

**Balappa Vs. State of Karnataka**

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**SooperKanoon Citation :** [sooperkanoon.com/387196](http://sooperkanoon.com/387196)

**Court :** Karnataka

**Decided On :** Nov-10-2003

**Reported in :** ILR2004KAR586; 2004(2)KarLJ285

**Judge :** S.R. Bannurmath and ;Mohan Shantanagoudar, JJ.

**Acts :** [Indian Penal Code \(IPC\), 1860](#) - Sections 203 and 302; [Code of Criminal Procedure \(CrPC\), 1973](#) - Sections 313; [Evidence Act, 1872](#) - Sections 27

**Appeal No. :** Cr.A.No. 1280/2001

**Appellant :** Balappa

**Respondent :** State of Karnataka

**Advocate for Def. :** H.V. Ramesh, HCGP

**Advocate for Pet/Ap. :** Anand Navalgimath, Amicus Curiae, Adv.

**Disposition :** Appeal dismissed

**Judgement :**

**Bannurmath, J.**

1. This appeal is filed challenging the judgment of conviction dated 29th June 2001 passed by the learned Sessions Judge, Koppal, in Session Case No. 59/2000 finding the accused/appellant guilty of the offences punishable under Sections 302

and 203 IPC., and sentencing him to undergo imprisonment for life and fine of Rs. 100/- for the offence under Section 302 IPC., and simple imprisonment for one month for the offence under Section 203 IPC.

The brief facts as per the prosecution case are as follows: -

2. The accused Balappa was the husband of deceased Devamma, who was the daughter of Mahadevappa P.W.1. It is not in dispute that both Mahadevappa on one hand and the deceased on the other were staying in Kustagi though in different houses at a short distance of a furlong or so. According to the prosecution the accused was of suspicious mind and was in fact suspecting the fidelity of his wife.

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3. During the investigation, P.W. 13 has recorded the statements of various witnesses including P.Ws. 1 and 2 who have seen the accused last time with the deceased when alive. It appears during the interrogation, the accused made a voluntary statement and on the basis of which the murder weapon - axe - M.O.6, blood stained shirt - M.O. 1 and dhoti - M.O.2 of accused have been discovered, the same have been seized under mahazars, the body is subjected to autopsy and the clothes are sent to the Forensic Science Laboratory. On receipt of the necessary reports and on completion of the investigation, charge sheet is filed against the accused for the offence punishable under Sections 302 and 203 IPC.

4. On committal as the accused denied the charges and claimed to be tried, he is tried in Session Case No. 59/2000. In order to establish the guilt of the accused, the prosecution in all has examined 15 witnesses, got marked Exs.P. 1 to 23 and M.Os. 1 to 6.

5. The accused when questioned under Section 313 Cr.P.C., has denied the prosecution case in its entirety and neither has he offered any explanation as to how his wife met with brutal murder nor his whereabouts in and around that time. Taking into consideration all the material evidence led before the Court, the trial Court found the accused guilty of the offence punishable under Sections 302 and 203 IPC., and sentenced him accordingly. Hence, the present appeal.

As the appeal has been filed by the appellant/accused through jail as an indigent person, this Court had requested Sri Anand Navalgimath, the learned Counsel to assist the Court as Amicus Curiae.

6. We have heard the learned Amicus Curiae and Sri Ramesh, learned High Court Government Pleader.

7. The entire case of the prosecution revolves around the circumstantial evidence. The links in the chain of circumstances according to the prosecution are:

(i) Motive;

(ii) Last seen together;

(iii) False explanation to hide the crime;

(iv) Recovery of incriminating articles at the instance of the accused and

(v) Conduct of the accused.

In so far as the motive is concerned, P.W. 1. the father of the deceased has cogently stated as to the conduct of the accused in suspecting the fidelity of his daughter/wife of the accused. On perusal of the evidence of P.W. 1 it is very apparent that he is a small agriculturist and practically has no malice against the accused. To corroborate his evidence though the prosecution has examined P.W. 10 Mudukappa, who is alleged to have given Rs. 10/- to the deceased few days prior at Gudadur Gaddeyyaswamy Jatra, which is suspected by accused otherwise as he has not supported the prosecution, has been treated as hostile and inspite of cross-examination, nothing material in support of the prosecution case has been brought out.

