

**SUPREME COURT OF INDIA**

Shankaraya Naik

Vs.

State of Karnataka

Crl.A.No.512 of 2001

(S.B.Sinha and Harjit Singh Bedi JJ.)

22.09.2008

**JUDGMENT**

**Harjit Singh Bedi, J.**

1. This appeal arises out of the following facts:

2. One B.K.Naik had two brothers - Rekhya Naik and Ganga Naik PW 6. Balappa Naik, the deceased, PW3 Veeraya Naik, PW 7 Naga Naik and PW9 Shantamma are the children of B.K.Naik and Jamballama, PW1. Shankaramma PW24 was the wife of the deceased. The accused are all sons of Rekhya Naik aforesaid whereas PW.5, Moulasab is the son-in-law of PW6. All the persons being closely related were residents of the Janatha Colony falling within the jurisdiction of Yergera Police Station, Raichur District. As per the prosecution story, land measuring more than 5 acres belonging to B.K.Naik had been mortgaged to Rekhya Naik, father of the accused. The deceased Balappa Naik, who had shifted to Bombay was able to save some money to redeem a part of the land and was making efforts to redeem the remaining portion of the property as well. As the accused had enjoyed the usufruct of the property for some time, they were not happy at this turn of events which had led to ill will between the parties. On 25<sup>th</sup> August 1995 at about 6.30 p.m., the deceased along with some of the witnesses was sitting outside their houses when all the accused armed with clubs and sickles came there and assaulted Balappa Naik and when those sitting there, that is, his mother, sister, brothers and uncle intervened, they too were assaulted and caused various injuries. Veeraya Naik PW3 lodged the first information report at about 3 a.m. on 26th August 1995 and on its basis, a case was registered under sections 143, 147, 148, 324, 323 and 504 read with Section 149 IPC. All the injured including Ballappa Naik were sent to the District Hospital and examined by Doctor Chandra Rao PW8. As the condition of Balappa Naik was serious, he was admitted to the hospital but later succumbed to the injuries. As a result, a case under Section 302/149 IPC was also added. The Doctor also noted specific injuries on PW 1, 3, 5, 6, 7 and 12. All the eight accused were arrested in due course and were charged for offences punishable under Sections 147,148,302 read with section 149, 326, read with 149, 324 read with 149, 323 read with 149 and 504 IPC and as they pleaded not guilty, they were put

to trial. The prosecution relied on the evidence of the aforesaid witnesses, in addition to the evidence relating to the recovery of weapons etc. The accused denied the allegations leveled against them in their statement made under Section 313 Cr.P.C. Ex.D1 was also marked on their request and taken into evidence.

3. The trial court in its judgment dated 31st October 1997 held that though the assault on Balappa and the other injured in the hands of the accused had been proved, the prosecution had failed to establish the common object of the unlawful assembly to cause the murder of Balappa or causing an assault and injury on the injured witnesses and in this view of the matter, the accused were liable to be convicted for their individual acts. Applying this principle, the trial court found that A1 Lachamappa Naik, A7 Nagappa Naik and A8 Hanumantha Naik had not committed any individual overt act pertaining to the deceased or the injured and as such they were entitled to the benefit of doubt and thus an acquittal. Accused No.4 Sriramulu Naik was held guilty for causing the death of Balappa under Section 302 IPC. The court also opined that accused No.5 Gopal Naik and accused No.6 Reddy Naik were liable to be convicted under Sections 324 and 326 IPC in so far as the attack on Balappa was concerned, whereas the other accused Nos. 2 to 6 were found guilty of assault on the injured witnesses and were convicted for offences punishable under Section 324 and 326 IPC. Accused No.4 Sriramulu Naik was accordingly sentenced to undergo imprisonment for life and fine of Rs.2000/- for the offence under Section 302 IPC with a default sentence. Accused Nos. 2 to 6, who were found guilty under Section 326 IPC were sentenced to undergo R.I. for two years and a fine of Rs.1000/- each with a default sentence and under Sections 324 IPC and were sentenced to undergo R.I. for a period of one year and fine of Rs.500/- each with default sentence.

