The appellant was last seen with the deceased and his having taken away the

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deceased along with him on the pretext of taking her to the said shrine and thereafter, their not returning house and ultimately the dead body of the deceased being traced in the canal water and the conduct of the appellant in keeping silent are circumstances strong enough to establish his guilt. Further, the evidence of the Doctor PW.11, who held autopsy over the dead body of the deceased on 30-07-1990 between 11.00 a.m. and 12.00 noon would indicate that the death of the deceased was due to asphyxia as a result of drowning. Ex.P5 is the post mortem report issued in that regard by the Doctor-PW.11. He has also testified to the fact that in his opinion the death might have occurred about more than three days prior to the conducting of the post mortem examination by him. This evidence of the Doctor-PW.11 would bring the date of death of the deceased to 27-07-1990. These circumstances would clearly indicate that the deceased had died due to asphyxia as a result of drowning on the day on which the accused had taken the deceased along with him on the pretext of going over to the shrine of Peeraladevaru at Bandihatti.

B.1

12. The next circumstance is the motive for the commission of the offence by the accused. It was urged by the learned counsel for the appellant that there was no strong motive for the appellant to commit the murder of his wife and the one that is alleged by the prosecution besides being not proved was not at all sufficient to commit the murder of his wife. The learned Sessions Judge has accepted the evidence of motive namely, the fact that the accused had developed a strong dis-liking towards the deceased and wanted to have a second marriage with the daughter of one Bheemappa-PW.4. The learned Sessions Judge on the question of motive found as follows:-

"17. The motive for the offence alleged to be against the accused is that the accused developed disliking towards deceased and wanted to have a second marriage. He is said to have illicit connection with the daughter of one Bheemappa. PW.3 has deposed in his evidence before the Court that since the accused had developed illicit connection with Bheemappa's daughter, he used to quarrel and assault his wife Anjinamma. In spite of the advice made, the accused not correct himself and led the happy married life. The said Naikar Bheemappa has been examined before the Court as

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PW.4. According to his evidence, his daughter Eramma had told him that the accused her as if she is his wife. He had taken the accused to task. He has also spoken to the effect that the accused made an offer to marry his daughter even after the marriage of the accused with the deceased Anjinamma and he has refused the said offer. Suggestion put to him that his daughter has not developed illicit intimacy with the accused has been admitted, but it can be seen that no lady who is unmarried will admit about the illicit intimacy with any one and PW.4 being the father of such a lady cannot be expected to admit the existence of such relationship between the accused and his daughter. PW.5 is the son of the complainant. He has also spoken about the illicit intimacy of the accused with Bheemappa's daughter and the illtreatment meted out to his sister in this connection by the accused. All these materials go to show that the accused used to illtreat the deceased and wanted to get rid off. He was having some connection with Bheemappa's daughter and even had made offer to marry her. This can be said to be the motive, which has been established by the prosecution by satisfactory evidence.

13. It has to be stated <sup>here</sup> that the lust for women is a very sensitive matter. Various persons react differently in similar circumstances and we cannot therefore exclude the possibility of the appellant having reacted very sharply against what he considered that the deceased to be <sup>a</sup> hurdle in the

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way of his taking a second wife. PW.4-Bheemappa is the father of one Eramma. He has deposed that the accused as well as his daughter Eramma were both working as collies under the same contractor Anjinappa. **About** five years prior to his evidence in Court, on one occasion his daughter Eramma had told or informed to him that the accused is addressing to her "as if she is his wife". Thereupon, he had taken the accused to task and had also assaulted him having taken exception to it. He has further testified to the fact that the accused had made a proposal to marry his daughter Eramma also but he had declined the said proposal of the accused. Under the cross-examination, he has stated that in the same week in which his daughter had informed to him about the said conduct of the accused, the accused had made a proposal to marry his daughter also. He has however denied the fact that his daughter had illicit intimacy with the accused. Being a father, it is impossible to expect him to admit that the accused had illicit intimacy with his daughter **more so when she was a spinster daughter.** The fact that his daughter had complained to him or informed to him about the

B.6

accused addressing his daughter as if she his wife would clearly go to show that the accused had a strong liking for her and he had in fact made a proposal to PW.4 to marry his daughter. The evidence of PW.1, the father of the deceased would show that after some time of their marriage, the differences had arisen between the accused and the deceased because of the illicit intimacy of the accused with the daughter of PW.4. Under the cross-examination, it is elicited that he had seen the accused and the deceased quarreling and abusing each other. PW.3 has stated that after about some time of their marriage, differences had cropped up between the accused and the deceased in connection with or because of the illicit intimacy of the accused with the daughter of PW.4. He has stated that the accused used to quarrel and assault his wife Anjinamma. Under the cross-examination, he has stated that there was a rumour about the accused having illicit intimacy with the daughter of PW.4. The same is the evidence of PW.5. Under the cross-examination of PW.5, it is brought out that he had seen the accused illtreating his sister

B.16

namely, the deceased in the house. The evidence on record does disclose that all was not well with the accused and the deceased. Their relationship were very much strained. The disliking for each other may not **have/** <sup>**been**</sup> very bitter but then it is too much to say that it could not possibly form a motive for the occurrence. The variation in human nature being so vast, murders known to have been actuated by much lesser motives. Therefore, having regard to the above evidence on record, it cannot be said that the accused had no motive at all to commit the murder of his wife. In our view, this would certainly provide an adequate motive for the murder of his wife, who was considered to be an obstacle in the way of the appellant taking a second wife. In these circumstances, we are satisfied that the finding of the Trial Court on this point is proper and correct.

