

**In Re: Gullappa**

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**Court :** Karnataka

**Decided On :** Mar-09-1960

**Reported in :** AIR1961Kant71; AIR1961Mys71; 1961CriLJ400

**Judge :** H. Hombe Gowda and ;B.M. Kalagate, JJ.

**Acts :** [Code of Criminal Procedure \(CrPC\) , 1898](#) - Sections 164, 173, 271, 287 and 342; India Penal Code (IPC), 1860 - Sections 302

**Appeal No. :** Criminal Appeal Nos. 319 and 333 of 1957

**Appellant :** In Re: Gullappa

**Advocate for Def. :** G. Shankara Chetty, Addl. Asst. Adv. General

**Advocate for Pet/Ap. :** Manohar Rao Jagirdar, Adv.

**Judgement :**

**Hombe Gowda, J.**

1. These two appeals arise out of the same judgment. Cr. A. 319/57 is submitted by the appellant through the Superintendent of the Jail in which he is undergoing imprisonment. Cr. A. 333/57 is presented by him through an Advocate.

2. The appellant Gullappa is convicted by the District and Sessions Judge, Raichur, under Section 302 J. P. C. and sentenced to imprisonment for life on the

allegation that he committed the murder of one Suganna, son of Monappa, at about midnight time, on 9-3-1957, while he was sleeping in his threshing ground of 'Makel Benchi Hola' in Sivangi village. It is the case of the prosecution that deceased Suganna had developed criminal intimacy with Malkawa, the wife of the appellant, and that was the motive for the appellant to make up his mind to commit the murder of Suganna while he was sleeping in his threshing field called Makel Benchi Hola in Sivangi village.

Basanna, the younger brother of the deceased, informed the patel of Sivangi village on 9-3-1957 that he learnt from Wadu Hanumantha that his brother Suganna, who was sleeping in his threshing floor of Makel Benchi Hola had been murdered. The Patel proceeded to the field and found Suganna lying dead in a pool of blood. He enquired Basanna as to whether he suspected any person as being responsible for the murder of his brother. Basanna stated to the Patel that he suspected Eachappa and Yadgir Sugappa as being responsible for the murder of his brother.

On the information so conveyed, the Patel wrote a report and sent the same to the Police Station at Ramdurg on 10-3-57. On receipt of the report of the Patel, the Sub-Inspector of Police who was in charge of the Police Station at Ramdurg registered a case for an offence under Section 302 I. P. C. against Bachappa and Sugappa and submitted a First Information Report. He proceeded to Sivangi village. On reaching Makel Benchi field, which is on the way from Ramdurg to Sivangi, he collected Panchayatdars and conducted an inquest over the dead body of Suganna and forwarded the dead body for post mortem examination. He then examined some witnesses during the course of investigation. He came to know that it is the appellant that was responsible for the murder of Suganna. He therefore arrested the appellant on 13-3-1957. It is alleged that the appellant gave information to the Investigating Officer immediately after his arrest and volunteered to produce the axe with which the offence had been committed and also the bloodstained clothes that were on his person at the time of the incident. The Sub-Inspector of Police collected the panchayatdars and proceeded with the appellant to his house.

It is stated by the prosecution, the appellant entered his house and produced M. O. 1 the axe and M. Os. 2 and 3, the clothes belonging to him from out of his house. It is alleged further that though all these articles had been washed, there were still some traces of blood on them and therefore, the Sub-Inspector seized them and took them into his possession for the purpose of further investigation. The Circle Inspector of Police arrived at the place and he took up the further investigation from the Sub-Inspector of Police.

It is also stated that the appellant volunteered to make a confession statement on 14-3-1957. He was, therefore, produced before the Munsiff-Magistrate of Deodurg on 16-3-1957 for the purpose of recording his confession statement. It is alleged that the appellant even after he was duly warned voluntarily made a confession statement before the Magistrate. For reasons which are not disclosed, the investigation was once again transferred to the Sub-Inspector of Police P. W. 10 Parwathreddy.

The material objects viz., the axe and the two clothes belonging to the appellant, which had been seized by the Sub-Inspector of Police on 13-3-57 were submitted to the Magistrate on 20-3-57 and they were dispatched by the Magistrate to the office of the Chemical Examiner on 27-3-57. After completing the investigation the Sub-Inspector of Police P. W. 10 Parwatreddy placed a charge-sheet against the appellant before the First Class Magistrate of Deodurg, the very same Magistrate who had recorded the confession statement of the appellant.

