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2 to 5 were promoted to the said post with all consequential benefits, pecuniary and otherwise.

ILR 2003 KAR 4933

B. PADMARAJ & S.R. BANNURMATH, JJ

The Registrar General, High Court of Karnataka, Bangalore vs Talawara Venkatappa*

INDIAN PENAL CODE, 1860 — SECTION 302 — CRIMINAL PROCEDURE CODE, 1973 (CENTRAL ACT NO. 2/1974) SECTIONS 366 AND SECTION 374(2) —

(A) A Case of Homicidal Death — And the prosecution case entirely rested on circumstantial evidence — While appreciating the evidence of witnesses in a Criminal Trial, minor discrepancies on certain trivial matters without affecting the substratum of the prosecution case, ought not to prompt the Court to reject the evidence in its entirety.

(B) Even with regard to interested witnesses, it is the duty of the Court to separate the truth from the falsehood and the chaff from the grain. The Court cannot ignore the evidence of a witness only on the ground that he is an interested witness.

(C) The Court while appreciating the evidence ought to keep in mind and visualize the situation at the time of occurrence of the incident. The Evidence of the witness should be appreciated by keeping the ground reality and the fact situation in mind. On facts - HELD — In the instant case the discrepancies which were pointed out for the appellant are all minor variations and discrepancies which does not in any way affect the substratum of the prosecution case — The Evidence available on record is trustworthy and acceptable and it can be relied upon and

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* Cr.R.C.No. 4/2002 etc. dated 31st January 2003

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has been rightly relied upon by the Trial Court— On the nature of evidence as is available on record, the question of any entitlement of benefit of doubt would not arise — The Court, further held, the Evidence on record is worth its credence and trustworthy and as such creates confidence in the mind of the Court. The evidence of PWs 1,2, 7, 10 supports the case of the prosecution — The incriminating circumstances indicated would unmistakably and inevitably lead to the guilt of the Appellant — Nothing has been 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 Trial Court has rightly held that the prosecution has established the case against the accused beyond all reasonable doubt — Order of the Trial Court confirmed in respect of conviction under Section 302 IPC.

On Facts:

The Appellant who is the sole accused in the case, a shepherd by profession, has been convicted by the Trial Court under Section 302 IPC for committing the murder of his wife Smt. Manjamma on 4.2.93. The Trial Court has imposed the death sentence and made reference to this Court under Section 366 CrP.C. for confirmation. The Appellant has also filed an appeal challenging the conviction and sentence imposed by the Trial Court. Both the matters finally disposed of by the common judgment.

Conviction of the appellant under Section 302 IPC confirmed and appeal dismissed.

Held: *The first circumstances is whether the deceased Smt. Manjamma died a homicidal death. It is not and could not be disputed that the death of the deceased Smt. Manjamma in the house of PW-1 was homicidal.* *(Para 17)*

As to the cause of death of the deceased, the Doctor PW-4 has clearly opined that it was due to asphyxia as a result of throttling. Accordingly, he has issued the Postmortem report as per Ex.P.2. He has further opined that the external injuries that were found on the dead body of the deceased could be caused by the wooden implement like thattu mani/MO-1. The injuries that

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were found on the dead body of the deceased were ante-mortem in nature. (Para 19)

Besides the medical evidence on record, the other evidence in the form of the inquest proceedings held over the dead body of the deceased by the Investigating Officer, which has been spoken to by PW-12, a Panch for the inquest and the Investigating Officer himself. Their evidence coupled with the relevant contents of the Inquest report Ex.P-6 to the extent admissible under law would clearly indicate that the death of the deceased was caused by external violence. (Para 20)

The first information to the Police was lodged by the complainant/PW-1 with the PSI/PW-11 at about 5.30 P.M. In the evening at the Police Station, situated at a distance of about 10kms., from the place of occurrence. Thus there is no undue delay in lodging the first information to the Police which lends some assurance to the prosecution version. (Para 22)

Except for minor embellishments here and there, they have withstood the cross-examination of the defence. Their evidence has not been shaken in any manner with regard to the substratum of the prosecution case. Of the four witnesses who speaks to this fact, PW-1 is only the relative of the deceased and the rest of them were not related to the deceased in any manner. They have nothing against the accused to falsely implicate the accused in such a heinous offence. So also PW-1. PW-1 being a relative of the deceased, that could hardly be a ground to discard her evidence. (Para 29)

When any incident happens in the dwelling house, the most natural witnesses would be the residents of that house. In that context PW-1 was a natural witness. It is unpragmatic to ignore such natural witnesses and insist on outsiders who would not have seen the occurrence of the incident. (Para 29)

It is also an established law that even with regard to the interested witnesses, it is the duty of the Court to separate the truth from the falsewood and not to ignore the evidence of witnesses only on the ground that he is an interested witness. (Para 29)

Cross-examination is an unequal duel between a rustic and refined lawyer. Furthermore, the Court while appreciating the

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evidence ought to keep in mind and visualize the situation at the time of occurrence of the incident. The evidence of the witnesses should be appreciated by keeping the ground reality and the fact situation in mind. *(Para 29)*

Incidentally it may be mentioned that while appreciating the evidence of witnesses in a criminal trial, minor discrepancies on certain trivial matters without affecting the substratum of the prosecution case, ought not to promote the Court to reject the evidence in its entirety. *(Para 29)*

The evidence available on record is otherwise trustworthy and acceptable and it can be relied upon and has been rightly relied upon by the Trial Court. On the nature of evidence as is available on record and as noted above, the question of any entitlement of benefit of doubt would not arise. The evidence on record is worth its credence and trust worthy and as such creates confidence in the mind of the Court. *(Para 29*

(B) CRIMINAL PROCEDURE CODE 1973 (CENTRAL ACT NO. 2/1974) — SECTIONS 354(3) AND SECTION 366 — Death sentence can be awarded for "special reasons" as provided in Section 354(3) — Death sentence will be warranted, if the murder is diabolically conceived and cruelly executed — Death sentence depends upon a variety of considerations such as the nature of the crime, the manner of its commission, the motive which impelled it and the character and antecedents of the accused — The fact of the murder being terrific cannot be an adequate reason for imposing death Sentence — The extreme penalty of death need not be inflicted except in gravest cases of extreme culpability. Thus, on Facts, HELD — The accused and deceased were both young and rustic villagers. Though the accused was found to be bad to his wife, he was found to be good to the society — He was not an unwanted element in the society — In the instant case looking to the circumstances as brought out from the evidence by the prosecution, there is no indication of any diabolic planning to commit the crime, though the act committed by the accused is cruel — There were no aggravating circumstances against the accused to award death sentence, hence, life sentence will be more appropriate.

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The criminal referred case, dismissed and the sentence of death against accused set aside and life imprisonment imposed.

HELD:

Section 302 IPC prescribes death or Life imprisonment as penalty for murder. But while doing so, the provisions contained in Section 354 (3) of Cr.P.C. lays down certain guidelines consistent with the policy indicated by the legislature. As regards sentence, it may be stated that now the death sentence is an exception and life imprisonment is a rule. Section 354 (3) of Cr.P.C. instructs the Court as to the application of the sentence for the offence under Section 302 IPC. Death sentence can be awarded for special reasons which should be clearly indicated. The determination of sentence in a given case depends upon a variety of considerations such as the nature of the crime, the manner of its commission, the motive which impelled it and the character and antecedents of the accused.

Further more, when the prosecution case is based solely on circumstantial evidence and the incident in question was found to be a result of petty quarrel between the accused and the deceased over a trivial issue and there being nothing on record to show as to what actually transpired at the time of the actual occurrence, we do not think it is expedient to award the capital sentence upon the accused. The passing of death sentence must elicit the greatest concern and soliçitude of the court because that is the one sentence which cannot be recalled. Hence, we are not inclined to confirm the death sentence awarded by the Trial Court.

CASES REFERRED: **AT PARAS**

1. *AIR 1959 SC 484 (C) - Narain and others vs State of Punjab* *(Ref)* 9
2. *AIR 1968 SC 1402 (B) - Kamesh Kumar Singh and Others vs State of Uttar Pradesh* *(do)* 9
3. *2002 (4) All India Criminal Law Reporter Page 757 - Ravinder Parkash and another vs State of Haryana and Page 616 (Balu Sonba Shinde vs State of Maharashtra* *(do)* 9

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4.	2001 (3) SCC Page 628 (A) - Pawan Kumar vs State of Haryana and	(do)	9
5.	2002 (4) All India Criminal Law Reporter Page 632 - State of Karnataka vs Hanumantha	(do)	9
6.	AIR 1973 SC Page 1(C) - Apren Joseph alias Current Kukunju and Others vs The State of Kerala	(do)	11
7.	AIR 1973 SC Page. 947 -Jagmohan Singh vs State of U.P.	(do)	11
8.	AIR 1977 SC Page 949 (B) - Shiv Mohan Singh vs The state (Delhi Administration)	(do)	11
9.	AIR 1978 SC Page 1248(F) - Shankaria vs State of Rajasthan	(do)	11
10.	2002 (3) SCC Page 76 - Lehna vs state of Haryana	(do)	11
11.	2002 (6) SCC Page 663 - State of Punjab vs Gurmej Singh	(do)	11
12.	2001 (6) SCC Page 296 - Shri Bhagwan vs State of Rajasthan	(do)	11
13.	2000 (6) Cr L.L.J. Page 5(B) - State of U.P. vs Dharmendra Singh and another	(do)	11
14.	AIR 1999 SC. Page 1860 - Jaikumar vs State of M.P	(do)	11
15.	AIR 1981 (1) SCC Page 164 para 2 - Shidagouda Ningappa Ghandavar vs State of Karnataka	(Ref)	12
16.	AIR 1981 SC 1710 - Unmilal vs State of Madhya Pradesh	(do)	12
17.	1983 Cr L.L.J. Page 1057 - Amruta vs State of Maharashtra	(do)	12
18.	1989 (3) SCC Page 33 - Anguswamy & Anr. vs State of T.N.	(do)	12

