

**Siddappa Vs. the State of Karnataka**

**Siddappa Vs. the State of Karnataka**

**SooperKanoon Citation :** [sooperkanoon.com/376179](http://sooperkanoon.com/376179)

**Court :** Karnataka

**Decided On :** Jul-25-1990

**Reported in :** 1991CriLJ458; 1990(2)KarLJ242

**Judge :** B. Jagannatha Hegde and ;D.P. Hiremath, JJ.

**Appeal No. :** Cri. Appeal No. 71/1988

**Appellant :** Siddappa

**Respondent :** The State of Karnataka

**Advocate for Def. :** B.H. Sathish, H.C.G.P.

**Advocate for Pet/Ap. :** N.S. Shivayogimath, Amicus Curiae

**Judgement :**

1. The appellant herein was convicted by the Sessions Court at Raichur of under Section 302 I.P.C. and sentenced to suffer imprisonment for life for committing the murder of his wife in the mid-night on 21-8-1986 on the katte in front of their house at Aidabhavi village in Raichur District by assaulting her with an axe. The case depended solely on the circumstantial evidence, the circumstances being the accused and the deceased sleeping on the katte that night, the deceased crying aloud at midnight time on sustaining severe injuries, and the accused being seen running from that place away and then he approaching the Dalapathi of the village and making confession before him and thereafter the Dalapathi taking the accused

to the Police Station at Lingasugur and producing him in the police Station and the axe and in the clothes stained with blood being seized at the Police Station and the PSI having arrived at the spot on receipt of the report of the Dalapathi. The P.S.I. after seizing the articles from the person of the accused, handed over investigation to the C.P.I. and he having gone to the spot, held inquest over the dead body and found four injuries on it.

2. In this jail appeal, Sri N. S. Shivayogimath has been appointed Amicus Curiae and he has ably assisted us. Out of these circumstances, according to him, the Sessions Court went wrong in the relying on the extra-judicial confession said to have been made before the Dalapathi P.W. 1. Dalapathi, who is appointed under the Karnataka Village Defence Parties Act, 1964, is a Police Officer and, therefore, the confession said to have been made before him by the accused is inadmissible under section 25 of the Evidence Act. The Sessions Court relied on some decisions. The decision relied upon by the defence before it and reported in 1972(1) Criminal Law Journal, page 499 appears to have been wrongly quoted and it does not relate to the Office of a Police Patel. However, Office of the Police Patel having been abolished, Dalapathi cannot become a Police Patel. Before the Sessions Court it was argued on behalf of the State that in view of the decision in the case of Akanman Bora v. State of Assam 1988 Cri LJ 573 : (1987 (3) Crimes 168) it was held that the Village Defence Party member is not a Police Officer and, therefore, the confession made before him is admissible in evidence. We have gone through the decision relied upon by the Sessions Court and also referred to by the learned High Court Government Pleader in this case and we find that the methods of constitution of the Village Defence Party in our State and in the State of Assam are altogether different. In paragraph 13 of the Report the learned Judges of the Gauhati High Court referred to the constitution of the Assam Village Defence Organisation and pointed out that a member of the Village Defence Party means a person enrolled as a member of the Assam Village Defence Organisation in accordance with the provisions of the Act. The Administration and control of the Village Defence Organisation in that State vest in the Chief Controller of the Organisation. A member may be removed from the Organisation or from the Village Defence Party as the case may be by the Chief Controller or the District Village Defence Officer. Therefore, it is necessary to note this cardinal distinction

in the matter of appointment, control and removal of a member of the Village Defence Organisation under Karnataka Act No. 34 of 1964.

3. In this State, a member of the Village Defence Party or a Dalapathi who is picked up from one of the members of the Village Defence Party is constituted and controlled entirely by the officers of the State Police Force. Under Section 5 of the Act, the Inspector General of Police shall be the head of all the defence parties in the State and shall exercise chief control over them. At the District level, the Superintendent of police shall be the head of the Village Defence Party in the area for which he is appointed as Superintendent. The administration of Village Defence Parties in any area shall, subject to general control and direction of the Deputy Inspector General of Police having jurisdiction over the village, be vested in the Superintendent. The Superintendent under section 8 of the Act has the power to appoint any person as a member of the Village Defence Party. He shall issue a certificate to such member on his appointment as such. Under Section 9, for every Village Defence Party, the Superintendent shall appoint one of his members as Dalapathi whose powers and duties shall be such as may be prescribed (by the Rules). It is pertinent to note that under Section 10, for the direction and supervision of the Village Defence Party within the local limits of a Police Station, the Superintendent may appoint a Police Officer not below the rank of a Head Constable to be a Station Village Defence Officer. Thus, at all levels, either the members of the Village Defence Party or the Dalapathi who is also one of such members are controlled by none else than the Police Officers of the State. Under Section 13 every member of the Village Defence Party shall have privileges and protection as Police Officer. No prosecution shall be instituted against a member of the Village Defence Party except with the previous sanction of the Superintendent. The rules framed under the Act further amplify the position and status of the Dalapathi. R. 13 provides for appointment of Dalapathi and R. 16 refers to his functions which are analogous to that of a Police Officer. Under R. 16(e), subject to the orders of the Superintendent, the Dalapathi shall perform all the duties prescribed by the Act and the Rules. Under R. 16-I, claim, honorarium and remuneration payable to the Dalapathi shall be supported by a certificate issued by the Assistant or Deputy Superintendent of Police having jurisdiction over the area for which Dalapathi is appointed and be counter-signed by the

