
(2000) 07 KAR CK 0062
In the Karnataka High Court
Case No : Criminal Appeal No. 965 of 1996

Sanne Gowda Alias Gopala

APPELLANT

Vs

State by Sakleshpur Rural Police

RESPONDENT

Date of Decision : 05-07-2000

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 294
Penal Code, 1860 (IPC) — Section 300

Citation : (2000) 7 KarLJ 509

Hon'ble Judges : S. R. Bannurmath, J;B. Padmaraj, J

Judgement

B. Padmaraj, J.-Heard the arguments of the learned Amicus Curiae Smt. Manjula R. Kamadolli for the appellant and the learned State Public Prosecutor for the respondent-State and carefully perused the case records in detail with their assistance.

2. The sole accused Sannegowda alias Gopala is the appellant herein. The deceased is one Manjula aged about 26 years. She was married to the accused about 4 years prior to her death and she had a daughter aged about two years through the accused. The appellant has been convicted by the Trial Court for the offence under Section 302 of the IPC for having committed the murder of his wife Manjula on 4-2-1991 at about 3.00 p.m. in the afternoon in the coffee estate of one Rajashekar situated within the limits of Kollalli village of Sakaleshpur taluk. P.W. 1-Shankari is the younger sister of the deceased. During the relevant time of this incident, P.W. 1-Shankari had come to her parental house for her first pregnancy and she had also delivered a child in the house of her parents. P.W. 5-Subbamma is the mother of the deceased and P.W. 1. It is the case of the prosecution that after the deceased Manjula was taken by the accused to his village Handanakere, to live there, she had lived with the accused for about 2 months. Thereafter it is stated that on a certain Sunday at about 6 p.m. in the evening, the deceased Manjula returned to the house of her mother, P.W. 5 at Sakaleshpur and told to both her mother and sister that she had been ill-treated and assaulted by the accused and that further she had also told them

that the accused had caused burn injuries on her person and that she is not prepared to go back to the house of her husband namely the accused in view of the harassment meted out to her at the hands of the accused in her matrimonial house. Thereupon, apprehending that the accused may come at any time and harass the deceased, P.W. 5, the mother of the deceased, kept the deceased Manjula in the house of one Kamalamma, P.W. 14. While she was so staying in the house of P.W. 14-Kamalamma, it is stated that the deceased had visited a Kannada movie in Uma Shankar Theatre in their village along with Rangamma, P.W. 2 and Ratnamma, P.W. 3. On the same day at about 2.30 p.m. the accused stated to have visited the house of P.W. 5-Subbamma and enquired with P.W. 1-Shankari about the deceased. At that time P.W. 5 was however not present in the house. The accused also drank water in the house of P.W. 5 on that day and then he went away from the house of P.W. 5. Thereafter on the next day morning at about 11 or 11.30 a.m. the accused again came near the house of P.W. 5 in an autorickshaw and tried to offer a biscuit packet to his daughter. But his daughter being scared of the accused, came inside the house. Thereafter when P.W. 1 came outside the house, the accused went away in the autorickshaw. P.W. 1 informed this fact to her mother on her return to the house at about 6 p.m. in the evening. Immediately P.W. 5-Subbamma went and made enquiries with Rangamma and she was told by her that the accused took away the deceased Manjula along with him from the theatre itself. Thereupon P.W. 5-Subbamma went to Sakaleshpura Police Station and lodged a missing complaint in respect of her daughter-Manjula. Thereafter the presence of the accused was secured to the police station and was asked about the whereabouts of the deceased Manjula. The accused told them that he had kept the deceased Manjula (his wife) in the house of one Girija at Nuggehalli. Then P.W. 5 was asked to accompany the accused in order to get back the deceased Manjula from Nuggehalli. Accordingly P.W. 5-Subbamma along with Kamalamma, P.W. 14 and Kandaswamy, P.W. 13 accompanied the accused in order to go to Nuggehalli village. But when they came to Hassan bus stop from their village in order to go to Nuggehalli, the accused gave a slip to them at the bus stop and ran away. He could not be secured by them. When the accused gave a slip to them at the bus stop of Hassan and ran away there from and could not be traced by them, P.W. 5 along with above said persons returned to their village. P.W. 5 also stated to have made efforts to trace the deceased Manjula but it was proved to be unsuccessful. After about 4 or 5 days of their return to the village, the dead body of the deceased Manjula was traced in the coffee estate of one Rajashekar within the limits of Kollalli village of Sakaleshpura taluk. It is stated that while P.W. 5-Subbamma was in the house, an young girl aged about four and a half years came and told P.W. 5 that the dead body of her daughter is found lying in the said coffee estate. Thereafter P.W. 1-Smt. Shankari along with some other persons went there and saw the dead body of the deceased Manjula in the said coffee estate. The dead body of the deceased Manjula was found in reclining position, back supported against the stem of a coffee plant and buttocks rested on the ground. The ligature material was found around the neck. Thereafter a

