

CASE NO.:
Appeal (crl.) 609 of 2006

PETITIONER:
Chandrappa & Ors

RESPONDENT:
State of Karnataka

DATE OF JUDGMENT: 29/04/2008

BENCH:
S.B. SINHA & HARJIT SINGH BEDI

JUDGMENT:
J U D G M E N T
NON-REPORTABLE

CRIMINAL APPEAL NO.609/2006

HARJIT SINGH BEDI, J.

1. The facts leading to the filing of this appeal by way of special leave are as under:
2. PW-1 Bhagyavathi, wife of Thimmappa deceased of village Arebilachi, is the complainant in the case. Thimmappa was the son of Navilapa. Navilapa had, in addition, five other sons Devendrappa, Manjappa, Chandrappa, Nagarajappa and Gadigeshappa and two daughters including Ratnamma PW-2. Navilapa had about 12 acres of ancestral land and he had divided the said land equally between himself and his sons and all were in possession of their respective shares thereafter. Thimmappa, Devendrappa and Manjappa were residing separately whereas the other two, Chandrappa and Gadigeshappa, were residing in their old family home whereas Nagarajappa was residing with his father Navilapa and his sister Ratnamma. Thimmappa, however, acquired about 10 acres of land on his own but his brothers Chandrappa and Gadigeshappa were demanding a share out of this land as well and on account of this development, the relationship between the brothers had become strained. Chandrappa and Gadigeshappa also filed a suit seeking a share in the 10 acres acquired by Thimmappa with the result that the relation between the brothers was further strained. At about 4 p.m. on 1.8.1993, Thimmappa told his wife Bhagyavathi that he had learnt that Chandrappa and Gadigeshappa had gone to the field to pluck coconuts and that he was going to prevent them from doing so. Thimmappa and his brother Devendrappa PW3 then left for the fields on a scooter. A few minutes later Rathnamma PW2, sister-in-law of Bhagyavathi PW-1 came to her house and informed her that she had seen Chandrappa and Gadigeshappa accompanied by their brother-in-law Hanumanthappa, Shiva and Siddeshappa along with Bhoomesha and Manja proceeding towards the field armed with Choppers and sickles and she apprehended some danger. Bhagyavathi and Rathnamma then left for the field and as they reached the outer fencing at about 4.30 p.m., they saw all the accused as well as Bhoomesha and Manja assaulting Thimmappa with sickles and choppers. PW3 Devendrappa went to the rescue of his brother but he too was assaulted and having sustained an injury he ran away towards the village. PWS1 and 2 thereafter entered the garden and saw that Thimmappa was lying grievously injured near the Samadhi

adjoining the land. The accused Siddeshappa and Hanumanthappa also abused and assaulted the two women. PW4 Prashanth Kumar, who was attracted to the place, rushed in with some water which he attempted to put into Thimmappa's mouth but he succumbed to his injuries at the spot. PW3 Devendrappa was also taken to the Bhadravathi hospital by PW11 Rudrappa whereas PWs.1,2 and 4 stood near the dead body. It was also noticed that the accused while running away had left behind a sickle and a club near the dead body. An FIR was got registered by PW1 Bhagyavathi at about 11.45 p.m. at the Police Station. The investigation was taken over by Inspector M.I. Jameel PW20 who visited the scene of occurrence on 2nd August 1993 at about 6.30 a.m. and prepared the inquest report and recorded the statements of the witnesses and picked up the sickle and club in the presence of witnesses. His efforts to trace out the accused were, however, not successful till the 3rd August 1993 when he arrested four of them. Accused No.2 was arrested on 10.9.1993. He also visited the Government Hospital Bhadravathi on the same day and seized the blood stained clothes of injured PW3 Devendrappa. Several weapons of offence were also recovered on the interrogation of the accused. On the completion of the investigation, the accused were charged for offences punishable under sections 143, 147, 148, 302 and 324 read with 149 of the IPC.

3. The prosecution in support of its case relied primarily on the statements of the four eye witnesses PW1 Bhagyavathi, wife of the deceased, her sister-in-law PW2 Rathnamma, PW3 Devendrappa an injured witness and brother of the deceased and of two of the accused, and PW4 Prashanth Kumar son of PW3, a boy aged 13 years. Reliance was also placed on certain pieces of circumstantial evidence. The prosecution case was then put to the accused under section 313 of the Cr.P.C. and in the written statements filed by way of their defence they denied the allegations in toto and on the contrary put up a counter version that Hanumanthappa and Siddeshappa had not been present at the time of incident and that the other three accused had been assaulted by Thimmappa deceased, PW3 Devendrappa and one Manju Nath and that they had caused injuries to Thimmappa in their self defence.