Superintendent of the Districts under R. 14. If any Dalapathi or a member is found unfit to discharge his duties and is found to be indisciplined, he may be removed by the Superintendent by a written order recording his reasons therefor. However, the constitutional guarantee under Art. 311 of the Constitution is assured.

4. These various provisions under the Act and the Rules clearly indicate that at every level, the Dalapathi is controlled by one or the other of the Police Officers enumerated above and, therefore, it is inconceivable that a Dalapathi becomes totally independent of the Police Organisation in the State. It appears, after the abolition of the Office of the Police Patil or Village Patel as the case may be in some of the areas in this State, the Village Defence Party came into existence to assist the police in the maintenance of law and order and also in the matter of reporting of the offences taking place in villages.

5. Earlier, this Court has occasion to consider the status and position of the Dalapathi under the Act. In Criminal Appeal No. 380/1983 (Rama Venkata Naik v. State of Karnataka D.D. 4-6-1986) relying on an earlier decision in Criminal Appeal No. 244/1983 (Hanumanthappa v. State of Karnataka D.D. 3-2-1986), a Division Bench of this Court held that according to the provisions of the Karnataka Village Defence Parties Act and the Rules framed thereunder, he has virtually to discharge the duties of a Police Officer and, therefore, the confession statement made before him is inadmissible in evidence under Section 25 of the Evidence Act. We are respectfully in agreement with this view taken earlier by this Court and analogy drawn by the Sessions Court from the Village Defence Parties Act of the State of Assam is not apposite. We, therefore, find that the extra-judicial confession relied upon by the prosecution made to Dalapathi P.W. 1 in this case cannot be considered as extra-judicial confession but confession made to a Police Officer and hit by Section 25 of the Evidence Act. Even then, as held by the Supreme Court and referred to by this Court in similar cases where the accused himself gives the first information, the fact of his giving the information is admissible against him as evidence of his conduct under section 8 of the Evidence Act. If the information is non-confessional it is admissible against the accused under section 21 of the Evidence Act and is relevant. But, a confessional first information report by the accused to a Police Officer cannot be used against him in

view Section 25 of the Evidence Act (Aghnoo Nagesia v. State of Bihar, : 1966 CriLJ100 .

6. It is in the evidence of P.W. 1 that during that night, the accused went to his house, wake him up and called him to the outhouse and when he went there, the accused told him that he had cut and killed his wife when she was sleeping on the katta in front of his house. When asked as to why he had killed her, he told him that he had cut and killed her as he became suspicious about her chastity. At that time the accused was having an axe in his hands and it was stained with blood. There were also blood-stains on his clothes. He pacified him, took him inside his house and made him sleep. After he fell asleep, he went to the accused's house during the same night and saw the dead body of his wife and found that what the accused had told him was true. Her face had become full of blood. She had sustained injuries on the neck, on the head and on the chin. The children of the accused, Sabevva and Shivappa were standing weeping. They also told him that their father had cut her and had gone. He returned home and in the morning along with the accused he went to Lingasugur Police Station and produced him before the P.S.I. It was he who filed the complaint as per exhibit P-1. In this exhibit P-1, he has narrated what all happened that night including the confession statement made by the accused. In our view, this confessional statement has to be eschewed as inadmissible under section 25 of the Evidence Act. But, the accused approaching P.W. 1 with blood-stained axe and the blood-stained clothes is clearly admissible as evidence of his conduct under section 8 of the Evidence Act. It now remains to be seen if there are other reliable and acceptable circumstances to connect the accused with the murder of the deceased.

