

SUPREME COURT OF INDIA

Hanmappa

Vs.

State of Karnataka

Crl.A.No.336 of 2007

(Dr.Arijit Pasayat and Asok Kumar Ganguly JJ.)

17.03.2009

ORDER

1. Heard.

2. Challenge in this appeal is to the order of Division Bench of Karnataka High Court. By the impugned judgment the order of acquittal passed by learned Sessions Judge, Gelbarga was set aside and the appellant was convicted for offence punishable under Section 302 of the *Indian Penal Code, 1860* (in short 'IPC') imposing sentence of imprisonment for life and pay a fine of Rs. 10,000/- with default stipulation. The co-accused persons i.e. Yamanappa and Govindappa who were convicted for offence punishable under Section 506 read with Section 34 IPC were each sentenced to undergo two years imprisonment. The original A4 is the present appellant. A3, Nagappa had died during trial and therefore the case stood abated against him. One Nagappa (hereinafter referred to as the deceased) lost his life on 25.04.1993. The trial court found that the evidence was not adequate to fasten the guilt on the accused persons.

3. The State questioned the acquittal by preferring the appeal after obtaining leave in terms of Section 378 of the *Code of Criminal Procedure, 1973* (in short 'Code'). The High Court found that the evidence of PW5 is reliable and therefore the judgment of acquittal as recorded by the trial court was not in order. It appears that a stone was thrown at the deceased which resulted in his death and accordingly, as noted above, the High Court interfered with the judgment of acquittal.

4. In support of the appeal, learned Counsel for the appellant submitted that the background facts were appropriately considered by the trial court and therefore the High Court ought not to have interfered with the judgment of acquittal. Learned Counsel for the respondent-State on the other hand supported the judgment of the High Court.

5. We find that there was a quarrel between the deceased and accused PW5 has categorically stated that when he went near the place of occurrence after hearing cries of the deceased he

found that the accused and the deceased were scuffling with each other and also found the deceased was being assaulted with stone on the left rib which ultimately led to his death.

6. Considering the background facts we find that the appropriate conviction would be under Section 304 Part-II IPC. It appears that the appellant has already suffered custody for some years. Custodial sentence is reduced to the period already undergone. The appellant be released from custody forthwith unless required to be in custody in connection with any other case.

7. The appeal is allowed to the aforesaid extent.