

IN THE HIGH COURT OF KARNATAKA AT BANGALORE

DATED THIS THE 9<sup>TH</sup> DAY OF JANUARY 2004

PRESENT

THE HON'BLE MR. JUSTICE S.R.BANMURMATH

AND

THE HON'BLE MR. JUSTICE MOHAN SHANTHANAGOWDAR

CRIMINAL APPEAL NO.173 OF 2001

BETWEEN :

Suresh Uruf Soori,  
S/o Gangappa Uruf Gangaiah,  
Major, No.479, 1<sup>st</sup> main road,  
2<sup>nd</sup> cross, Gangondanahalli,  
Bangalore, native of Pura,  
Madabal Hobli,  
Magadi Taluk,  
Bangalore Rural District.

... APPELLANT

(By M/s Ahamed S.N. & Associates, Advs.)

AND :

State of Karnataka,  
By Magadi Police Station,  
Bangalore Rural District.

... RESPONDENT

(By Shri M.Marigowda, Addl.SPP)

THIS CRL.A. IS FILED U/S. 374(1) CR.P.C. BY THE ADVOCATE FOR THE APPELLANT-ACCUSED AGAINST THE JUDGMENT DT.7.12.2000 PASSED BY THE II ADDL. DIST. & SESSIONS JUDGE, BANGALORE RURAL DIST., BANGALORE, IN S.C.NO.21/99, CONVICTING THE APPELLANT FOR THE OFFENCE PUNISHABLE UNDER SECTION 302 OF IPC AND SENTENCING HIM TO UNDERGO IMPRISONMENT FOR LIFE.

THIS CRL.A. COMING ON FOR HEARING THIS DAY, MOHAN SHANTHANAGOWDAR J, DELIVERED THE FOLLOWING:



J U D G M E N T

The appellant being the convicted accused in Sessions case No.21/99 for the offence punishable under Section 302 IPC has assailed the correctness of the said judgment passed by the Court below, in this appeal.

2. On the basis of the complaint lodged by Gangaiah(P.W.1), the father of the deceased Manjunath and the accused, a case in crime No.247/97 was registered in Magadi Police Station for the offence punishable under section 302 IPC. The said complaint discloses that the complainant Gangaiah had two wives viz., Jayamma and Parvathamma(P.W.3). Jayamma, the first wife of P.W.1 is residing at Bangalore along with the children begotten to her including the accused. About 20 years prior to the incident, the complainant Gangaiah married Parvathamma(P.W.3). The deceased was the son of the complainant through his second wife Parvathamma. The complainant, deceased and Parvathamma were residing at Pura village in Magadi Taluk. There used to be frequent quarrels between the accused on the one hand and complainant and his second wife on the other. The accused used to demand money and property frequently from the



complainant and his second wife. About a week prior to the incident in question, the accused had come to Pura village and quarreled with P.W.3 and deceased and evicted them from their house after assaulting them. Because of fear of the accused, P.W.1, P.W.3, and the deceased were residing in adjoining house at Pura village. On 21.11.1997, at about 6.00 A.M., the complainant went to Bangalore for his personal work. He came back to his village from Bangalore at 10.00 P.M., and found his house closed. He did not find his second wife Parvathamma and the deceased in the house. He could not find out the whereabouts of these two persons even on enquiry with the neighbours. P.W.3, after requesting P.Ws 5, 14 & others, went along with them near his agricultural land only to find out his cattle tied to the tree in the said land. He could not find either deceased or P.W.3 in the said land on that night. He, along with P.Ws 5 and 14 came back to the village along with cattle. Next day morning at about 6.00 A.M., i.e., on 22.11.1997, the complainant went again along with P.Ws 5 and 14 in search of the deceased and P.W.3. They found dead body of the deceased Manjunatha under a Honge tree beneath the bush and after searching,



also found Parvathamma(P.W.3) who had fallen unconscious. P.W.3 was brought back to the village after regaining conscious. P.W.3 disclosed in the house that the accused assaulted the deceased with chopper on the previous day, i.e., on 21.11.1997 at about 5.00 P.M. in the evening and after seeing this ghastly incident, P.W.3 fell on the ground unconscious. After getting such information from P.W.3, the complainant went to Magadi Police Station at about 11.00 A.M. on 22.11.1997 and lodged complaint as per Ex.P1. The Asst. Sub Inspector of Police Mohammad Hanaef(P.W.6) registered case in Crime No.247/97 for the offence punishable under Section 302 IPC and sent F.I.R. to the jurisdictional Court. The Inspector of Police Shri Ranganath(P.W.17) after investigation, lodged charge-sheet against the accused for the said offence.

