

IN THE HIGH COURT OF KARNATAKA AT BANGALORE

DATED THIS THE 13TH DAY OF JUNE, 2007

PRESENT

THE HON'BLE MR. JUSTICE K.SREEDHAR RAO

AND

THE HON'BLE MR. JUSTICE C.R.KUMARASWAMY

CRL. A. No.18/2001 C/W
19/2001 AND 1031/2000

BETWEEN:

CRL.A.NO.18/2001:

THE STATE OF KARNATAKA,
BY H.A.L. POLICE.
APPELLANT

(BY SRI. N. RUDRAMUNI, ADDL. SPP.,..)

AND :

- 1 GOVINDA
AGED 20, S/O.PERUMAL
C/O.MUNICHIKKAPPA,
M.GANDHINAGAR, BLORE
- 2 HARISH
AGED 20, S/O.YALLAPPA
NO.1, M.GANDHINAGAR
BANGALORE
- 3 SHANKAR
AGED 29, R/O.YALLAPPA
NO.1, M.GANDHINAGAR



BANGALORE

4 CHANDRESH
AGED 22, S/O.YALLAPPA
NO.1, M.GANDHINAGAR
BANGALORE

5 SURESH
AGED 24 YEARS
S/O.YALLAPPA, NO.1
M.GANDHINAGAR
BANGALORE

... RESPONDENTS

(By Sri/Smt : J RAMAKRISHNA, ADV.,)

CRL.A. FILED U/S.377 CR.P.C. BY THE SPP FOR THE STATE PRAYING TO ENHANCE THE SENTENCE IMPOSED ON THE RESPONDENTS/ACCUSED IN THE JUDGMENT AND ORDER DT. 24.8.2000 PASSED BY THE IV ADDL. SESSIONS JUDGE., BANGALORE, IN SC.NO.6/99, CONVICTING THE RESPONDENTS/ACCUSED FOR THE OFFENCE PUNISHABLE U/S.304 PART II IPC AND SENTENCING THEM TO SUFFER S.I. FOR 2 YEARS AND TO PAY FINE OF RS.1,000/- EACH AND I.D. OF PAYMENT OF FINE TO SUFFER S.I. FOR 4 MONTHS.

CRL.A.NO.19/2001:

BETWEEN:

THE STATE OF KARNATAKA,
BY H.A.L. POLICE.

.. APPELLANT

(BY SRI. N. RUDRAMUNI, ADDL. SPP.,..)



AND

- 1 GOVINDA
AGE: 20 YRS
S/O PERUMAL
C/O MUNICHIKKAPPA
M.GANDHINAGAR
BANGALORE
- 2 HARISH
AGE: 20 YRS
S/O YALLAPPA
NO.1, M. GANDHINAGAR
BANGALROE
- 3 SHANKAR
AGE: 29 YRS
R/O YALLAPPA
NO.1, M.GANDHINAGAR
BANGALORE
- 4 CHANDRESH
AGE: 22 YRS
S/O YALLAPPA
NO.1, M.GANDHINAGAR
BANGALORE
- 5 SURESH
AGE: 24 YRS
S/O YALLAPPA
NO.1,
M. GANDHINAGAR
BANGALORE

... RESPONDENTS

(By Sri/Smt : J RAMAKRISHNA, ADV., FOR R1 TO R5)

CRL.A. FILED U/S.378(1) CR.P.C. BY THE STATE PP FOR
THE STATE PRAYING TO GRANT LEAVE TO FILE AN APPEAL
AGAINST THE JUDGMENT AND ORDER DT. 24.8.2000 PASSED



BY THE IV ADDL CITY. SESSIONS JUDGE., MAYO HALL,
BANGALORE, IN SC.NO.6/99, IN SO FAR AS IT RELATES TO
ACQUITTING THE RESPONDENT FOR THE OFFENCE
PUNISHABLE U/S.302 R/W 34 OF IPC.