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19. 1989 SCC (Crl.) 319 - Dharam Pal Singh vs State (Delhi Administration) and R.N. Aggarwal vs Dharam Pal and Ors.	*(do)*	*12*
20. 1994 SCC (Crl) 629 - Vithal vs State of Maharashtra	*(do)*	*12*
21. ILR 1995 KAR 3525 - Gundegowda @ Moganna vs State	*(do)*	*12*
22. AIR 1999 SC Page 3857 - Ramji Rai & Ors. vs State of Bihar	*(do)*	*12*
23. 1984(4) SCC 116 - Sharad Birdhichand Sarda vs State of Maharashtra	*(do)*	*14*
24. 1994(2) SCC 220 - Dhananjay Chatterjee alias Dhana vs State of W.B.	*(do)*	*14*
25. 1994(3) SCC 381 - Laxman Naik vs State of Orissa	*(do)*	*14*
26. 1998(5)SCC 699 - Brijlala Pd. Sinha vs State of Bihar	*(do)*	*14*
27. AIR 1953 SC 364 - Dalip Singh & Ors. vs The State of Punjab	*(do)*	*29*
28. 1985 SCC(Cri) 105 - State of U.P. vs M.K. Anthony	*(do)*	*29*
29. 2000 SCC (CRI) 222 - Leela Ram (dead) through Duli Chand vs State of Haryana & Anr.	*(do)*	*29*
30. SCC 751, Para 209 - Bachan Singh vs State of Punjab	*(do)*	*36*
31. AIR 2000 SC 2762 - Laxman Naskar vs State of West Bengal and Another	*(Foll)*	*37*

Book Referred:

"Judgments on crimes against women" -Sri R.N. Choudhary.

Sri H.S. Chandramouli, SPP for Appellant
Sri S.S. Guttal, Advocate for Appellant
Sri S.S. Guttal, Advocate for Respondent
Sri H.S. Chandramouli, SPP for Respondent

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JUDGMENT

Padmaraj, J

Heard the arguments of the learned SPP as well as the learned Counsel for the convicted accused at a considerable length and carefully perused the entire case papers in detail including the impugned judgment made by the Trial Court with their assistance. We have also carefully perused the several decisions relied upon by the learned Counsel on either side.

2. The appellant Talawara Venkatappa who is the sole accused in the case, aged about 25 years, a shephered by profession and resident of Loleshwar, has been convicted by the Trial Court under Section 302 of IPC for committing the murder of his wife Smt. Manjamma, aged about 20 years on 04.12.1993 at about 3 p.m. at the dwelling house of PW-1/Smt. Devakka, the elder sister of the deceased at Kyarakatte village by committing assault on the deceased with a wooden implement called "thattu mani" (an wooden implement used of leveling the earthern floor) on her face and by throttling or squeezing her neck, when the deceased had been staying in the house of her elder sister Smt. Devakka/PW-1; the deceased being pregnant carrying 6 months of pregnancy.

3. On the question of sentence, the Trial Court found that the convicted accused being an intemperate person could not control his passion and killed his wife Smt. Manjamma in a most cruel manner without any justification and that the accused is dangerous to the society and he does not deserve any sympathy from the Court. In this view of the matter, the Trial Court felt that the death sentence has to be awarded to the convicted accused in order to deter and dampen the spirit of the criminals like the accused in the present case. Accordingly, the Trial Court has imposed the sentence of death upon the convicted accused and made reference to this Court for confirmation under Section 366 of Cr.P.C.

4. Besides the reference made by the Trial Court under Section 366 of Cr.P.C. for confirmation of the death sentence of the accused who has been convicted of the offence under Section 302 IPC, the appellant has also filed an appeal challenging his conviction and sentence imposed by the Trial Court.

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5. Since these two matters namely the reference made by the Trial Court Section 366 of Cr.P.C. and the appeal filed by the convicted accused against his conviction and sentence, arise out of the same Judgment and order of the Trial Court, they are conveniently dealt with together and are finally disposed of by his common Judgment.

The case of the prosecution in brief is.

6. The appellant is the husband of the deceased Manjamma. At the time of her death, the deceased was hardly aged about 20 years and she was pregnant by 6 months. She was married to the appellant about 1½ years prior to her death. After the marriage, the appellant took his wife deceased Smt. Manjamma to his house at Loleshwar and stayed together for few days leading a happy marital life. Subsequently, the appellant started assaulting the deceased. After about two months of their stay at Loleshwar since the appellant could not pull on well with the other members of his family, he came along with his wife and sheep to a place called Kyarakatte village to live there. Even after coming over there, the appellant had been assaulting his wife and ill-treating her. That is to say, he did not stop ill-treating and harassing the deceased even after coming over to Kyarakatte village. PW-1/Smt. Devakka, who is an elder sister of the deceased, has been residing at Kyarakatte village itself. PW.-1/Smt.Devakka, PW-8 Kenchappa and PW-12 Shambulingappa and few other elders of the village advised the accused not ill treat and harass the deceased and to lead a happy married life with her. But the said advice has no effect on the appellant and he continued to be so. Thereafter the appellant went along with his wife to a place called Channapura and stayed there for about 3 months and later he went along with the deceased to Mathihalli and left his wife in the house of his maternal aunt. In the course of time, the deceased Manjamma became pregnant through the appellant and during the relevant time of this incident, She was pregnant by six months. When the deceased Manjamma was pregnant by 5 months and a few days prior to her death, she was brought to the house of her elder sister PW-1 in Kyarakatte village by PW-1, her younger sister Kamalamma and Parassappa, the husband of her younger sister and accordingly the deceased was staying in the house of PW-1 at Kyarakatte village expecting a child.

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It appears that the deceased Smt. Manjamma had become pregnant for the first time and accordingly she was brought to the house of PW-1 for her delivery. While the deceased Manjamma was so staying in the house of PW-1 at Kyarakatte village, the appellant came to the house of PW-1 and demanded PW-1 to send his wife along with him. PW-1 replied to the accused that the deceased would be sent after her delivery. Even the deceased refused or declined to go along with the accused when asked by the accused to accompany him to his house. Thereafter on that relevant day in the morning, the appellant had a quarrel with the deceased on her refusal to accompany him. PW-1/Smt. Devakka advised the accused not a quarrel with the deceased. Thereafter the complainant/ PW-1 left the house to go for coolie work in the field. So also the husband and the son of PW-1 left the house in order to go for coolie work. When the complainant/PW-1 left the house, the appellant and the deceased were only present in the house. On the same day at about 3 p.m. the complainant/PW-1 returned to her house and having found the door of her house closed, she gave a call to the deceased to open the door. But she did not receive any response from inside the house. While the complainant/ PW-1 was still standing outside their house, the appellant suddenly opened the door and ran outside the house by pushing aside the complainant/PW-1. When the appellant emerged out of the house, his clothes were found to be blood stained. Soon thereafter the complainant/PW-1 went inside the house and found the deceased Manjamma lying death in the house. The wooden implement called "thattu mani" was also found lying nearby. On seeing such ghastly incident, the complaint/PW-1 ran out of the house screaming. On hearing her cries, one Obalappa/PW-7 came there and PW-1 informed him of what she had actually witnessed or seen.

Thereafter, both PWs.1 and 7 chased the accused, but he could not be caught as he ran towards Bylenahalli village. Karriyappa/ PW-10 had also chased the accused, but the accused pushed him and ran away by giving a threat. Thereafter the complainant/PW-1 went to the Police Station at about 5.30 p.m. on 04.12.1993 and gave her statement which was recorded to writing as per Ex.P.1. On the basis of which and treating the same as FIR, the PSI/PW-11 registered the case and took up investigation. During the course of his investigation, the accused was apprehended by

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the PSI/PW-11 on 19.2.1994 and was produced before the CPI/ PW-13. He caused the arrest of the accused and got him remanded to judicial custody. After completion of the investigation, a charge sheet was laid against the accused under Section 302 IPC. In the normal course, the case of the accused stood committed to the Sessions Court for Trial. The appellant having pleaded not guilty and claim to be tried, the prosecution had examined at the Trial as many as 13 witnesses and also placed on record certain documentary evidence and material objects including the weapon of offence MO.1. When the accused was examined under Section 313 Cr.P.C, he denied all the incriminating circumstances appearing against him in the prosecution evidence. The defence of the accused was one of a total denial. He did not however examine any witness on his behalf.

7. The Trial Court, on consideration of the entire evidence on record and after hearing the submissions on both sides, has found that the prosecution has been able to establish or prove the following circumstances against the accused and they are:

1. The death of the deceased Smt. Manjamma was homicidal;

2. The accused has motive to kill his wife as she refused to accompany him;

3. The accused and the deceased were alone present in the house till PW-1 came and called out Manjamma and thereafter the accused ran away from the house which rules out the possibility of the deceased Smt. Manjamma being killed by none else than the accused and the accused alone;

4. The accused ran away from the house after pushing PW-1 and he was chased by Obalappa/PW-7, but could not be caught;

5. The accused was seen by PW-10 at about 3 p.m, who came running towards his land from the village side and PW-7 chasing him and that he was caught by PW-10, but the accused somehow escaped and ran away; and

6. The conduct of the accused in becoming scarce after the incident.

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8. On the basis of the above circumstances and the conclusion drawn therefrom, the learned trial Judge found that the prosecution has been able to establish its case against the accused for the offence under Section 302 IPC. Then after hearing the accused on the question of sentence, the trial Court felt that the murder of the deceased lady has been committed in a most cruel manner without any justification and that the accused is dangerous to the society and does not deserve any sympathy of Court in the matter of awarding sentence and accordingly, the learned trial Judge convicted the accused under Section 302 IPC and sentenced him to death and made a reference to this Court under Section 366 of Cr.P.C. The convicted accused has also preferred an appeal challenging his conviction and sentence. Hence the Criminal Reference made by the Trial Court under Section 366 of Cr.P.C. as well as the Criminal Appeal filed by the convicted accused are conveniently taken up together for consideration.