3. During the course of trial, the prosecution in all examined 17 witnesses and got marked 20 exhibits and 7 material objects. After hearing, the trial Court convicted the accused for the offence punishable under Section 302 IPC and sentenced him to undergo life imprisonment. Feeling aggrieved, this appeal is filed by the convicted accused.

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4. The learned Advocate for the appellant contended that the appreciation of evidence on record, particularly the evidence of eye witness P.W.3 by the Court below is not proper and correct in as much as the same is not appreciated in proper perspective which has resulted in miscarriage of justice. That the Court below ought to have disbelieved the presence of P.W.3 on the spot in as much as her conduct of lying on the spot through out the night is unnatural. Further non-disclosure of the incident on the spot by P.W.3 after regaining conscious at about 6.00 A.M. on 22.11.1997 is also unnatural. He further commented upon the recovery of Machhu by the police based on the alleged voluntary statement of accused made before the police officer investigating into another crime, i.e., crime No.63/98 of Chandra Layout Police Station, Bangalore. According to the learned Counsel for the appellant, the motive is also not proved. On such and among other grounds, the learned Counsel for the appellant argued for acquittal of the accused.

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5. On the other hand, Shri M.Marigowda, learned H.C.G.P. argued in support of the judgment of the Court below.

6. The prosecution in order to prove its case mainly relied upon four aspects, namely, a) motive as deposed by P.Ws.1, 3 and 15, b) ocular testimony of eye witness P.W.3, c) circumstantial evidence of P.W.4 of seeing the accused near the scene of offence during relevant time and d) abscondence of the accused.

7. The evidence of P.W.1(complainant) discloses that the accused used to quarrel with the complainant and P.W.3 frequently by demanding property and money. The complainant had paid the entire retirement benefits to the first wife and her children and in that view of the matter, the relationship between the first wife and the second wife was strained. In the cross-examination of P.W.3, the defence suggestions and the answers elicited also disclose that there was enmity between the accused and P.W.1 and P.W.3.

8. The evidence of P.W.1 relating to motive is corroborated by evidence of P.W.15, who is an independent elderly witness aged about 75 years. His

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evidence discloses that he convened Panchayath for settling the dispute between the accused and the complainant. In the said Panchayat, P.W.15 advised the accused not to quarrel with the complainant and his second wife. The evidence of these witnesses amply goes to show that the accused had some ire towards victim who is the only son of P.W.3 and step-mother of the accused. It is well settled that when the prosecution has succeeded in showing the possibility of ire for the accused towards the victim, the inability to further put on record the manner in which such ire would have swelled up in the mind of the offender to such a degree as to impel him to commit the offence cannot be construed as a fatal weakness of the prosecution. It is almost an impossibility for the prosecution to unravel the full dimension of the mental disposition of an offender towards the person whom he offended.

9. Looking to the material on record, we are of the considered opinion that as the victim was the only son born to P.Ws 1 and 3, the accused must have thought that if the victim Manjunatha is eliminated once for all, the accused and his brothers would get the entire property of P.W.1. In our view the

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prosecution is able to prove the motive for accused to commit crime in question.

10. The case of the prosecution is supported by the evidence of P.W.3, the sole eyewitness to the incident in question. P.W.3 is the mother of the deceased and step-mother of the accused. Her evidence discloses that at about 12.00 noon, herself and her deceased son-Manjunath went to the land for grazing cattle. After some time, she went to cut the grass. At about 3.00 or 4.00 P.M., the accused came to the said land with the chopper and he was wandering here and there. The accused asked P.W.3 as to the whereabouts of her husband. P.W.3 feared, as the accused was holding the Machhu and was coming near her. She went little distance away from the deceased. Thereafter, the accused went near the son of P.W.3 i.e., deceased. After hearing shouting cries of her son, she went near her son and saw the accused assaulting her son/deceased with chopper mercilessly on all over the body. After seeing this ghastly incident, P.W.3 ran towards the forest, which is abutting their land. As she could not tolerate the assault on her son, was fainted and fell down unconscious. She regained conscious only on the next

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day morning when her husband and others came to the said land. After taking her to the house, P.W.1 and others asked as to what had happened on the previous day. P.W.3 narrated the incident to P.Ws.1, 5 and 14. Inspite of searching the cross-examination of this witnesses, nothing worth is elicited from her so as to discard her testimony. Certain suggestions made by the defence in the cross-examination are also denied by the accused. Nothing is brought out in the cross-examination of P.W.3, so as to discredit the testimony of P.W.3.