7. That his wife did die homicidal death is not in dispute and unchallenged. The medical evidence given by P.W. 2 the Medical Officer of the Primary Health Unit at Gurugunta is that he saw two transverse incised wounds on the body of the deceased and a lacerated wound over anterior aspect of the left clavicle at the junction of medial 2/3 and lateral 1/3 of the clavicle with underlying fracture of the bone. The time of death could be 12 to 24 hours prior to autopsy which was conducted at 4.45 p.m. on 22-8-1986. The deceased died due to shock as a result of haemorrhage from the big vessels of the injured and all of them were sufficient

to cause her death. That the body of the deceased was lying on the katta of the house of the accused is also not in dispute. P.W. 3 gave certain clarifications sought by the Investigating Officer. M.O. 1-axe with its sharp edge could cause the transverse incised wounds whereas the one at the clavicle could have been caused by the butt end of the axe which is blunt. Because the doctor who had conducted autopsy had gone for training, clarification was given by this witness. Thus, there is material to show that M.O. 1 could have been used in inflicting these fatal injuries on the deceased.

8. P.W. 4 Sabavva, 13 years of age, was administered oath by the Court making note that she was able to understand the significance and importance of oath. According to her, herself, her father the accused, her deceased mother and her younger brothers had slept on the katta in front of their house. Paramanna, the youngest of the children was sleeping by the side of his mother. He was still a sucking baby. They were using quilt or kaudi to cover themselves which was identified as M.O. 4. At about mid-night time, this child started crying. She got up and told her mother to feed him with breast milk. Her mother did not wake up. When she touched her mother, she felt coldness on her hand. She had sustained injuries on the face and the neck and she saw her father running with axe in his hand. She identifies M.O. 1 which was taken away by her father and she further testifies axe that it was being kept by his side by her father while sleeping at night. She bawled out seeing her mother with those injuries dead. Her elder brother came down from the roof and thereafter Ayyanagowda, P.W. 1, also came there whom they told what they had seen. She further states that 2 or 3 days before her father and mother were quarrelling. In the cross-examination, she stated that her father was seen running towards Agasi and admitted that she did not state before police about her father running from that place. However, she stated that she saw him at a distance of 3 or 4 houses from theirs.

9. The evidence of P.W. 5 Shivappa, a son of the deceased and 14 years of age, is very clinching as he was sleeping on the roof of the house and when he heard his sister and his younger brother crying he woke up and saw his father running away with the axe M.O. 1. He came down the roof and saw his mother dead and there was moon-light that night. Some neighbours also collected on hearing their

cries and thereafter Iyyanagowda P.W. 1 came there, but they did not tell him anything. He again confirmed in the cross-examination that he saw his father running away with the axe in his hand.

10. Sonavva P.W. 6, who is the mother of the accused, was staying in the house of her another son Mukkanna. When she went to the spot on hearing the news of the murder of the deceased, P.Ws. 4 and 5 told her that her father had hit their mother and had gone. According to her, the accused and his wife were quarrelling, but she did not ask the reasons therefor. In our view, the evidence of P.Ws. 4 and 5, the two children of the deceased and the accused is quite reliable and there is no reason for these witnesses to implicate their father by stating that the moment they got up they saw the accused running away holding the axe M.O. 1. The evidence with regard to the in cordiality between the deceased and the accused is equally reliable.

11. That the accused was taken to the Police Station with the bloodstained clothes on his person and the bloodstained axe finds support in the evidence of P.W. 9, the panch witness, who witnessed the seizure of the articles under Exhibit P-8. There are absolutely no reasons for discarding the evidence of P.W. 1, who had taken the accused in that condition and produced at the Police Station. It is as though this witness treated the accused with some consideration when he pacified him in that agitated moment till daybreak. The report of the serologist is not however available or was not produced during trial. But, in the chemical examiner's report, he states that these articles were stained with blood. The learned Amicus Curiae argued that there is no evidence to show that this was human blood and muchless that of the blood group of the deceased. The argument could have had sufficient force in the event of there being no other circumstantial evidence to connect the accused with this crime. That these articles were stained with blood is only an additional link in the chain of circumstances which is provided by P.Ws. 4 and 5 and P.W. 1 and also in the conduct of the accused himself under section 8 of the Evidence Act. In that view of the matter, we find that the Court below was justified in finding the accused guilty as these circumstances have conclusively established that it was the accused and the accused alone who had committed the murder of the deceased.

12. We find no reasons to come to a different conclusion. The appeal, therefore, has to be dismissed and is dismissed. The conviction and sentence passed by the Sessions Court are confirmed.

13. Appeal dismissed.

**SooperKanoon - India's Premier Online Legal Search - [sooperkanoon.com](http://sooperkanoon.com)**