

Before

THE HONORABLE PRINCIPAL DISTRICT & SESSIONS JUDGE

BANGALORE RURAL DISTRICT, BANGALORE

2015

TRIAL UNDER SECTION 177 r/w 209 OF CRIMINAL PROCEDURE CODE

IN THE MATTER OF:

STATE OF KARNATAKA - - - - - - PROSECUTION

V.

UNKNOWN - - - - - - - DEFENDANT

WRITTEN SUBMISSION ON BEHALF OF THE PROSECUTION

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¶	Paragraph
&	And
ABR	All India Reports- Bombay High Court Reports
AIR	All India Reporter
AP	Andhra Pradesh
All.	Allahabad
Anr.	Another
Bom.	Bombay
CCR	Current Criminal Reports
Co.	Company
CrPC	Criminal Procedure Code
Crl.A.	Criminal Appeal
Edn. / Ed.	Edition
FIR	First Information Report
Guj.	Gujarat
GLR	Gujarat Law Reporter
Govt.	Government
Hon`ble	Honorable
I.L.R	Indian Law Reporter
Id.	Ibid

Ker.	Kerela
L.J.	Law Journal
Ltd.	Limited
Mr.	Mister
Mad.	Madras
MP	Madhya Pradesh
No.	Number
HC	High Court
Ors.	Others
Pat.	Patna
Pg.	Page
Re.	Reference
Pvt.	Private
Sau	Saurashtra
SCC	Supreme Court Cases
SCR	Supreme Court Reporter
SC	Supreme Court
Sd/	Signed
UP	Uttar Pradesh
UOI	Union Of India
V.	Versus
Vol.	Volume

INDEX OF AUTHORITIES

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2. Abu Thakir & Ors. v. State of Tamil Nadu, (2010) 5 SCC 91.
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7. State of Maharashtra v. Kunda Zaverchand Sheth & Ors., 2013 (3) ABR 1348.
8. State of Karnataka v. Haji Mohamed Ibrahim, ILR 1990 Karnataka 1973.
9. Sirima Narasimha Rao etc. v. State of AP, 2010 Cri LJ 769.
10. Vikas Alias Vicky Alias Ponga v. State Govt. of NCT Delhi, Cri. A. 992/2011.

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2. Code of Criminal Procedure, 1973
3. Indian Evidence Act, 1872

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11. Underhill`s Criminal Evidence, Fifth d. Vol. I, p. 664.

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STATEMENT OF JURISDICTION

The counsels representing the prosecution have endorsed their pleadings before the Hon`ble Principal District & Sessions Court, Bangalore, under Section 177<sup>1</sup> r/w Section 209<sup>2</sup> of the Code of Criminal Procedure, 1973 in which the Hon`ble Court has the jurisdiction.

The present memorandum sets forth the facts, contentions and arguments.

¹**177. Ordinary place of inquiry and trial**—Every offence shall ordinarily be inquired into and tried by a Court within whose local jurisdiction it was committed.

²**209. Commitment of case to Court of Session when offence is triable exclusively by it**—When in a case instituted on a police report or otherwise, the accused appears or is brought before the Magistrate and it appears to the Magistrate that the offence is triable exclusively by the Court of Session, he shall—

(a) commit, after complying with the provisions of section 207 or section 208, as the case may be, the case to the Court of Session, and subject to the provisions of this Code relating to bail, remand the accused to custody until such commitment has been made;

(b) subject to the provisions of this Code relating to bail, remand the accused to custody during, and until the conclusion of, the trial;

(c) send to that Court the record of the case and the documents and articles, if any, which are to be produced in evidence;

(d) notify the Public Prosecutor of the commitment of the case to the Court of Session.

STATEMENT OF FACTS

For the sake of brevity and convenience of the Hon`ble Court the facts of the present case are summarized as follows:

RELEVANT INCIDENT

On 26.07.2008 at about 1:15 am, the accused committed murder of his wife, Sheela, in his house in Varthur by stabbing her with a knife, when she cried out for help, both the children got up and saw that the accused was there and that their mother had already been stabbed. On being stabbed, the deceased started moving toward the front door but she could not go out of the house.