14. The next piece of evidence relied upon by the prosecution is that the accused made an extra judicial confession before PW.3, the co-brother of the accused. PW.3 has deposed that

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on the 3rd day morning at about 7.00 a.m., the accused visited his house and informed him not to make any search for the deceased as on the first day itself he took her ~~under~~ <sup>on</sup> the pretext of going over to the shrine of Peeraladevaru at Bandihatti, he had pushed her into the canal. The relevant evidence of PW.3 in this regard reads as under:-

"3rd day morning at about 7.00 a.m., accused had come to my house, he informed me not to make any search for Anjinamma as on the 1st day he had taken her (Anjinamma) under pretext of going to Peeraladevaru, Bandhihatti. He has further told me that when Anjinamma did not agree to go to Peerala Devaru on the ground that she had not taken bath, he (accused) had asked her to take bath in the canal. He has further stated that he took Anjinamma to the canal water and had pushed her into the canal. I had told this fact of disclosure made to me and accused to my father-in-law."



15. Under the cross-examination, the witness PW.3 has stated on this point as under:-

I had seen the accused on the 3rd day morning. I had not seen the accused on the 2nd day or 1st day. At the time when accused had been to my house on 3rd day morning, I was alone in my house. I stay in my house along with my wife. My brother's wife was present on that day, but, she died about 2 years back. I had not taken the accused with me and handed over him to the police. I had not gone in search of dead-body. It is not true to say that accused had not made any extra Judicial confession before me and that I am deposing falsely at the instance of my father-in-law and police. After giving information to me, accused had gone to his house."

16. The evidence of PW.1 would disclose that on the next day of his lodging a missing complaint with the police, PW.3 came and informed <sup>him</sup> ~~me~~ about the accused having told him about the pushing of the deceased into the canal water. Thereupon, PW.1 had deputed his son, Nagaraj-PW.5 and others to search for the body of the deceased in the canal area and accordingly <sup>a</sup> search was made and the body of the deceased was found floating in the

P.S.

canal water. Thereafter, PW.1 went and lodged a complaint with the police as per Ex.P1. The contents of the complaint Ex.P1 would substantially corroborate the version of PW.1 in Court. Thus, the evidence of PW.3 that the accused had made extra judicial confession before him would receive ~~the evidence of~~ substantial support from the evidence of PW.1 as well as the FIR-Ex.P1 and also from the fact that the PW.5 found the dead body of the deceased floating in the ~~the evidence of~~ canal water. Thus the evidence of PW.1 and PW.5 corroborates the evidence of PW.3 on this material aspect of the case. This evidence has been accepted by the Trial Court. Therefore, the evidence of PW.3 regarding the extra judicial confession made by the accused before him is natural and believable. The evidence discloses that PW.3 is none other than the co-brother of the accused. Such a confession came to be made by the accused before PW.3 after the missing complaint was lodged by PW.1, obviously for the reason that PW.3 may save him from the situation. There is nothing unnatural in the conduct of the the evidence of accused confessing in that situation before PW.3, who is his co-brother. It is only when such a

B.k

confession was made, the dead body of the deceased **infact** was traced by PW.5. Therefore, in our view the Trial Court was justified in accepting this circumstance. **also.**

17. The last circumstance relied upon by the Trial Court is that after the accused was arrested, he gave information leading to the discovery of the broken bangle pieces from the **PW-15, the Investigating Officer has stated that on 30.7.19** occurrence spot. / he took the investigation of this case from the P.S.I. and on the same day, at about 5.00 p.m., the police constables who were deputed on special duty to trace the accused, produced before him the accused and he arrested the accused after observing the arrest formalities. **and that** / then interrogated the accused, who volunteered with an information to point out the place where the offence was committed. The admissible portion of which was marked as Ex.P9. **also** Thereafter, he / says that the accused led the police and the panchas to the place which was situated on HLC canal, Km.No.87.4. A panchanama was recorded at the spot and broken bangle pieces of blue colour, which was

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lying there namely, MO.10 were seized from the spot. Under the cross-examination, he has stated that the place that was pointed out by the accused was accessible to all. Except this, nothing worth-while has been elicited in the evidence of PW.15 to dis-believe the said fact. It may be that the place that was pointed out by the accused was accessible to all but pursuant to the statement made by the accused, the broken bangle pieces were discovered from the occurrence spot, which was within the exclusive knowledge of the accused. In our view, therefore, this is also an incriminating circumstance against the accused along with the other circumstances.

18. It is no doubt true that the prosecution evidence does suffer from inconsistencies and discrepancies here and there, but that is <sup>a</sup> shortcoming from which no criminal case is free. The main thing to be seen <sup>is</sup> whether those inconsistencies etc. go to the root of the matter or pertinent to insignificant facts. In the instant case, we find on an over all view of the

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matter that the prosecution case as a whole is acceptable and it does not suffer from any such inconsistencies and discrepancies which go to the root of the matter. We need discuss the matter no further and suffice it to say that we find ourselves at one with the reasons given by the Trial Court for recording conviction of the accused.

19. On an over all consideration of the matter, we are of the opinion that the Trial Court had fully adhered to the principles **laid down** by the Hon'ble Supreme Court in various decisions and there is no infirmity in its judgment. The circumstances taken as a whole coupled with the conduct of the accused conclusively establish his guilt.

20. For the reasons stated above, we find no merit in this appeal filed by the appellant-Accused.

B.K.

21. In the result, therefore, the appeal filed by the Appellant-Accused fails and it is accordingly dismissed.

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Sd/-  
JUDGE

Sd/-  
JUDGE

