

**State Vs. Yenkappa**

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**SooperKanoon Citation :** [sooperkanoon.com/387939](http://sooperkanoon.com/387939)

**Court :** Karnataka

**Decided On :** Jun-24-2003

**Reported in :** 2003CriLJ3558

**Judge :** M.F. Saldanha and ;M.S. Rajendra Prasad, JJ.

**Acts :** [Indian Penal Code \(IPC\), 1860](#) - Sections 300 and 304; [Evidence Act, 1872](#) - Sections 27 and 118

**Appeal No. :** Criminal Appeal No. 239 of 1998

**Appellant :** State

**Respondent :** Yenkappa

**Advocate for Def. :** R.B. Deshpande, Adv.

**Advocate for Pet/Ap. :** G. Bhavani Singh, Addl. S.P.P.

**Disposition :** Appeal allowed

**Judgement :**

**M.S. Rajendra Prasad, J.**

1. This criminal appeal, by the State, filed under Section 378, Cr.P.C., is directed against the judgment dated 9-12-1997, passed in SC No. 20/ 1995, on the file of the Principal Sessions Judge, Gulbarga, wherein the learned single Judge had

acquitted the accused-respondent for an offence under Section 302, IPC, questioning the legality and validity of the said judgment.

2. We have heard the arguments of Sri Bhavani Singh, the learned Addl. SPP appearing on behalf of the State and Sri R. B. Deshpande, learned Advocate on behalf of the respondent.

3. The parties in the course of this judgment are referred to with reference to their ranking as held in the trial Court for the purpose of convenience.

4. Sri Bhavani Singh, learned Addl. SPP, strenuously contended that the material on record clearly shows that the Judgment of the trial Court is illegal and invalid. The prosecution had successfully proved the guilt of the accused for the said offence and the learned single Judge without proper appreciation of the evidence on record had arrived at a wrong conclusion and the same has resulted in miscarriage of justice. Hence, the learned Addl. SPP prayed for allowing the appeal.

5. On the contrary, Sri R. B. Deshpande, the learned counsel for the respondent strenuously contended that the material on record clearly shows that the Judgment of the trial Court impugned under the appeal is legal and valid. The prosecution had utterly failed to bring home the guilt of the accused for the said offence and the learned Sessions Judge had properly appreciated the evidence on record and had acquitted the accused. The alleged eye-witnesses are two adolescents and both of them are related to the deceased and the incident in question, even according to the prosecution, had taken place during the dead of night and having regard to the age of the said adolescents it cannot be said that they would have witnessed the incident, so as to narrate the same before the Court. The learned counsel further contended that, moreover, P.W. 1, in the course of evidence has admitted that he had been tutored by the Police to depose before the Court. This admission itself is sufficient to discard the whole case of the prosecution. The learned counsel also contended that the incident in question is stated to have taken place during the dead of night and patently, there was no facility of electricity in the house of the accused. Such being the case, it becomes hard to believe that these adolescents would have witnessed the incident in question. The appeal is

devoid of merits and the appellant has not made out a ground to allow the appeal. However, the learned counsel also submitted an alternative argument to the effect that the incident in question is alleged to have been preceded by a verbal exchange between the husband and wife. Even, according to the prosecution, the accused was suspecting the fidelity of his wife and on the relevant night there had been a verbal exchange between the accused and his wife and the same might have provoked the accused in this regard. There is absolutely no material to show that there had been any intention or knowledge on the part of the accused to do away with the life of his wife. The learned counsel, however, vehemently contended that the prosecution has utterly failed to bring home the guilt of the accused for the offence under Section 302, IPC. Hence, the learned counsel prayed for dismissal of the appeal.

6. We have carefully perused the material on record and have given our anxious thoughts over the rival contentions raised at the Bar.

7. From the material on record, it is seen that the entire case of the prosecution lies in three facets. Firstly, the prosecution contends that the deceased Smt. Basamma had died a homicidal death. To prove this aspect the prosecution relied upon the complaint lodged by P.W.-9, setting the criminal law in motion and this document makes a mention that there had been injuries over the neck and chin of Smt. Basamma. It is pertinent to note that this document had come into existence within a few hours of the alleged incident and there is no dispute with regard to the fact that there had been an injury over Smt. Basamma. In addition, it is necessary to mention that Ex. P-1 inquest report drawn on 17-10-1994 also makes a specific mention with regard to the injuries on Smt. Basamma. Ex. P-6, Post Mortem report, makes a specific mention on these external injuries noticed by the Doctor, who conducted the autopsy over the dead body of Smt. Basamma Ext. P-6 also makes a mention that the deceased Smt. Basamma had died due to shock and haemorrhage, as a result of multiple injuries. It is not disputed that the Doctor, who conducted the autopsy, had died and the prosecution has examined P.W.8, who had been a colleague and he has deposed totally supporting the case of the prosecution and on par with the contents of Ex. P-6. Though this witness has been cross-examined, nothing is elicited so as to discard the evidence of this witness.