CRL.A.NO.1031/2000:

BETWEEN

- 1 GOVINDA
AGE:21 YRS
S/O PERUMAL
R/O MUNICHIKKAPPA
M.GANDHINAGAR
BANGALORE-37
- 2 HARISHA
AGE:21 YRS
S/O YELLAPPA AND
R/O NO.1, GANDHINAGAR
MARATHALLI
BANGALORE-37
- 3 SHANKAR
AGE:28 YRS
S/O YELLAPPA AND
R/O NO.1, GANDHINAGAR
MARATHALLI
BANGALORE-37
- 4 CHANDRESHA
AGE:23 YRS
S/O YELLAPPA AND
R/O NO.1, GANDHINAGAR
MARATHALLI
BANGALORE-37
- 5 SURESHA
AGE:25 YRS



S/O YELLAPPA AND
R/O NO.1, GANDHINAGAR
MARATHALLI
BANGALORE-37

... APPELLANTS

(By Sri/Smt : J RAMAKRISHNA, ADV., FOR R1 TO R5)

AND

THE STATE OF KARNATAKA,
BY H.A.L. POLICE,
BANGALORE..

.. RESPONDENT

(BY SRI. N. RUDRAMUNI, ADDL. SPP.,,)

CRL.A. FILED U/S.374(2) CR.P.C. BY THE ADVOCATE FOR THE APPELLANTS AGAINST THE JUDGMENT PASSED BY THE IV ADDL. CITY CIVIL AND S.J., MAYOHALL, BANGALORE, IN SC.NO.6/99, DT. 24.8.2000 CONVICTING THE APPELLANTS/ACCUSED FOR THE OFFENCES U/S.304 PART II IPC AND SENTENCING THEM TO SUFFER S.I. FOR 2 YEARS AND I.D. PAY FINE OF RS.1,000/- EACH AND I.D. OF PAYMENT OF FINE TO SUFFER S.I. FOR 4 MONTHS.

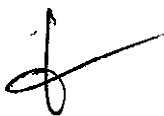
These appeals coming on for hearing this day, K. SREEDHAR RAO, J., delivered the following:-

JUDGMENT

One Manjula (P.W.2) is the wife of one Udayachandra (P.W.1). One Kumar (deceased) is the family friend of P.W.1 and P.W.2. The deceased was unemployed and he was requesting



P.W.1 to secure some employment. The deceased used to visit the house of P.W.1 often. On 26.7.98 (Sunday) at 9 p.m. P.W.2 and the deceased were sitting together and conversing. P.W.1 was in the house. A1 while passing by the house of P.W.1 abused P.W.2 and assaulted the deceased with iron rod on the head. A3 assaulted the deceased on the forehead with a club. A4 assaulted the deceased with a club. A2 and A5 also assaulted the deceased with a club. P.W.1 was pushed aside by the accused when he tried to rescue. The accused decamped from the scene after the assault. P.W.1 took the deceased in an auto to Nimhans. The deceased was pronounced dead at about 2.45 a.m. in the night. P.W.1 lodged the FIR at 3.30 a.m. in the night on 27.7.1998. At the voluntary instance of A1, M.O.3-iron rod was recovered. . At the voluntary instance of A2 and A5, M.Os.4 to 7 the clubs were recovered. One Abhimanyu (P.W.3) and Muruli (P.W.4) are the eye witnesses to the incident and all the said witnesses supported the prosecution version deposing to the effect that the accused persons assaulted the deceased Kumar on 26.7.1998 around 9.30 a.m. near the back yard of the house of P.W.1.



2. The accused had examined D.W.1 (Dr. M. Salvarajan). Ex.D1(a) the M.L.C. Register is marked to show that the deceased was admitted to Nimhans with a history of lying unconscious on the road and that one George admitted him to the hospital. The Trial Court found that the defence version is incredible. The Trial Court relying upon the evidence of P.W.1 to P.W.4 found that the accused are guilty of the offence U/s.304 part II IPC and not as charged U/s.302 r/w 149 IPC. The accused are in appeal in Criminal Appeal No. 1031/2000 challenging their conviction. The State has filed Criminal Appeal No.18/2001 seeking enhancement of sentence and the State has filed the appeal in Criminal Appeal No.19/2001 challenging the acquittal of accused for a charge U/s.302 IPC.

