

(1997) 01 KAR CK 0019
In the Karnataka High Court
Case No : Cr.A. No. 189/95

Sri Beerappa

APPELLANT

Vs

State of Karnataka

RESPONDENT

Date of Decision : 27-01-1997

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 164
Penal Code, 1860 (IPC) — Section 302, 304 (1)

Citation : (1998) 1 ALT(Cri) 236 : (1998) 1 DMC 275 : (1997) ILR (Kar) 3149 : (1997) 3 KarLJ 493

Hon'ble Judges : M.F. Saldanha, J; M.B. Vishwanath, J

Bench : Division Bench

Advocate : Hasmath Pasha, for the Appellant; A.B. Patil, Addl. S.P.P., for the Respondent

Judgement

M.F. Saldanha, J.—This is one of the most unhappy and disgraceful cases that have come before the Courts in recent times. The facts of the case make sad reading in so far as the appellant before us is a poor villager who was working as a coolie. The appellant's wife had died and he married one Sharadamma who already had a son through her previous marriage. Thereafter the accused and Sharadamma had three children and it is evident to us from the record that for a variety of reasons including the economic condition of the parties, that the relations between husband and wife got estranged. Sharadamma thereafter went to reside separately in a room at a village by the name of Henchinasiddapura and the accused continued to stay for sometime at Agaradahalli. Sharadamma had taken the three children with her and she was also residing with her son Sanjeeva. Sometime prior to the incident the accused who was reduced to desperate economic conditions, went to Sharadamma and asked her for help. There is some suggestion to the effect that he was trying to persuade her to transfer some lands to his name but in any event, what transpired was that Sharadamma had agreed to allow him to occupy a corner of the room in which she and the family were staying. It is material for us to point out that the

treatment which the accused received from Sharadamma at this point of time when he was in extreme distress was one of considerable lack of consideration and is summarised from the fact that the accused in his confession has stated that she condescended to allow him to partake of some food and lie in one corner of the room provided he did not interfere with anybody else. This aspect of the matter is of some significance because this is an unusual case where the situation got completely out of control after some time and the appellant's learned advocate has argued at some length with regard to these special features of the case.

2. The incident in question took place shortly after midnight at 1.7.92. The accused is alleged to have attacked Sharadamma at about 1.30 A.M. with a "machu" while she was sleeping. The medical evidence indicates that he has dealt one severe blow on the neck which measured 6 inches followed by two more blows around the same region with an equal degree of violence. The impact of the attack was so severe that Sharadamma died on the spot. There was a commotion because the children woke up and raised an alarm and once it was found that Sharadamma was dead, those present decided not to interfere with the situation as it obtained and to inform the police. The accused is alleged to have closed the door, put a lock on it and then made his way to the police station where he presented himself along with the children and informed the police officer of what had happened. The accused was placed under arrest and since his clothes were found to be blood stained, the police attached these clothes. They also contend that the accused offered to produce the murder weapon and that he led the police to the room, opened the door with the key that he was in his possession where the police found the body of Sharadamma lying in a pool of blood at which time the accused is alleged to have produced the weapon which had been placed in a gunnybag and which was found to be blood stained. The police completed the necessary formalities and sent the body for post mortem examination. There is one last development of some significance namely that it is alleged that on the evening of 1.7.1992, the accused is alleged to have expressed the desire to make a complete confession and the police officer accordingly contacted the J.M.F.C. It was directed that the accused be transferred to judicial custody where he remained for the next 5 to 6 days. On 7.7.1992 the J.M.F.C. recorded the confession statement of the accused u/s 164 Cr.P.C. It is this statement that is the most crucial piece of evidence in this case perhaps the most unhappy part of the episode.

3. Briefly stated, the accused indicated in that statement of his that the relationship between him and Sharadamma had deteriorated and that she had gone away to stay separately, he states that among other things, a rumour had started in the village that there was a strange and illicit intimacy between Sharadamma and Sanjeeva who was her own son through her previous marriage. The accused has stated that among other things, his young daughter had complained to him that it was most difficult for them to continue to sleep in the same room when sexual activity was going on between the mother and son