8. In addition, the prosecution has also placed on record the oral evidence of P.Ws.4 and 9, who are totally independent witnesses and their evidence clearly goes to show that on the relevant night when they had gone to the house of the accused they found the dead body of Smt. Basamma lying in the kitchen with bleeding injuries. At this stage, it is also necessary to mention that there has been sufficient material placed before the Court to show that Smt. Basamma had died homicidal death. Moreover, there is no serious cross-examination of any of these witnesses challenging the said documentary and oral evidence on the part of the accused. The learned Sessions Judge after appreciation of evidence on record had arrived at the right conclusion in this behalf, nothing is demonstrated, to record a finding differing from that of the learned Sessions Judge.

9. Secondly, the prosecution has let in evidence with regard to the incident in question. Initially, it should be mentioned that P.Ws.1 and 2, who are the adolescent children of the accused and the deceased, are stated to be the eye-witness to the incident. It should be mentioned that it is not in dispute that the accused and the deceased along with P.Ws. 1 and 2 had been staying together on the relevant night. The evidence of P.Ws. 1 and 2 shows that on the relevant night after supper all of them slept in the house. Both the children woke up on hearing the verbal quarrel i.e. that of the accused and the deceased. The accused had been quarrelling with his wife-deceased and was abusing her in filthy language on the ground that she had illicit intimacy with some persons. In the course of the quarrel, the accused had assaulted the deceased by means of M.O.-1. Consequently, Smt. Basamma sustained serious bodily injuries and died on the spot. This incident had been witnessed by P.Ws.1 and 2 as seen from their evidence. Later on, when the accused had opened the door P.W. 1 had gone out and informed P.W.4 about the incident, who in turn had informed P.W.-9 Parvatha Reddy and these two witnesses, in particular, had reached the house of the accused and saw lying of the dead body of Smt. Basamma with injuries. So far as witnessing of the incident is concerned, it is P.Ws.1 and 2 who have deposed in detail with regard to the overt acts of the accused.

10. At this stage, it is necessary to mention that the learned counsel for the respondent strenuously contended that P.Ws. 1 and 2 are child witnesses and

there has been some evidence to show that they had been tutored to depose before the Court falsely implicating the accused. It is necessary to mention that the settled law in this regard is to the effect that just because the witness happens to be a child witness, the evidence cannot be rejected in toto on that score. However, the Court should be cautious enough to see that an innocent is not punished solely acting upon the testimony of child witness, as the children are very easily susceptible for tutoring.

11. Possibly on the relevant night when the PWs. 1 and 2 were sleeping in the house along with their parents and they had woken up after hearing the quarrel between the accused and the deceased. The presence of P.Ws. 1 and 2 in the house is a normal situation and their witnessing the incident cannot be stated to be in any way unusual or unnatural. On a careful perusal of the evidence of these witnesses, in the opinion of the Court, their evidence inspires confidence and will have to be acted upon. It is also pertinent to mention that on the accused opening the door, P.W.1 had gone out and fetched P.W.-4. He also speaks of the presence of the accused at the spot along with P.Ws. 1 and 2. Here again it should be mentioned that the learned counsel for the accused has advanced another interesting argument to the effect that if really the accused had murdered his wife, the normal human conduct would have been to take to his heels. In this connection, it is necessary to mention that it is a settled principle of law that the attitude and behaviour of each person varies. On that score and in view of the nature and quality of the evidence placed on record by the prosecution and having regard to the facts and circumstances of the case, in our considered view, the contention of the learned counsel for the accused in this regard does not stand to reason. The cumulative effect of evidence of the P.Ws.1 and 2 clearly goes to show that at the relevant time the accused had assaulted his wife by M.O.-1. It is also necessary to mention that the accused was found very much at the spot and when P.W.4 arrived and he tried to escape, he had been chased, he had been nabbed and tied to the electric pole. The evidence of P.Ws.1 and 2, in our opinion, will have to be acted upon and the learned Sessions Judge had not appreciated the evidence on record in the right perspective.

12. From the material on record, it is also seen that the oral evidence of P.Ws.4 and 9 goes to show that both of them reached the spot and saw lying of the dead body of Smt. Basamma with injuries. They have also spoken to the presence of the accused at the spot. From the material on record, it is seen that these aspects have not been seriously disputed by the accused and though these witnesses have been cross-examined at length, nothing is elicited so as to discard their evidence. The cumulative effect of these witnesses partake (sic) the nature of res gestae evidence, which also adds to the case of the prosecution. Here again, it should be mentioned that the learned Sessions Judge had not appreciated the evidence on record in the right perspective.

