

## Chandra Vs State of Karnataka

**Court:** Karnataka High Court

**Date of Decision:** Feb. 11, 2015

**Acts Referred:** Criminal Procedure Code, 1973 (CrPC) - Section 313  
Penal Code, 1860 (IPC) - Section 201, 302, 364

**Hon'ble Judges:** Mohan M. Shantana Goudar and P.S. Dinesh Kumar, JJ.

**Bench:** Division Bench

**Advocate:** C.V. Sheelavant, Advocate, for the Appellant; B.T. Venkatesh, Addl. S.P.P., for the Respondent

**Final Decision:** Dismissed

### Judgement

Mohan M. Shantana Goudar, J.

The Judgment & Order of conviction and sentence dated 8/11.4.2011 passed by the Fast Track Court-

II, Mysore in S.C. No. 17/2010 is called in question by the convicted accused in this appeal.

The sole accused was tried and convicted for the offences punishable under Sections 364, 302 and 201 of IPC.

2. Case of the prosecution in brief is that the accused had married Sundamma (P.W. 7), who is the sister of the complainant Smt. Chandamma

(P.W. 11); deceased Shivakumar is the son of Chandamma (P.W. 11), resident of Ailapur Village; deceased was aged about 14 years as on the

date of the incident; that on 21.10.2009 a relative of the accused died at Ailapur Village; deceased, his mother (P.W. 11) and P.W. 7 are

residents of Ailapur Village; after attending the cremation, accused left the house of P.W. 7 to go to his native place i.e., Chowkur village. It is

relevant to note here itself that P.W. 7 is the 2nd wife of the accused. The first wife of the accused is still alive and she has children also. During the

subsistence of the first marriage, the accused had married P.W. 7 and a child was born out of the said wedlock.

The deceased was studying in a Government school at Periyapatna. The deceased was going to school at Periyapatna on the bicycle. In the

evening of 22.10.2009 the deceased had been to the school at Periyapatna on his bicycle. At 6 p.m. on 22.10.2009 the deceased went to the

school of the deceased and called him to come near Durga Sweets of Periyapatna town. Thereafter the deceased was taken by the accused to

Chowkur with an intention to commit his murder; accused assaulted him and strangled his neck with a plastic wire, consequent upon which the

deceased died; in order to screen himself, the accused wrapped the dead body in a white cloth and buried the dead body in a pit near his house

and tried to destroy the evidence of murder.

P.W. 11 lodged the missing complaint on 26.10.2009 with an allegation that the deceased is missing. However the records pertaining to such

missing complaint are not brought on record and therefore filing of the missing complaint cannot be believed.

Be that as it may, the complaint came to be lodged as per Ex. P4 on 30.10.2009 at 6 a.m. by P.W. 11 suspecting the complicity of the accused in

the crime. The accused was arrested at 7.45 a.m. on 30.10.2009 and investigation proceeded with. During the course of investigation, the dead

body was exhumed at the instance of the accused. The weapons are recovered at his instance and after recording the statements of all the relevant

witnesses, P.W. 35 - Investigating Officer laid the charge sheet.

3. In order to prove its case, the prosecution in all examined 35 witnesses and got marked 21 Exhibits and 14 Material Objects. On behalf of the

defence, no witness is examined.

As aforementioned, the trial Court convicted the accused for the offences under Sections 364, 302 and 201 of IPC and sentenced the accused

accordingly.

4. Sri Sheelvant, learned advocate appearing for the appellant taking us through the material on record submits that the Court below is not justified

in convicting the accused merely on assumptions; case of the prosecution fully rests on the circumstantial evidence, but the circumstances are not

proved beyond reasonable doubt; all the witnesses are interested inasmuch as they are relatives of the deceased; absolutely no motive is found

against the accused to commit the crime against the innocent child; if really, the accused had intention to harm his wife, he would have assaulted her

and not the innocent child. He further submits that the reasons assigned and the conclusion arrived at by the Court below are improper and

incorrect.