4. Two appeals were thereafter filed before the High Court; Accused Nos. 2 to 6 challenged their conviction in Criminal Appeal No. 911/1997, whereas the State preferred Criminal Appeal No. 45/1998 being aggrieved by the order of acquittal of all the accused for the offences under Section 302 read with 149 IPC as also the outright acquittal of A1 Lachamappa Naik, A7 Nagappa Naik and A8 Hanumantha Naik. The High Court re-examined the evidence and observed that there were as many as six injured witnesses, closely related to the deceased, and in addition, PWs 11 and 12 who were independent witnesses and neighbours of the deceased who too had received injuries when they had tried to go to the rescue of the deceased. The Court also observed that the motive also stood proved as Balappa, the deceased was trying to recover the remaining portion of the land that had been mortgaged with the opposite party, and this had led to ill will between them. The Court noted that the accused, the prosecution witnesses and the deceased, were all living in the same colony in houses facing each other and the incident had taken place in the open area between the two rows of houses. The plea of the learned counsel for the accused appellant, who challenged the location of the site of the incident, was rejected on the basis of the sketch, Ex.P2 and the significant fact that the entire Janatha Colony of 10 houses had been constructed in a site of 80 feet by 12 feet which fixed the site of the incident with certainty. The Court also opined that PW 24, the wife of the deceased, had undoubtedly tried to wriggle out of her earlier statements, but on cross-examination by the Public Prosecutor, had again supported the prosecution story in to. The court also found that there was no delay in the

lodging of the FIR as by 3 a.m., all the injured including Balappa, the deceased had reached the Police Station and the FIR had thereupon been recorded. The High Court then went on to examine the participation of accused Nos 1, 7 and 8, who had been acquitted by the Trial Court and concluded that a lingering doubt as to their participation did exist which did not justify any interference in the State appeal with regard to their case. The court then examined the larger question as to whether the remaining accused constituted an unlawful assembly envisaged under Section 141 of the IPC and therefore liable to be convicted under Section 302/149 of the IPC as well. The court observed that whether a case of common object was made out or not was dependant on the facts of the case and the facts of the present case clearly showed that there was animosity between the parties and that the accused had come to the place of incident armed with lethal weapons and had caused severe injuries leading to the death of one person and injuries to eight others. The Court also relied upon several judgments of this Court and concluded thus:

"Section 149 IPC covers two classes of acts. The two parts of the Section are quite distinct, though the same act may and frequently does fall under the both. The first class of acts is of the acts committed in prosecution of a common object of the assembly. The act may be that of one individual accused. But, if it is committed in furtherance of the end which all of them have in view, all the accused are liable for committing the same. The second class of acts is those acts which the accused knew to be likely to be committed in connection with carrying out of their end purpose. As we have found in the present case, the assembly of the accused, except accused 1, 7 and 8 was for the purpose of committing the offence as a retaliation for getting the land redeemed by the complainant party. They came to the scene armed with weapons like clubs and sickle and in pursuance of the same gave blows on the deceased and others. No doubt it was the act of one of the accused, viz. Accused-4, which resulted in the death of Balappa. But, because of the importation of the concept of vicarious liability as observed by the Apex Court each and every member of such unlawful assembly has to be held guilty. In our view, the trial court committed an error in not appreciating this aspect. It went wrong and erroneously held that though all the accused came in group their act was individual and not as a member of an unlawful assembly. As such, we feel that the trial court was not justified in acquitting these accused, viz. Accused 2 to 6, of the offences under Section 147,148,302 with the aid of Section 149 IPC.

After giving our anxious consideration on this, in our view, Criminal Appeal No. 911 of 1997 filed by the accused is liable to be rejected. However, Criminal Appeal No. 45 of 1998 filed by the State is to be allowed against all the accused, except Accused 1, 7 and 8, are concerned. In reversal of the finding of the trial court, we hold Accused 2 to 6 guilty of the offence punishable under Sections 147, 148 and 302 IPC read with Section 149 IPC apart from Sections 323 and 324 both read with Section 149 IPC. For the offence under Section 302 IPC read with Section 149 IPC, accused 2 to 6 are sentenced to undergo imprisonment for life and to pay fine of Rs.1000/- each and in default of payment of fine to undergo rigorous imprisonment for six months. If the fine amount is recovered, the same may be paid to the legal representatives of

deceased Balappa Naik. The trial court is directed to take necessary steps to secure the presence of Accused 2, 3, 5 and 6 to undergo the sentence awarded by this Court. In the result, Criminal Appeal No. 911 of 1997 fails and the same is dismissed. Criminal Appeal No. 45 of 1998 partially succeeds as noted above and it is accordingly allowed in part."