9. Learned Counsel for the Appellant in Criminal Appeal No. 1419/2002 after taking us through the entire evidence, has contended before us that the conviction of the accused in this case is based only on the circumstantial evidence, but the circumstances/ sought to be proved against the accused are not at all sufficient to hold him guilty under Section 302 IPC. He contended that even the evidence of PW-1 suffers from several contradictions and omissions. While elaborating this submission, he contended that the complainant/PW-1 has stated in her chief examination that the accused opened the door from inside and ran out of the house, whereas in the cross-examination she has stated that she herself opened the door which was locked from inside and not the accused and after the door was so opened by her, the accused ran out of the house. Besides this contradiction, he contended that the evidence of PW-1 suffers from several infirmities. While referring to the evidence of PW.2, he contended that he has suffered an omission with regard to the motive attributed to the accused namely the quarrel of the accused with the deceased. He contended that the circumstances sought to be proved against the accused are not at all sufficient to convict the accused under Section 302 IPC. He also contended that certain material witnesses who were supposed to have been present nearby the house of the complainant/PW-1 have not been examined in the case which is fatal to the prosecution

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case. He also contended that even the husband and son of PW-1 who were admittedly residing in the house along with PW-1 have not been examined and their non-examination without any explanation is fatal to the prosecution. He further contended that even the other sister of PW-1 and her husband who alleged to have brought the deceased and made her to say in the house of PW-1 ought to have examined by the Prosecution, but they have not been examined. He therefore contended that the non-examination of any of these witnesses by the prosecution is clearly fatal to the prosecution. He contended that in so far as the complainant/PW-1 is concerned, she is a tutored witness and introduced for the purpose of this case and hence she could not be relied upon. He contended that the presence of PW-1 at that hour of the day appears to be unnatural in the circumstances of the case. While elaborating this submission, he contended that even as admitted by PW-1 herself, normally when they go for coolie work, they would return only in the evening and that being so, the presence of PW-1 at about 3. p.m., in the afternoon near her house is highly unnatural. He also contended that the conduct of the accused in staying in the house till the arrival of PW-1 as spoken to by her would only speak of the innocence of the accused and not his guilty mind. He contended that, that could not have been the conduct of the person if he has committed the murder of his wife in the house. Learned Counsel for the appellant also commented on the conduct of PW-1 in consulting the villagers and thereafter going to the Police Station to lodge a complaint. Under the circumstances, he contended that in all probability, the complaint must have been given after due deliberation. While adverting to the evidence of PWs-2, 7 and 10, he contended that their evidence also suffers from serious infirmities and does not in any way corroborate with the evidence of PW-1. He also contended that the complainant PW-1 has not stated as to whose land she had gone for coolie work that day and hence it is doubtful whether she had gone for a coolie work at all on that day. He also contended that when the accused and the deceased were found quarreling in the house, the complainant/PW-1 could not have left them alone in the house and gone out. He contended that PW-2 has stated that PW-10/Kariyappa was there near the house of PW-1 when he had gone there after hearing the cries of PW-1, whereas PW-10/Kariyappa has stated that he was in a field and at that time, he saw the

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accused being chased by PW-7. Further according to PW-7, the two roads namely Bylenahalli road and Bendigere road are different and distinct and there is clear discrepancy as to which road the accused took while running away from the house. Under the circumstances, he contended that PW-10/Kariappa seeing the accused running and being chased by PW-7 is highly doubtful in view of he evidence of PW-2 who has stated that he had seen PW-10 at the house of PW-1. He therefore contended that all these discrepancies in the evidence of PWs-1, 2, 7 and 10 could not have been there, if the events had occurred in the manner as deposed to by them. He also contended that even the circumstances spoken to by these witness taken on their face value will not point out definitely to the guilt of the accused. He contended that the one and the only circumstances if at all established from their evidence is the presence of the accused and that by itself is not sufficient to connect the accused with the crime especially when the deceased and the accused are husband and wife and at the relevant time of this incident, they were both staying in the house of PW-1. He contended that the theory of last seen together besides being not proved by the prosecution, is not sufficient to fasten the guilt upon the accused. He further contended that while PW-2 has stated that PW-10 was present at the house of PW-1 and also stated that when he saw the accused, the hands of the accused were blood stained, whereas PW-10, who states to be in the field, claims to have seen the accused with blood stained clothes and so also PW-1. He also contended that there is also some variation with regard to the time of the incident. According to him, some of the prosecution witnesses says 1.00 or 2.00 p.m. and some say 3.00 p.m. He contended that there is also some discrepancy with regard to the road that was taken by the accused while running away from the house of PW-1. Further he contended that according to PW-1, nobody was seen nearby her house. But whereas the others say that on hearing the cries of PW-1, they had come to the spot. Coming to the motive part of the case put forth by the prosecution, he contended that the motive attributed to the accused is too feeble for committing such ghastly crime. He also contended in the alternative that the incident in question might have happened under a grave and sudden provocation when the deceased declined to accompany the accused to his house and hence the act committed by the accused does not attract Section 302 IPC. He

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also referred to certain investigation lapses in the case. He contended that the Investigating Officer did not seize the blood stained clothes of the accused though they were stated to be blood stained. He contended that the non-seizure of the clothes of the accused is fatal to the prosecution case. He therefore contended that the prosecution is not at all successful in establishing its case. In support of his submissions, the learned Counsel for the Appellant has relied upon the decisions reported in:

NARAIN AND OTHERS vs STATE OF PUNJAB[1]

KAMESH KUMAR SINGH AND OTHERS vs STATE OF UTTAR PRADESH[2]

RAVINDER PARKASH AND ANOTHER vs STATE OF HARYANA (Page 616) and BALU SONBA SHINDE vs STATE OF MAHARASHTRA[3]

PAWAN KUMAR vs STATE OF HARYANA[4] and

STATE OF KARNATAKA vs HANUMANTHA[5]

10. As against this, the learned SPP for the Respondent/State has contended that it is always quality and not quantity of evidence that counts in a criminal case. He contended that in the instant case, all the relevant material witnesses who are supposed to have been acquainted with the case have been examined in the Court and they have given their evidence in Court in the most natural way. He contended that there is a prompt lodging of the FIR to the Police without undue delay which lends assurance to the prosecution version put forth at the trial. While adverting to the evidence of the witnesses examined in Court, he contended that except the complainant/PW-1, all other witnesses are independent witnesses. Their evidence according to the learned SPP clearly establishes the circumstances which inescapably points out to the guilt of the accused. He contended that even the motive attributed to the accused has also been clearly established not only by the prosecution witnesses but also by the suggestion made by the defence. He contended that the accused and the deceased were

1. AIR 1959 SC 484 (C) 2. AIR 1968 SC 1402 (B)
3. 2002(4) All India Criminal Law Reporter P. 757
4. 2001(3) SCC Page 628(A) 5. 2002 (4) A.I.C.L. Reporter P-632

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always quarrelling and they were not pulling on well with each other. With regard to the presence of the deceased at the house of PW-1, he contended that it was the first pregnancy of the deceased and hence it is quite natural to have the deceased in the house of PW-1 as per their tradition. He contended that the material evidence placed on record clearly reveals that on that fateful day only the accused and the deceased were present in the house and none else. He contended that when the death of the deceased had occurred in a suspicious circumstances, it is the accused alone who could explain the same as to the circumstances under which the death of the deceased had occurred and the non-explanation on the part of the accused coupled with the proved circumstances, will clearly establish that it is the accused and accused alone has committed the murder. He contended that the circumstances spoken to by the prosecution witnesses namely PWs-1, 2, 4, 7 and 10 would clearly establish the guilt against the accused and the non-explanation of the accused with regard to the incriminating circumstances appearing against him in the prosecution evidence is an additional link to complete the chain of circumstances. He also contended that there was absolutely no reason for the witnesses to falsely implicate the accused. All the prosecution witnesses have withstood the cross-examination effectively and they have consistently spoken to about the incident in question. He therefore contended that the prosecution has proved its case beyond all reasonable doubts. He also referred to the abscondence of the accused as a circumstances to complete the link.

11. On the question of death sentence imposed by the Trial Court, the learned SPP has contended that the Trial Court was fully justified in imposing the death sentence against the accused who has committed the murder of the deceased while she was carrying a child in the womb. He contended that the appellant had escaped conviction in the previous case as the witnesses has turned hostile. But the said circumstances of the accused facing a trial for murder previously would show that the Appellant had bad antecedents and rightly the same has been taken special note of by the Trial Court while awarding the death sentence. He contended that in the instant case, the accused, who is the husband of the deceased, has most inhumanly committed the murder of his own wife who at that time was pregnant by six months and thereby he

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not only killed the lady but also the child in the womb which was yet to see the world. He therefore contended that this is a fit case where this Court should confirm the death sentence imposed by the Trial Court. In support of his submissions, the learned SPP has placed reliance upon the several decisions reported in:

APREN JOSEPH ALIAS CURRENT KUKUNJU AND OTHERS vs THE STATE OF KERALA[6] P. 947 (C,D,E) and JAGMOHAN SINGH vs STATE OF U.P.[7], SHIV MOHAN SINGH vs THE STATE (Delhi Administration)[8]

SHANKARIA vs STATE OF RAJASTHAN[9]

LEHNA vs STATE OF HARYANA[10]

STATE OF PUNJAB vs GURMEJ SINGH[11]

SHRI BHAGWAN vs STATE OF RAJASTHAN[12]

STATE OF U.P. vs DHARMENDRA SINGH AND ANOTHER[13]

JAI KUMAR vs STATE OF M.P.[14]

He also drew our attention to certain passages in the book titled "JUDGMENTS ON CRIMES AGAINST WOMEN" 1st Edition by R.N. Choudhary, wherein the learned Author after referring to certain decisions of the Supreme Court has observed as under:.

> "In the matter of punishment for offence committed by a person, there are many approaches to the problem. On the commission of crime three types of reactions may generate; the traditional reaction of universal nature which is termed as punitive approach. It regards the criminal as a notoriously dangerous person who must be inflicted severe punishment to protect the society from his criminal assaults. The other approach is the therapeutic approach. It regards the criminal as a sick person requiring treatment, while the third is the preventive approach which seeks to eliminate those conditions from the society which were responsible for crime causation.