11. The evidence of P.W.3 is further supported by evidence of P.W.4, who is the neighbouring landowner. His evidence discloses that at about 12.00 noon, on the date of incident, P.W.3 and the deceased were in their land, which abuts the land of P.W.4. At about 2.00 P.M., the accused came near the land along with Machhu. He heard the loud cries of the deceased at about 5.00 P.M. The learned Advocate for the appellant submitted that the conduct of P.Ws.3 and 4 is unnatural in as much as P.W.3 could not have fallen unconscious through out the night and that P.W.4 could not have come back to the village

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after hearing the cries of the deceased. Though, the conduct of P.W.3 and 4 appeared to be strange at the first look, after going through the entire material on record, particularly the evidence of the doctor, we find the conduct of P.W.3 is not strange. The doctor (P.W.8) deposed that if any person sees another person who is his nearest relative assaulted, such person may fall unconscious. That there is a chance of falling unconscious for sometime after seeing the incident. Sometime they will regain conscious in short intervals if water is sprinkled on such person's face. After regaining conscious, such person may walk without anybody's assistance. As the deceased was only son to P.W.3, her falling unconscious after seeing the ghastly incident due to mental shock, cannot be said to be unnatural. On the other hand, P.W.3 falling unconscious appears to be probable, as P.W.3 who was the only lady at the land could not have even resisted the assault by the accused. We cannot definitely visualise, what would have been the situation of the lady-P.W.3 on the spot at that point of time.



12. The Apex Court in the judgment reported in AIR 1968 SUPREME COURT PAGE 696 in the case of ANNABAI VS. STATE OF GUJARATH, has held as follows:

"The Court however must bear in mind that witnesses to a serious crime may not react in a normal manner nor do they react uniformly. The horror stricken witnesses at a dastardly crime or an act of egregious nature may react differently. Their course of conduct may not be of ordinary type in the normal circumstances. The Court, therefore, cannot reject their evidence merely because they have behaved or reacted in an unusual manner.

13. The conduct of a person seeing the ghastly incident particularly of a close relative may be different for different persons. One may fall unconscious, one may run away from the scene, or somebody else can intervene in the quarrel. What would be the exact conduct of an eyewitness when such a ghastly incident is seen by him/her cannot definitely be said. Thus, we do not find any reason to suspect the version of P.W.3 version that she had fallen unconscious immediately after seeing the incident.

14. The evidence of P.W.3 is again corroborated by evidence of P.Ws. 5 and 14 apart from P.W.1 regarding her falling unconscious. P.Ws. 5 and 14 are independent and unrelated either to the accused

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or deceased. P.W.5 and 14 have deposed that P.W.1 requested them to come along with him near the spot to find out whereabouts of the deceased as well as P.W.3. When they reached the spot at 6.00 A.M., on 22.11.97, they found P.W.3 fallen in unconscious situation and after awakening her, they took P.W.3 to her house and got the information as to what had happened on the earlier day. The evidence of these witnesses amply support the evidence of P.W.3 to the effect that P.W.3 was found in an unconscious position even in the early morning of 22.11.97. We do not find any reason to disbelieve the evidence of independent witnesses P.W.5 and 14.

15. Looking to the totality of evidence of these witnesses on record, it cannot be doubted that after seeing the incident in question P.W.3 fell unconscious and regained conscious only on the early morning of next day after being awakened by P.W.1 and others. The photographs on record vide Exs.P6 to 11 also disclose ghastly nature of crime. We find nothing unnatural in the conduct of P.W.3 falling unconscious, particularly when she has seen the ghastly assault on her young and the only son aged about 14 years.

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16. The incident in question has taken place at about 5.00 P.M., on 21.11.1997. Inspite of best efforts by the police, the whereabouts of the accused could not be known by the Investigating Officer till 27.4.1998. The accused was arrested on 27.4.1998 in Crime No.63/1998 by the Chandra Layout Police Station, Bangalore, as he was suspected to have committed theft. After getting the information of his arrest in Crime No.63/98, the Investigating Officer in the present crime No.247/97 secured the presence of the accused on 30.4.1998. Thus from 21.11.1997, the accused had been absconding till 27.4.1998. The Prolonged abscondance of the accused is an additional circumstance against the accused, particularly in the absence of any explanation by him in that regard.

17. Looking to the entire material on record, we hold that the trial Court has come to the correct conclusion that the accused has committed offence of murder punishable under Section 302 IPC. On reappraisal of evidence on record, we do not find any reason to interfere with the judgment of conviction and sentence passed by the Court below in



as much as the reasons assigned and conclusion arrived at by the Court below are proper and correct.

18. Hence this appeal is devoid of merits and the same is dismissed.



Sd/-  
JUDGE

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