

SUPREME COURT OF INDIA

Yallawa & Ors.

Vs.

State of Karnataka

Crl.A.No.1126 of 2007

(Fakkir Mohamed Ibrahim Kalifulla and Uday Umesh Lalit, JJ.)

09.10.2015

JUDGMENT

Fakkir Mohamed Ibrahim Kalifulla, J.,

1. This appeal is directed against the Division Bench judgment of the High Court of Karnataka dated 31st March, 2006 passed in Criminal Appeal Nos. 276 along with 1201 of 1999. Both the appeals were preferred by the State of Karnataka before the High Court. In Criminal Appeal No. 276 of 1999, as many as 24 respondents were arrayed while in Criminal Appeal No. 1201 of 1999 there was only one respondent.

2. Altogether 28 accused were proceeded against in Crime No. 134 of 1991 for the offences punishable under Sections 143, 147, 148, 342, 114, 302, 436 and 506 read with 149 IPC. One Shobha was a juvenile and, therefore, her case was dealt with separately by the Juvenile Justice Board. The rest of the 27 accused were tried before the learned First Additional Sessions Judge, Jabalpur in Sessions Case No. 35 of 1992. When the trial was pending, second accused and 15th accused died, and, therefore, the criminal case against them got abated. The case against A18 was separated by order dated 12th October, 1995. Ultimately, by judgment dated 30th November, 1998, the trial Court acquitted all the accused.

3. As against the said acquittal, the State preferred the above two Criminal Appeals. Subsequently, the case as against A-18 also ended in acquittal. Thereafter, the State preferred the two appeals namely, 276 and 1201 of 1999 before the High Court. In Criminal Appeal No. 276 of 1999, 24 respondents were shown and in Criminal Appeal No. 1201 of 1999, A-18 was the respondent. By the impugned judgment and order, the Division Bench of the High Court reversed the judgment of the trial Court and convicted the appellants along with other accused for offences under Sections 148, 302, 506, 342 and 436 read with 149 IPC. They were imposed with the sentence of life imprisonment for the offences punishable under Section 302 IPC apart from a fine amount of Rs. 5,000/- (Rupees five thousand) with a default clause to undergo further rigorous imprisonment for a period of two years. They were also

convicted for the offence under Section 436 IPC and sentenced to undergo imprisonment for a period of ten years along with a fine of Rs.5,000/-(Rupees Five thousand) with a default sentence of one year rigorous imprisonment. The fine amount, after its collection, was directed to be distributed equally to the heirs of deceased Channabasappa and Pavithra Bai. Both the sentences were directed to run concurrently.

4. It must be stated that as against the Division Bench decision, A3, A10, A13, A22, A24 and A18 did not file any appeal before this Court. Subsequent to the filing of the appeal before us, appellant no. 18 Vimlabai, wife of Siddarth Kattimani died and, therefore, her appeal insofar as the said appellant concerned, the same got abated. Therefore, we are now presently concerned only with the 18 accused, out of whom appellant Nos. 1,9,12,13 and 16 withdrew their appeal and their appeals were dismissed as withdrawn by order dated 20th August, 2007 by the Hon'ble Judge in Chamber. Since out of 19 appellants five have withdrawn their appeal and one is no more we are now concerned with only 13 appellants namely, appellant Nos. 2-8,10,11, 14, 15, 17 and 19.

5. The genesis of the case can be culled out from Exhibit P1 dated 5th October, 1991 filed by one Shmt. Vatasalabai, wife of Chandrashekhar Kattimani who was examined as P.W.1 before the trial Court.

6. Shorn of unnecessary details, the case of the prosecution was that ever since the marriage of P.W.1 which was 15 years ago, prior to the date of occurrence namely, 5th October, 1991, she was living at the Village Bardol. Her husband got five elder brothers including the deceased Channabasappa Hawappa Kattimani, that they were all living separately, though he was playing leading role in he affairs of Harijankeri (Harijan Colony) by amicably settling the disputes between different persons living in that colony, that about 20 years prior to the occurrence one, Amoghi, son of Ningappa Kambale of Anjutagi village came and settled at Bardol and started living in Harijankeri who also started mediating between the members of persons living in the Harijankeri which in course of time created a difference of opinion as between her brother-in-law Channabasappa and the said Amoghi. According to P.W. 1, her brother-in-law felt that Amoghi was not following proper course while mediating between the parties and thereby injustice was being caused, which ultimately resulted in ill-will having been developed as between both of them and on some occasions resulted in quarrels as between them.