6. AIR 1973 SC Page 1(C)
7. AIR 1973 SC Page 947
8. AIR 1972 SC 949(B)
9. AIR 1978 SC Page 1248(F)
10. 2002(3) SCC PAge 76
11. 2002(6) SCC Page 663
12. 2001(6) SCC Page 296
13. 2000 CRI. L.J. Page 5(B)
14. AIR 1999 SC Page 1860

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Under the punitive approach the rationalisation of punishment is based on retributive and utilitarian theories. Deterrent theory which is also part of the punitive approach proceeds on the basis that the punishment should act as a deterrent not only to the offender but also to others in the community.

The therpeutic approach aims at curing the criminal tendencies which were the product of a diseased psychology. There may be many factors, including the family problems.

Sexual offences, however, constitute an altogether different kind of crime which is the result of a perverse mind. The perversity may result in homosexuality or in the commission of rape. Those who commit rape are psychologically sadistic persons exhibiting this tendency in the rape forcibly committed by them."

12. As against this, the learned Counsel for the convicted accused in the death reference case has contended that the circumstances stated to have been proved by the prosecution does not in any way indicate that the accused had an intention to kill deceased. While elaborating this submission, he contended that the accused, as admitted by the prosecution itself, had come to the house of PW-1 only to take her back along with him to his house, but she declined to accompany and even PW-1 also refused to send the deceased along with the accused, but inspite of all these, the accused has stayed in the house of PW-1 for some time under the hope that the deceased may accompany him to his house. But unfortunately, it did not happen and when the deceased showed no sign of return, in all probability the accused must have lost his mental balance and the incident in question might have occurred under a sudden and grave provocation. He also contended that the case of the prosecution is mainly based on circumstantial evidence and there are no eye witnesses to the occurrence. Under the circumstances, he contended that the death sentence imposed by the Trial Court is not at all justified as it does not come under the category of the rarest of rare cases. In support of his submissions, the learned Counsel for the convicted accused has placed reliance upon the decisions reported in:

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1. SHIDAGOUDA NINGAPPA GHANDAVAR vs STATE OF KARNATAKA[15]

2. UNMILAL vs STATE OF MADHYA PRADESH.[16]

3. AMRUTA vs STATE OF MAHARASHTRA[17]

4. ANGUSWAMY AND ANOTHER vs STATE OF TAMIL NADU[18]

5. DHARAM PAL SINGH vs STATE (DELHI ADMINISTRATION) AND R.N. AGGARWAL vs DHARAM PAL AND OTHERS[19]

6. VITHAL vs STATE OF MAHARASHTRA[20]

7. GUNDEGOWDA @ MOGANNA vs STATE[21]

8. RAMJI RAI AND OTHERS vs STATE OF BIHAR[22].

13. At the outset, it has to be stated that there is no eye witnesses to the occurrence in question. The prosecution case entirely rested on circumstantial evidence. The circumstances sought to be proved by the prosecution were:

1. Smt. Manjamma, the young wife of the accused died a homicidal death;

2. The deceased was last seen with the Appellant in the house of PW-1. That is to say the deceased was found in the company of the accused prior to her death;

3. The accused ran out of the house of PW-1 with blood stained clothes and the dead body of the deceased was found lying in the house soon after his exit;

4. The relationship between the accused and the deceased were somewhat strained and the deceased was being ill-treated and beaten by the Appellant and even on that fateful day also the appellant had a quarrel with the deceased in the house of PW.1; and

15. AIR 1981 (i) SCC Page 164
16. AIR 1981 SC 1710
17. 1983 CRI.L.J. Page 1057
18. 1989 (3) SCC Page 33
19. 1989 SCC (CRL) 319
20. 1994 SCC (CRL) 629
21. ILR 1995 Karnataka 3525
22. AIR 1999 SC P. 3857

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5. The obscondence of the Appellant after the occurrence.

14. The standard of proof required to convict a person on circumstantial evidence is now well established by a series of decisions of the Hon'ble Supreme Court. According to that standard, the circumstances relied upon in support of the conviction must be fully established and the chain of evidence furnished by those circumstances must be so complete as not to leave any reasonable ground for a conclusion consistent with the innocence of the accused. The circumstances from which the conclusion of the guilt is to be drawn have not only to be fully established but also that all the circumstances so established should be of a conclusive nature and consistent only with the hypothesis of the guilt of the accused and should not be capable of being explained by any other hypothesis, except the guilt of the accused and when all the circumstances cumulatively taken together should lead to the only irresistible conclusion that the accused alone is the perpetrator of the crime. In this connection, a reference may be made to a few decisions of the Hon'ble Supreme Court reported in:

1. SHARAD BIRDHICHAND SARDA vs STATE OF MAHARASHTRA[23]

2. DHANANJOY CHATTERJEE ALIAS DHANA vs STATE OF W.B.[24]

3. LAXMAN NAIK vs STATE OF ORISSA[25]

4. BRIJLALA PD SINHA vs STATE OF BIHAR[26]

A reference may also be made to a decision of the hon'ble Supreme Court relied upon by the learned Counsel for the convicted accused in the case of "PAWAN KUMAR vs STATE OF HARYANA" (Supra) wherein it is held as under:

> "Success of the prosecution on the basis of circumstantial evidence will depend on the availability of a complete chain of events so as not to leave any doubt for the conclusion that the act must have been done by the accused person. The evidence on record, ascribed to be circumstantial, ought to justify the

23. 1984 (4) Scc 116
24. 1994(2) SCC 220
25. 1994(3) SCC 381
26. 1998 (5) SCC 699

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inferences of the guilt from the incriminating facts and circumstances which are incompatible with the innocence of the accused or guilt of any other person. While, it is true that there should be no missing links in the chain of events so far as the prosecution is concerned, it is not that every one of the links must appear on the surface of this evidence, since some of these links may only be inferred from the proven facts. Circumstances of strong suspicion without however, any conclusive evidence are not sufficient to justify the conviction and it is on this score that great care must be taken in evaluating the circumstantial evidence. In any event, on the availability of two inferences, the one in favour of the accused must be accepted."

15. From the above observations made by the Hon'ble Supreme Court, it is quite clear that while it is true that there should be no missing links in the chain of events so far as the prosecution is concerned, it is not that everyone of the links must appear on the surface of the evidence, since some of these links may only be inferred from the proven facts.

16. Keeping these principles in mind, we shall now advert to the circumstances which are sought to be relied upon by the Prosecution to prove the guilt of the accused.

17. The first circumstances is whether the deceased Smt. Manjamma died a homicidal death. It is not and could not be disputed that the death of the deceased Smt. Manjamma in the house of PW-1 was homicidal. Just to complete the record, we may refer to the evidence of PW-4 Dr. Ramappa who held autopsy over the dead body of the deceased. He conducted the post mortem examination on the dead body of the deceased during the interval between 1.00 p.m. and 3.00 p.m. on 05.12.1993. He noticed the following external injuries:

1) A lacerated injury size 2 1/2 x 1/2" situated on the right side just below the angle of the mouth. Extending transervicing below the right angle of the mouth 1/2" below the middle of the lower lip. All the tooths are intact. Both side of the below the face ears are contused and swollen.

18. On dissection of the dead body of the deceased, he found the following internal injuries:

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"1. Trachea was congested, lacerated injury below the right angle of the mouth.

Neck: A reddish brown impression of size 2½" x 2" present over the thyroid cartilage of the neck was present.

2. ½" lacerated to the middle line on the left side of the neck, there are finger marks impression. Clustered together placed obliquely from above downwards and outerwards these marks. These marks are reddish brown in colour of size 6" transversely and 4" vertically."

19. The Doctor PW-4 further found on dissection that there was extravasation of blood into the subcutaneous tissue of the neck, expecially below the finger mark impression. There was a fracture of superior carni of the thyroid bone and also there was a fracture of superior carno of thyroid cartilage. As to the cause of death of the deceased, the Doctor PW-4 has clearly opined that it was due to asphyxia as a result of throttling. Accordingly, he has issued the Postmortem report as per Ex.P.2. He has further opined that the external injuries that were found on the dead body of the deceased could be caused by the wooden implement like thattu mani/MO-1. The injuries that were found on the dead body of the deceased were ante-mortem in nature. The Doctor/PW-4 had also found at the time of autopsy that the deceased was pregnant by 6 months at the time of her death. Under the cross examination, he has further stated that on observing the uterus on the basis of the height, he can say the age of the child in the womb of the deceased. According to the Doctor/PW-4, the deceased could have taken food about 4 hours earlier to the death. It is no doubt true that the Doctor/PW-4 has also stated about the other possibility of sustaining such injuries by the deceased, but no such circumstance has been established or brought out in the case to infer that the death of the deceased had caused either due to a fall from a ladder or by coming in contact with the edge of any katta. Besides this, we find that certain hypothetical question has been put by the defence without any basis to the Doctor/PW-4 and he has stated that such possibility cannot be eliminated. But as we have already indicated, there is nothing on record to show that the deceased Smt. Manjamma had a fall on that day from a ladder and had come in

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contact with any katta. In the absence of any such circumstances being brought on record, the answer given by the Doctor/PW-4 will be of no consequence.

20. Besides the medical evidence on record, we have the other evidence in the form of the inquest proceedings held over the dead body of the deceased by the Investigating Officer, which has been spoken to by PW-12, a Panch for the inquest and the Investigating Officer himself. Their evidence coupled with the relevant contents of the Inquest report Ex.P-6 to the extent admissible under law would clearly indicate that the death of the deceased was caused by external violence.

21. From the above evidence on record, the prosecution has been able to establish that the death of the deceased was homicidal. Thus the fact that the deceased Smt. Manjamma had died due to violence in the house of PW-1 stands established from the prosecution evidence on record.

22. Coming to the second circumstances, we have the evidence of Smt. Devakka/ PW-1, who besides being a circumstantial witness, was also an informant to the police. It would be of some relevance to note here itself that the first information was lodged by PW-1 to the Police without undue delay. The incident in question took place around 3.00 p.m., on 4.12.1993. The first information to the Police was lodged by the complainant/PW-1 with the PSI/PW-11 at about 5.30 P.M., in the evening at the Police Station, situated at a distance of about 10 kms., from the place of occurrence. Thus there is no undue delay in lodging the first information to the Police which lends some assurance to the prosecution version.