13. The cumulative effect of the evidence of P.Ws.1, 2, 4 and 9, in our opinion, is sufficient to hold that the deceased Smt. Basamma died on account of attack by the accused with M.O.1 and accused had been responsible for the incident in question. The evidence placed on record, in our opinion, is sufficient to spell out a case against the accused with regard to the incident in question. The learned Sessions Judge had not appreciated the evidence on record in this behalf in the right perspective and, in our opinion, the same has led for miscarriage of justice, so as to call for interference.

14. From the material on record, it is seen that the prosecution also relies upon another important circumstance that is with regard to the recovery of M.O.1 at the instance of the accused. In this regard, the prosecution has relied upon Ex. P-3 -- recovery mahazar and oral evidence of P.W.3 and the I.O. At the outset, it should be mentioned that oral evidence of P.W.3 is not clear, cogent and convincing. In addition, it is necessary to mention that Ex. P-3 shows that M.O.1 is stated to have been recovered at the instance of the accused from the dunghill and boundaries of this place clearly disclose that it was not an isolated place and there is no evidence to show that the accused alone had knowledge of this aspect. Moreover, there is no material to show that the members of the public had no access to that place. In the light of this, oral evidence of I.O. goes to the backdrop. In view of the material on record, we have no hesitation to hold that the prosecution has not been able to place acceptable material in this regard and the same cannot be made use of for the purpose of spelling out a case in favour of the prosecution.

15. Discussion, supra, clearly goes to show that Smt. Basamma, had died a homicidal death, consequent upon the injuries sustained by her in the attack by the accused. It is necessary to mention that the learned counsel for the accused had also canvassed an interesting argument that there was no intention or knowledge on the part of the accused in doing away with the life of the deceased and the incident in question is stated to have taken place on account of grave and sudden provocation.

16. On a careful perusal of the record, the evidence of P.W. 1, in particular, goes to show that there had been a verbal quarrel between the accused and the deceased on the relevant night immediately earlier to the incident. It is to be borne in mind that the quarrelling between the husband and wife is a normal universal phenomenon and the Courts should not view this aspect seriously unless there is some material suggesting the contrary. The material on record clearly shows that the accused had no intention or knowledge to commit murder of his wife and the incident had occurred on account of quarrel of husband and wife and that too, on accused using abusive language and implicating Smt. Basamma with adultery. It is quite natural that on hearing such imputations anybody would get wild with the person making such imputations and no wonder that Smt. Basamma had retorted and this must have provoked the accused to commit the said offence.

17. In view of the nature and quality of evidence placed on record by the prosecution, in our opinion, the prosecution has not been able to prove that the accused intentionally murdered his wife. However, the case on hand would fall within the provisions of Section 304(ii), I.P.C., and the case on hand would squarely fall within an exception to Section 300, I.P.C. The learned Sessions Judge had not appreciated the evidence on record in the light of the settled principle of law and in our opinion, the same has resulted in miscarriage of justice. Taking an overall view of the matter, in our considered view, it would meet the ends of justice, if the accused is convicted for an offence under Section 304(ii), I.P.C.

18. Now, coming to the question of sentence, the learned counsel for the accused has submitted that P.Ws. 1 and 2 being adolescent children have lost their mother

in the incident and if the accused is sent to Jail, they would be deprived of natural love and affection and the accused is also aged more than 57 years coming from rural side. Hence, the learned counsel prayed for taking a lenient view of the matter and impose nominal sentence. The material on record clearly shows that for the acts of the accused Smt. Basamma had lost her life and consequently, P.Ws.1 and 2 are now thrown to streets. It is also pertinent to mention that the accused had attacked Smt. Basamma on that date when she was fast asleep. Taking into consideration, this aspect, in our opinion, it should be in the ends of justice, if the accused is directed to undergo rigorous imprisonment for five years and also to pay a fine of Rs. 2,000/- in default to suffer simple imprisonment for a period of six months, for the offence under Section 304(ii), I.P.C.

19. For the foregoing reasons the appeal stands allowed. The Judgment of the trial Court is hereby set aside and the accused is found guilty of the offence under Section 304(ii), I.P.C. and is sentenced to undergo R.I. for a period of five years and also to pay a fine of Rs. 2,000/- i/d to suffer S/I for six months for the said offence. The accused shall also be entitled to for the benefit of provisions of Section 428, Cr.P.C. in respect of the sentence undergone either during investigation or trial of the case.

20. The accused is directed to surrender before the learned Sessions Judge within one month from today and the learned Sessions Judge to commit the accused to the prison in terms of this Judgment, failing which the learned Sessions Judge shall secure the presence of the accused and commit him to prison in the light of this judgment.