

Mahantappa and Others

Vs

State of Karnataka

Criminal Appeal No. 594 of 1997

(M. K. Mukherjee, B. N. Kirpal JJ)

12.11.1998

JUDGMENT

M. K. MUKHERJEE, J. -

1. Seventeen persons, including the ten appellants before us, were tried by the Sessions Judge, Raichur for rioting, murder and other cognate offences and acquitted. Assailing their acquittal, the respondent-State of Karnataka filed an appeal in the High Court during the pendency of which three of them died and, resultantly, the appeal as against them abated. Of the surviving fourteen, the High Court upheld the acquittal of three and, reversing the acquittal of the other eleven (who were arrayed as A-1, A-2, A-4 to A-10, A-12 and A-13 before the trial court and will henceforth be so referred to), convicted them under Section 148 IPC and Sections 302, 307, 449, 436 and 201 IPC, all read with Section 149 IPC. A-9 died thereafter and the remaining ten filed the instant appeal under Section 379 of the Code of Criminal Procedure.

2. (a) According to the prosecution case, on 10-10-1985, at or about 10 a.m., the accused persons formed themselves into an unlawful assembly armed with various weapons in Village Bappur and, in prosecution of their common object, accosted Veerabhadrapa (PW 1) and Pampanagowda (the deceased), when they came out of the hotel of Pampayya (PW 4) and assaulted the former with a sword near the house of one Nabeebi. Thereafter they chased PW 1 and the deceased who, being frightened, took shelter in the nearby house of Neelamma (PW 8), after bolting the door of the house from inside. They then attempted to set the house of PW 8 on fire by pouring kerosene-soaked lighted cotton inside the house. Finding no other alternative, when PW 8 opened the door of her house, the accused persons trespassed into it, assaulted PW 1 and dragging the deceased out of the house killed him with the weapons they were carrying. They then threw the dead body in the hut of one Hajamara Mahantappa and set it on fire with a view to destroying the evidence of the murder.

(b) PW 1 then went to the police station at Turvihar and lodged a complaint. A case was registered on that complaint and PW 1 was sent to the local hospital for treatment. Kalakappa (PW 27), Inspector of Police, took up investigation of the case and went to the scene of offence. He held inquest upon the dead body and, after sending it for post-mortem examination, went in search of the accused persons. Though he failed to apprehend any of them on that day, he found a tractor with a trailer parked in front of the cafe shed of A-3 containing various weapons like sticks, sword, spear and axe. He attached those articles and the tractor. Later on, in the course of the investigation, he apprehended the accused persons and seized some weapons pursuant to their statements. On completion of investigation, he submitted charge-sheet against them.

3. The accused persons pleaded not guilty to the charges framed against them and contended that they had been falsely implicated due to enmity.
4. In the course of the trial, the prosecution examined twenty-seven witnesses. The defence, however, did not examine any witness but exhibited certain documents in support of their case. Of the witnesses examined by the prosecution, Veerabhadrappa (PW 1), Shankarappa (PW 2), Yankappa (PW 3), Pampayya (PW 4), Mahantappa (PW 6) and Neelamma (PW 8) figured as eyewitnesses.
5. Relying upon the evidence of the doctor (PW 16), the trial court first held that the deceased met with a homicidal death and PW 1 sustained injuries as alleged by the prosecution; and then proceeded to consider the evidence of the five eyewitnesses. On consideration thereof, it observed that none of them could be relied upon as their testimony was unsatisfactory and inconsistent. Accordingly, the trial court held that the incident did not take place in the manner alleged by the prosecution and acquitted the accused.
6. In appeal, the High Court first observed that the inconsistencies referred to by the trial court were insignificant and it was not at all justified in discarding the evidence of the eyewitnesses on that score. The High Court then detailed and reappraised the evidence of the eyewitnesses and found the same reliable and fully corroborated by other evidence. Thus, accepting the case of the prosecution, it convicted the appellants and A-9 but gave the benefit of doubt to A-15, A-16 and A-17 in the absence of satisfactory evidence to prove their participation in the incident.
7. This being a statutory appeal we have, with the assistance of the learned counsel for the parties, gone through the entire evidence on record and the judgments of the courts below. Our such exercise constrains us to say that the judgment of the trial court is, to say the least, perverse. The so-called evidential infirmities for which the eyewitnesses have been disbelieved are so trivial that the trial court should not have referred to the same, much less, relied upon. To eschew prolixity, we refrain from referring to all of them except a few to demonstrate the approach of the trial court in dealing with the same. In disbelieving PW 1, the trial court observed that he was not in a position to say the number of blows given by each of the accused on his person nor could he say on which part of his body such blow was inflicted. Similar details he (PW 1) could not give about the assault on the deceased. For identical reasons, he disbelieved the evidence of some of the other eyewitnesses. On a careful analysis of the evidence of the eyewitnesses, we have no hesitation in concluding that the incident took place in the manner alleged by the prosecution. In drawing this conclusion, we have drawn inspiration from the fact that the evidence stands amply corroborated by the objective findings of the investigating officer about the burnt houses and that of the doctor regarding injuries found on the person of the deceased and PW 1.
8. The next question that needs an answer is whether the prosecution has been able to conclusively prove the participation of the appellants in the incident. Having given our anxious consideration to this aspect of the matter we find that the participation of A-1, A-2, A-4, A-5 and A-8 and their active roles in the incident stands established by the evidence of two or more eyewitnesses. We, therefore, find no hesitation in upholding the convictions of the above five appellants. So far as A-6 and A-7 are concerned, they were identified by PW 2 only as two of the miscreants. Considering the fact that a large number of persons were involved in the gruesome incident, we do not feel it safe to sustain their convictions relying solely on the identification by one witness only. We, therefore, give them the benefit of reasonable doubt. As regards A-10 and A-13, there is no satisfactory evidence to conclusively hold that they were members of the unlawful assembly. In other words, their presence

at the scene of the crime as onlookers cannot be ruled out. Coming now to A-12, we find that he has not been named in the FIR lodged by PW 1 even though he had named all the other accused persons therein as the miscreants. He is also, therefore, entitled to the benefit of reasonable doubt.

9. On the conclusions as above, we uphold the impugned order of conviction and sentence recorded against Mahantappa (A-1), Giryappa (A-2), Yankanagouda (A-4), Mallanagouda (A-5) and Waddar Mariappa (A-8) - who are Appellants 1, 2, 3, 4 and 7 respectively in this appeal and set aside the same so far as it related to Shekharappa (A-6), Devanagouda (A-7), Nagappa @ Dodda Nagappa (A-10), Bhimanna @ Sanna Nagappa (A-12) and Bheemanagouda (A-13) - the other appellants in this appeal. Let A-6, A-7, A-10, A-12 and A-13, who are Appellants 5, 6, 8, 9 and 10 before us, and are in jail, be released forthwith unless wanted in connection with some other case. The appeal is, thus, disposed of.