23. PW-1 is an elder sister of the deceased and a resident of Kyarakatte village. The deceased Manjamma was brought to the house of PW-1 when she was pregnant by about 5 to 6 months. It was her first pregnancy. Under the circumstances, it is quite natural to expect as per the custom of the community to get the pregnant lady for her first delivery to the house of her parents, if they are alive or to the house of her relatives from the parents side. Under the circumstances, it is quite natural for the deceased to be brought to the house of PW-1 for her first pregnancy. The deceased Smt. Manjamma had come to the house of PW-1 about

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15 days prior to her death and was staying with her elder sister PW-1 in her house at Kyarakatte village. Abut 8 days later, the accused came to the house of PW-1 to take back his wife to his house. The accused asked PW-1 to send his wife along with him to his house. For that PW-1 replied that the deceased will be sent after her delivery. The deceased Smt. Manjamma also declined to go along with the accused. Thereafter, the accused also stayed in the house of PW-1 and during such stay of the accused in the house of PW-1, there used to be frequent quarrels between the accused and the deceased over the issue of the deceased accompanying the accused to his house. Even on the day of the occurrence also, the accused had quarreled with the deceased in the morning. PW-1 having asked the accused and the deceased to remain cool in the house, left for coolie work outside her house. Even the husband and son of PW-1 also left the house for coolie work. They had gone to a field to pick cotton. When they so left the house, the accused and the deceased were the only persons left in the house. PW-1 worked in the field till 3.00 p.m and returned alone to the house to carry food. When PW-1 left the field at about 3.00 p.m. her husband and son were still working in the filed. When PW-1 approached the house, she found the door of her house was closed from inside. She called out the name of the deceased Manjama to open the door, but there was no response from inside the house. Then after sometime, the appellant opened the door and ran out of the house. The clothes of the accused were found to be blood stained. On going inside the house, PW-1 saw her sister Manjamma lying dead in the house with injuries and the wooden implement MO-1 was lying nearby. On seeing such ghastly incident in the house, she raised a loud cry. On hearing her cries, PW-7/Obanna came there and on his enquiry she narrated the occurrence as witnessed by her to PW-7. Thereafter, PW-7 went chasing the accused. While he was so chasing the accused, one Kariyappa/PW-10 was found working in his field and when the said Kariyappa/PW-10 tried to catch hold of the accused, he escaped and ran away. The accused could not be caught. Thereafter, the complainant/PW-1 was advised by the elders in the village to go and lodge a complaint with the police and accordingly PW-1 went to the Police Station and gave her compliant as per Ex.P.1. It is no doubt true that the complainant/PW-1 has stated that she went to the Police Station at about 8.00 p.m., in the night. But that appears

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to be a patent mistake because the PSI/PW-11 has clearly stated the complaint was given to him at about 5.30 p.m., in the evening at the Police Station. Under the circumstances, no significance can be attached to the time factor given by the complainant/PW-1 regarding the lodging of the first information. Under the cross-examination, PW-1 has stated that she is an illiterate lady. Normally when they go for coolie work, they return home in the evening. But she would further qualify by saying that whenever they carry food along with them, they would return home in the evening and when they did not carry food along with them, she would come to the house and take food and again go to the place of work. It would be of some relevance to note here itself that on that day, the complainant/PW-1 had returned to the house at about 3.00 p.m., in the afternoon to carry food from the house. The said statement made by PW-1 in the light of the answer elicited by defence in the cross-examination would clearly indicate that she had come to the house in order to carry food and hence there was nothing unnatural for the complainant/PW-1 to be present near her house at about 3.00 p.m on that day. She has further stated in the cross-examination that the nature of quarrel between the accused and the deceased was one which was common to the husband and wife and there was no special significance for their quarrel. She has further stated in her cross-examination that when they brought the deceased to their house for observing certain custom, she was pregnant by 6 months and it was her first pregnancy. The defence has also brought out in the cross-examination of PW-1 that there are other residential houses by the side of her house. But during working hours nobody will be sitting at the katta situated in front of her house indulging in idle chatting. She has further stated that when she returned to the house to take mid-day meal, the door of her house was closed from inside and the time then was about 1.00 to 2.00 p.m., and that she enquired with a boy who was present near her house as to the presence of her sister. She further stated that the latch of her house was opened by her from outside and as soon as the door was opened, the accused suddenly emerged from the house and ran outside. He ran towards the Bendigere road. After seeing the dead body of her sister, she came out and screamed. At that time, there were no persons nearby. It is further elicited in the cross-examination that the house of Obanna/PW-7 was situated at a distance of about 30 feet from

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her house. She told PW-7/Obanna that her sister has been murdered and along with Obanna/PW-7 she went chasing the accused. While they were running, they could not trace the accused. She has also stated that the clothes of the accused were blood stained. Only she and PW-7 had chased the accused. She has denied the suggestion made by the defence that the deceased Manjamma was of lose morals. It is further elicited in the cross-examination by the defence that the accused gave a threat to PW-1 that she would be killed.

24. The very fact that the deceased was lying dead in the house of the complainant/PW-1 would show that she was staying in the house of PW-1 during the relevant time of this incident. The evidence on record including the medical evidence would show that the deceased was pregnant and it was her first pregnancy as has been elicited by the defence in the cross-examination of PW-1. Under the circumstances, as we have already indicated there is nothing unnatural for the deceased being found in the house of PW-1 at the relevant time of this incident. Later, the accused also came to the house of PW-1. The deceased refused to go along with PW-1 when called PW.1 also stated that the deceased would be sent after her delivery. She has clearly stated that when she and her husband as well as their son left the house, the deceased and the accused were the only two persons who were then present in the house. When she returned to the house at about 3.00 p.m and gave a call to the deceased, there was no response. As we have already indicated, the return of PW-1 at about 3.00 p.m to her house was also normal in view of the fact that when they did not carry food along with them, they will return to the house for mid-day meal. Hence, it is quite likely that the complainant/PW-1 had returned to the house at about 3.00 pm. on that day. No doubt there is slight variation in the time as given in the cross-examination and as given in the chief examination. But then, we have to bear in mind that the complainant/PW-1 is an illiterate lady. But the fact that still remains to be seen is that the complainant/PW-1 had returned to her house in the afternoon to have mid-day meal. She has clearly stated that as soon as the door was opened, the accused who was inside the house, ran out of the house and his clothes were found to be blood stained. It is no doubt true that there is some variation as to who actually opened the door. But then, the

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fact that remains to be seen is that as soon as the door of the house was opened, the accused ran outside the house and his clothes were found to be blood stained. Infact, the clothes of the accused being found to be blood stained, has been got confirmed in the cross - examination. The evidence of PW-1 does not suffer from any such infirmity so as to discard the substratum of the prosecution case as spoken to by her in Court. Her evidence would clearly indicate that the deceased was last seen in the company of the appellant. The appellant has no explanation for this. He did not say as to when he had parted with the company of the deceased. The medical evidence in the case also substantially supports her evidence. No doubt the blood stained clothes of the accused were not seized by the Investigating Officer. But then, the Appellant having been arrested after a long lapse of time the possibility of the blood stained clothes of the accused being worn by him appears to be too remote. Hence no significance can be attached for non-seizure of the blood stained clothes of the accused. Even otherwise, it could be attributed only to the lapse on the part of the Investigating Officer.

25. PW-2/Kotreshi, PW-7/Obanna and PW-10/Kariyappa have substantially corroborated the evidence of PW-1.

26. PW-2/Kotreshi who was sitting at that time near the house of one Basanagowda, heard the cries of PW-1 and ran towards her house. The place where he was sitting was at a distance of about 30 to 35 feet from the house of PW-1. While he was so proceeding towards the house of PW-1, he saw the Appellant emerging out from the house of PW-1 and running. He also went inside the house and saw the dead body of the deceased which was lying in the house of PW.1. Under the cross-examination of PW-2, the defence has elicited that when he went near the house of PW-1, some others were also present. PW-1 was also along with them. He also refers to the proceedings of the panchayat and says that they did not ask as to why the Appellant was quarrelling with the deceased. He also admits that there are residential houses near about the house of PW-1. Again a suggestion has been made by the defence to PW-2 that the deceased was a person of lose morals and the same has been denied. Except this, there is nothing in cross-examination of PW-2 so as to discredit his version in Court. PW-7/Obanna had returned to the house from the field at about

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3.00 pm. He heard the cries of PW-1 from her house. When his attention was attracted towards the house of PW-7 on hearing the cries, he saw the accused coming out of the house of PW-1 and he ran in front of him towards the west. He enquired with PW-1 and learnt about the occurrence. He also went inside the house and saw the dead body of the deceased. He has stated that the accused jumped the fence and ran away. Under the cross-examination, he has further stated that his house is situated at a distance of about 10 to 20 feet from the house of PW-1. Normally people will be found on the Bevina Katta situated in front of the house of PW-1, but on that day no one was there. He has stated that PW-1 cried out saying that the deceased had been assaulted by the accused. He has stated that immediately on hearing the cries of PW-1 he had gone there. He has further stated that before going to the house of PW-1, he had chased the accused. He is not related to PW-1, but they belong to the same community. He has stated that both he and PW-1 had chased the accused in the first instance and thereafter the others also joined them. He admits having stated that Kariyappa had also come along with her.

27. PW-10/Kariyappa was working at that time in his field and he saw the accused running near the field after coming from the village side. He also saw the accused being chased by PW-7. PW-7 cried out to catch the accused. Then he ran and caught hold of the accused. But the accused somehow escaped from his hold. The accused also gave a threat to PW-10. Then PW-10 returned along with PW-7 to the house of PW-1 and saw the dead body of the deceased. Under the cross-examination, he has stated that PW-1 is known to him. Though they belong to the same community, she is not related to him. According to him, the accused was running towards Marenahalli road. He saw the accused running from a distance of about 30 to 40 feet followed by PW-7 and the distance between the two was 40 to 50 feet. Only the accused and PW-7 was running one behind the other. According to him at that time, he was engaged in ploughing the land. Thus there is nothing in the cross-examination of PW-10 so as to discredit his version in Court.