INFORMATION TO POLICE

The children rushed to the house of their maternal uncle, Shankara, who is the complainant and resides in the immediate vicinity of the house of the accused. However, the children also stated in their testimony that one of them had gone directly to the beat police stationed around 500 metres away from their house and alerted them. The complainant, along with other relatives, came to the scene and saw the deceased lying in a pool of blood in front of the neighbour`s house. The beat police were also present at the scene by the time the complainant came there. The deceased was shifted by the complainant and the police in an injured condition to the hospital, where she died at 6:20 am while undergoing treatment.

FIR AND ARREST

The statement of Shankara was recorded by the police at the hospital on the basis of which the first information report was prepared at 5:30 am. The accused was arrested and investigation was conducted by the police into the said incident. The police completed investigation and submitted the charge sheet with 42 witnesses.

POLICE INVESTIGATION

MO6 and MO7 which are two knives recovered from the house of the accused. Prosecution introduced these as the murder weapon. At the time the police seized MO6 and MO7 from the scene of the crime, a seizure mahazar Ex P4 was drawn up. One of the witnesses to the seizure, PW11, who also signed the mahazar, on his cross examination, states that he did not read the contents of the mahazar. He also stated that he was illiterate and only knew how to write his name (signature).

RECORDING OF EVIDENCE

Shankara was examined as PW1 and stated that the accused had stabbed the deceased thereby killing her. Shankara further states that after the death of his wife, her two children are living with him and his family. He said that on the night of the murder, the two children came running to his house at around 1:30 am and said that their mother had been murdered. The prosecution examined the two children as PW2 and PW3 who stated that their father and mother used to live harmoniously. However, the witnesses also stated that the accused murdered the victim.

PW7 is the driver of the police jeep which was parked at the beat police check post 500 meters away from the scene of the crime. He testifies that one child aged around 6 years came running to him on the night of the murder. He said that the child was crying and managed to tell him to come to his house because his mother had been murdered. Thereafter, PW7 immediately left with the child to reach the scene of the crime, where some people had already assembled. He states that the murder victim was lying in a pool of blood in front of a house. Thereafter, he immediately contacted the jurisdictional police station, Varthur and informed the SHO on duty of the occurrence of a cognizable offence within the police station limits. This was around 1:45 am.

PW8 is the SHO on duty at the time the murder was committed. He admits to having received the wireless communication from PW7 and states that he immediately dispatched 2 police constables and another police jeep to go to the murder scene and guard the area. Thereafter, at around 4:30 am, he himself proceeded to the hospital to record the dying declaration of the victim and the complaint.

PW12 is the treating doctor at the hospital who treated the victim, He testifies that the victim was in a fit condition to make a statement till 12 around 4 am and after that she lost consciousness until she died at around 6:20 am. He states that the cause of the death was excessive haemorrhage and trauma due to lacerated cuts which had penetrated portions of the colon, stomach and liver of the victim. His version is verified by the post mortem report, Ex P3.

FINAL ARGUMENTS

The present case is now before the Hon`ble Principal District & Sessions Judge, Bangalore Rural District, Bangalore for the Final Arguments.

QUESTIONS PRESENTED

The following questions are presented before this Hon'ble court for adjudication in the instant matter:

I. WHETHER THE TESTIMONIES OF PW2, PW3, AND PW1 ARE CREDIBLE.

II. WHETHER THE PROSECUTION HAS BEEN ABLE TO ESTABLISH CHAIN OF EVIDENCES.

SUMMARY OF ARGUMENTS

I. THE TESTIMONIES OF PW2, PW3 AND PW1 ARE CREDIBLE.

Firstly, PW2 & PW3 are credible witness as omission of oath at the time of recording of evidence is irrelevant.

Secondly, there was no tutoring of PW2 & PW3 by PW1.

Thirdly, PW1 is also a reliable witness as he has understood the situation in a correct manner and then named accused as the murderer in both First Information Report & his testimony.

II. PROSECUTION HAS BEEN ABLE TO ESTABLISH CHAIN OF EVIDENCES.

Prosecution has been able to able to establish the chain of evidences as circumstantial evidences are very clear. Prosecution has established following circumstances-

Firstly, recovery of seizure mahazar is valid.

Secondly, conduct of accused is incriminating against him.

Thirdly, exclusive opportunity of murder lies with accused.