4. The trial court held that it was clear from the record that a dispute existed between Thimmappa and his brothers with regard to the 10 acres of land and that Thimmappa had in fact filed three suits seeking an injunction but the said suits had been dismissed on 3rd April, 1993 itself and as such there was no injunction in favour of Thimmappa on the day of incident. The court also observed that a Partition Suit which too had been filed, had been compromised after the murder on 5th November 1993 and that no partition had taken place before the aforesaid date and the field in which the incident happened stood in the name of Navilappa and that they had started a plantation on the said land which was being managed by them. The court also noted that it appeared that in the early hours of 1st August 1993 Navilappa had filed a complaint before the police alleging that his sons Thimmappa deceased and PW3 Devendrappa were obstructing him from entering his land and it therefore appeared that the accused Chandrappa and Gadigesappa and son Nagarajappa had joined hands to defend their possession when the deceased Thimmappa and Devendrappa PW3 were creating an obstruction. The court then examined the statements of the witnesses and observed that the FIR did not show the presence of PW4 Prashanth Kumar or the nature of the weapons in the hands of the accused and the story that the accused had snatched a Mangalya with a golden chain from

PW1 Bhagyavathi was also an exaggeration. The court further observed that the police itself appeared to have discarded the presence of Bhoomesha and Manja and had not filed a charge-sheet against them which supported the view that an attempt had been made to rope in innocent people. The court also observed that the fact that the witnesses who were allegedly 30 meters away from the field of the spot had stood still watching "just like a film shooting" or like "Dumb statues" and this was also circumstance against the prosecution. The court further observed that there was a delay in the lodging of the FIR which had not been adequately explained away. The court then went into the medical evidence and opined that PW15 Dr. Nanda Koti, who had treated the accused and PW3 Devendrappa for their injuries had not informed the police as to what had transpired and that PW3 had mentioned only two of the accused i.e. Chandrappa and Gadigeshappa as having been present. The court finally concluded that it was the deceased and injured witnesses who were the aggressors, the moreso as the prosecution had not been able to explain the injuries on the accused. For arriving at this conclusion, the trial court relied on the evidence of PW15 Dr. Nanda Koti who had examined three of the accused i.e. Chandrappa, Shiva and Gadigeshappa for their injuries at the Bhadravathi Government Hospital at 5.20 p.m. on 1st August 1993 with a history of assault caused on deceased Thimmappa, PW3 Devendrappa and one Manjappa and had detected one incised injury each on the person of Gadigeshappa and Shiva, both injuries which could have been caused with a sickle or a chopper. PW15 also examined PW3 at 6.30 p.m. the same day who had appeared with a history of assault by Chandrappa and Gadigeshappa. The court nevertheless relying on several judgments held that though the non-explanation of minor injuries on the person of the accused could not be said to be fatal to the prosecution story but such an omission did create a doubt as to its veracity. The court finally hinted that it appeared that the defence version was more probable and prefaced its conclusion by observing:

"In view of the discussions made by me in the above said paras, I find there is an inordinate delay in lodging the complaint. That delay is not satisfactorily explained. The witnesses chosen by the prosecution are only the interested inimical witnesses. In view of the material discrepancies in between the evidence of PW's 1 to 4 their presence at the time of the alleged mutual fight or galata is itself rather doubtful. In all probability, PWs.1,2, and 4 must have come to the spot only after coming to know of the assault not prior to that and the person involved in the fight PW3 somehow escaped from the spot. The whole of the evidence of PWs 1 to 4 appears to be bit unnatural and unbelievable one in the ordinary course of time. It is an over exaggerated evidence given by them. Admittedly, there is a property dispute. As on the date of this alleged incident, the land "Pavadi Hondada Thota" was standing in the name of Navilappa, the father of deceased Thimmappa as well as accused Nos. 1 and 4. It is accused Nos. 1 and 4 who are managing the said property. It has also come in the evidence that the suit filed by deceased seeking injunction pertaining to

the said land was dismissed very well prior to this alleged incident. So, as on the date of incident, there was no injunction nor deceased was in possession of the said property including PW3. But still they went there to assert their right. There are two versions. According to PW3 it is he and his brother deceased Thimmappa, who first went to the said land. Thereafter 10 minutes, accused came to the said land. But on the other hand, the investigation reveals through PWs 1 and 2's evidence that it is the accused, who first went to the said land. When they intended to pluck the coconuts, these PW3 and deceased went to the spot there arose galata."