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28. It is no doubt true that PW-2 in the course of his evidence has stated that he saw Kariyappa /PW-10 near the house of PW-1 when he had gone there. But then the evidence of both PW-7 and PW-10 would clearly indicate that PW-10 was in his field and he had caught hold of the accused, but the accused somehow escaped from his hold and thereafter both PW-7 and PW-10 went near the house of PW-1. Under the circumstances, no significance can be attached to the evidence of PW-1 saying that he saw PW-10 near the house of PW-1 when he went there.

29. Except for minor embellishments here and there, they have withstood the cross-examination of the defence. Their evidence has not been shaken in any manner with regard to the substratum of the prosecution case. Of the four witnesses who speaks to this fact, PW-1 is only the relative of the deceased and the rest of them were not related to the deceased in any manner. They have nothing against the accused to falsely implicate the accused in such a heinous offence. So also PW-1. PW-1 being a relative of the deceased, that could hardly be a ground to discard her evidence. On the other hand the relative, of the deceased will not try to implicate any innocent person in the murder of the deceased. That apart no personal enmity had been alleged towards the accused. We do not find anything in the cross-examination of these witnesses, not to rely upon their evidence. The over insistence on witnesses having no relation with the victims often results in criminal justice going away. When any incident happens in the dwelling house, the most natural witnesses would be the residents of that house. In that context PW-1 was a natural witness. It is unpragmatic to ignore such natural witnesses and insist on outsiders who would not have even seen anything. If the Court has discerned from the evidence or even from the Investigating records that some other independent person has witnessed any event connecting the incident in question, then there is a justification for making adverse comments against non-examination of such person as a prosecution witness. Otherwise, merely on surmises, the Court should not castigate the prosecution for not examining the other persons of the locality as prosecution witnesses. The prosecution can be expected to examine only those who have witnessed certain events connected with the crime and not those who have not seen or heard about the incident though the neighbourhood may be replete with other residents also.

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In the instant case, there is nothing on record to show that any of the neighbors who had witnessed this incident and have not been examined by the prosecution. On the other hand, the evidence on record shows that the neighbours who are attracted to the spot and saw the occurrence, have been examined in Court by the prosecution. Even with regard to the interested witnesses, it is the duty of the Court to separate the truth from the falsehood and the chaff from the grain. In view of the close relationship, witnesses naturally would have a tendency to exaggerate or add facts, but while appreciating the evidence exaggerate facts are to be ignored unless of course it affects the substratum or the core of the prosecution case. While appreciating the evidence of a witness in a criminal trial, the approach must be whether the evidence of the witness read as a whole in its entirety appears to have a ring of truth. Once that impression is found, it is undoubtedly necessary for the Court to scrutinize the evidence more particularly keeping in view the deficiency, drawback and infirmities pointed out in the evidence as a whole and evaluate them to find out whether it is against the general tenor of the evidence and whether the earlier evaluation of the evidence is shaken as to render it unworthy of belief. Applying this test, we find that the evidence of PWs 1, 2, 7 and 10 are worthy of belief. Minor discrepancies on trivial matters not touching the core of the case, as hypertechnical approach in perusal of the evidence should be avoided. Even honest and truthful witnesses may differ in some details unrelated to the main incident because power of observation, retention and reproduction differ with individuals. Cross-examination is an unequal duel between a rustic and refined lawyer. Furthermore, the Court while appreciating the evidence ought to keep in mind and visualize the situation at the time of occurrence of the incident. The evidence of the witnesses should be appreciated by keeping the ground reality and the fact situation in mind. It is also established law that even with regard to the interested witnesses, it is the duty of the Court to separate the truth from the falsehood and not to ignore the evidence of witnesses only on the ground that he is an interested witness. Moreover, as we have already indicated a close relative who is a very natural witness cannot be regarded as an interested witness. The term "interested" postulates that the person concerned must have some direct interest in seeing that the accused person is somehow or the other convicted either because he had some

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animus against the accused or for some other reason. Such is not the case here. In the instant case, there is absolutely no evidence to indicate that either PW-1 or PWs-2,3, 7, 8 and 10 bore any animus against the accused. The Hon'ble Supreme Court had an occasion to decide as to whether a relative could be treated s an interested witness. In "DALIP SINGH AND OTHERS vs THE STATE OF PUNJAB[27], the Hon'ble Supreme Court expressed its surprise who were under the impression which prevailed in the minds of the members of the Bar that relatives were not independent witnesses and in order to dispense the same the qualities of independent witnesses were clearly elucidated. In this connection, the Hon'ble Supreme Court has observed as follows:

> "We are unable to agree with the learned Judges of the High Court that the testimony of the two eye witnesses requires corroboration. If the foundation for such an observation is based on the fact that the witnesses are women and that the fate of 7 men hands on their testimony, we know of no such rule. If it is grounded on the reason that they are closely related to the deceased, we are unable to concur. This is a fallacy common to many criminal cases and one which another bench of the Hon'ble Supreme Court endeavoured to dispel in Rameshwar vs the State of Rajasthan reported in AIR 1952 SC 54. We find however that it unfortunately still persists, if not in the judgments of the Courts, at any rate in the arguments of Counsel.
>
> A witness is normally to be considered independent unless he or she springs from sources which are likely to be tainted and that usually means unless the witness has caused, such as enmity against the accused to wish to implicate him falsely. Ordinarily a close relative would be the last to screen the real culprit and falsely implicate an innocent person. It is true when feelings run high and there is personal cause for enmity that there is a tendency to drag in an innocent person against whom a witness has a grudge alongwith the guilty, but foundation must be laid for such a criticism and the mere fact of relationship far from being a foundation is often a sure guarantee of truth."

Therefore, we find no good reason to discard or to reject the evidence of PWs-1, 2, 7 and 10 when they have no animosity against

27. AIR 1953 SC 364

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the accused to falsely implicate him in the case. As we have already indicated shorn of a few embellishments here and there, their testimony read as a whole in its entirely has a ring of truth, a colour of consistency and sense of straight forwardness as a result of which, their evidence inspires confidence. In the instant case, the witnesses being rustic villagers, the too sophisticated approaches familiar in Courts based on unreal assumptions about human conduct cannot obviously be applied to those given to the lethargic ways of our villagers. When scanning the evidence of the witnesses in a criminal trial, we have to inform ourselves that variances on the fringes, discrepancies in details, contradictions in narrations and embellishments in inessential parts cannot militate against the veracity of the core or the substratum of the testimony of the witnesses given in Court provided there is the impress of truth and conformity to probability in the substantial fabric of the testimony delivered by the witnesses. Incidentally it may be mentioned that while appreciating the evidence of witnesses in a criminal trial, minor discrepancies on certain trivial matters without affecting the substratum of the prosecution case, ought not to prompt the Court to reject the evidence in its entirety. If the general tenor of the evidence given by the witnesses and the Trial Court upon appreciation of the evidence forms opinion about the credibility thereof, in the normal circumstances, the Appellate Court would not be justified to review it once again without justifiable reasons. It is the totality of the situation which has to be taken note off and in the instant case, we do not see any justification to pass a contra note as well on perusal of the evidence on record. In this connection, a reference may be made to the decisions of the Hon'ble Supreme Court in the cases of "STATE OF U.P. vs M.K. ANTHONY[28] and "LEELA RAM (DEAD) TROUGH DULI CHAND vs STATE OF HARYANA AND ANOTHER"[29]. It would be of some relevance to note here itself that difference in minor details which does not otherwise affect the substratum of the prosecution case may be there, but that by itself would not prompt the Court to reject the evidence on minor variations and discrepancies. In the instant case, we find that the discrepancies which were pointed out to us by the learned Counsel for the Appellant are all minor variations and discrepancies which does not in any way affect the

28. 1985 SCC (Criminal) 105 29. 200 SCC (Criminal) 222

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substratum of the prosecution case. Therefore, the evidence available on record is otherwise trustworthy and acceptable and it can be relied upon and has been rightly relied upon by the Trial Court. On the nature of evidence as is available on record and as noted above, the question of any entitlement of benefit of doubt would not arise. The evidence on record is worth its credence and trust worthy and as such creates confidence in the mind of the Court.

30. PW-3 and PW-8 are the two independent witnesses who are residents of Kyarakatte village have stated that the Appellant was found quarrelling and beating the deceased. They have stated that the Appellant was harassing the deceased. In that connection, their evidence would show that a panchayat was convened wherein both PWs-3 and 8 had participated. They had suitably advised the accused. They have no personal knowledge of the nature of quarrel between the accused and the deceased. But a panchayat was convened regarding the quarrel between the accused and the deceased and the accused was suitably advised. In this context, it would be of some relevance to note that the defence has given suggestion to all the material witnesses for the prosecution that the deceased was a lady with loose morals or bad character. Infact the defence has gone to the extent of eliciting in the cross-examination of PW-12 that there was a strong rumour in the village that the deceased Manjamma was a lady with loose morals. No doubt, the suggestion made by the defence has been denied by the material witnesses for the prosecution. But the fact that still remains on record is that the accused had some suspicion about the morality of his wife namely the deceased.

31. PW.1 and PW-2 have also deposed to the fact that the accused was quarreling with the deceased. That apart, as we already indicated the answer elicited in the cross-examination of PW-12 would show that there was some suspicion cast on the character of the deceased.

32. Thus the evidence on record would show that the accused had some ire towards the deceased. When the prosecution has succeeded in showing the possibility of some ire or anger of the accused towards the deceased, the inability to further put on record the manner in which such ire or anger would have swelled up in

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the mind of the accused to such a degree as to impel him to commit the murder of the deceased cannot be considered as a fatal weakness of the prosecution. It is almost an impossibility for the prosecution to unraval the full dimension of the mental disposition of the accused towards the deceased. This is a case where however the prosecution has succeeded in showing that accused had some reason for anger or dislike towards the deceased. We cannot fathom the mental disposition of the accused towards the deceased at the time of the commission of the offence, nor could we rule out the possibility of some cause of immediate provocation for the accused. Having regard to the circumstances under which the incident in question had occurred, it could be known only to the deceased and the accused. The deceased is not alive to tell us what was the provocation. The accused did not disclose it to us. So we are unable to appreciate the contention that the provocation was not sufficient enough for the ghastly act perpetrated by the accused.

