

SUPREME COURT OF INDIA

Yankappa

Vs.

State of Karnataka

CrI.A.No.68 of 2002

(Dr. Arijit Pasayat and Dr. Mukundakam Sharma JJ.)

16.12.2008

JUDGMENT

Dr. Arijit Pasayat, J.

1. Challenge in this appeal is to the judgment of the Division Bench of the Karnataka High Court disposing of two criminal appeals i.e. one by accused Yankappa (hereinafter described as 'A1') who was convicted for offence punishable under Section 302 read with Section 149 of the *Indian Penal Code, 1860* (in short the 'IPC') and the other filed by the State questioning conviction by the trial Court for offence punishable under Section 304 Part I IPC read with Section 149 IPC in respect of A1 to A6. Sentence of 3 years is imposed. According to State, they should have been convicted also under Section 302 read with Section 149 IPC. Appellants 7 to 15 were acquitted by the trial Court which was challenged in the State's appeal.

2. By the impugned judgment the High Court dismissed the appeal filed by Yankappa (A1) but allowed the State's appeal to the extent that A2 to A8 were convicted for offence under Section 302 read with Section 149 IPC. They were sentenced to undergo imprisonment for life. The acquittal in respect of rest as was recorded by the trial Court was upheld by the High Court.

3. Factual scenario giving rise to the trial of the accused persons is as follows:

“The accused No.1 Yamanappa and 14 others were tried before the Trial Court on charges under Sections 143, 147, 148 & 302 read with Section 149 IPC. The Trial Court convicted the accused No.1 Yamanappa under Section 302 read with 149 IPC and the accused Nos. 2 to 6 under Section 304 Part I read with 149 IPC. The rest of the accused persons viz. the accused 7 to 15 were acquitted of all the charges framed against them. The accused No.1 was sentenced to undergo life imprisonment and to pay a fine of Rs.10,000/- u/s 302 IPC and the accused Nos. 2 to 6 were sentenced to undergo RI for three years and fine of Rs.10,000/- under Section 304 Part-I read with Section 149 IPC. The accused No.1 filed an appeal against his conviction and

sentence in Crl. Appeal No.315/97. The State also preferred an appeal in Crl. Appeal No.553/97 against an order of acquittal of the accused under Section 302 read with Section 149 IPC. The accused Nos.2 to 6 did not prefer any appeal against their conviction and sentence. The deceased is one Mahadevappa aged about 30 years. He was killed on the Musky-Mudgal Road on 28.10.95 at about 8.30 am in the morning. Smt Mallamma (PW-1) is the wife of the deceased. The deceased Mahadevappa along with his wife Mallamma PW-1 and mother CW-5 had been residing in the house situated in his land; on the outskirts of Bailagudda village. Pampanna (PW-2) and Erappa (PW-3) are the brothers of the deceased and they were both residing in the village habitation of Bailagudda. The land of the deceased Mahadevappa was adjoining the land of the accused No.1 Yamanappa. That is to say, they were possessing contiguous lands. Deceased Mahadevappa had seriously objected to the accused No.1 Yamanappa digging a borewell near his own borewell and thereafter, the differences arose between the family of the accused No.1 Yamanappa and the family of the deceased. Since then, there used to be some kind of friction between the members of their two families. While this was so, on the evening of 27.10.95, the cattles belonging to the accused No.1 Yamanappa entered into the land of the deceased Mahadevappa for the purpose of grazing and in that regard, there was a verbal quarrel between the wife of the deceased (PW1) and the wife of the accused No.1 namely Sharanamma. This incident was reported by PW-1 to the deceased on his return to the house. Thereafter, on the following morning, at about 8.30 am, after giving the grains (Bajra) to one Muniyappa (PW-4) who had come to the house of the deceased to collect the grains, the deceased Mahadevappa was proceeding along with PW-4 from his house in order to go to Musky, with the intention to lodge a complaint with the police in respect of the incident, which occurred on the previous day evening. When the deceased Mahadevappa was so proceeding along the road near a school, all the accused persons came in a group, armed with various weapons like clubs, axes and spears and after picking up a quarrel with the deceased, they committed assault on, him. Accused No.1 Yamanappa stabbed the deceased with a spear. The accused No.6 dealt axe blows on the deceased. The others viz. accused No.4 Kidiappa, accused No.7 Ayappa and accused No.8 Hanumantha assaulted the deceased with clubs. Thereafter, the women accused No. 13 Sharanamma, accused No. 11 Garudamma, accused No.10 Hanumavva, accused No.12 Fakiravva and accused NO.14 Shivamma dropped stones on the deceased and so also one Kumarappa brother of Sharanamma and son-in-law of Durgappa. As a result of the assault committed by these accused, the deceased had sustained bleeding injuries on his head and legs. The complainant Erappa (PW-3) and Pampanna (PW-2), the brothers of the deceased, Mallamma (PW-1), the wife of the deceased and one Shekara Gowda (PW-6) had intervened to rescue the deceased. But they were not successful in preventing the accused from committing the assault on the deceased. Thereafter, before the deceased Mahadevappa could be shifted to the hospital for treatment, he died on the spot. The PSI PW-17 who was on village rounds came to the spot at about 11 am and recorded the statement of Erappa (PW-3) which is as per Ex.P.1 and treated the same as the FIR. On the basis of such FIR Ex.P.1, the investigation was taken up and on completion of the investigation, the charge sheet was laid against the 15 accused