and finally concluded as under:
"I have closely scrutinized the evidence of these PWs 1 to 4. But I find their evidence is not trustworthy. The other part of the evidence of other witnesses is very much formal and procedural one. The two other eye witnesses PWs 6 and 7 have turned hostile. So, viewing from any angle, I find the evidence now before me is not just and sufficient to connect the accused with the alleged offence punishable under section 143, 147, 148, 324, 302 and 149 of the IPC. I find the prosecution has failed to prove that the accused being the members of unlawful assembly being armed with deadly weapons in prosecution of their common object caused rioting on that day and assaulted Thimmappa as well as PW3 with the said weapons, which has resulted in the death of Thimmappa and injuries to PW3. It may amount to repetition if I say that the evidence now before is not just and sufficient to connect the accused with the said charge. PW2 has categorically stated that when herself and PW1 came to the said spot on that day, they saw PW3 already left the place. He had gone to his house. That means to say these PWs 1, 2 and 4 have not actually seen the accused assaulting either Thimmappa or PW3. This evidence of PW2 cuts at the root of the prosecution case. As there arises a reasonable doubt in the case of prosecution, the accused are entitled to have the benefit of the same. Prosecution has failed to establish that these accused are the real aggressors or they are directly responsible causing the said incident. On the other hand, defence of the accused is substantiated on the facts and material now placed before the court that in all probability the deceased and PW3 must have taken the law into their own hands at the inception and in that mutual fight both sides sustained

injuries. Unfortunately, Thimmappa succumbed to the injuries. But who is responsible for his death, who is responsible for causing injury to PW3 is not specifically established by the prosecution. Hence, with these reasons, I answer point Nos. 1 to 3 in the negative and proceed to pass the following:"

5. The trial court accordingly acquitted the accused. The matter was taken to the High Court by way of an appeal at the instance of the State of Karnataka. The High Court in the course of its judgment upset the order of the trial Judge by observing that the fact that Thimmappa deceased had met a homicidal death had been proved from the medical evidence and then went to the question as who was responsible thereof. The court examined the evidence of the eye witnesses and found that they corroborated each other in material particulars, the more so as the presence of PW3 Devendrappa had also been admitted by the defence. The court also held that the eye witness testimony had a ring of truth around it and the injuries Ex.P27 to P29 confirmed the presence of the accused in the incident and also the fact that only one of the accused had sustained a simple injury, no obligation rested on the prosecution to explain it. The court also observed (in the facts of the case) that the delay in lodging of the FIR was not fatal to the prosecution story as the complaint had been lodged by PW1 between 10 and 11 p.m. and the formal FIR had been registered at about 11.45 p.m. The plea of the accused that the case would fall under section 304 IPC was also repelled as the manner of the assault did not justify such a conclusion. The court accordingly held as under:

"To sum up, we hold that the trial court's judgment and order of acquittal cannot be sustained as it is contrary to the evidence on record and unreasonable as well as perverse and bring opposed to well established principles of law with regard to appreciation of evidence and as such, the same is liable to be interfered with. We, therefore, convict the accused persons for the offences punishable under Sections 143,147,148,302 read with 149 and 324 read with 149 of the IPC."

and in doing so sentenced them to imprisonment for life under section 302/149 IPC with no separate sentence for the other offences. It is in this circumstance that the present appeal by way of special leave has come up before us.

6. Mr. Basava Prabhu S.Patil, the learned counsel for the appellants has pointed out that certain facts had been admitted by both parties and that the matter would have to be examined in this background. He has pointed out that both the complainant and the accused party were very closely related to each other, the five accused being the brothers of the deceased and the eye witnesses being the wife and nephew of the deceased and of the accused. It has also been pointed out that the fact that a dispute with regard to the land had also found its way to the civil and criminal Courts was clear from the record. It has also been pleaded that the accused had spelt out a counter version and had pointed out in their statement under section 313 of the Cr.P.C. inasmuch as three of them i.e.

Hanumanthappa, Siddeshappa had not been present whereas the other three have in their statements admitted their presence and stated that the land in which the incident had happened was the ancestral property of the family with the Revenue documents in the name of Navilapa their father and that a complaint had also been filed by Navilapa against Thimmappa as to his attempts to encroach upon this property.

7. In this background, Mr. Patil has argued that it appeared that deceased and his companions were indeed the aggressors and that the incident had happened when the accused were exercising their right of self defence to protect their person and property. It has further been pleaded that the witnesses were discrepant as to the actual manner of the assault and as such no credence could be attached to their testimony. It has finally been pleaded that there was an inordinate delay in the registration of the FIR and that this delay had been utilized to create four eye witnesses and a false story inculcating the accused. The State counsel has however supported the judgment of the High Court.