complaint came to be lodged in this regard to the P.S.I., P.W. 9 by the complainant P.W. 1 and on the basis of which, he registered a case and took up the investigation. He held the inquest proceedings on the dead body of the deceased as well as the observation mahazar at the spot. Thereafter the investigation was taken over by the C.P.I., P.W. 16, who completed the investigation and submitted the charge-sheet to the Court against the accused. The dead body of the deceased was subjected to post-mortem examination at the spot as per the P.M. Report, Ex. P. 12. It would reveal that the dead body of the deceased was found at the spot in a reclining position, back supported against the stem of the coffee plant and the buttocks resting on the ground. The ligature material was thrown around the neck in two rows with a knot present over the left side of the neck. Eyes have come out of their sockets, tongue was bitten and protruding out of oral cavity teeth clenched and bluish discoloration was seen over the face, neck and upper part of chest. The ligature mark of about 4 inches wide was seen present over the neck region, completely encircling the neck about 14 inches in length. Another faint ligature mark of about 6 inches in length was found above the first ligature mark. With regard to the cause of death, it is opined that no definite opinion can be given as to the cause of death. P.Ws. 2 and 3 who alleged to have accompanied the deceased for seeing the Kannada movie on that relevant day in a cinema theatre, have turned hostile. P.W. 4 is a panch for the inquest proceedings held over the dead body of the deceased as per the inquest report Ex. P. 4. P.Ws. 6, 7 and 8 have been examined by the prosecution to speak regarding the circumstances of the accused and the deceased being last seen together alive. P.W. 10 is the police constable who carried the FIR to the jurisdictional Magistrate. P.W. 11 is the P.S.I. who speaks to the complaint Ex. P. 6 given by P.W. 5-Subbamma on 6-2-1991 and at that time he had also recorded the statement of the accused as per Ex. P. 8 after he was secured to the police station on the basis of a complaint given by P.W. 5. P.W. 10 is a panch to the Panchanama Ex. P. 9. P.Ws. 13 and 14 are the two persons who had accompanied P.W. 5-Subbamma to Nuggehalli and the accused gave them a slip at the Hassan bus stop and ran away. P.W. 15-Murgesh is the gate keeper of the cinema theatre which was alleged to have been visited by the deceased to see a Kannada movie on that relevant day. Though P.W. 15 has turned hostile to the prosecution, he has supported the case for the prosecution to a certain extent.

3. The accused when examined under Section 313 of the Cr. P.C., except admitting the fact that the deceased Manjula is his wife, has denied all the incriminating circumstances. The defence of the accused is one of a total denial.

4. The Trial Court on consideration of the entire materials placed on record by the prosecution, has convicted the accused under Section 302 of the IPC, for committing the murder of his wife and sentenced him to undergo imprisonment for life and also to pay a fine of Rs. 1,000/-. Aggrieved thereby, the convicted accused has preferred this appeal challenging the conviction and sentence passed by the Trial Court.

5. There are no eye-witnesses to the incident. The case of the prosecution rests entirely upon the circumstantial evidence. The circumstances relied upon by the prosecution to establish the guilt against the accused are the motive, false explanation of the accused regarding the whereabouts of the deceased, the accused and the deceased being last seen together and the conduct of the accused.