persons. At the trial, the prosecution had examined PWs 1 to 21. Of them, PWs 1 to 4 & 6 claimed to be eye witnesses to the occurrence. PW-5 was also examined as an eye witness, but he did not support the prosecution case in its entirety. PWs 7 & 8 had come to the spot immediately after the assault and they were informed of the occurrence by PW-1. PW-9 is a witness for the inquest proceedings held on the dead body of the deceased and the spot panchanama conducted over the place of incident as per Exs P.6 & P.7.”

4. After completion of investigation, charge sheet was filed. As the accused persons pleaded innocence, trial was held. The trial Court, as noted above, held A1 to A6 guilty of different offences as noted above. A7 to A15 were acquitted. The High Court found that the conviction of A1 was in order. The conviction of A2 to A6 was made under Section 302 read with Section 149 IPC. Similar was the case in respect of A7 and A8 who were acquitted by the trial Court.

5. The High Court gave the following reasons for its conclusions:

"Therefore in our view the acquittal of the Accused Nos.9 to 15 is concerned warrants no interference in the appeal filed by the State. In so far as the other accused viz., Accused Nos.1 to 8 are concerned, there is consistent evidence of all the eye-witnesses, whose presence at the spot cannot be doubted, that they conjointly assaulted the deceased and caused his death. It is no doubt true that a reading of the evidence of PW-2 alongwith the evidence of PW-4 would create some doubt about the presence of PW-2 at the time of the actual occurrence. But there is absolutely no reason to doubt the presence of PWs.1, 3, 4 and 6 at the spot when the incident in question had occurred. The evidence against the Accused Nos.1 to 8 is overwhelming. It consists of several eye-witnesses who saw the assault in the broad day light and who knew all these accused persons. There is no doubt that all these accused persons A1 to A8 joined in the assault committed on the deceased when he was near the gaddige with the various weapons and they inflicted such serious injuries to the deceased that he had died on the spot. They must have known that at the least, they were causing injuries, which were likely to cause death and if death has resulted, they were guilty of murder. In such cases, it is immaterial by whose weapon the fatal injury is inflicted. In our opinion all these 8 accused persons A1 to A8 ought to have been convicted for murder and if they have been so convicted of murder, we would not have interfered. It has to be stated that when several persons jointly attack the deceased with various weapons resulting in the death of the deceased, they are all equally guilty even though it may not be possible to prove which of them actually inflicted the fatal blow. In the instant case, the learned trial Judge was not justified in not convicting the Accused Nos. 1 to 8 under Section 302 IPC either with the aid of Section 149 of with Section 34 IPC. To that extent, the order of the trial Court needs to be modified. We are aware that we are interfering with the order of acquittal under Section 302 IPC, but we think interference in this case is imperative and hesitation to interference will lead to a miscarriage of justice."

6. In support of the appeal learned counsel for the appellants submitted that the trial Court should not have found any of the accused persons guilty. The evidence of PWs. 1, 3, 4 and 6

should not have been relied upon particularly when PW5 did not support the prosecution and PW2 was disbelieved by the trial Court. It is also submitted that there is no reason to convict A7 and A8 who were acquitted by the trial Court.

7. Learned counsel for the respondent supported the judgment of the High Court.

8. We find that the reasoning indicated by the High Court as quoted above suffers from no infirmity so far A1 to A6 are concerned. The trial Court had committed grave error in holding that Section 302 was not applicable to them. Therefore, the High Court has rightly convicted each A1 to A6 in terms of Section 302 read with Section 149 IPC. So far as appellants A7 and A8 are concerned, the reasoning indicated by the trial Court for acquitting them does not suffer from any infirmity. Evidence of PW-1 and PW-3 relate to only A1 to A6. They have not ascribed any role to A7 and A8.

9. That being so, while upholding the judgment of the High Court we allow the appeal so far as it relates to A7 and A8 i.e. the appellants. A1 i.e. Yankappa has not questioned correctness of the judgment. The appellants Ayyapa and Hanumantha are acquitted. They were released on bail pursuant to the order dated 18.2.2002. The bail bonds shall stand discharged.

10. The appeal is allowed to the aforesaid extent.