IN THE HIGH COURT OF KARNATAKA AT BANGALORE

DATED THIS THE 2ND DAY OF JUNE, 2003

PRESENT

THE HON'BLE MR. JUSTICE M.F.SALDANHA

AND

THE HON'BLE MR. JUSTICE M.S.RAJENDRA PRASAD

CRIMINAL APPEAL NO. 2011 OF 2002

BETWEEN :

State of Karnataka
Through Police, Sedam.

...APPELLANT

(By Sri G.Bhavani Singh, Addl. SPP)

AND :

1. Jagappa,
S/o Sharnappa Bangi,
Aged about 26 years,
Occ: Coolie.

2. Ratnamma,
W/o Mogalappa Bangi,
Aged about 39 years,
Occ: Coolie

...Respondents

* * *

This appeal is praying to grant leave to file an appeal against the judgment dt. 1-8-2002 passed by the Prl. Sessions Judge, Gulbarga, in SC No. 32/98, acquitting the respondents for the offence punishable u/s 302, 504 r/w 34 IPC, etc.

This appeal coming on for ORDERS this day, SALDANHA.J., delivered the following;

JUDGMENT

We have heard the learned Addl. SPP on merits in this appeal. Though there is IA-I for condonation of delay of 31 days, normally, the Court would have issued notice to respondent on IA-I and then taken up the main appeal for consideration, we have for the reasons set out below, examined the appeal on merits because one of the predominant factors which weighs with the Court while condoning the delay is the question as to how very strong and sustainable the appeal is on merits. In a case where it does appear to the Court that the appeal is very valid and that prima facie interference with the order of acquittal is necessary because there appears to be enough material to sustain a conviction, merely because there is some delay, the Court would not refuse to condone the delay. We are, out of a sense of responsibility required to reverse the position in so far as if the appeal appears to be weak on merits and if there appears

to be virtually no grounds on which the order of acquittal could be replaced by an order of conviction, then, in our considered view the issuance of notice to the respondent - Accused would not be in consonance with the interests of justice. It is because the Court while examining the facts of the case cannot overlook the status of the accused, who in this case happen to be villagers who do not have sufficient resources even to contest the application for condonation of delay, even to subject them to one or two hearings before the High Court would be burdensome and therefore, it is a heavy duty cast upon the Court to examine the aspect of delay along with merits of the case before issue of notice.

2. The learned Addl. SPP, in support of the appeal has pointed out to us that there is very clear evidence of PWs 1 to 4, who claim to be eye witnesses to the incident. The witnesses are PWs 1 and 2 who allege that the respondents

1 and 2 to this appeal had incidentally caught hold of the deceased and they were grappling with him and that it was the juvenile accused, who has been tried separately, who inflicted the injuries with a stone, as a result of which the death took place.

3. The learned trial Judge has rightly applied the law while weighing this evidence in so far as he holds that admittedly the injuries had not been caused by these accused. What would be left us to see is, therefore, the question as to whether if it is held that they were participating in the incident, the present accused could be held guilty under Section 34 or 109 IPC.

4. In assessing the latter aspect of the case, we need to carefully scrutinise the evidence of these witnesses. There is one tell-tale circumstance which the learned trial Judge has laid heavy emphasis on, namely, PWs 1 to 4

virtually admit in their evidence that by the time they reached the spot where the incident took place the deceased had already fallen down, which really makes that they are not the eye witnesses to the assault in question. It is obvious that these persons had gone to the assistance of the deceased because admittedly they took him away, but the record would also establish that it is doubtful as to whether they could have witnessed the incident in question. The added factor which the trial Court has taken cognizance of is that PWs 1 and 2 are relatives and PWs 3 and 4 are interested persons and this again tends to weaken the quality of their evidence. The trial Court on the basis of this materials has held that it is insufficient to sustain a conviction. On a reappraisal of the record and after carefully considering the submissions canvassed by the learned counsel in support of the appeal, we find it virtually impossible to interfere with this conclusion, because even on the basis of our independent

assessment we cannot record a finding that this material would be sufficient to sustain a conviction under any of the heads of charge. It is for this reason that this Court declines to interfere with the order of acquittal.

5. Having assessed the appeal on merits and recorded the aforesaid finding, we see no necessity to issue formal notice to the respondent - Accused. However, in view of what has been pointed out by the learned counsel who appears on behalf of the State, IA-I is allowed and the delay is condoned. The main appeal, however, stand dismissed on merits.

Sd/-
Judge

Sd/-
Judge

VK