virtually in the same place. According to the accused, his economic condition was extremely bad and he therefore came to see Sharadamma and to ask her for help. All that she agreed to permit him was to partake of some food and to lie in one corner of the room provided he did not interfere with anybody else. He has given an elaborate description of what he witnessed between mother and son two nights prior to the incident. According to the accused, he had pretended to be asleep and was a virtual eye witness to the sexual activity that was going on between the couple in the same room who unfortunately enough happened to be his own wife and his foster son. The accused has described how disturbed he was and how terrible her reaction to witnessing such an incident was. From what he states, it is clear that he was so traumatized by the activities on that night that it disturbed him immensely. From the statements made by him, what horrified him much more than the indulgence in sex was that it was an incestuous relationship between a mother and her own son and this was something that so completely shattered the mind of the accused that he just could not conceive of how Sharadamma could even indulge in acts of this type. It is clear from the statements made by him in the confession that he could not believe ever that a mother could indulge in such acts with her own son. According to him, on the night in question he was so mentally disturbed that he was awake and late that night when he got up and looked at Sharadamma, the activities of the night before crowded into his mind and drove him virtually into a state of frenzy. He picked up the machu and assaulted Sharadamma with it and thereafter stood there quietly. It is this confession that has been relied upon very heavily by the learned trial Judge even though the accused has retracted it about one month later. We need to point out that even though the children were cited as witnesses that they have turned hostile and that there is very little evidence on record which the trial Court found worthy of acceptance. The learned Judge relied on the fact that the clothes of the accused were blood stained, that it was he who led the police to the room where the incident had taken place and opened the room with a key that was in his possession and lastly, the fact that it was he who produced the blood stained machu with which the assault had taken place. The blood on the clothes of the accused and on the weapon tallied with the blood of the deceased and this was one of the additional circumstances against him. The accused had denied the charge and his version was that when the incident took place he had been called there and that the blood on his clothes can be explained because of the fact that he had gone into that room and handled the corpse and he seeks to place reliance on the fact that it was he who went to the police to lodge a complaint and that he would not have done this had he been the assailant. It is his version that the police had worked on his simple mind by telling him that if he accepts the guilt and makes a confession to that effect that they would see to it that he was let off and that it was under such inducement and deception that he had made this statement before the J.M.F.C. the learned trial Judge rejected the defence, found the accused guilty of the offence u/s 302 IPC. and convicted him Of the charge of murder and sentenced him to suffer rigorous imprisonment for life. It is against this conviction and sentence that the

present appeal has been directed.

4. Mr. Pasha, the learned advocate who represents the appellant has submitted that the principal basis for conviction in this case is the retracted confession that is attributed to the accused. The learned advocate has advanced a two fold submission on points of law. The first of them being that where the prosecution seeks to virtually base its entire case on a confession recorded before a Judicial Officer, that the Court must be virtually 100% satisfied about the voluntariness of the accused. Mr. Pasha has drawn our attention to the decision of the Supreme Court reported in Shivappa Vs. State of Karnataka, on this point and it is virtually a restatement of the law that even if the transcript of the confession and the evidence of the authority concerned indicates that there does not appear to be inducement or coercion, that the Court would still have to be quite certain about the fact that there was no unfairness involved. Learned advocate relies on the fact that an accused who is in custody is totally and completely at the mercy of the police and that it is not unknown for the police to try and make their task lighter by using various threats and inducements and possibly, by even using force and torture, the sum total of which is that the accused gives a confession statement u/s 164 Cr.P.C. Learned Advocate has argued at considerable length on this point because he submitted that it is not the question of the accused having been in custody prior to the making of the statement but that the accused continues in custody after the making of the statement and is therefore completely at the mercy of the authority and that in this background, there is every reason to accept the defence plea that the police were wholly and completely responsible for the confession statement. His submission is that apart from other aspects, the police invariably threaten the accused to follow their instructions when produced before the Court and to give such statements as the police have virtually ordered him to make failing which, the accused will have to face severe punishment from the police and that in this background, where the use of such methods can never be ruled out, that the Court should not place any reliance on the confession statement. The subsidiary argument was that the accused has retracted the statement which reduces its evidentiary value and that therefore such a retracted confession even if acceptable to the Court requires corroboration on material points. As far as this proposition is concerned, reliance has been placed on the Supreme Court decision reported in 1983 S.C.C. 387 wherein the Supreme Court while accepting a retracted confession as a voluntary one, still laid down that as a rule of prudence a Court would always look for requisite corroboration. Learned advocate submitted that in the present case the conviction almost solitarily depends on the confession statement and in the absence of corroborations that the conviction would be rendered unsustainable.