6. The learned Amicus Curiae, Smt. Manjula R. Kamadolli for the appellant has vehemently contended before us that the circumstances sought to be relied upon by the prosecution to establish the guilt against the accused besides being not satisfactorily proved, are not at all sufficient to connect the accused with the crime. While elaborating this submission she contended that the prosecution has failed to establish the fact that the deceased Manjula had died a homicidal death. She contended that when this fact itself has not been established by the prosecution, other circumstances relied upon by the prosecution will be of no avail to connect the accused with the crime. She further contended that when the material witnesses namely, P.Ws. 6, 7 and 8 were examined in Court, the accused was admittedly absent and their evidence has been taken in the absence of the accused which is highly impermissible in law. She also contended that in the instant case the doctor who conducted the P.M. examination has not been examined and only the P.M. report has been marked through the I.O., P.W. 6 as per Ex. P. 12 and even the P.M. report placed on record does not disclose the cause of death of the deceased. She further contended that the doctor who conducted the P.M. examination has not given any definite opinion about the cause of death of the deceased. She therefore, contended that the prosecution has failed to prove that the deceased Manjula had met with an homicidal death. She therefore contended that the prosecution has failed to establish the guilt of the accused for the offence under Section 302 of the IPC, and hence the accused is entitled for acquittal.

7. As against this the learned State Public Prosecutor on behalf of the respondent-State has contended that each and every one of the circumstances which clearly involves the accused with the guilt have been satisfactorily proved by the prosecution. While elaborating this submission he contended that there was frequent quarrels between the accused and the deceased and obviously for this reason the deceased had left the house of her husband and came over to Sakaleshpur to live with her mother P.W. 5. He contended that but even then the accused did not leave her and he came in search of the deceased. The learned State Public Prosecutor has contended that the evidence of P.Ws. 6, 7 and 8 would clearly indicate that the accused had taken the deceased along with him and they also saw them going towards the said coffee estate where the dead body of the deceased was ultimately traced. He also contended that the conduct of the accused to make a false representation about the whereabouts of his wife and then giving a slip to P.W. 5 and thereafter remaining absconding till he was arrested by the police would clearly indicate that the accused was not innocent. He contended that if the accused was really innocent, he would not have made

such a false representation to P.W. 5 and further having come to know of the death of his wife, he should have immediately come to the spot and attended to the funeral of the deceased. The learned State Public Prosecutor has contended that though the doctor who conducted the P.M. examination has not been examined in this case, the P.M. report has been marked as per Ex. P. 12 through the evidence of the I.O., P.W. 16 and the same has not been objected to by the defence. He therefore contended that the genuineness of the P.M. report having not been contested by the defence, the contents thereof could be looked into even in the absence of the examination of the doctor. He therefore contended that the P.M. report Ex. P. 12 can be looked into and if the contents thereof are carefully scrutinised, they would clearly indicate that the death of the deceased was homicidal inasmuch as she was done to death by strangulation. He contended that there was absolutely no reason for the deceased to commit suicide and in that event the only other possibility is that the deceased had been done to death by the accused. He further contended that it is no doubt true that when P.Ws. 6, 7 and 8 were examined in Court, the accused being hospitalised, could not be produced from the judicial custody and that being so the personal appearance of the accused has been dispensed with by the Trial Court and the evidence of P.Ws. 1, 6 and 7 have been taken in the presence of the learned Counsel for the accused during the temporary absence of the accused. He therefore contended that the procedure adopted by the learned Trial Court is in accordance with the provisions contained in Section 273 of the Cr. P.C. and that being so the appellant at this length of time and that too in the appeal cannot take up that contention. He further contended that the very fact that the accused was after the deceased is clearly borne from the evidence of P.W. 1 as well as from the evidence of the gate keeper of the cinema theatre which was visited by the deceased to see a Kannada movie. He contended that the P.M. report Ex. P. 12 coupled with the other circumstances appearing in the case would clearly indicate that the cause of death of the deceased was due to strangulation and thus it was a homicidal death. The other circumstances established in the case by the prosecution according to the learned State Public Prosecutor would clearly involve the accused in the commission of the offence. He therefore contended that the findings recorded by the Trial Court are clearly supported by the evidence on record and hence the impugned judgment and order of conviction made by the Trial Court warrants no interference in the appeal by this Court.