33. The evidence on record would clearly indicate that the accused was not traced from the day following the incident for about two and a half months. PWs-1,2,7 and 10 have consistently stated that the accused ran away from the house of PW-1 and he could not be caught. The evidence of PSI/PW-11 would show that he had deputed his staff to trace the accused and ultimately on 19.02.1994 he apprehended the accused and produced him before the CPI. There is nothing on record to show that the accused was available to the police. No doubt the accused has stated in his examination under Section 313 of Cr.P.C. that he was arrested from his house. The said statement is not capable of being accepted on its face value. This is because, if really the accused was innocent and if he was available in the house, then what should have been the normal conduct of the accused on coming to know of the unnatural death of his wife. In our opinion, he should have rushed to the spot. But he did not do so. Under the circumstances, the answer given by the accused appears to be a afterthought. Therefore, there is ample evidence on record that the accused had absconded from the date of the incident and could not be traced till 19.02.1994.

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34. The incriminating circumstances indicated above would unmistakably and inevitably lead to the guilt of the appellant 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. When the accused was questioned under Section 313 of Cr.P.C., the appellant instead of making atleast an attempt to explain or clarify the incriminating circumstances appearing against him in the prosecution evidence and connecting him with the crime, by his adamant attitude of total denial of every thing when those circumstances were brought to his notice by the Court, not only the accused lost the opportunity to explain the circumstances appearing against him, but stood self condemned. Such incriminating links of facts could if at all have been only explained by the accused and by none else, they being personally and exclusively within his knowledge. It has to be pointed out that at the time of the incident in question, the accused and the deceased were the only in inmates in the house and what transpired between them is within the exclusive knowledge of the accused. The accused did not also say as to when he had parted with the company of the deceased. Of late, Courts have from the falsity of the defence plea, and false answers to Court when questioned found the missing links to be supplied by such answers for completing the chain of incriminating circumstances necessary to connect the accused with the crime committed. That missing link to connect the accused, we find in this case provided by the blunt and outright denial of each and everyone of the incriminating circumstances pointed out to the accused, which in our view with sufficient and reasonable certainty on the facts and in the circumstances proved in the case by prosecution would connect the accused with the death and the cause for the death of the deceased Manjamma.

35. For all these above reasons, we have no hesitation to agree with the finding of the Trial Court holding the Appellant guilty of the offence under Section 302 IPC for committing the murder of the deceased. The Appellant being the husband of the deceased seems to have took advantage of the loneliness of the helpless lady. The circumstances taken cumulatively clearly point to the only hypothesis of guilt of the Appellant. There is no material on record pointing towards his innocence. On such materials, the Trial Court, in our

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view, has rightly held that the prosecution has established the case against the accused beyond all reasonable doubts. Hence, the conviction of the appellant under section 302 IPC is to be upheld and it is accordingly upheld.

36. Coming to the question as to whether for conviction under Section 302 IPC, the Court below is justified in awarding death sentence to accused, we find that the learned Trial Judge has not correctly and properly applied the principles enunciated by the Hon'ble Supreme Court in awarding of death sentence, but on the other hand has been swayed away by his own emotions on the ground that the accused was also previously charged with a similar offence. But the appellant was acquitted in that case, may be for want of evidence. Thus, it was only an accusation and not a proved material to brand him as previous convict or a person with bad antecedents. We are unable to accept the contention of the learned SPP that a person though acquitted being charged with such offence could be considered to be a person of bad antecedents. Merely because, certain accusations have been made against a person and the same having not been proved, he cannot be considered to be a person with bad antecedents. It is true that the deceased was a pregnant woman and the appellant herein took advantage of the helplessness of the lonely lady in inflicting injuries on her. But then, there is something on record to show that the deceased was refusing to go along with the accused to his house, when he had come there to take her back and in that regard there were quarrels between the accused and the deceased and even on the day of the occurrence also there was a quarrel between the accused and the deceased in the morning. The incident being a sequel of such a quarrel between the accused and deceased cannot be eliminated. We find that there is no correct and proper appreciation of the law on the point by the Trial Court. True Section 302 IPC prescribes death or life imprisonment as penalty for murder. But while doing so, the provisions contained in Section 354 (3) of Cr.P.C., lays down certain guidelines consistent with the policy indicated by the Legislature. As regards sentence, it may be stated that now the death sentence is an exception and life imprisonment is a rule. Section 354(3) of CR.P.C. instructs the Court as to the application of the sentence for the offence under Section 302 IPC. Death sentence can be awarded for special reasons which should be

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clearly indicated. The determination of sentence in a given case depends upon a variety of considerations such as the nature of the crime, the manner of its commission, the motive which impelled it and the character and antecedents of the accused. The extreme penalty of death is not to be inflicted except in gravest cases of extreme culpability which shakes the conscience of the Court. The murder is terrific and therefore the fact of the murder being terrific cannot be an adequate reasons for imposing death, otherwise the death sentence will become a rule not an exception. Special reasons in Section 354(3) of Cr.P.C. should be taken as equivalent and synonymous to compelling reasons. No doubt it is rather difficult to put special reasons in a strait jacket as has been contended by the learned SPP. Each case depends on its particular facts. While deciding the question of imposing death sentence, along with the circumstances of the crime, the circumstances of the offender also have to be taken into account. All the aggravating and mitigating circumstances have to be drawn up and a balance is to be struck before exercising the right and correct choice of the sentence. The crime to receive death sentence must be of an uncommon nature in which even after giving maximum weightage to the mitigating circumstances, the Court must be of the opinion that life sentences is inadequate. To kill or murder is itself cruel and therefore all murders are cruel. But such cruelty may vary in its degree of culpability and it is only when the culpability assumes the proportion of extreme depravity that special reasons can legitimately be said to exist. Death sentence will be warranted, if the murder is diabolically conceived and cruelly executed. Undoubtedly felonious propensity of the accused is a factor which requires consideration while dealing with the question of imposition of death sentence. But that cannot be made the sole basis for such sentence as all other factors relating to the commission of offence including motive, manner, magnitude and the circumstances under which it was committed have also to be taken into account while inflicting the sentence. In this connection, a decision of the Hon'ble Supreme Court which briefly and beautifully deals with the question of death sentence in the case of "LEHNA vs STATE OF HARYANA" relied upon by the learned SPP may be referred to wherein it is concluded on the question of death sentence as under:

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"Para. 14. The other question of vital importance is whether death sentence is the appropriate one. Section 302 IPC prescribes death or life imprisonment as the penalty for murder. While doing so, the Code instructs the Court as to its application. The changes which the code has undergone in the last three decades clearly indicate that Parliament is taking note of contemporary criminological thought and movement. It is not difficult to discern that in the code, there is a definite swing towards life imprisonment. Death sentence is ordinarily ruled out and can only be imposed for "special reasons", as provided in Section 354(3). There is another provision in the code which also uses the significant expression "special reason". It is Section 361. Section 360 of the 1973 Code re-enacts, in substance, Section 562 of the Criminal Procedure Code, 1898 (in short "the old Code"). Section 361 which is new provision in the Code makes it mandatory for the court to record "special reasons" for not applying the provisions of Section 360. Section 361 thus casts a duty upon the Court to apply the provisions of Section 360 wherever it is possible to do so and to state "special reasons" if it does not do so. In the context of Section 360, the "special reasons" contemplated by Section 361 must be such as to compel the Court to hold that it is impossible to reform and rehabilitate the offender after examining the matter with due regard to the age, character and antecedents of the offender and the circumstances in which the offence was committed. This is some indication by the legislature that reformation and rehabilitation of offenders and not mere deterrence, are now among the foremost objects of the administration of criminal justice in our country. Section 361 and Section 354(3) have both entered the statute-book at the same time and they are part of the emerging picture of acceptance by the legislature of the new trend in criminology. It would not, therefore, be wrong to assume that the personality of the offender as revealed by his age, character, antecedents and other circumstances and the tractability of the offender to reform must necessarily play the most prominent role in determining the sentence to be awarded. Special reasons must have some relation to these factors. Criminal justice deals with complex human problems and diverse human beings. A judge has to balance the personality of the offender with the circumstances, situations and the reactions and choose the appropriate sentence to be imposed.

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Para.22 The following guidelines which emerge from Bachan Singh case will have to be applied to the facts of each individual case where the question of imposition of death sentence arises: *(SCC p.489, para 38)

i) The extreme penalty of death need not be inflicted except in gravest cases of extreme culpability.

ii) Before opting for the death penalty the circumstances of the 'offender' also require to be taken into consideration along with the circumstances of the "crime".

iii) Life imprisonment is the rule and death sentence is an exception. Death sentence must be imposed only when life imprisonment appears to be an altogether inadequate punishment having regard to the relevant circumstances of the crime, and provided, and only provided, the option to impose sentence of imprisonment for life cannot be conscientiously exercised having regard to the nature and circumstances of the crime and all the relevant circumstances.

iv) A balance sheet of aggravating and mitigating circumstances has to be drawn up and in doing so the mitigating circumstances has to be accorded full weightage and a just balance has to be struck between the aggravating and the mitigating circumstances before the option is exercised.

Para 18. In BACHAN SINGH vs STATE OF PUNJAB[30] it has been observed that:

"A real and abiding concern for the dignity of human life postulates resistance to taking a life through law's instrumentality. That ought not to be done save in the rarest of rare cases when the alternative option is unquestionably foreclosed."

A balance sheet of aggravating and mitigating circumstances has to be drawn up and in doing so the mitigating circumstances have to be accorded full weightage and a just balance has to be struck between the aggravating and the mitigating circumstances before the option is exercised. In order to apply these guidelines, inter alia, the following questions may be asked and answered,

30. SCC 751, Para 209

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(a) is there something uncommon about the crime which renders sentence of imprisonment for the life inadequate and calls for death sentence? And (b) are the circumstances of the crime such that there is no alternative but to impose death sentence even after according maximum weightage to the mitigating circumstances which speak in favour of the offender?