7. On the morning of 5 th October, 1991, when P.W. 1 was in her house she learnt that about 7:00a.m. on that day her brother in law Channabasappa, his son Sadashiv and their men assaulted Amoghi and thereafter at about 8:00a.m. she heard noise of people from the side of her brother-in-law's house, pursuant to which when she along with her co-sister Subhadra P.W. 2, Mallikarjun, P.W. 21, Malakappa Ramappa Kambale, P.W. 3 reached the house of Channabasappa, she saw A19, A22, A18, A1, A2, A27, A9, A10, A13, A23, A17, A3, A4, A6, A24, A26, A15, A16 and others were in the process of setting fire to the house of Channabasappa, While accused 16, 3, 5, 4, 26 and 7 were aiding other accused with salt, kerosene oil and firewood. It was also stated that the male accused were throwing fire wood,

kerosene oil and salt on the doors of the house and there was lowering inferno from the house. P.W. 1 also stated that persons who were inside the house were crying for help. While the said action of setting fire to the house of Channabasappa was going on, the accused also stated to have instructed others to set fire to the adjacent house apart from preventing any one from proceeding near the firing house. Every attempt of P.W.1 and others who were standing nearby to help the victims from getting rescued was of no avail as they were all threatened by the accused of dire consequences and that they would also meet with the same fate.

8. It was stated that as many as ten persons including Channabasappa who rushed into his house in order to escape themselves from the onslaught of the accused when they approached them and who got inside his house and bolted it inside were burnt alive by the accused by bolting the doors from outside and by setting fire to the house in all directions with the use of kerosene, firewood and by throwing salt whereby infuriating the fire to the peak. It is stated that the police reached the place of occurrence at around 9:15a.m. and arrested A1 on the spot and subsequently arrested all the other accused and that after the arrival of the Police, the other accused escaped from the spot whereafter by summoning the fire brigade from Jabalpur, the fire was doused and the bodies of the ten victims were recovered. The post mortem was held on the spot and thereafter the challan was laid before the learned First Additional Sessions Judge, Jabalpur wherein the judgment of acquittal came to be passed. The Division Bench having reversed the said judgment and imposed the conviction and sentence as noted above, the appellants are before us.

9. We heard Mr Rajesh Mahale, learned counsel for the appellants and Ms. Rashmi Nandakumar, learned counsel for the State. Though Mr. Mahale appeared on behalf of some of the appellants but on our request he argued on behalf of the other appellants also.

10. At the very outset, it must be pointed that though the sequence of the events narrated above, disclose that ill-will between the deceased Channabasappa and Amoghi was growing for quite some time before the occurrence, on the date of occurrence i.e. 5th October, 1991, the action of Channabasappa along with his son Sadashiv who was also killed in this occurrence, stated to have caused some injury on the said Amoghi around 7:00a.m. on that day at his place which enraged the son of Amoghi and the other appellants who took it in the affront and in that pursuit, the appellants along with the other accused stated to have marched towards the house of Channabasappa in an aggressive mood carrying weapons and fearing serious consequences, Channabasappa and nine of his supporters who were all killed in the occurrence, entered the house of Channabasappa got them bolted inside to escape from the onslaught of the appellants. Unfortunately, it came handy for the accused to bolt his house from outside and by setting fire to the house on all sides ensured that none of the inmates were able to get out of that house and save their lives.