5. On this point the learned Additional S.P.P. submitted that this is one of the few cases in which the learned J.M.F.C. PW. 15 H.B. Raveendran has in his evidence pointed out the material fact that the first precaution which he took was that immediately on being informed that the accused desires to make a confession, that he directed that the accused be transferred to Judicial custody so that he

would be completely out of the influence of the police. Secondly, what is pointed out is that the evidence of PW.15 is almost letter perfect in so far as the learned J.M.F.C. has not only waited for 4 or 5 days before taking the accused for recording his confession. But that he first put several questions to him for purposes of completely satisfying himself that the accused was not acting under any fear, threats or for that matter any inducement. The learned Additional S.P.P. submitted that unlike many other situations, that every one of the requisite safeguards has been adopted by the learned J.M.F.C. and that even the recording of the statement has been very correctly done by the judicial officer concerned leaving no room for even the slightest degree of doubt. On the question of retraction, the learned Additional S.P.P. submitted that such retractions are customary but he was very critical of the grounds set out when the confession was retracted because he submitted that whereas normally the accused contend that they have acted under duress and intimidation and possibly physical torture, that on the other hand this is a case in which the accused has put forward the plea that he made the confession on the ground of inducement that he would be let off. The Learned Counsel submitted that this is almost close to an absurdity where an accused person who has himself surrendered before the police immediately after the incident with blood stained clothes and has taken the police to the scene of offence himself and made a clean breast of everything before a Court and one month later put forward the totally incredible plea that he did this under the inducement that if he made such a confession, he would be let off.

6. On the question of retraction, we need to take note of the fact that such retractions are the order of the day and that they are almost mechanically put forward. We need to also lay down that particularly in cases where the confession has been recorded by a judicial officer after observing all the necessary safeguards and where the Court has recorded that it is more than satisfied that there was no threat or inducement, if a charge is subsequently made that the statement was issued under one of these two situations, then a mere allegation to that effect would not avail the maker of the statement unless it is substantiated to some extent. Apart from positive evidence, it is always possible to establish this through cross-examination of the relevant prosecution witnesses. In the absence of any such material emerging, it would not be correct on the part of any Court to discredit the evidentiary value of a perfectly acceptable confession merely because some retraction has been placed on record. In the present case, we are in agreement with the submission canvassed by the learned S.P.P. that it can never be believed that the accused was induced to make the statement on the plea that he would be let off. No investigating authority could even put forward such an inducement and more importantly, no accused person could ever believe such an offer even if it were to be made because this is not a case where the accused was asked to make a confession statement on the ground that he would be given pardon and would be used as an approver against any other accused. In this background we have no hesitation in

holding that the retraction is of no consequence.

7. As regards the main statement itself, we have tested Mr. Pasha's argument on the basis of certain other significant parts of the record. We find that this is a case in which immediately after the incident the accused himself surrendered at the police station which is very indicative of the fact that once the deed was done, that he decided to face the consequences of the act in question. Shortly thereafter, he has led the police to the room where the incident took place, he has opened the room with a key and he has produced, the murder weapon and in the background of this evidence, the statement of the accused that he desires to make a confession and his subsequently making such a confession before the J.M.F.C. are all not only a sequence of events that perfectly fall into place but are also in consonance with each other but more importantly with the conduct of the accused and his mental make up at that point of time. Coupled with this fact, we have the very clear cut evidence of PW. 15 who has taken the precaution of ensuring that the accused was transferred out of police custody and was kept in judicial custody over a long enough period of time to off-set whatever the police may have done to him when he was in the their custody. Even after this, the learned J.M.F.C. who was conscious of the importance of a confession made by an accused before a Judicial officer and the consequences of such a statement, has doubly satisfied himself that there was no impediment or no unfairness, irregularity or illegality of any type involved in the accused making the confession and has recorded the clear finding that the statement was absolutely voluntary. For the aforesaid reasons, we have no hesitation in confirming the finding of the learned trial Judge that the confession statement was voluntary and that it is good enough to be relied upon by the Court.

8. Mr. Pasha did seriously attack the evidence relating to the seizure of the blood stained clothes and he submitted that unlike in other cases, that this fact cannot be used as a guilty circumstance against the accused. He seeks to place reliance on the defence plea that after the children raised a hue and cry and persons gathered there, since it was found that Sharadamma had been murdered, efforts were immediately made to call the accused who went there. The learned advocate submits that the corpse was lying in a pool of blood and when the accused came there and examined the body that it was inevitable that some of the blood would get on to his clothes. As far as this aspect of the matter is concerned, we find that the record is to the contrary in so far as it has been established that the accused had come to stay in the room sometime earlier and that he was in the room on the night of the incident. There could be no question of some third party having murdered Sharadamma and the neighbours thereafter sending for the accused. The evidence clearly establishes that the accused was very much on the scene when the incident took place and in the light of his confession statement, it is established that it was he who dealt the fatal blows to Sharadamma with the machu and these facts ;are absolutely in consonance with the prosecution version that it was in the course of this incident that the blood splattered on to the clothes of the accused. The C.A. report also confirms that

the blood found on the clothes matched the blood group of the deceased and this evidence virtually clinches the issue.