Per contra, Sri Venkatesh, learned Addl. SPP arguing in support of the judgment of the Court below contends that the circumstances relied upon

by the prosecution are proved beyond reasonable doubt; the chain of circumstances so proved as the same will not leave any scope for the

accused to escape; the proved circumstances lead to only hypothesis relating to guilt of the accused.

5. P.W. 1 is Kum. Sandhya aged about 16 years; she is the friend and classmate of the deceased; she has seen the deceased with the accused on

the date of the offence i.e., in the evening of 22.10.2009. P.Ws. 2, 3 and 4 also deposed about the last seen circumstance.

P.W. 5 is the Archak of the temple. He has deposed that the deceased, his parents and his family members used to visit the said temple and hence

he knows the entire family of the deceased. According to him, in the evening of 22.10.2009, deceased came to his house and left his bicycle and

school bag in his house and gone alongwith his uncle (accused).

P.W. 6 is the grand-mother of the deceased. She has deposed about the accused taking deceased alongwith him on several occasions.

P.W. 7 is the wife of the accused. She has deposed about the circumstance of motive. According to her, there was marital discord between the

accused and herself and the accused used to torture her by suspecting her fidelity as well as in the matter of property.

P.W. 8 is the witness for inquest panchanama - Ex. P6. However he has turned hostile.

P.W. 9 is the Village Panchayath Secretary. He has received the certified copies of the revenue extracts pertaining to Sy. No. 22/7 of Chowkur

village wherein the incident has taken place.

P.W. 10 is the Head Master of the school. He has produced the attendance register pertaining to the attendance of the deceased at his school. The

register is at Ex. P3. He has further deposed that P.W. 1 and the deceased were students of the same school.

P.W. 11 is the mother of the deceased. She is the complainant. The complaint is at Ex. P4. The complainant has suspected the involvement of the

accused at the time of lodging the complaint. She has identified the personal belongings of the deceased, which he had worn at the time of the

incident.

P.W. 12 is the witness for search and seizure of the dead body of the deceased at the instance of the accused. He is also a witness for mahazars

Ex. P5, Ex. P6 and Ex. P7. Ex. P5 is the scene of offence mahazar, Ex. P6 is the inquest mahazar and Ex. P7 is the mahazar of the pit from which

the dead body was exhumed at the instance of the accused. He identified not only the accused but also personal belongings of the deceased as per

MOs. 3, 4 and 6. Under the panchanama, white clothes - MO. 7 in which the dead body was wrapped as well as the rope which was tied to

white clothes are seized.

P.W. 13 is a witness for recovery of MO. 9 - pickaxe (guddali) and MO. 10 - chopper used for commission of the offence and for hiding the

dead body. Such recoveries are conducted at the instance of the accused on the basis of the voluntary statement Ex. P19. Ex. P8 is the

panchanama.

P.W. 14 is the sister of the deceased. She also identified the dead body as well as the accused apart from identifying the material objects owned

by the deceased on the particular date.

P.W. 15 is the photographer. He took photographs and video at the time of exhumation of the dead body. They were seized under panchanama -

Ex. P9. MOs. 11, 12 and 13 are the cassettes and CDs.

P.W. 16 is another witness for seizure panchanama - Ex. P9 under which MOs. 11, 12 and 13 are seized.

P.W. 17 is the municipal employee. He dug out the place shown by the accused in presence of the panchas and removed the dead body of the

deceased.

P.W. 18 is a witness for seizure of clothes of the deceased under Ex. P10.

P.W. 19 is the witness for exhumation of the dead body.

P.W. 20 is the Assistant Director of Forensic Science Laboratory. Ex. P11 is the Forensic Science Laboratory report. The same may not be of

any help to the case of the prosecution inasmuch as the said report merely states that no poisonous substance is found in the viscera of the

deceased.

P.W. 21 is the doctor who conducted the postmortem examination over the dead body. Ex. P12 is the postmortem report.

P.W. 22 is the Junior Engineer who drew the sketch of scene of offence. Ex. P13 is the sketch relating to the place of murder and Ex. P14 is the

sketch relating to the place of kidnap.

P.Ws. 23 and 31 are the Police Constable and Assistant Sub-Inspector of Police respectively. They arrested the accused on 30.10.2009. P.W.