PLEADINGS AND AUTHORITIES

I. TESTIMONIES OF PW2, PW3, AND PW1 ARE CREDIBLE.

1. In the present case testimonies of PW2, PW3 and PW1 are valid and omission of oath is irrelevant. There was no tutoring of PW2 and PW3 by PW1 as there were major variances in the statement of children and maternal uncle; if children would have been tutored then there could not be such major variances. PW1 is also a reliable witness because in given circumstances he understood the situation correctly and soon after the crime in FIR he named accused as killer which establishes that there was no ill will behind the statement of the PW1.
A. NON-ADMINISTERING OF OATH TO PW2 & PW3 DOES NOT UNDERMINE THEIR CREDIBILITY.
2. It is humbly submitted before this Hon`ble court that non-administration of oath by the Hon`ble judge at the time of examination does not undermine the credibility of their testimonies. In the present matter, Court intentionally omitted to administer the oath to the child witnesses PW2 and PW3 as they could not understand its nature or sanctity, but still continued to take their evidence, shows that Court was satisfied that the child witnesses have sufficient intelligence to understand an obligation to state truth before the Court.³
3. As per sections 4 and 7 of Indian Oaths Act, 1969, in cases of child witness under twelve years of age, absence of an oath or affirmation shall not render inadmissible any evidence given by such witness nor affect the obligation of the witness to state the truth.⁴ In simpler words, even in the absence of oath the evidence of a child witness can be considered under Section 118 of the evidence Act. The evidence of a child witness and credibility thereof would depend upon the circumstances of each case.⁵
4. In the present case, PW2 was having knowledge to approach beat police just after the incident as he was aware of the fact that police protect the people. Furthermore, the conduct of PW3 to rush to the home of PW1 and managing to tell the incident establishes his credibility. Thus, from the immediate action of the PW2 and PW3 in such circumstances, it can be easily inferred that the children had basic understanding to realize the act of murder⁶ which

³State of Punjab v. Hari Singh, AIR 1974 SC 1168.

⁴Sections 4 & 7, Oaths Act.

⁵Dattu Ramrao Sakhare v. State of Maharashtra, (1997) 5 SCC 341.

⁶State of U.P. v. Krishna Master, (2010) 12 SCC 324; *See also*: State of Karnataka v. Shariff, (2003) 2 SCC 473.

establishes their credibility⁷ and non-administration of oath to them by Court at the time of examination has no relevance with the credibility of their testimonies.

B. THERE IS NO TUTORING OF PW2 AND PW3.

5. It is humbly submitted that in the present case, there is no tutoring of PW2 and PW3 by PW1. It is a settled position of law that an inference as to whether child has been tutored or not, can be drawn from the contents of his deposition.⁸
6. In the present case, PW2 & PW3 were living with PW1 for two years after the incident. However, this fact does not establish that children were tutored. It was natural for them to live with their maternal uncle as he was their closest relative after the death of their mother. There are various other facts and circumstances which have to be taken into consideration to determine credibility of PW2 & PW3.⁹
7. Firstly, there are variances in the testimonies of PW2 & PW3 and the testimony of PW1 in relation to the movement of both PW2 & PW3 after the incident, which logically suggests that there is no tutoring of PW2 and PW3 by PW1 because if there have been so, it would be natural for PW2 & PW3 to state same instance in their testimony.
8. Secondly, PW2 and PW3, in their testimony have stated that accused and victim were having harmonious relationship. It is imperative to note that, if there have been tutoring of the above witnesses; their answer to the above point would be in direct conflict to the above part of the testimony.
9. Considering all the above points, competency and credibility of PW2 and PW3 is proved beyond any doubt. Further, the possibility of tutoring is also ruled out in the present case.

C. PW1 IS A RELIABLE WITNESS.

10. In the present case PW1 has stated in his testimony as well as in FIR that the accused had stabbed the deceased thereby killing her. Victim was alive when FIR was lodged by the PW1. Now, it is important to note the relation between PW1 and the deceased. When his sister is on the death bed, he would think about her life rather than creating a false story against the accused particularly when time between the incident and death is very less.¹⁰ If PW1 would have any ill will towards the deceased, he would have tutored PW2 and PW3 in the two years period. However, it has already been established that children were never tutored by PW1.

⁷Ghasi Ram v. State, 1952 CriLJ 1366 (MP HC).

⁸State of MP v. Ramesh & Anr, (2011) 4 SCC 786.

⁹Supra note 6.

¹⁰Underhill's Criminal Evidence, Fifth d. Vol. I, p. 664.

Statement of the PW1 can be corroborated with the FIR¹¹ because in both he named accused as the murderer.