3. Sri G.Ramakrishna, learned Counsel for the accused listed the following omissions and contradictions in the evidence of P.W.1 to P.W.4 and other circumstances to contend that the conviction order is bad in law.

- a) P.W.1 in the FIR does not state the presence of P.W.3 and P.W.4 at the time of incident but later on they are projected as eye witness by way of concoction;



- b) The P.W.1 in the FIR does not state that there was electric light at the backside of his house. Similarly P.W.2 to P.W.4 in the statement before the Police do not state that there was electric light at the backside of the house of P.W.1.
- c) P.W.1 in the course of evidence states that P.W.3 tried to rescue and the accused caused injury to her thigh. This version is not stated in the FIR. P.W.2 is not subjected to medical examination to prove the injury.
- d) P.W.1 states that he took the deceased in an auto to Nimhans whereas P.W.3 claims that he accompanied P.W.1 in an auto and got the deceased admitted to Nimhans.
- e) P.W.10-Mother of the deceased admits that the deceased was unemployed and he had several enemies.
- f) P.W.1 states that he did not give the names of the assailants to the Doctor and he has only stated to the Doctor that some body has assaulted the deceased and that they had enmity between them.



- g) P.W.3 and P.W.4 admitted that they are related to the deceased and that P.W.4 has given complaint against A2 in the year 1995 and that there is enmity between P.W. 4 and the accused.
- h) PW-15, the recovery witness do not support the prosecution version of recovery of MO-1 to MO-5. The Serology report is not produced to connect MO-1 to MO-5 with the crime to show that they are the one used for committing offence.
- i) DW-1 (Doctor) who recorded contents of EX.D1(a) states that one George admitted the deceased to hospital with a history that the deceased was lying unconscious on the road.

In view of the said material, it is strenuously argued that the version of P.W. 1 to P.W.4 is unbelievable and that order of conviction is bad in law.

4. On a careful perusal of the entries in Ex.D-1 and the entry at Ex.D-1(a) we find that the entry in the document does not appear to be a genuine one. DW-1 admits that the deceased was admitted to the hospital at 11.10 p.m. One Francis was



admitted to the hospital on the same day at 11.30 p.m. The entry relating to admission of Francis and the deceased are entered in the same page at Sl.No.84. The admission of the deceased being earlier in point of time, it is natural that the entry relating to admission of Kumar should find earlier to admission of Francis Joseph, but the records otherwise show that the admission of Francis Joseph is entered and later on the admission of deceased is entered, there is a mis-sequence in the entries. In Ex.D1 usually for entering admission particulars of the patient full page is used. However, for entries at page 28 and page 108 in Ex. D1, the admission entry particulars of 2 patients in one page is made. But at the end of the entries the signature of the person who got the patient admitted is taken. But in the case of the entry relating to deceased there is no signature of George who is alleged to have admitted the deceased. That apart at page 84 at the bottom, after the entry relating to the deceased the signature of Francis is taken. In the space between the entry particulars of Francis and the signature of Francis, the particulars of admission of the deceased are written. On thorough consideration of these discrepancies, we



find that the entry made at Ex.D-1(a) does not inspire the confidence that it is truthful and genuine entry. The explanation given by DW-1 that because of rush of work he did not enter the admissions in the sequential order is an untenable for the above discussed reasons.

5. In the F.I.R. PW-1 makes a categorical admission that he got the deceased admitted to NIMHANS and there he was pronounced dead. He lodged F.I.R. at 3.30 a.m. This categorical version in Ex.P-1 and Ex.P-13 the F.I.R. appears to be a truthful version and there is nothing to suspect this version. Therefore the defence contention that the deceased was injured and lying unconscious on road and was admitted by George at 11.10 p.m. is an untenable contention. The omissions and contradictions in the evidence of PW-1 and PW-2 pointed out are of not serious nature to disbelieve the veracity.