7. The next link in the chain of circumstances is more important as it pertains to the accused and the deceased when alive seen together for the last time when the deceased was alive. In this regard again the evidence of P.W. 1 is very clear. According to him his house is hardly a furlong away from the house of the accused and the deceased. According to him because of his old age, the deceased daughter used to sleep some time in his house and some time in her husband's house. According to this witness on the previous night of the incident, when the deceased was infact in his house, in the morning it was the accused, who came there and took her out on the pretext of bringing timber from the nearby place and according to this witness thereafter both the deceased (alive) and the accused left his house. The fact of accused and deceased were seen going together in the morning is also established during the evidence of P.W.2 - Kanteppa. According to this witness while he was returning from his land at about 6.30 a.m after staying in the land overnight for irrigating his crop on the National Highway Road, he came across the accused carrying an axe and the deceased. He has identified the place where he saw the accused and deceased as near the land of Hullappa which is the exact location where not only the dead body of Devamma is found but also there are signs of cutting the Nilgiri tree. This evidence of P.W. 2 as to his seeing the accused with the deceased last has remained unshaken. In view of this evidence it was for the accused to explain as to when he parted the company of his wife. In this regard from the evidence of the Investigating Officer, we find that infact the accused himself has approached the Kustagi Police Station at about 9.30 a.m. and has given the report of his wife being kidnapped by some truck drivers identified by him as Sikh persons. It is this complaint of the accused which has infact set the investigation in motion. However, what is to be noted at this stage itself is that inspite of such giving complaint of alleged kidnapping of his wife during the statements under Section 313 Cr.P.C., the accused has assumed total silence. The fact that the accused went to the house of P.W. 1, met and took his wife, and together left the house at about 6.30 a.m. for the purpose of cutting the Nilgiri wood remains an undisputed fact and by itself corroborates the version of P.Ws. 1 and 2. If that is so, it was for the accused to explain under what circumstances or where he parted his company with the wife. Nodoubt it is true that the accused by his conduct has tried to project that his wife was kidnapped by

some others. But the investigation and the evidence of the PSI clearly shows that unfortunately for the accused, he himself has lead the Investigating Officer while trying to point out the place from where his wife is alleged to have been kidnapped to the very location the dead body is discovered.

8. At this stage itself we would like to mention that the death of Devamma being homicidal in nature is well established and even not disputed by the accused. Even otherwise as the autopsy report and the evidence of the doctor who conducted the same viz., P.W.9 Doctor Mohammed Abdul Salam shows that the dead body of Devamma had sustained nearly ten incised injuries more concentrated on the face and head region. According to this doctor the injuries were of ante marten in nature and the cause of death was due to shock as a result of hemorrhage. This Doctor has clearly opined that the time of death was probably eight to ten hours prior to his conducting autopsy. As the doctor has conducted the autopsy between 4.15 and 6.10 to 6.12 hours, time goes back to early morning of 4 to 10 a.m. of the day which fits itself properly with the time as projected by the prosecution somewhere after 6.30 am. and before 11.00 a.m. when the body is discovered. This doctor has also given opinion as to the possibility of M. 0.6 being the murderous weapon. The suggestions put to this witness viz., that if a person is assaulted with a blunt iron patti or assaulted with kada worn by Sikh persons - Sardarji, he has denied the same and has said that as the injuries were incised in nature, flat or blunt objects cannot cause the same and it is only the heavy sharp edged weapon like axe which could cause the injuries. As we have already noted the fact that the accused carried an axe similar to M.O.6 is not much in dispute. These facts added to the discovery of not only the axe but also blood stained clothes of the accused hidden near the place of incident itself is the last nail in his coffin. This fact of discovery squarely falls under Section 27 of the Evidence Act. No doubt C. E. report is not sent. However the F. S. L. report clearly indicates presence of human blood on all these articles.

9. What is more troubling us, is the silence of the accused inspite of his earlier stand of his wife being kidnapped by somebody else. In this regard as observed by the Apex Court in the case DANIDAR v. STATE OF KARNATAKA, 2000 SCC (Criminal) 90 when the prosecution has established accused last seen together

with the deceased, it is for the accused to explain as to when and where he parted the company of the deceased either in his 313 statement or by any other evidence and if the accused fails to give any explanation or offers an explanation which is found to be untrue, then this conduct of the accused provides an additional link in the chain of circumstances to make it complete.

10. It is to be noted that as observed by the Apex Court in the case *RATTAN SINGH v. STATE OF HP*, 1997 SCC (Cri) 525 examination of the accused under Section 313 Cr.P.C., answers given by the accused during such examination have a practical utility for criminal courts. Apart from affording an opportunity to the accused to explain the incriminating circumstances, the answers would also help the Court in appreciating the entire evidence adduced in the Court. If in spite of there being some material to indicate the accused was last seen together with the deceased is available and if there is no explanation or any false explanation is offered by the accused, then in our view, as is the present case that provides the last missing link so as to make the chain of circumstances complete.

Having given our anxious considerations to the entire evidence and even after re-appreciating the same, we do not find that the appreciation of evidence and conclusions arrived at by the trial Court can be either said to be illegal or perverse. In view of the same, we find no merit in the appeal and hence the same is liable to be dismissed.

In the result for the reasons stated above, the appeal fails and the same is dismissed.

In view of the able assistance rendered by the learned Amicus Curiae, we direct the Office to pay an honorarium of Rs. 2000/= to the learned Amicus Curiae.

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