11. In addition to above, PW 1 stated in his testimony that her sister was stabbed which was later on affirmed in post mortem report. It is imperative to understand that PW1 was closest relative of the victim which means certainly he would have this knowledge that only four persons would be at home. Therefore, he rightly inferred in his statement that accused murdered the victim. Thus, PW1 is credible witness and his testimony is valid.

II. PROSECUTION HAS BEEN ABLE TO ESTABLISH CHAIN OF EVIDENCES.

12. It is humbly submitted before this Hon`ble Court that accused can be declared guilty if prosecution establishes chain of evidences.¹² In the present case circumstantial evidences are very clear. Victim was murdered inside the accused house, weapons were recovered in house of the accused, accused failed to give any explanation under section 313 of Cr.P.C. and most importantly he could be the only one who could have murdered the victim.¹³ Thus, in present case chain of evidence can be established through above propositions, which are following:

A. MURDER WAS COMMITTED INSIDE THE ACCUSED HOUSE.

13. It is humbly submitted before this Hon`ble Court that PW2 & PW3 have stated that their mother was murdered by their father, which confirms their presence at the murder site. However, they have not stated anything regarding the location of the body because soon after the incident they only saw deceased crying for help then they ran away from the scene. This omission regarding the location of the body in the statement of the PW2 & PW3 affirms story of prosecution because prosecution has only stated that soon after the stabbing deceased started moving towards the front door but she could not go out of the house.
14. Therefore, after the departure of both the children, what happened, prosecution has not included that in their story. It is evident that she would have struggled to go out of the house to save her from accused but could only managed to go to front of the neighbour`s house.
15. Thus, after correlating prosecution`s story and statement of PW2 & PW3, it can be easily inferred that deceased was murdered in the room where PW2, PW3, accused and deceased were sleeping.
16. In addition to the aforementioned submissions, it is imperative to note that if deceased would have been murdered outside the house of the accused so first person to hear her voice or to

¹¹Section 157, Cr.P.C, 1973.

¹²Harish Ramesh Pulekar v. The State Of Maharashtra, C.A. no.1035 of 2008; *See also*: State of U.P. v. Satish, AIR 2005 SC 1000 & Vilas Pandurang Patil v. State of Maharashtra, AIR 2004 SC 3562.

¹³Ajit Savant Majagvai v. State of Karnataka, AIR 1997 SC 3255.

observe her body would be neighbours because she was lying outside their house. However, they were PW2 & PW3, who came to know about the incident which further establishes that murder was certainly committed inside the accused house.

B. MURDER WAS COMMITTED BY MO6 & MO7 AND SEIZURE MAHAZAR IS VALID.

17. In the present case prosecution has introduced MO6 & MO7 as murder weapons which are two knives, recovered from the house of the accused. Since it has been established that stabbing took place inside the house and the only weapons recovered from the house are MO6 & MO7, then this directly can be related to the fact that these two weapons have direct connection with the injuries caused to the victim.¹⁴
18. It is significant to mention here that victim was found lying in a pool of blood which confirms that bleeding was external instead of internal. It is also imperative to note that in the lacerated cuts there were penetrated portions of colon, stomach and liver which means that cuts were deep. In various celebrated cases also experts have established that weapons like MO6 & MO7 have caused lacerated cuts.¹⁵
19. Hence, it establishes that on the night of the incident due to penetration of MO6 & MO7 into liver, stomach and colon there was excessive external haemorrhage from the body of the victim which resulted in her death.
20. In addition to the aforementioned submission, it is submitted before this Hon`ble court that, where witness to the seizure mahazar on his cross examination states that he did not read the contents of the mahazar, it will not be enough to disbelieve the prosecution version.¹⁶
21. It is also submitted that in the case of *Kadiya Kanbi Bhavan Monju v. Ismail Mamad*¹⁷, it was held, “A *panchnama* cannot be treated as substantive evidence of the fact recorded therein. The facts have to be proved independently of the *panchnama* by the testimony on oath of the *panch* who had seen these facts and who is a party to the *panchnama*.”
22. Furthermore, prosecution case is also affirmed by duty on the police officer to read out the contents of the mahazar to the witness of the seizure mahazar as it is an obligatory duty on the part of police officials to read out the contents of the mahazar as per Karnataka State Police Manual which is a mandate as it is framed under Karnataka Police Act, 1963.