3. The learned Magistrate recorded the evidence of the three eye-witnesses to the incident and after perusing the papers filed under Section 173 of Cr. P. C. and after examining the appellant under Section 342 Cr. P. C., framed a charge for an offence under Section 302 I. P. C. against the appellant. It appears from the record that the learned Magistrate read over and explained the charge to the appellant and called upon him to plead and that the appellant pleaded guilty to the charge and the same was recorded by the learned Magistrate.

After recording this plea of the appellant, the learned Magistrate committed the appellant to take his trial in the Court of Sessions at Raichur. It is in respect of the charge so framed by the learned Magistrate of Deodurg that the appellant was

tried by the learned Sessions Judge, Raichur, in the Sessions Case referred to above.

4. The prosecution examined ten witnesses to prove the case against the appellant. After the conclusion of the trial, the learned Public Prosecutor made a motion to the learned Sessions Judge totreat (1) the confession statement made by the appellant (2) the statement made by the accused while he was examined in the Committal Court under Section 342 Cr. P. C. and (3) the plea of the appellant to the charge that was read over and explained to him by the Committal Magistrate, as evidence against the appellant by transferring these three documents. Accordingly the learned Sessions Judge transferred all these three documents to his file. He examined the appellant with reference to the evidence and circumstances proved against him under Section 342 Cr. P. C. The learned Sessions Judge, after analysing the evidence on record, reached the conclusion that the prosecution had established a clear case of an offence under Section 302 I. P. C. against the appellant and convicted and sentenced him as above stated. These two appeals are directed against the said judgment.

5. Sri Manohar Rao Jagirdhar, the learned counsel, who argued the case for the appellant, contended before us that there was absolutely no creditworthy evidence on record to induce the learned Sessions Judge to find the appellant guilty under Section 302 I. P. C. He urged that the evidence of the alleged eye-witnesses examined by the prosecution, is hopelessly discrepant, highly interested, un credit worthy and the learned Sessions Judge, in the circumstances proved in the case, was not justified in relying upon the same and basing a conviction against the appellant.

He further contended that the motive alleged against the appellant was slender, apart from the fact that there was no reliable evidence to hold that the appellant had any motive to commit the murder. In so far as the recovery of the axe, the dhoti and the half-banyan of the appellant which, according to the prosecution, had some stains of human blood on them, it was urged that the inordinate delay in forwarding these articles to the chemical examiner and the retention of these articles In an unpacked condition by the Sub-Inspector of Police for over a week,

were points against the prosecution and no conclusion can be drawn against the appellant on the evidence placed by the prosecution in the case In this regard.

He further contended that the learned Sessions Judge was not justified in relying upon the confession statement which had not been proved in the case; the plea which had been illegally recorded by the learned Magistrate and the confession purported to have been made by the appellant while he was examined in the Committal Court under Section 342 of the Code of Criminal Procedure as the same had not been properly brought on record under Section 287 of the Code of Criminal Procedure. There is considerable force In every one of these contentions.

(6-9) (His Lordship discussed the evidence of prosecution witnesses and held it unreliable and on the question of motive he agreed with the contention of the defence counsel and proceeded:)

10. It is the case of the prosecution that immediately after his arrest, the appellant expressed his willingness to make a confession statement. It is stated that the Circle Inspector of Police, who came to Sivangi took up the Investigation from P. W. 10 Parwatiwddy, the Inspector of Police, on 14-3-57. It is the Circle Inspector of Police that produced the appellant before the Munsiff-Magistrate with a request to record his confession statement after getting him remanded to judicial custody on 14-3-1957.

For reasons best known to the prosecution, the Circle Inspector of Police who conducted a part of the investigation in the case has not been examined. At any rate, it is stated that the appellant was remanded to the judicial custody by the Munsiff-Magistrate Deodurg on 14-3-1957. The Munsiff-Magistrate secured the appellant to his chambers on 16-3-1957 and after necessary warning, recorded his confession statement. The magistrate who recorded the confession was not examined as a witness for the prosecution. No other witness has been examined in the case to prove that the appellant gave the confession statement and that it is the one that has been brought on record.

The learned Public Prosecutor who conducted the case for the prosecution has, as is clear from the records, filed an application at the commencement of the trial viz.

on 29-7-57, praying the learned Sessions Judge to transfer to his file the confession statement, the plea made by the appellant to the charge which was read over and explained to him by the committal Magistrate and also his statement recorded in the committal Court under Section 342. Cr. P. C.