6. The F.I.R. should not be taken as exhaustive and complete document to reveal all the detailed particulars of the crime. P.W.1 says that P.W.2 was assaulted and injured, may be P.W.2 might not have sustained serious or visible injuries. The claim that there was light at the backside of the house also



cannot be suspected since on the backside of the house of P.W.1 there is a public road. It is quite natural that the houses will have light in the front yard and to the backyard. That apart the evidence of P.W.1 to P.W.4 disclose that the area is a residential area and there are a number of residential houses surrounding. The glow of the lights of the residential houses perhaps would also give proper illumination. P.W.1 says that he cannot give the correct names of all the accused, that statement cannot be interpreted to mean that P.W.1 does not know the accused and they are not familiar to him. P.W.1 in his evidence makes it clear that the residences of the accused are nearby to his house. May be he might not know their correct names, but P.W.1 is very much familiar with the accused persons.

7. P.W.2 says she does not know the names of the accused persons except A-2. By this statement it cannot be argued that accused are stranger to P.W.1 and P.W.2. It is quite natural that P.W.2 being a housewife, may not know the names of all the male persons who live in the vicinity, however it cannot be



understood to mean that she had not seen the accused also and she does not know the accused by their features.

8. P.W.3 states that, he accompanied P.W.1 and got the deceased admitted at NIMHANS. If the said circumstance is true, it is natural that PW-1 would have mentioned the presence of P.W.3 in the F.I.R. P.W.3 and P.W.4 claim to be the relatives of the deceased. It is also established by the defence that enmity exists between P.W.4 and the accused. Even assuming that P.W.3 and P.W.4 are not the witnesses to the incident and they were not present at the scene at the time of incident. Nonetheless the evidence of P.W.1 and P.W.2 convincingly establish the guilt of the accused.

9. The trial Court has convicted the accused for an offence punishable U/s.304-II. For the benefit of quick reference, the provisions of Sec.304 are extracted hereunder:

***304.Punishment for culpable homicide not amounting to murder:**

Whoever commits culpable homicide not amounting to murder, shall be punished with imprisonment for life, or imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine, if the act by which the death is caused is done with the intention of causing death, or of causing such bodily injury as is likely to cause death;



of causing death, or of causing such bodily injury as is likely to cause death;

or with imprisonment of either description for a term which may extend to ten years, or with fine, or with both, if the act is done with the knowledge that it is likely to cause death, but without any intention to cause death or to cause such bodily injury as is likely to cause death."

10. An act leading to death envisaged under categories 1 to 4 of Sec.300 amounts to culpable homicide amounting to murder punishable U/s.302. If the act of death is caused under any of the circumstances mentioned in exceptions 1 to 5 of Sec.300, it would be an offence of culpable homicide not amounting to murder punishable U/s.304-I. In order to constitute an offence U/s. 302-II, the absence of two ingredients should necessarily be established by the defence i.e., (1) No intention to cause death, (2) No intention to cause an injury which is likely to cause death in the ordinary course. The evidence of P.W.14 that the injuries seen could also be caused by an accidental fall is only an opinion evidence. It is elicited from P.W.14 that the injuries seen could be caused if a person is severely assaulted with clubs and iron rods. In the instant case the accused have caused injuries with deadly weapons which



are likely to cause death in the ordinary course. Therefore the prosecution has successfully established that accused are guilty of offence U/s. 302 IPC.

11. In view of the above discussions the order of conviction passed by Trial Court for offence 302 Part II is bad in law. The same is set aside. The accused are conviction for an offence U/s. 3021 IPC r/w 149 IPC. The accused A1 to A5 are sentenced to life imprisonment and shall pay a fine of Rs.25,000/- each in default to each, in default to suffer S.I. for a period of four years. The entire fine amount shall be paid as compensation to P.W.10. The Criminal Appeal filed by the State is dismissed. The appeals filed by the appellants is dismissed.

Sd/-
Judge

Sd/-
Judge

Snb/