9. On the next head of evidence that is used against the accused namely the fact that he is alleged to have led the police and the panchas to the room where the murder had taken place, that the room was found locked and that the accused opened the lock with a key that was in his possession and he subsequently pointed out to the police the place where the blood stained machu had been kept by him is concerned, Mr. Pasha submitted that this evidence cannot be accepted for a variety of reasons. His main contention was that the evidence relating to the opening of the room is not conclusive and secondly he submitted that the murder weapon had not been concealed anywhere and if the police picked it up from the scene of offence that there can be no question of establishing a nexus between the murder and recovery of that weapon because it was found at the scene of the offence. The learned Additional S.P.P was quick to point out that the police have followed the requisite formalities of making the relevant panchanamas and furthermore that there is the positive evidence of the investigating authorities which establishes that it was the accused who led the police party to the room which was found locked and that it was he who opened the room in question. Also, it is pointed out that the inventory relating to the recovery of the machu clearly indicates that the accused had produced it from a gunny bag and it was not found at the scene of offence. This evidence does establish very strongly that the accused not only knew where the incident had taken place but that the room in question, was locked by him after the incident and that no other person had gone there until he brought the police to that spot and opened the room. Also, the guilty circumstance of pointing out the murder weapon to the police which is attributed to the accused has also been established in so far as we have no reason to disbelieve the prosecution version that if the accused had himself surrendered at the police station, and thereafter himself brought the police authority to the scene of offence that there is no reason why he would not have produced the murder weapon. We are unable to accept the defence plea that there is anything wrong or suspicious with regard to these heads of evidence and once they are accepted, they would provide more than sufficient supportive evidence to the confession of the accused.

10. We do not need to deal with the rest of the evidence because several of the witnesses have turned hostile in this case. The learned trial Judge was justified in recording a conviction against the accused on the basis of the material that has been accepted by us. The finding does not require any interference with and stands confirmed.

11. As indicated by us in the beginning of this judgment, the facts of this case are not only sad and depressing but are also unusual and exceptional. Mr. Pasha, the appellant's learned advocate placed reliance on an earlier decision of this Court reported in State of Karnataka Vs. R. Varadaraju, in support of his plea that in a situation where a wife indulges in adulterous conduct and where the

husband reacts violently to that situation and attacks her, that the facts would be serious enough to alter the offence from one of murder to culpable homicide not amounting to murder. Learned advocate relied on a decision of the Court of Appeal in England reported in 1993(2) Crimes 313 (R. v. AHLUWALIA) in support of his contention that within the framework of marriage, it is not only instances of sexual jealousy that can trigger off uncontrollable impulses but that situations could also arise where a violent incident can be triggered off due to an entirely different set of emotions namely rage. We have heard Mr. Pasha for some time on this aspect of the matter because we did see considerable substance in the plea put forward by him and particularly, his reliance on the English decision in Ahliwalia's case which undoubtedly was a decision which made international headlines. That was a case in which a young Indian wife had demonstrated that she was a victim of long term ill treatment which in that instance was also accompanied by violence and that she was the injured or the aggrieved party who had been at the receiving end for a long time and that finally, a situation arose where she was driven to such a stage of furiousness that she threw petrol on her husband who was then sleeping and ignited it as a result of which he lost his life. The Court of Appeal did accept the plea that there was immense provocation which the accused pleaded as justification for the incident and set aside the conviction though we need to record that the case was remanded for certain other reasons. Mr. Pasha is certainly entitled to draw a parallel between that case and the present one because the situations are very close. We do need to record that the law Courts have from time to time come across instances where a spouse has reacted very violently to adulterous conduct on the part of the other one and in those few situations where the errant spouse has been virtually caught in the act, the Courts have accepted the plea of grave and sudden provocation because of the intensely violent mental reaction that such a situation would invariably provoke in the majority of people. This Court had occasion to consider the law on the point and to uphold the defence plea in Crl.A.114/94 disposed of on 6.1.97. This case is however slightly different and again Mr. Pasha may be justified in pointing out that he is one even stronger grounds in the present proceeding because the confession statement itself very explicitly sets out the reaction of the poor villager to the utterly horrifying and disgusting situation of finding his own wife indulging in sexual intercourse with a person none other than her own son and that the accused should have had the misfortune of being an eye witness to such an incident. We need to however clarify that the learned Addl. S.P.P. was careful enough to point out to us that howsoever awful the incident might have been, that it has taken place two days earlier and that had the accused reacted at that time perhaps the plea would have been justified but that he did not do so, waited for four days and thereafter killed Sharadamma on a night when Sanjeeva was not even present in the room, that it would be extremely difficult to support the plea that it was the previous incident which impelled him to kill her. We have had occasion to consider the concept of delayed reaction while deciding Crl.A.114/94 and this Court has amplified that there can be a sudden revival or resurrection of the utterly violent