23 is also the scribe of scene of offence mahazars at Ex. P13 and P14.

P.Ws. 24, 25 and 26 are the Constables who participated in the investigation at different levels.

P.W. 27 is the Taluka Executive Magistrate. He conducted the exhumation procedure as well as inquest. Ex. P6 is the inquest panchanama. He

identified the M.O. Nos. 2, 3, 4, 5 and 6 which were recovered after recovery of the dead body.

P.W. 28 is the Officer of the Village Panchayat, Panchavalli, who issued the tax paid receipt in respect of the house of the accused as per Ex. P18.

P.Ws. 29 and 30 are two more Police Constables who participated in the investigation.

P.W. 32 is the Sub-Inspector of Police. He received the complaint as per Ex. P4 and registered the crime. He prepared the First Information

Report as per Ex. P17 and sent the same to the jurisdictional Magistrate.

P.W. 33 is a distant relative of P.Ws. 7 and 11. He has deposed that on the date of the incident at about 6.00 to 6.30 p.m., he received a

telephonic call from the deceased intimating P.W. 33 that he would be going along with his uncle (accused).

P.W. 34 is the Police Constable who was present at the time of exhumation of the dead body. He guarded the scene of offence.

P.W. 35 is the Investigating Officer who completed the investigation and laid the charge sheet.

6. Case of the prosecution fully rests on the circumstantial evidence. There are no eye witnesses to the incident in question. The incident has taken

place in a remote place near Chowkur Village of Periyaptna Taluk and thereafter the dead body was buried in a site belonging to the accused. The

circumstances relied upon by the prosecution are as under:-

1) Motive for commission of the offence - P.Ws. 7, 11 and 33 have deposed about the said circumstance.

2) Accused and the deceased were last seen together just prior to the incident, i.e., in the evening of 22.10.2009 - The said circumstance is

spoken to by P.Ws. 1, 2, 3 and 4. Their evidence is supported by the evidence of P.Ws. 5, 10 and 13.

3) Recovery of the dead body at the instance of the accused - P.Ws. 2, 11, 12, 14, 17, 19, 27 and 34 have deposed about the said circumstance.

4) Recovery of weapons at the instance of the accused - PW 13 has deposed about the said circumstance.

5) Identification of the dead body - P.Ws. 11 and 14 have deposed about the said circumstance.

7. Re. 1st circumstance (Motive): P.W. 7 is the wife of the accused. Her evidence clearly reveals that her marriage with the accused was

performed about 16 to 17 years prior to the incident; out of such wedlock a child was born; they lived together happily for about 2 to 3 years after

their marriage; thereafter (in view of the ill-treatment against P.W. 7 by the accused) P.W. 7 came back to her parents' place since she could not

tolerate the said ill-treatment; she started living in her parents' house; at that point of time, P.W. 11, the younger sister of P.W. 7 also came to her

parents' house because of the fact that her husband expired; since only female members were staying in the parents' house of P.Ws. 7 and 11,

they used to take the help of P.W. 33 (their distant relative) for agricultural operations and for solving other family problems; the accused used to

suspect the fidelity of P.W. 7 and used to quarrel with her and assault her frequently; he also used to quarrel with her on the issue relating to

property; the deceased used to interfere for saving P.W. 7 in such events; he was suspecting that some other person would grab the property of

P.W. 7 and her parents' family if any person comes in contact with P.W. 7 and her family members. According to the case of the prosecution, the

accused did not even tolerate the deceased interfering with the quarrels between the accused and P.W. 7 and therefore, he hatched the plan to do

away with the life of the deceased in order to save the property as well as in order to ward off interference of third person in his family affairs.

Case of the prosecution is fully supported by P.W. 7, who has deposed about the said aspect of motive. Her evidence is entirely supported by the

evidence of P.Ws. 11 and 33. P.Ws. 7 and 11 have further deposed that the accused was not happy with P.W. 33 since he was helping P.W. 7

and to her family members and since he was suspecting that there was illicit relationship of his wife (P.W. 7) with P.W. 33.