8. We shall now proceed to examine the material on record in order to find out whether the prosecution has succeeded in establishing the guilt of the accused beyond reasonable doubt.

9. It is not in dispute that the deceased Manjula was married to the accused about 4 years prior to her death and they had a daughter aged about 2 years at the time of the death of the deceased, Manjula. The said daughter was born to the deceased through her husband, the accused. Though the accused would deny that during the relevant time of the incident he was residing at Handanakere village, the material evidence placed on record would clearly indicate that he was

residing at Handanakere village. It is not in dispute that the accused was from Handanakere village. It has been specifically stated by P.W. 1-Smt. Shankari that after the arrival of the relatives of the accused, he went along with his wife to his own village, Handanakere, and had been staying there along with his wife and child. The medical evidence in the form of post-mortem report, Exhibit P. 12, would show that the post-mortem examination was conducted by the Doctor at the spot. The contents of the post-mortem report, Exhibit P. 12, would clearly indicate that the dead body of the deceased was found lying in a reclining position, back supported against the stem of a coffee plant and buttocks rested on the ground, with ligature material around her neck. It had been encircling the neck thrice and also involving the stem of the coffee plant and the knot was present over the left side of the neck. It is no doubt true that in this case, the Doctor, who conducted the post-mortem examination has not been examined in Court and, on the other hand, the post-mortem report issued by the Doctor has been marked through the evidence of the Investigating Officer, P.W. 16. But, the same has not been objected to by the defence at the time when the post-mortem report, Exhibit P. 12, was marked through P.W. 16. That means, the defence did not dispute the genuineness of the post-mortem report, Exhibit P. 12. Where the genuineness of any document is not disputed, such document may be read in evidence. Under sub-section (3) of Section 294 of the Cr. P.C., the post-mortem report filed by the prosecution the genuineness of which being not disputed by the defence can be read, in our view, as a substantive evidence. Section 294 of the Cr. P.C. applies to every document whose genuineness is not disputed. The post-mortem report filed by the prosecution and got marked through the evidence of the Investigating Officer, P.W. 16 can be read as a substantive evidence when its genuineness is not disputed by the defence. That is to say, if the genuineness of a document filed by the prosecution is not disputed by the defence, it may be read as substantive evidence under sub-section (3) of Section 294 of the Cr. P.C. Accordingly, the post-mortem report, Exhibit P. 12 marked through P.W. 16, can be read as substantive evidence to prove the correctness of its contents without the Doctor concerned being examined, when its genuineness was not disputed by the defence. In this connection, a reference may be made to a Full Bench decision of the Allahabad High Court in *Saddiq and Others v State*, 1981 Cri. L.J. 379 (All.). We are in respectful agreement with the view taken by the Allahabad High Court in the said decision, as, in our view, it appears to be more reasonable having regard to the provisions contained in Section 294 of the Cr. P.C. As we have already stated, the contents of the post-mortem report, Exhibit P. 12, would clearly indicate that the death of the deceased was caused by strangulation. In fact, the same were the features that were noticed in the inquest report. Exhibit P. 4, which is proved through the testimony of P.Ws. 4 and 9. When P.W. 1-Shankari went to the spot along with a few others and identified the dead body of the deceased to be that of her sister Manjula, the same were the features noticed by them at the spot. P.W. 5, the mother of the deceased, did not offer to see the dead body of the deceased by visiting the spot, as he had sooned on the way and was to be sent back home. In this context the further