11. When as many as 28 persons were involved in that process at the early hours of the morning of 5th October, 1991, it transpired that before any police force could come and rescue the victims in a matter of about hour and half, the fire set by the appellants to the house of Channabasappa completely engulfed all those who were inside the house who were

all charred to death. The medical evidence in the form of post mortem report have confirmed the manner in which the victims died by fire. 12. As far as the distance between the place of Amoghi and the place of occurrence is concerned, it is stated to be just two furlongs which could be covered in a matter of few minutes. The Police Station is stated to be in a distance of about 8 kms. The complaint was recorded at 9:45a.m. at the instance of P.W.1. There was also information furnished to the Police at around 9:50a.m. by P.W. 23 at the Police Station who was aged about 100 years on that day.

13. Earlier on that day A-11 who was owning a jeep stated to have carried Amoghi after his assault by Channabasappa and his men and arranged for shifting him to the hospital at Jabalpur who was also present in the Police Station at around 8:15a.m. At his instance Crime No.133 of 1991 was registered in the Police Station as against Channabasappa and others for the assault on Amoghi.

14. In the above stated background, the High Court while dealing with the appeal has found that the evidence of P.W.1 along with P.Ws. 2, 4, 5, 6, 10, 11, 16, 21, 22 and 26 who were all eye witnesses to the occurrence sufficiently demonstrated before the Court as to the manner in which the setting fire to the house of Channabasappa after they entered the house and bolted inside were surrounded and the bolting of the house outside by the accused persons and the manner in which the house was set on fire, as well as the adjacent house and also how the accused ensured that none of the victims who entered the house of Channabasappa were allowed to escape from the clutches of the accused and got themselves charred to death at the hands of the appellants. The High Court having noted the charge against the appellants namely, 147, 148, 302, 436, 504 read with 149 IPC after analyzing the evidence of the eye witnesses made a note of the various specific overt acts referred to by each of the eyewitnesses vis-a-vis the concerned accused by setting out a chart in paragraph 24 of the judgment which runs to 14 pages. We find that the High Court took pains to make note of the various details with reference to the sequence of events spoken to by the eye witnesses, specific role played by such of those accused who contributed their might in setting fire to the house of Channabasappa as well as the adjacent house and thereby ensuring that none of the victims who entered the house of Channabasappa were allowed to escape from the clutches of the appellants and other accused and ultimately met with their death.

15. Having regard to such detailed analysis made by the Division Bench by making specific reference to the eye witness account supported by the medical evidence, we are of the view that there is no scope for this Court to make any further analysis in order to find out whether any of the appellants could be exonerated of the charge found proved against them. However, Mr. Mahale took strenuous efforts to contend before us that at least insofar as A11 and A23 were concerned, it could be said that they were not present at all at the place of occurrence and, therefore, even with the aid of 149 IPC the offence as against both of them cannot be said to be made out. In the first instance, when we consider his submission with reference to A 23 (Appellant No. 16) we find that he has already withdrawn the appeal and, therefore, we

do not find any necessity to consider his case. We are, therefore, confining ourselves to A11.

16. The contention on behalf of A-11 was that after the assault of Amoghi by the deceased Channabasappa and his man at 7:00a.m., A11 shifted the injured Amoghi from the said place of occurrence and arranged for his transportation to the hospital at Jabalpur and also simultaneously went to the Police Station Chandechan and lodged a complaint which came to be registered as Crime No. 133 of 1991. A-11 was stated to be present in the Police Station at 7:45 a.m. for that purpose. P.W. 23 Hawappa also went to the police station after he witnessed setting of fire to the house of Channabasappa by around the same time. It has come out in the evidence of P.Ws. 43, 48 and 50 that A-11 was at the police station at 7:45a.m. initially and going by the version of P.W. 50 he was present in the Police Station upto 8:15a.m. Again going by the version of P.Ws. 43 and 48, when P.W. 23 went to the Police Station who was present in the Police Station till P.W.50 left the Police Station which was stated to be at 9:00a.m., A-11 was present inasmuch as according to P.W.43, A-11 on hearing the complaint of P.W.23 relating to the firing of the house of Channabasappa by the accused, A-11 slapped P.W.23 at the Police Station when the time was noted as 9:10a.m. Again P.W. 48 in his evidence stated that A-11 was present in the Police Station at 9:00a.m.