emotions at a point of time slightly remote from when it initially took place and that if the inter-connection is so complete that the Court was satisfied that it was that previous incident which triggered off the violence, that it could still come within the ambit of grave and sudden provocation. The reason for this is not because the Court proposes to bridge the time lag howsoever long or short between the two incidents but because the presence of that particular person or a revival of the memory of the earlier incident is what virtually regenerated the emotion and sent it out of control. Mr. Pasha was particular to demonstrate to us that the accused has vividly described his mental condition on the night of the incident when he stated that Sharadamma was undoubtedly sleeping but when he went near her and looked at her, that the entire picture of what she had been doing with Sanjeeva on the earlier occasion when the accused saw them in the process of incestuous adultery was virtually re-created and that it was this intolerable situation that pushed the accused to violence. While dealing with the cases of violent reaction in situations where an errant spouse has been found indulging in sexual activity, the Courts have been careful to take note of the status, background and mental make up of the accused and to invariably uphold the plea that the sporadic violent reaction could not justify a charge of murder. This case stands on an even stronger footing because it has been demonstrated by the accused himself who undoubtedly was a poor villager but who had a clear concept of the principles of right and wrong, who had a traditional reverence for the position of motherhood and who simply could not conceive or reconcile of something so abhorrent, distasteful and unpardonable as a mother indulging in sexual intercourse with none other than her own son. Undoubtedly, it was a sexual perversion and the reaction on the part of the accused was not only the feeling of traditional forms of sexual jealousy which is common in the case of aggrieved spouse but the far more violent reaction of rage at the sight of something which the accused could only categorise as the height of wickedness. Mr. Pasha was insistent that the Court should carefully assess this aspect of the matter which has perhaps not arisen in any Case before the Courts so far but which requires to be taken cognizance of more so because instances of such misconduct though rare, could come before the Courts at some future point of time. The field of sexual perversion is relatively wide and with the breakdown of traditional values of morality as also having regard to liberated views and loose social norms, the Courts would have to apply their minds seriously to this particular field of law, it is in this background that we are required to reject the contention raised by the learned Additional S.P.P that the time lag between the date when the accused witnessed the incident and the date when he ultimately attacked and killed Sharadamma would disqualify him from pleading grave and sudden provocation. On the special facts and circumstances of this case, we uphold the plea canvassed by Mr. Pasha on behalf of the appellant.

12. In the result, the appeal partially succeeds. The conviction of the accused/appellant recorded by the learned trial Judge u/s 302 I.P.C. is set aside and in its place, the appellant is convicted of the offence punishable u/s 304(1) I.P.C. On

the question of sentence, Mr. Pasha advanced a strong plea that the accused has been in custody for close to five years and he submits that even if he were to have been sentenced by the Trial Court in the first instance u/s 304(1) I.P.C., having regard to his age, his background, the fact that he was a very poor man who had been through a long and traumatic situation in his marriage with Sharadamma and that he virtually gave himself up after the incident, that the Court should award a sentence that is equivalent to the period already undergone. The offence u/s 304(1) I.P.C. is a very serious one but a Court is required to exercise its discretion with regard to the punishment awarded to an accused strictly in keeping with all relevant circumstances. We have already accepted the position that it was the accused who was at the receiving end for a very long time and that it was this traumatic situation which virtually propelled him to commit the violent act. These circumstances would amply justify our awarding a sentence equivalent to what has already been undergone by the appellant/ accused.

13. Having regard to the aforesaid situation, the appeal partially succeeds and stands disposed of. In the facts and circumstances of the case since the appellant/accused has undergone the sentence awarded by us, it is directed that he be set at liberty forthwith if not required in any other case.