C. CONDUCT OF THE ACCUSED IS INCRIMINATING AGAINST HIM.

¹⁴Vikas Alias Vicky Alias Ponga v. State Govt. of NCT Delhi CrI. A. 992/2011, MANU/DE/0242/2015.

¹⁵Sudalaimani v. State, II (2015) CCR 218 (Mad.).

¹⁶State v. Paramasivam, CRL.A.No.15 of 2002 (Madras HC), MANU/TN/2056/2009

¹⁷AIR 1955 SAU 32; See also: Kanubhai Virjibhai v. State, 2014 (1) GLR 655.

23. In cases of circumstantial evidence conduct of the accused before the crime and after the crime is very significant.¹⁸ In present case conduct of the accused during the trial has raised serious doubts regarding his innocence as he has failed to give explanation under section 313 of Cr.P.C. regarding his presence on the night of the incident, statement of the PW2 & PW3 and recovery of the weapons from his house. Apex Court of India has confirmed this proposition that it is the duty of the accused to explain the incriminating circumstances put before him while making a statement under section 313 of Cr.P.C.¹⁹ Thus, failure to give explanation regarding incriminating circumstance put before him under section 313 of Cr.P.C is an additional link in the chain of circumstances to sustain the charges against him.²⁰

D. EXCLUSIVE OPPORTUNITY TO MURDER WAS WITH THE ACCUSED.

24. In cases of circumstantial evidences it is very important to establish chain of evidences and one of the most important aspects of this chain is to establish that only accused had final opportunity to murder the victim.²¹ It has been established that accused was present at the murder scene on the fateful day, murder was also committed inside the house of the accused and MO6 & MO7 are also recovered from the house of the victim. Apart from this, another instance has to be taken into consideration that soon after the murder of victim, PW2 and PW3 rushed to the house of PW1 instead of going to the accused. Therefore, except accused no one had exclusive opportunity to murder the victim.²²
25. Hence, prosecution has been able to establish chain of evidence because no other inference²³ can be drawn except that accused murdered the victim²⁴ which is the most important variable in cases based on circumstantial evidence.²⁵
26. In addition to this, it is important to mention that once chain of evidence is established then there is no need to show motive.²⁶ Motive remains in the mind of the person that is why in cases of circumstantial evidences it is not relevant to prove motive once chain of evidences has been established.²⁷ Thus, motive loses its importance when chain of evidence is established.²⁸

¹⁸State of Maharashtra v. Kunda Zaverchand Sheth & Amit Zaverchand Sheth, 2013 (3) ABR 1348.

¹⁹Neel Kumar v. State of Haryana, (2012) 5 SCC 766.

²⁰Holiram Bordoloi v. State of Assam, AIR 2005 SC 2059.

²¹State of Karnataka v. Haji Mohamed Ibrahim, ILR 1990 Karnataka 1973.

²²Sirima Narasimha Rao etc. v. State of AP, 2010 Cri LJ 769.

²³Bodh Raj v. State of J & K, AIR 2002 SC 3164.

²⁴Geejaganda Somaiah v. State of Karnataka, 2007 Cri. LJ 1792 (SC).

²⁵Umed v. State of Gujarat, AIR 1978 SC 424; *See also*: Bhagat Ram v. State of Punjab, AIR 1954 SC 621.

²⁶Ganeshlal v. State of Maharashtra, (1992) 3 SCC 106.

²⁷State of UP v. Kishanpal & Ors., 2008 16 SCC 73.

²⁸Hari Shankar v. Stat of UP, (1996) 9 SCC 40; *See also*: Bikau Pandey & Ors. v. State of Bihar, (2003) 12 SCC 616; and Abu Thakir & Ors. v. State of Tamil Nadu, (2010) 5 SCC 91.

PRAYER FOR RELIEF

Wherefore, in light of the facts stated, issues raised, authorities cited & arguments advanced, may this Hon`ble Principal District and Sessions Court be pleased to *adjudge & declare that*:

1. Testimonies of PW1, PW2 and PW3 are credible.
2. Seizure mahazar is valid.
3. Prosecution has been able to establish the case beyond reasonable doubt.
4. Accused is convicted under section 302 of IPC.

AND

Pass any other order that it may deem fit in the interest of justice, equity & good conscience.

All of which is most humbly prayed.

On behalf of

STATE OF KARNATAKA

Counsel for the State

Sd/