Para 23. In rarest of rare cases when the collective conscience of the community is so shocked, that it will expect the holders of the judicial power center to inflict death penalty irrespective of their personal opinion as regards desirability or otherwise of retaining death penalty, death sentence can be awarded. The community may entertain such sentiment in the following circumstances:

1) when the murder is committed in an extremely brutal, grotesque, diabolical, revolting, or dastardly manner so as to arouse intense and extreme indignation of the community.

2) When the murder is committed for a motive which evinces total depravity and meanness; e.g. murder by hired assassin for money or reward; or cold-blooded murder for gains of a person vis-à-vis whom the murderer is in a dominating position or in a position of trust; or murder is committed in the course for betrayal of the motherland.

3) When murder of a member of a Scheduled Caste or minority community etc., is committed not for personal reasons but in circumstances which arouse social wrath, or in cases of 'ride burning' or 'dowry deaths' or when murder is committed in order to remarry for the sake of extracting dowry once again or to marry another woman on account of infatuation.

4)When the crime is enormous in proportion. For instance when multiple murders, say of all or almost all the members of a family or a large number of persons of a particular caste, community, or locality, are committed.

5)When the victim of murder is an innocent child, or a helpless woman or old or infirm person or a person vis-à-vis whom the murderer is in a dominating position, or a public figure generally loved and respected by the community.

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Para.24 If upon taking an overall global view of all the circumstances in the light of the aforesaid propositions and taking into account the answers to the questions posed by way of the test for the rarest of rare cases, the circumstances of the case are such that death sentence is warranted, the court would proceed to do so.

Para 25. A convict hovers between life and death when the question of gravity of the offence and award of adequate sentence comes up for consideration. Mankind has shifted from the state of nature towards a civilized society and it is no longer the physical opinion of the majority that takes away the liberty of a citizen by convicting him and making him suffer a sentence of imprisonment. Award of punishment following conviction at a trial in a system wedded to the rule of law is the outcome of cool deliberation in the Court room after adequate hearing is afforded to the parties, accusations are brought against the accused the prosecuted is given an opportunity of meeting the accusations by establishing his innocence. It is the outcome of cool deliberations and the screening of the material by the informed man i.e, the Judge leads to determination of the lis.

Para 26. The principle of proportion between crime and punishment is a principle of just desert that serves as a foundation of every criminal sentence that is justifiable. As a principle of criminal justice it is hardly less familiar or less important than the principle that only the guilty ought to punished. Indeed, the requirement that punishment not be disproportionately great, which is a corollary of just desert, is dictated by the same principle that does not allow punishment of the innocent, for any punishment in excess of what is deserved for the criminal conduct is punishment without guilt.

Para 27. The criminal law adheres in general to the principle of proportionality in prescribing liability according to the culpability of each kind of criminal conduct. It ordinarily allows some significant discretion to the Judge in arriving at a sentence in each case, presumably to permit sentences that reflect more subtle considerations of culpability that are raised by the special facts of each case. Punishment ought always to fit the crime; yet in practice sentences are determined largely by other considerations. Sometimes it is the correctional needs of the

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perpetrator that are offered to justify a sentence; sometimes the desirability of keeping him out of circulation, and sometimes even the terrific results of his crime. Inevitably these considerations cause a departure from just desert as the basis punishment and create cases of apparent injustice that are serious and widespread.

Para 28. Proportion between crime and punishment is a goal respected in principle, and in spite of errant notions it remains a strong influence in the determination of sentences. The practice of punishing all serious crimes with equal severity is now unknown in civilized societies; but such a radical departure from the principle of proportionality has disappeared from the law only in recent times. Even now a single grave infraction is though to call for uniformly drastic measures. Anything less than a penalty of greatest severity for any serious crime is though then to be measure of toleration that is unwarranted and unwise. But, in tact, quite apart from those considerations that make punishment unjustifiable when it is out of proportion to the crime uniformly disproportionate punishment has some very undesirable practical consequences."

37. The circumstances which needs to be considered here are that the accused and the deceased were both young and rustic villagers. Though the accused was found to be bad to his wife, he was found to be good to the society. Infact, PW-12 has stated in his evidence that the accused was good and minding his work. That is to say, it cannot be said that he was an unwanted element in the society. It would appear from the evidence on record that the accused had come to the house of PW-1 to take back his wife namely the deceased along with him to his house. But unfortunately, the deceased was not prepared to go along with the accused and PW-1 was also not prepared to send the deceased along with the accused. But inspite of this, the accused appeared to have stayed patently in the house of PW-1 and ultimately on that fateful day, he had a quarrel with the deceased over the same issue in the morning. Naturally, when the accused being the husband of the deceased had come there to take back his wife and if the wife is not prepared to go along with him, he must have lost his mental balance. Even the motive that is attributed to the accused by the prosecution is that there used to be frequent quarrels between the deceased and the accused and the nature of such quarrels as admitted by PW-1

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in her cross-examination were the usual quarrels between the husband and wife. Infact, even PW-1 did not anticipate that the accused will do any harm to the deceased. Obviously for the said reason, she had left the house asking both the accused and the deceased to remain cool in the house. It is also in evidence that there were thick rumors or gossip in the village that the deceased was a lady with loose morals or virtues and she was staying in the house of PW-1 against the wishes of the accused. It is true that a pregnant lady had been killed mercilessly by the accused who is none other than her own husband. But at the same time, what prompted the accused to take such extreme step is not known and at any rate it could not be simple usual quarrel between the husband and wife as sought to be made out by the prosecution through PW-1 But the fact is that the deceased has refused or declined to go along with the accused when asked to accompany him to his house and in that regard, there were quarrels between the accused and the deceased since few days prior to her death and even on the date of death also. Under the circumstances, the mental condition of the accused who is rustic shepherd cannot be lost sight of. The circumstances which were then prevailing may not be relevant to judge the culpability, but is certainly a factor to be taken note of while exercising the option with regard to the choice of sentence. In the instant case, looking to the circumstances as brought out from the evidence by the prosecution, there is no indication of any diabolic planning to commit the crime, though the act committed the accused is cruel. Deprived of his mental balance on account of the refusal of his own wife to accompany him to his house, the accused had, as the evidence indicates, quarreled with his wife and in the course of such quarrel it is quite likely that the accused being a rustic villager and shepherd by profession, lost his cool and killed her with a material that was available in the house. The incident in question appears to be more or less sudden and without any premeditation. The quarrel between the accused and the deceased on that day over an issue regarding the refusal of the deceased to accompany the accused to his house indicates that it was not preconceived and hence there was no sinister design or plan to commit the murder of the deceased. The factual scenario in which the incident seems to have occurred gives us an impression of certain sudden and impulsive act on the part of the

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accused following a quarrel over a trivial issue and cannot be said to be a preplanned or preconceived assault. Therefore, from the facts narrated above and discussed in this judgment and the circumstances established through the prosecution evidence, we do not find any aggravating circumstances against the accused to award death sentence. Furthermore, when the prosecution case is based solely on circumstantial evidence and the incident in question was found to be a result of petty quarrel between the accused and the deceased over a trivial issue and there being nothing on record to show as to what actually transpired at the time of the actual occurrence, we do not think it is expedient to award the capital sentence upon the accused. The passing of death sentence must elicit the greatest concern and solicitude of the Court because that is the one sentence which cannot be recalled. Hence, we are not inclined to confirm the death sentence awarded by he Trial Court. In our considered view, therefore, on the facts and in the circumstances of the case, death sentence for the offence committed by the accused under Section 302 IPC may not be proper and instead, life sentence will be more appropriate. It has to be mentioned that sentence for imprisonment for life means the imprisonment for the whole of the remaining period of the convicted accused's natural life as has been laid down in the decision of the Hon'ble Supreme Court in the case of "LAXMAN NASKAR vs STATE OF WEST BENGAL AND ANOTHER[31] " and we do not want it to be restricted either to 20 years or 15 years by accepting the arguments of the learned SPP that a direction be given that the accused should not be released for a period of 15 years or 20 years. No doubt a convict undergoing life sentence may earn remission under the prison rules, but such remission in the absence of an order of the Government does not entitle the convict to be released automatically before the full life term is served and in the matter of passing of any such appropriate order by the Government, we are not inclined to interfere. Hence, we are unable to accept the contention of the learned SPP to give direction not to release the accused either for a period of 15 years or 20 years. **In this view of the matter while upholding the conviction of the Appellant under Section 302 IPC, we set aside the sentence of death awarded against him and commute the same to imprisonment for life.**

31. AIR 2000 SC 2762

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38. In the result, therefore, the conviction of the Appellant under Section 302 IPC is confirmed, but the award of death sentence against the appellant is commuted to imprisonment for life. Criminal Appeal No. 1419/02 as well as the Criminal Referred Case No. 4/ 2002, both stands rejected. It is ordered accordingly.

39. The Registry is directed to communicate the operative portion of this Judgment to all the concerned including the Trial Court.

ILR 2003 KAR 4977

P. VISHWANATHA SHETTY & AJIT J. GUNJAL, JJ

Commissioner of Income-Tax and Another vs The Grain Merchants Co-op Bank Ltd.*

(A) INCOME TAX ACT, 1961 (CENTRAL ACT NO. 43 of 1961— SECTION 80P (2) (a) (i) — Income received by letting out a portion of the premises belonging to the Bank — Interest received out of the funds deposited in Reserve Bank and other banks — Whether such income exempt from payment of tax. HELD — Income received out of the Reserve fund is exempted from payment of tax.
(Para-5)

(B) THE BANKING REGULATION ACT, 1949 — (CENTRAL ACT NO. 10 OF 1949) — SECTIONS 6(1)(a) TO (o) — SECTION 6(1)(K)(L) — INCOME TAX ACT, 1961 — (CENTRAL ACT NO. 43 OF 1961) — SECTION 22, 80P (2)(a) (i) — Whether the provisions of Clause (f) of Section 80P(2) of the Income Tax Act control the benefit of exemption extended to the assessee from payment of tax. HELD- Clause (b) of sub-section (2) of Section 80P of the Income Tax Act, provides that the income derived by the Housing Society is chargeable under Section 22 of the Income Tax Act. The Housing Society referred to in Clause (f) of the said Section must be understood as the society which is not

*Income Tax Appeals Nos. 149 to 151 of 2001 dated 22nd October 2003