

# **SUPREME COURT OF INDIA**

Gangappa Ningappa Ugarkohod

Vs.

State of Karnataka

Crl.A.No.683 of 2005

(Aftab Alam and R.M.Lodha JJ.)

16.04.2013

## **JUDGMENT**

### **AFTAB ALAM, J.**

1. These three appeals arise from a common judgment and order passed by the Karnataka High Court. By the impugned judgment, the High Court disposed of two appeals, which came to it from a common judgment and order passed by the trial court. The High Court allowed the appeals insofar as Smt. Nagavva (accused no. 2) and Doddappa Ningappa Ugarkhod (accused no. 13) are concerned and acquitted them of all the charges. In regard to the rest of the accused (the present appellants before this Court) the appeals were dismissed and their conviction and the sentences given to them by the trial court was confirmed by the High Court.

2. Criminal Appeal No. 47 of 2007 (that was the last among the three appeals to come to this Court) is at the instance of Sataveer Basappa Hariyal (accused no.1: He died on November 10, 2009 during the pendency of the appeal), Honnappa Shiddappa Banni (accused no. 3), Beerappa Shiddappa Huggi (accused no. 9) and Yallappa Kenchappa Vibhuti (accused no. 16). Criminal Appeal No. 1064 of 2005 has been filed by Beerappa Demasheppa Deshanur (accused no. 5) and Maruti Demasheppa Deshanur (accused no. 6). All the six appellants in these two appeals are convicted under section 302 read with section 149 and some other ancillary sections of the Penal Code. For committing murder, they are sentenced to undergo rigorous imprisonment for life and a fine of Rs. 2,000/- each with the default sentence of imprisonment for six months. They are also given some lesser

punishments for the various other offences but all the sentences are directed to run concurrently.

3. Criminal Appeal No. 683 of 2005 (which was the first among the three to come to this Court) is filed by Gangappa Ningappa Ugarkhod (accused no. 12). His conviction is mainly under section 326 read with section 149 beside some other ancillary sections of the Penal Code. He is sentenced under section 326/149 to rigorous imprisonment for three years and a fine of Rs. 2,000/- with the default sentence of imprisonment for six months. The relatively lesser sentences for other offences in his case too are directed to run concurrently with the main sentence.

4. Both the appellants-accused and the members of the prosecution party belong to the same family and live in the same village. According to the prosecution, Sataveer (accused no.1: appellant no. 1 in Criminal Appeal No. 47 of 2007) is the step brother of Siddappa. He carried a grudge against his father Basappa and the step brother Siddappa due to his father's refusal to give him land in excess of his step brother. About three months prior to the occurrence, giving rise to the present case, there was an incident of assault by Sataveer and his mother Nagavva on Basappa. At that time Ningappa (the Complainant) had taken Basappa to hospital and had also prevailed upon Basappa to lodge a police report against Sataveer. Sometime later, the starter of the electric pump set in the land of Ningappa was stolen. He suspected the hand of Sataveer and his men in the theft and had filed a complaint with the police against some of the accused in the present case. This had further strained the relations between the two sides. Two days before the occurrence the complainant's son Rudrappa had gone to fetch water from the borewell. There the daughter of Beerappa (accused No. 9: appellant no. 3 in Criminal Appeal No. 47 of 2007) quarreled with him and abused him. On the same evening Beerappa and his people went to the house of the complainant and gave threats that they would finish off the complainant's men.

5. On October 12, 1991 when Ningappa, his son Rudrappa and his younger brother Basavanneppa were in the farm house, Basavanneppa's wife Kasturi (PW.3) came there at about 7.00 a.m. and asked them to bring the cattle from the house to the farm house. The complainant and his brother then proceeded from the farm house for their house; Kasturi was also coming behind them. On the way, as they passed in front of the Kannada School in village Maradi Nagalapur, accused nos. 1 to 28, armed with sickles and clubs came out from the side of the house of accused no. 9. They were shouting at and abusing Ningappa. On hearing their shouts, Kasturi, followed by Ningappa's wife, Shanthavva (PW.4), Basavanneppa's third wife,

Balavva and Ningappa's second son, Anand (PW.7), also came there. Ningappa's younger sister, Gangavva (PW.5), also arrived at the spot. The accused began to assault Basavanneppa. He was given stick blows by accused nos. 1 to 5 causing grievous injuries. Accused nos. 1, 2, 5, 9 and 16 assaulted PW.1. Accused nos. 2, 3, 6, 9 and 16 also assaulted Basavanneppa, who died as a result of the assault. PW.1 also received grievous injuries. When PWs 3, 4, 5 and 7 tried to save PW.1, they were also assaulted by accused nos. 16 to 28.

6. Ningappa (PW.1) lodged a complaint against the accused for offences punishable under sections 143, 147, 148, 302, 326, 324, 506 and 504 read with section 149 of the Penal Code. The injured on the prosecution side were sent to the hospital for treatment.