From the aforementioned evidence of P.Ws. 7, 11 and 13, we are of the opinion that the trial Court is justified in concluding that the aspect of

motive is proved. It is needless to observe that the motive is always hidden in the mind of the accused. It would be difficult for anybody to unearth

the motive which is hidden in the mind of the accused for commission of the offence. Only accused would be knowing as to why he committed the

murder of innocent child aged about 14 years. However, in this case, the fact remains that the prosecution was able to prove that the accused was

suspecting the fidelity of P.W. 7 as well as P.W. 11 and their alleged affair with P.W. 33. Prosecution was also successful in proving that the

accused was quarrelling with P.W. 7 and others in respect of property belonging to the parents of P.W. 7.

8. Re. 2nd circumstance (Last seen together): Case of the prosecution is that the accused told the deceased that he should come near "Durga

Sweets" Shop in order to accompany him to his native place; after taking the deceased, the accused committed his murder in his native place, i.e.,

Chowkur. As aforementioned, P.Ws. 1, 2, 3 and 4 are the primary witnesses for proving the said circumstance relating to "last seen together".

Their evidence is supported by P.Ws. 5, 10 and 33.

P.W. 1 is none other than the classmate of the deceased. She is also the friend of the deceased. She was studying in SSLC at the time of the

offence. However, she was studying in First Year PUC at the time of deposing before the Court. After putting some questions to P.W. 1 (to verify

as to whether she has appropriate knowledge or not), the trial Court was satisfied that the witness was able to depose independently without any

bias. Thereafter her evidence is recorded. P.W. 1 has deposed that in the evening of 22.10.2009, in order to go to her native place, she was

proceeding in the bus along with her sister; when the bus stopped near "Durga Sweets" shop, she saw the deceased and another person; such

other person was holding the hand of the deceased; when asked by P.W. 1, the deceased told her that he is going along with his uncle. Despite

lengthy cross-examination of the child witness, nothing worth is elicited by the defence in the cross-examination so as to discard her evidence. On

going through the material on record and the evidence of P.W. 1, we find that her evidence is natural and reliable. She is an independent child

witness. There is absolutely no reason as to why she should tell falsehood against the accused if really she had not seen the deceased along with the

accused. She has boldly faced all the questions put forth by the defence. Her evidence is not shaken to any extent by the defence. We find that her

evidence is believable. Her evidence clearly discloses that she saw the deceased in the company of the accused waiting for a bus near "Durga

Sweets" shop in the evening of 22.10.2009.

Evidence of P.W. 1 is supported by P.Ws. 2, 3 and 4. P.W. 2 is a driver of the jeep. He used to drive the jeep in between Periyapatna, Satyagala

and Panchavalli on hire. He identified the accused in Court Hall. He has deposed that accused came and asked him as to whether he can take the

accused and the child to Panchavalli; P.W. 2 however refused to take them in his jeep in view of the fact that jeep was full and consequently

suggested the accused that he may go in autorickshaw as number of autorickshaw ply between Periyapatna and Panchavalli frequently. P.W. 2 has

further deposed that the child which was with the accused was about 12 to 13 years and he saw both of them boarding an autorickshaw. This

portion of his evidence also has remained unshaken in the cross-examination. Even in the cross-examination, P.W. 2 has reiterated that he himself

suggested the accused to take the child in an autorickshaw and that he knew the auto drivers. As aforementioned, P.W. 2 has also identified the

accused as he usually is found on that road. He has also deposed about the exhumation of the dead body.

P.W. 3 is the driver of autorickshaw. He has deposed that at about 5.45 p.m. on 22.10.2009, the accused came and requested him to take him to

Panchavalli Village in his autorickshaw and at that point of time a child aged about 7 to 8 years was with him; he took both of them in his

autorickshaw up to Satyagala Village and received the fare for the said journey; he identified the accused before the Court. P.W. 3 has further

deposed that the child was wearing the school uniform i.e., blue coloured half-pant and blue-white checks shirt and accused was wearing yellow

coloured shirt. The evidence of P.W. 3 is consistent with the evidence of P.Ws. 1 and 2.