4. The present appeal at the instance of the accused has been filed as a consequence of the order of the High Court.

5. We have heard the learned counsel for the parties and gone through the record. Mr. Lingraja, the learned counsel for the appellant has pointed out at the very outset that the High Court was not justified in allowing the State appeal in the light of the fact that the Trial Court had given good reasons for holding that Section 149 of the IPC was not applicable. It has also been urged by the learned counsel that the delay in the lodging of the FIR had been utilized to create a false story as the facts showed that the incident had happened at about 6.30 p.m. on 25th August 1995 and the FIR lodged at 3 a.m. on 26th August 1995. The learned counsel for the State has however pointed out that the prosecution story had been proved by eight injured witnesses including PWs 11 and 12, who were independent witnesses and the fact that the accused had come to the place of incident duly armed with lethal weapons and no injury had been suffered by any of them, showed that the attack had been made after due preparation which betrayed the common object of the unlawful assembly to commit murder. He has also pointed out that the injured witnesses and Balappa since deceased had reached the hospital at about 8 p.m. and this could not be said to be delayed inasmuch as some time would have taken for the transport of the large number of persons who had suffered injuries. He has also pointed out that in the light of the fact that there were a large number of injured witnesses, some minor discrepancies in the statements were but natural under the circumstances.

6. We have considered the arguments advanced by the learned counsel for the parties. It is true that the Trial Court had observed that the common object of the unlawful assembly was not to commit murder and had accordingly acquitted the accused for the offence punishable under Sections 302/149 of the IPC. We find, however, that the High Court has dealt with the matter in extenso and we can see no flaw in its reasoning of this aspect. It is clear from the record that the accused had come to the place of incident duly armed and had immediately proceeded with the attack on the opposite party and had caused serious injuries to the deceased and to as many as eight witnesses. It is also clear from the facts preceding the attack that there was great animosity between the parties and it must, therefore, be inferred that when the accused had come armed with lethal weapons, the chance that somebody might be killed was a real possibility.

7. We are also of the opinion that there is absolutely no delay in the lodging of the FIR in the facts of the case. The incident had happened at 6.30 p.m. on 25th August, 1995, the injured had reached the hospital by 8 p.m. and the FIR had been lodged at the police station by an injured eye witness eight hours later. Taking into account normal human conduct and the fact

that many persons had sustained injuries, one of whom had subsequently died, a delay of eight hours can, by no stretch of imagination, be dubbed as inordinate.

8. We, further, find that even assuming there was some delay in the recording of the FIR, the fact that there were eight injured witnesses, two completely independent, PWs.11 and 12, who have fully supported the prosecution story in all particulars, the story stands proved. Some arguments were raised by the learned counsel to that effect that there were discrepancies in the statements of the witnesses not only with regard to the time of the incident but also as to the manner of its execution. We find that these statements have been examined minutely by the High Court and it must also be, in addition, borne in mind that some discrepancies are bound to appear in the statements of witnesses recorded long after the incident.

9. Mr. Lingraja, the learned counsel for the appellant has, however, pointed out that one of the primary witnesses in this case was PW24 Shankrama, the wife of the deceased Balappa Naik, and her vacillating statement clearly showed that the story projected by the prosecution was not the correct one. We have considered this argument as well. We notice that in her examination-in-chief, PW24 had resiled from her earlier statement and was accordingly cross-examined by the Public Prosecutor as a hostile witness and in this examination she did a volte face and once again supported the prosecution story in all material particulars. Even assuming however, that she was an unreliable witness, there are many other injured witnesses whose presence cannot be doubted. Any suspicion with regard to the veracity of the evidence given by PW24 thus becomes meaningless.

10. We thus find no merit in the appeal. It is accordingly dismissed.