finding of the post-mortem report, Exhibit P. 12, which was not disputed by the defence would show that a ligature mark of about 3/4 in width was found over the carotid region of the neck, completely encircling the neck about 14 in length. Another faint ligature mark of about 6 in length was found present above the first ligature mark. The dissection of the ligature mark revealed the underlying brownish putrefying tissues. The other important features which are worth mentioning, as has been revealed in the post-mortem report. Exhibit P. 12, are that the tongue was bitten and protruding out of the oral cavity and bluish discoloration was seen over the face, neck, upper part of the chest and upper and lower limbs. No doubt, as to the cause of death of the deceased, the post-mortem report, Exhibit P. 12, would show that since the body was decomposed at the time of the post-mortem examination, no definite opinion could be given. But the above features noticed on the dead body of the deceased as well as the features observed at the spot would clearly disclose that it was a case of strangulation. Therefore, in all probability, the deceased died due to strangulation. It is to be stated whether strangulation was suicidal, homicidal or accidental has to be gathered from the circumstances of the case apart from the medical evidence on record. In the case of homicidal strangulation, usually there is a single turn of ligature around the neck with one or more knots and sometimes, there may be more turns in which case more ligature marks will be found on the neck. In addition to the ligature marks there is a probability of evidence of struggle, marks of violence on other parts of the body. In the instant case, a careful perusal of the material placed on record by the prosecution including the contents of the post-mortem report, Exhibit P. 12, would indicate that all such features were found present. It would be of some relevance to note here itself that in all doubtful cases, the circumstantial evidence is important. The contents of the post-mortem report, Exhibit P. 12, coupled with other circumstances appearing in the case, in our view, would clearly point out that it was a case of homicidal strangulation. Further, in this case there is no plausible reason for the deceased to commit suicide. It is to be pointed out that being disgusted with her husband, the deceased had taken shelter in the house of her mother along with her child and she was quite happy while staying with her mother. That being so, there was absolutely no reason for the deceased to commit suicide when she had a child aged about 2 years at the time of the incident. Therefore, it is more realistic to conclude that it was a homicidal strangulation of the neck of the deceased with ligature material that was found around the neck of the deceased. It is quite possible that the killer took the deceased near the stem of the coffee plant and made her to strangle by using the stem of the coffee plant as a support. In view of the above said features found on the dead body of the deceased as well as the observations made at the spot, a conclusion that the deceased, Manjula, died a homicidal death is irresistible especially when there was no plausible reason for the deceased to commit suicide. We, therefore, unhesitatingly conclude that it was a case of homicidal death.

10. The next circumstance and the most vital one is about the deceased being last seen alive together with or in the company of the accused and not seen thereafter alive anywhere. On this aspect, there is a direct evidence of P.Ws. 6, 7 and 8, who are the residents of the same locality where P.W. 5 had been residing. It is to be pointed out that at the relevant time of this incident, the deceased had been staying along with her child in the house of P.W. 5. P.Ws. 6, 7 and 8 had nothing against the accused and there was no reason for them to speak falsely to implicate the accused and despite searching cross-examination made by the defence, nothing could be brought out to discredit their evidence in Court. The evidence of P.W. 6 would show that about 8 days prior to the date of discovery of the dead body she saw the deceased and her husband, viz., the accused, coming from the side of the cinema theatre and going towards the garden. It is also confirmed by the evidence of P.Ws. 7 and 8. We see no infirmity in the evidence of P.Ws. 6, 7 and 8 so as to discredit their version. Further, their evidence gets confirmation from the other circumstances appearing in the case.