P.W. 4 is the driver of another jeep. He also drives his jeep between Periyapatna and Panchavalli Village on hire. On 22.10.2009, he was also

asked by the accused to take him to Panchavalli Village but, he also suggested that the accused may go in an autorickshaw, inasmuch as number of

autorickshaws only on the said route.

From the evidence of these witnesses, it is amply clear that the accused was seen with the deceased at about 6 p.m. on 22.10.2009. They

boarded an autorickshaw and went to Satyagala Village. The evidence of the aforesaid witnesses is supported by P.Ws. 5, 10 and 33. P.W. 5 is

the Archak of the temple. He has deposed that deceased came to his house in the evening of 22.10.2009 and left his bicycle and school bag in

order to go with his uncle. P.W. 10 is the Head Master of the School wherein the deceased was studying. He has produced the Attendance

Register as per Ex. P3. P.W. 33 has deposed that he received a telephonic call from the deceased in the evening of 22.10.2009 informing him that

he would be going along with his uncle. The same makes it clear that the deceased was studying in Basavanikethan Kannada and English High

School, Periyapatna during the relevant point of time and on the date of the incident, the deceased had attended the classes till evening; the

deceased did not attend the classes from next day. The Head Master (P.W. 10) has further deposed that P.W. 1 and deceased are the classmates

studying in the same school. He also identified the accused in Court Hall.

The evidence of these witnesses is consistent, cogent and natural. All these witnesses are independent witnesses. They are from different fields.

Absolutely no reason is forthcoming as to why they should tell falsehood against the accused or in favour of the case of the prosecution. Evidence

of these witnesses amply proves that the accused and deceased were together in the evening of 22.10.2009; they left Periyapatna and travelled up

to Satyagala Village in the autorickshaw of P.W. 3.

9. Re. 3rd circumstance (Recovery of the dead body): During the course of investigation, the police recorded the voluntary statement of the

accused. The relevant portion is marked at Ex. P9. The accused volunteered to show the place wherein he had buried the dead body.

Accordingly, the police took panchas along with them in a jeep and went to the place wherein the dead body was buried. P.Ws. 2, 11, 12, 14, 17,

19, 27 and 34 are the witnesses in support of the said circumstance. P.W. 2 is the driver of the jeep; P.W. 11 is the mother of the deceased; P.W.

12 is the witness for recovery mahazar; P.W. 14 is the elder sister of the deceased; P.W. 17 is the employee of Periyapatna Municipality who dug

the pit and exhumed the dead body; P.W. 19 is the witness for scene of offence panchanama; P.W. 27 is the Taluka Executive Magistrate; P.W.

34 is the Police Constable who was present at the time of exhumation of the dead body. The panchas as well as Taluka Executive Magistrate

including the Police Constable have deposed that the accused lead the police and panchas to the scene and volunteered to show the place wherein

he has buried the dead body.

P.W. 12 is the witness for recovery mahazar. He has deposed that accused lead the panchas and the police to "Durga Sweets" shop and showed

the place from wherein the deceased was kidnapped by him. Thereafter, the accused lead them to Satyagala Village, where the accused alighted

from autorickshaw along with the deceased. Thereafter the accused lead the police and panchas to Panchavalli Village towards Peepal and Neem



trees. Thereafter the panchas were taken near Tamarind tree, where the accused allegedly assaulted the deceased and to the nearby place where

the dead body was buried covering the same with the white cloth. This evidence of P.W. 12 is fully supported by other witnesses. P.W. 27-Taluka

Executive Magistrate has deposed that he went along with the police personnel to the place where the accused had buried the dead body and at

that time, the accused had shown them the place where he had buried the dead body; the body was exhumed with help of municipal employee

(P.W. 17) of the Periyapatna Municipality; the dead body was identified by P.W. 11-mother of the deceased. P.W. 27 has further deposed that

the dead body was tied in the white cloth with the help of plastic wire. He has further deposed about the seizure of personal belongings of

deceased i.e., blue checks shirt, blue half pant, socks, waist thread, neck thread having dollar of Lord Eswara (M.O. Nos. 2, 3, 4, 5 and 6) at the

said spot. Thereafter inquest was conducted. The evidence of these witnesses is further supported by the evidence of employee of Periyapatna

Municipality who exhumed the dead body on the direction of P.W. 27 at the instance of the accused.