8. It is true that prima facie there appears to be some delay in the lodging of the FIR at 10.45 p.m. in the light of the fact that incident had happened at 4.30 p.m. on 1st August 1993. However, as three of the accused have put up a counter version, the effect of the delay in the FIR is somewhat reduced. We are also of the opinion that the delay in the lodging of the FIR has been substantially explained as the incident had happened in a remote village some distance from the Police Station and as PW3 had also sustained a serious injury, the first anxiety of the family would have been to look after him the more so as all the brothers of the deceased and PW3 were themselves the assailants and there was nobody else in the family to have taken the injured PW3 to the hospital. It is also significant that the FIR could not have been recorded earlier as the entire family was involved either on one side or the other and it had ultimately been left to a hapless widow, completely isolated from the rest of the family, to lodge the FIR. It is in this background we find that a delay of a couple of hours cannot be said to be unreasonable.

9. It has been contended by the learned counsel for the appellants that the discrepancies between the statements of the eye witnesses inter-se would go to show that they had not seen the incident and no reliance could thus be placed on their testimony. It has been pointed out that their statements were discrepant as to the actual manner of assault and as to the injuries caused by each of the accused to the deceased and to PW3 the injured eye witness. We are of the opinion that in such matters it would be unreasonable to expect a witness to give a picture perfect report of the injuries caused by each witness to the deceased or the injured more particularly where it has been proved on record that the injuries had been caused by several accused armed with different kinds of weapons. We also find that with the passage of time the memory of an eye witness tends to dim and it is perhaps difficult for a witness to recall events with precision. We have gone through the record and find that the evidence had been recorded more than 5 years after the incident and if the memory had partly failed the eye witnesses and if they had not been able to give an exact description of the injuries, it would not detract from the substratum of their evidence. It is however very significant that PW2 is the sister of the 5 appellants, the deceased and PW3

Devendrappa and in the dispute between the brothers she had continued to reside with her father Navilappa who was residing with the appellants, but she has nevertheless still supported the prosecution. We are of the opinion that in normal circumstances she would not have given evidence against the appellants but she has come forth as an eye witness and supported the prosecution in all material particulars.

10. Much emphasis has been however laid by Mr. Patil, on the defence version that Thimmappa, Devendrappa and one Manjappa had first made an attack on three of the appellants and that the appellants had thereafter caused injuries in their self defence leading to the death of Thimmappa and some injuries to Devendrappa. We find that this matter had been discussed in extenso by the High Court in its judgment and the version of the appellants had been rightly rejected. Some emphasis has also been laid by the learned counsel on the fact that as per injury certificates Ex.P-27 to P-29 that three accused had suffered injuries in the incident. It is however clear from a perusal of these documents that out of the three, only one of the accused had sustained a simple injury on the hand and the other two had no discernible injury except a complaint of a backache in the case of Shiva. On the other hand, we have the evidence of PW15 Dr. Nanda Koti who had examined Devendrappa on the evening of the day of incident with a history of attack with a sickle and club and she had found the following 5 injuries on his person:

i) lacerated wound over occipital region
3 cms X 1 cm bleeding.

ii) Stab injury over right arm, lower
and posterior aspect 1 cm X = cm
covered with fresh blood clots.

iii) Incised wound over web space
between right thumb and index
finger 3 cm X 1cm X = covered with
fresh blood clots.

iv) Contusion over middle of a shin of
left leg 6 cm X 4 cm red.

v) Contusion with club impression over
left side of the chest 6 cms X 2 cms
red.

11. It is also well settled that the prosecution is not called upon to explain each and every injury on the person of an accused and in this view of the matter the non-explanation of an insignificant injury on the person of only one does not dislodge the prosecution story.

12. It has also been contended that no case under section 302 of the IPC had been made out and if at all the accused were liable to be convicted under section 304 Part-II of the IPC. We find no merit in this plea. It is clear from the record that the accused had come to the place of incident fully armed with the object to sort things out with the deceased as he was creating problems for them and their father over the land in question and to remove him from the scene once and for all. Furthermore, in the light of the serious injuries caused to the deceased and to PW3

Devendrappa the matter does not fall within the ambit of section 304 Part II of the IPC.

13. It has finally been pleaded by Mr. Patil that Siddeshappa, accused No.5 was a juvenile on the date of incident and ought to have been dealt with under that procedure. We, however, find no evidence to suggest that the aforesaid accused was indeed a juvenile and the counsel's mere ipse-dixit at this belated stage cannot be accepted.

14. We thus find no merit in the appeal. Dismissed.

JUDIS