7. In the meanwhile, some of the accused went to Belgaum and got themselves admitted in Belgaum Hospital. On intimation, the PSI from Belgaum P.S. went to the hospital and took down the statement of Sataveer (accused no. 1) in which he made the allegation of assault on him and his people by Ningappa and his party. On the basis of his statement a case was registered against Ningappa and some of the prosecution witnesses which was transferred to Bailhongal P.S. and was investigated along with the FIR of the present case. After completion of investigation, a charge-sheet was filed against the present appellants, accused in the case registered as S.C. No. 84/1993. The counter case instituted on the basis of the complaint of accused no. 1 was numbered as S.C. No. 71/1993.

8. Both the cases were tried together by the Additional Sessions Judge I, Belgaum. In the counter case (S.C. No. 71/1993) there were nine accused including PWs 1, 3, 4, 5 and 8 of the present case. All the accused in that case were finally acquitted by judgment and order dated September 7, 2001 passed by the trial court.

9. In the present case, the accused pleaded not guilty and claimed to be tried. The prosecution in support of its case examined 28 witnesses; PWs 1 to 5, 7 and 8 are eye-witnesses; PW.6 is the doctor who medically examined Ningappa, Ganganvva Nagappa Chandaragi, Smt. Shanthavva, Balavva Basappa Chandaragi, Anand Ningappa Chandaragi and Smt. Kasturi and proved their injury reports which were marked as Exhibit Nos. P.2, P.3, P.4, P.5, P.6 and P.7 respectively. He also examined the two sticks, six bamboo sticks and four pieces of stone, seized by the police and gave his opinion that the injuries caused to the persons examined by him, except injury no. 5 of Ningappa, could be caused by those articles.; PW.17 is another doctor who had medically examined Ningappa and who proved his injury

report Exhibit No. P.15 before the court. PW.25 is the doctor who held post-mortem on the deceased. He proved the post-mortem report made by him which was marked as Exhibit No. P.27. PWs 26, 27 and 28 are the police officers who investigated the case.

10. In course of the trial, two, among the 28 accused on trial, died. At the conclusion of the trial, the trial court by its judgment and order dated September 7, 2001 in Sessions Case No. 84/1993 acquitted 16 of the accused but found the remaining 10 guilty of the charges and convicted accused nos. 1, 2, 3, 5, 6, 9 and 16 under section 302/149 of the Penal Code, accused no. 12 and 13 under section 326/149 of the Penal Code and accused no. 25 under section 324/149 of the Penal Code.

11. Out of the 10 convicted accused, 9 went to the High Court in two appeals being Appeal Nos. 1490 of 2001 and 1491 of 2001 (accused no. 25 convicted under section 324/149 of the Penal Code did not file any appeal).

12. The High Court, by its judgment and order dated December 18, 2004, acquitted accused nos. 2 and 13 but confirmed the conviction and sentence given to the rest of the accused, who are now in appeal before this Court.

13. The medical evidence fully supports the prosecution case. We have also gone through the depositions of the seven eye-witnesses and the ocular account of the occurrence is quite unimpeachable.

14. However, the learned counsel appearing for the appellants strongly submitted that some of the accused had received injuries and those remained unexplained by the prosecution. He, therefore, contended that the occurrence clearly did not take place in the manner presented by the prosecution and for that reason alone the prosecution case deserved to be junked.

15. Both the trial court and the High Court have taken this aspect of the matter in due consideration. The trial court has pointed out, and in our view quite rightly that the defense in this case completely denied the occurrence. According to the defense, the occurrence took place in a different manner and at a completely different place as alleged in the counter case being S.C. No. 71/1993. The trial court further observed that since the accused denied the very occurrence, no reliance could be placed on the alleged injuries suffered by them, insofar as the trial of S.C. No. 84/1993 is concerned. Moreover, the defense story, which was the

prosecution case in S.C. No. 71/1993, was disbelieved and hence, the alleged injuries suffered by the accused were of no help to them in this case.

16. We are in agreement with the view taken by the trial court and the High Court.

17. However, having regard to the fact that, to start with, there were a number of accused and many of them were acquitted by the trial court and two by the High Court, we suggested to the counsel appearing for the appellants to address the Court in regard to the individual roles of the different appellants so that their individual culpability may be separately examined.

18. The counsel, however, insisted on challenging the prosecution case in its entirety.

19. Nonetheless, we have gone through the records to see the individual culpability of the seven appellants but we find that the judgment of the High Court is faultless and the conviction of the seven appellants has been arrived at correctly and on a proper appreciation of the prosecution evidence.

20. We, thus, find no merit in these appeals which are accordingly dismissed. The bail bond of Gangappa Ningappa Ugarkhod, appellant in Criminal Appeal No. 683 of 2005, is cancelled and he is order to surrender within 4 weeks, failing which the trial court is directed to take coercive steps to take him in custody and to make him serve out the remaining sentence.