P.W. 11, who was then working as a Head Constable in Sakaleshpur Police Station, has stated in his evidence that on 6-2-1991 at about 2.15 p.m, P.W. 5-Subbamma came to the Police Station and gave a written complaint as per Exhibit P. 6 and on the basis of which he registered the NCR case. It was mentioned in the complaint that her daughter being taken away by the accused did not return to the house subsequently. Thereupon P.W. 11 says that he had secured the presence of the accused to the police station and enquired him. He had also recorded his statement in that regard as per Exhibit P. 8. In that connection, he had also recorded the statement of P.W. 2-Rangamma. He has stated that the accused at that time told that he had kept the deceased, Manjula, in the house of one Girija of Nuggehalli village. Thereupon he directed the accused to take along with him P.W. 5-Subbamma and to bring the deceased, Manjula, back. Then we have the evidence of P.W. 5-Subbamma who has stated in her evidence that, accordingly, she had accompanied the accused along with P.Ws. 13 and 14 in order to go over to Nuggehalli to bring back the deceased, Manjula. But, on their way to Nuggehalli at Hassan Bus Stop the accused gave a slip to them and escaped. That is to say, the accused gave them a slip and ran away at the Hassan bus stop. This was at about 7.00 or 8.00 p.m. in the night. Then, they made efforts to trace the deceased by visiting the house of their relatives and several other places. After about 4 or 5 days of their return to the village from Hassan, the dead body of the deceased Manjula was traced or discovered in the coffee estate. It is pertinent to note that in the cross-examination of P.W. 5 it is elicited by the defence that after the accused gave a slip to them at the Hassan bus stop and ran away, she had gone to Nuggehalli and visited the house of the person where the deceased was alleged to have been kept by the accused. But, the deceased could not be found there. Further, the inmates of that house informed to her that the deceased was never brought to their house by the accused. These answers elicited in the cross-examination of P.W. 5 by the defence would show not only the natural conduct of P.W. 5 but also

would indicate the false representation made by the accused regarding the whereabouts of the deceased. It would also reflect on the conduct of the accused. If really the accused had kept the deceased in that house as has been represented to P.W. 5 at the Police Station by the accused, she should have been found in that house and the accused could not have given a slip to P.W. 5 at the Hassan bus stop and ran away therefrom. The said conduct on the part of the accused would clearly speak about the guilty mind of the accused. The registration of the NCR case is further confirmed by the evidence of P.W. 9 vide paragraph 5 of his deposition. Therefore, the formidable incriminating circumstance against the appellant as far as we could see is that the deceased was taken away by the accused and she was last seen alive only in his company and that further, when the presence of the accused was secured at the police station on the basis of the complaint given by P.W. 5, he had made false representation that he had kept the deceased in some house at Nuggahalli and, when he was asked to go along with P.W. 5 to bring the deceased back, he gave a slip to her and ran away from the Hassan bus stop and thereafter the enquiry made by P.W. 5 at the house in Nuggahalli where the deceased was stated to have been kept by the accused, it was found that the deceased was never brought to that house. As noticed earlier the deceased was last seen alive only with the accused and, thereafter, she neither returned to the house of P.W. 5, nor found anywhere else alive by any one outside the company of the accused. When, once it is established that the accused was with his wife near about the place where the dead body of the deceased was traced or discovered and when there is no explanation as to how and when he had parted with the company of the deceased, then it clearly involves the accused in the crime. In the instant case, not only there was no explanation of the accused but also he made a false representation to P.W. 5 and others about the whereabouts of the deceased. The above circumstance coupled with the conduct of the accused clearly incriminates the appellant with the guilt of the accused. In a case of this nature, the conduct of the accused is also important. No doubt, the prosecution has to prove its case beyond reasonable doubt. But, when the prosecution has established all the circumstances connecting the accused with the crime and in the absence of any explanation, it cannot be said that the conduct of the accused has to be ignored and need not be taken into account. The incriminating circumstances enumerated above unmistakably and inevitably lead to the guilt of the accused and nothing has been highlighted or brought on record to make the facts proved or the circumstances established to be in any manner in consonance with the innocence of the appellant. The incriminating circumstances could, if at all, have been explained only by the accused and by nobody else, they being personally and exclusively within his knowledge. Of late the Courts have from the falsity of the defence plea and false answers given to the Court when questioned under Section 313 of the Cr. P. C found the missing link to be supplied by such answers for completing the chain of incriminating circumstances necessary to connect the accused person with the crime committed.

11. For all these reasons states supra we have no hesitation to agree with the finding of the Trial Court holding the accused guilty of the offence under Section 302 of the IPC for committing the murder of his wife Smt. Manjula.