We find that the evidence of these witnesses is consistent and cogent. P.W. 17 (employee of Municipality), P.W. 27 (Taluka Executive

Magistrate) and panchas for recovery of the dead body at the instance of the accused are all independent witnesses. Absolutely nothing is found to

suspect their evidence.

The evidence of these witnesses amply proves that the body was exhumed and recovered at the instance of the accused. It is also relevant to note

that the site where the dead body was buried, is owned by the accused himself and it is very near to the place of his residence.

10. Re. 4th circumstance (Recovery of weapons): P.W. 13 has deposed that after recovery of the dead body as mentioned supra, the accused

lead them to his house and showed the place where he had hidden pickaxe, chopper and his yellow coloured shirt. All these articles were found in

bathroom of the house of the accused. They were seized under the mahazar at Ex. P8. It is specifically deposed by P.W. 13 that the shirt which

was recovered at the instance of the accused is of light yellow colour. P.W. 13 is the neighbour of the accused. Despite the same, he has

supported the case of the prosecution relating to recovery of weapons at the instance of the accused. He has identified the weapons which are

recovered at the instance of the accused, before the Court. Though it is suggested to P.W. 13 that he used to quarrel with the accused, such

suggestion is denied by him. Even in the cross-examination he has reiterated about the recovery of the weapons at the instance of the accused.

11. Last circumstance (Identification of the dead body): P.Ws. 11 and 14 are the witnesses who identified the dead body. They are none other

than the mother and the sister of the deceased respectively. In the examination-in-chief, P.W. 11 has deposed as to what all were wore by the

deceased at the time of going to school. She identified all the personal belongings of the deceased after exhumation of the dead body. So also, she

identified the dead body of the deceased. Her evidence is supported by P.W. 14, the sister of the deceased. We do not find any reason to suspect

the version of P.Ws. 11 and 14 relating to identification of the dead body. It is but natural for them to identify the dead body of deceased. There is

no much cross-examination by the defence to show that the dead body was not of Shivakumar.

12. As aforementioned, admittedly, the dead body was buried in the site of the accused which was very near to the place of his residence at

Chowkur Village. Absolutely, no explanation is forthcoming as to why the dead body was found there and that too buried in his land. Though the

suggestions are made to P.Ws. 33 and 11 by the defence that P.Ws. 11 and 33 murdered the deceased and carried the dead body to the place

where it was buried, such suggestions are denied by P.Ws. 33 and 11. Even otherwise, such suggestion made by the defence appears to be totally

unnatural. It may very hard for carrying the dead body from Ailapur, a far of place to a remote place Chowkur, that too without the knowledge of

anybody. There is absolutely no reason as to why anybody should bury the dead body in the land of the accused which is very near to his house. It

is not the case of the accused that the accused was not residing in the said place. Admittedly, the accused was residing in the very place at

Chowkur. The said site of burial belongs to him. In this view of the matter, non-explanation of the said circumstance which is staring at the accused

is an additional circumstance against him. Absolutely, no explanation is forthcoming from the accused in his statement recorded under Section 313

of Cr.P.C. as to how the dead body was found in his site though he has explained certain other factors.

13. In view of the above, we are of the clear opinion that the prosecution has proved all the circumstances relied upon by it to prove the guilt of the

accused. More than 80% of the prosecution witnesses in the matter are the independent witnesses and they are not related to the family of the

deceased. Even the neighbour of the accused has deposed against him. The officials of the State have also deposed about the exhumation of the

dead body at the instance of the accused. Since all the circumstances are proved beyond reasonable doubt and as the said proved circumstances

do not give any scope for the accused to escape from the clutches of the law, the trial Court is justified in convicting the accused for the offences

punishable under Sections 364, 302 and 201 of IPC. It is clear from the material on record that the accused, only with an intention to do away

with the life of the deceased, abducted and murdered him and buried the dead body with a view to hide his guilt. Hence, the trial Court is justified

in convicting the accused in respect of the offences with which he was charged.

In view of the same, no interference is called for. Hence, appeal fails and accordingly, the same stands dismissed.