17. The above evidence disclosed that A-11 who went to the Police Station at 7:45a.m. was found present in the Police Station at 8:15a.m. and again between 9:00 and 9:15a.m. As against the above evidence available through P.Ws. 43, 48 and 50, the evidence of P.W. 1 and the other eye witnesses disclose that A-11 was found to be extorting the other accused at the place of occurrence with all vehemence at his command for setting fire to the house of Channabasappa by issuing different orders such as for bolting the house of Channabasappa from outside, throwing salt and kerosene into the burning house and also issuing such other directions to ensure that the house of Channabasappa is set on fire totally with ten of them inside the house and everyone of them ultimately met with their death.

18. The learned counsel, Mr. Mahale, while appraising the version of P.Ws. 43, 48 and 50 submitted that A-11 was present at the Police Station at 7:40a.m., 8:15a.m. as well as between 9:00 and 9:15a.m. which, as spoken to by the above witnesses who were all police personnel, there was no scope at all for A-11 to be present at the place of occurrence as spoken to by other eye witnesses. It must be stated that the Police Station was hardly 8kms away from the place of occurrence. A-11 had a jeep at his disposal and it was he who organized for shifting the injured Amoghi to the hospital and also preferred the complaint with the Police relating to Crime No. 133 of 1991. It can be stated that immediately after the assault on Amoghi at 7:00a.m. A-11 who seems to have been interested in the welfare of Amoghi took every effort to save him from injuries sustained by him and also file appropriate complaint relating to the said incident with the Police which exercise he was able to successfully carry out. However, when we considered the evidence of the other witnesses who have consistently referred to the presence of A-11 at the place of occurrence and the nature of activity indulged in by him, and also the act of A11 who was present in the Police Station when saw P.W.23 making a complaint in the Police about setting of fire to the house

of Channabasappa, got enraged and went to the extent of slapping him unmindful of the fact that P.W. 23 was an old man, aged more than 100 years who stated to have fell down as a result of such harsh behaviour of A11. Since, the setting of the fire to the house of Channabasappa occurred at 8:00a.m., if A11 had no hand in it, there was no reason for him to get enraged when P.W. 23 reported the firing incident to the Police. Therefore, the conduct of A11 in having sharply reacted towards P.W.23 and that too by slapping him in the presence of Police only shows that he played key role in the setting fire to the house of Channabasappa as spoken to by the eye witnesses. Therefore, it is quite apparent that while on the one hand, the grievous attack on Amoghi cannot be said to be justified, A11's mind set to take revenge at those who caused the said attack on Amoghi cannot also be justified. Therefore, when the distance between the place of occurrence and the Police Station was hardly 8 kms in the village, such a distance could be covered in a matter of few minutes in a jeep in any case within 10 or 15 minutes. Therefore, in the absence of any concrete evidence to show that as between 7:45 a.m. and 9:15 a.m. during the entirety of the said period A-11 remained only inside the Police Station and did not move out of the said Police Station it will not be safe to simply go by the version of P.Ws. 43, 48 and 50 who referred to his presence at the Police Station at specified hours i.e. 7:45a.m., 8:15a.m., 9:00a.m. and 9:15a.m. and thereby hold that A-11 could have never made himself present in the place of occurrence in between those hours.

19. Therefore, when we analyse the evidence of other eye witnesses we find that they were very categorical in their statement about the manner in which A-11 was moving here and there at the place of occurrence, actively involving himself in issuing commands to other accused in the process of setting fire to the house of Channabasappa and ensured that the said house was completely burnt with all the ten victims inside. We are, therefore, convinced that the conclusion of the Division Bench in having found A-11 also guilty of the offence for which he was convicted was fully justified. We, therefore, do not find any scope to deal with A-11 differently. Consequently the appeal fails and the same is dismissed. All those appellants who were granted bail by an order dated 11-12-2009, their bail bonds shall stand cancelled and let them be secured forthwith and imprisoned to undergo the sentence awarded by the High Court as confirmed by us. As at our request, Mr. Mahale appeared for those accused who were not otherwise represented, for his valuable assistance to the court as an Amicus Curiae, we direct the Registry to pay him a fee of Rs. 10,000/-(Rupees Ten thousand).