12. The learned Amicus Curiae for the appellant has contended that, when the evidence of the material witnesses have been recorded in the absence of the accused, it would vitiate the trial. We are unable to accept this contention and more so having regard to the facts and circumstances of this case. The facts here would clearly indicate that, when the evidence of P.Ws. 6, 7 and others were taken in Court on 4-12-1995, the accused could not be produced from the custody in Court on account of his illness as he was hospitalised and hence the personal attendance of the accused was dispensed with by the Trial Court under Section 273 of the Cr. P.C. and the evidence of the said witnesses were taken in Court in the presence of the learned Counsel for the accused during the temporary absence of the accused on account of his illness. This is very clear from the noting made in the order sheet dated 4-12-1995 by the Trial Court. Section 273 of the Cr. P.C. by necessary implication confers powers on the Court to dispense with the personal attendance of the accused and obtain the evidence of the witnesses in the presence of the learned Counsel for the accused when the personal attendance of the accused is dispensed with. That is to say, Section 273 of the Cr. P.C. by necessary implication confers powers on the Court to dispense with the personal attendance of the accused and take the evidence in the presence of the Counsel for the accused. In our view, the Trial Court has followed the correct procedure and the same cannot be termed as illegal in view of the specific provision contained in Section 273 of the Cr. P.C. Therefore, there is no procedural illegality committed by the Trial Court in taking the evidence of P.Ws. 6, 7 and others. That apart, it has not been shown that as to how the accused has in any way been prejudiced by such procedure adopted by the Trial Court which is in conformity with the procedure prescribed under Section 273 of the Cr. P.C. It is to be further pointed out that, when the evidence of the said witnesses were being taken in Court by dispensing with the personal attendance of the accused in view of his hospitalisation, the same was not objected by the learned Counsel appearing for the accused and on the other hand he participated in the proceedings by cross-examining those witnesses. Under the circumstances, therefore, the accused was not in any way prejudiced by the said procedure. That apart, in our view, it is only a curable irregularity under Sections 464 and 465 of the Cr. P.C. The trial is not vitiated merely because the evidence was not taken in the presence of the accused and the same was taken in the presence of Counsel for the accused during temporary absence of the accused by dispensing with the personal attendance of the accused under Section 273 of the Cr. P.C. Trial of an accused person in his absence cannot be held to be null and void if the attendance of the accused is dispensed with by the Court and if he is represented by a Counsel of his choice during such absence. While, therefore, it cannot be denied that presence of the accused at the trial is necessary, the Code itself shows that the Trial Court has a discretion in certain circumstances to exempt

the personal attendance of the accused and take the evidence in his absence, in the presence of his Counsel. There is no specific section to that effect except Section 205 of the Cr. P.C., but it is implied in some of the other sections in the Code. For example, Section 273 of the Cr. P.C. provides for recording of evidence in the presence of the accused and is as follows.-

"Section 273. Evidence to be taken in presence of accused.-Except as otherwise expressly provided, all evidence taken in the course of the trial or other proceeding shall be taken in the presence of the accused, or, when his personal attendance is dispensed with, in the presence of his pleader.

Explanation.-In this section, "accused" includes a person in relation to whom any proceeding under Chapter VIII has been commenced under this Code".

Therefore, Section 273 of the Cr. P.C. by necessary implication confers powers on the Court to dispense with the personal attendance of an accused and take evidence in the presence of his Counsel. Hence, the trial of an accused in his absence cannot be held to be null and void, if his personal attendance by necessary implication dispensed with under Section 273 of the Cr. P.C., as in this case, and, if he is represented by a Counsel when the evidence was taken in Court and not objected to by the defence at that time. Thus, if an accused is exempted from personal attendance under Section 273 of the Cr. P.C., he should not be allowed to later complain in the appeal that his attendance should not have been exempted. Therefore, on the facts and circumstances of the case, we find no merit in this contention of the learned Amicus Curiae for the appellant.

13. Therefore, we see no merit in any of the contentions urged on behalf of the appellant/accused. Hence, the judgment and order of conviction as well as the sentence passed by the Trial Court deserves to be confirmed and it is accordingly confirmed.

14. In the result, therefore, this appeal filed by the appellant is dismissed as being devoid of merits.

15. We place on record the service rendered by the learned Amicus Curiae Smt. Manjula Kamadolli, in arriving at correct conclusion in the case and we fix her fee at Rs. 1,000/- for the assistance rendered by her in the above appeal.