The learned Sessions Judge allowed the application. But there is nothing on record to indicate that the appellant was heard before the same was allowed or that the learned Advocate who was appearing for the appellant was directed to file the objections for these documents being brought on record as evidence. There is absolutely nothing on record to indicate when these documents were brought on record and whether the appellant had knowledge of the fact that these documents were brought on record to be read as evidence against him later on.

At any rate, while the learned Judge examined the appellant under Section 342 of the Code of Criminal Procedure after the conclusion of the trial, he has questioned him with reference to the confession statement made by him before the Munsiff-Magistrate, Deodurg on 16th of March 1957; the Statement made by him in reply to the charge on 9-5-57 in the committal court and also the plea recorded by the Magistrate in which the appellant confessed his guilt on 9-5-57. It is needless for us to say that the procedure adopted by the learned Judge is highly irregular.

As already stated, the confession statement had not been brought on record and cannot, therefore, be read as evidence against the appellant. The appellant retracted the confession at the earliest possible stage, i.e., at the time when he was questioned about it by the trial Judge, after the conclusion of the trial. The learned Judge was of the opinion that he could base a conviction against the appellant on the retracted confession in view of the fact that the same had been corroborated in material particulars.

We have read the confession statement, though it has not been duly exhibited in the case, and we are of the opinion that the statements made by the appellant in the course of his confession statement have not been corroborated by the other evidence adduced by the prosecution completely. Mr. Shankar's Setty, the Addl. Asst. Advocate-General, who appears for the State, fairly conceded that the confession statement is not corroborated on material particulars except to the

extent that an unnatural death of Suganna has been admitted in the course of his confession statement.

While it is the case of the prosecution that the appellant inflicted the injury with an axe while the deceased and Yellawa (P. W. 7) were sleeping in the threshing floor on the night of 9-3-57, it is clear from the confession statement that Suganna was sleeping all alone when he inflicted the injury. While it is the case of the prosecution that M. O. 1 the bloodstained axe was recovered from the house of the appellant on the information alleged to have been given by him to Parwatreddy, the Sub-Inspector of Police, on 13-3-57, the appellant has stated in his confession that he produced M. O. 1 in the Police Station at Deodurg on 10-3-57.

It is thus clear that there is absolutely no basis for the conclusion that the several statements made by the appellant in his confession statement had been corroborated on material particulars by the other evidence adduced in the case and therefore, a conviction on the retracted confession can be based against the appellant. As already stated, the oral evidence in the case directly contradicts the several statements made by the appellant in the course of his confession statement.

11. The other piece of evidence relied upon by the prosecution is the statement made by the appellant under Section 342 Cr. P. C. when he was examined by the committal Magistrate after the conclusion of the inquiry. It is, no doubt, true that the appellant has stated in unequivocal terms that he committed the murder of Suganna while he was keeping in his threshing floor on the night of the incident as alleged by the prosecution, when he was examined by the committal Magistrate.

We are satisfied that the same cannot be made use of by the prosecution since it has not been brought on record as contemplated by Section 287 Cr. P. C. It is only at the conclusion of the trial that the Public Prosecutor is entitled to make a motion to the Court praying that the statement of the accused which was recorded by the committal Magistrate should be brought on record and read as evidence against the appellant.

There is absolutely nothing on record to indicate that such a motion was made by the Public Prosecutor at the conclusion of the trial and that his prayer was granted and the statement of the appellant was either tendered or read as evidence against the appellant. It is, no doubt, true that a question has been put to the appellant about the statement while he was examined under Section 342 Cr. P. C. but there is nothing to indicate that the statement made by the appellant was read over to him and he was asked whether he admitted such a statement or not. In these circumstances, we feel that the same cannot be availed of by the prosecution as an incriminating circumstance against the appellant and a conviction based on the same.

12. The next and the last piece of evidence relied on by the prosecution is the plea of the appellant recorded by the committal Magistrate when the charge was read over and explained to him on 9-5-57. Sri Shankara Setty, the learned Addl. Asst. Advocate General, fairly conceded that this recording of the plea of the appellant by the committal Magistrate is without jurisdiction and that there is no provision in the Criminal Procedure Code which enables him to do so and as such no conviction can be based on it.

13. It is thus clear that there is absolutely no reliable evidence placed on record by the prosecution to reach the conclusion that it is the appellant that committed the murder of Suganna on the night of 9-3-57. The conviction of the appellant cannot, therefore, be affirmed and is liable to be set aside. In the result, therefore, these two appeals are allowed, the conviction and sentence passed against the appellant are set aside and he is ordered to be set at liberty forthwith.

14. KALAGATE, J. : I agree.

15. Appeals allowed.