

IN THE HIGH COURT OF KARNATAKA AT BANGALORE

DATED THIS THE 15TH DAY OF APRIL 2002

PRESENT

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

AND

THE HON'BLE MR.JUSTICE N.K. PATIL

CRIMINAL APPEAL 781/1997

BETWEEN

State of Karnataka by  
Bindhanoor Police

APPELLANT

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

AND

1. C.M. Rudrayya  
s/of.Kumarayya  
58 yrs., agriculturist
2. Uddanayya  
s/of.C.M. Rudrayya  
36 yrs, agriculturist
3. Channayya  
s/of.Channa Mallayya  
63 yrs, agriculturist
4. Shambanna  
s/of.Basanna  
age: 33 years  
agriculturist
5. Siddanna  
s/of.Virupanna  
58 yrs.  
agriculturist
6. Sharanappa  
s/of.Basanna  
age: 29 yrs.  
agriculturist

RESPONDENTS CONTD..

Respts. contd..

7. Mallappa  
s/of.Doddangouda  
Age: 33 yrs.  
agriculturist
8. Mallayya,  
s/of.Shadakeharayya  
29 yrs., agriculturist
9. Anarayya  
s/of.Veerabhadrayya  
age: 27 years  
agriculturist
10. Virupaxayya  
s/of.Virupayya  
age: 42 yrs.  
agriculturist
11. Banna Ayyappa  
s/of.Veerabhadrappa  
Age: 25 yrs.  
Occ: Tailor
12. Biddayya Swamy  
s/of.C.M. Rudrayya  
33 yrs.,  
agriculturist
13. Veeresh  
s/of.Jambanna  
25 yrs, agriculturist
14. Chenna Malayya (Malayya)  
s/of.Channayya  
29 yrs.,  
agriculturist
15. Manjappa  
s/of.Sharnappa  
38 yrs.  
agriculturist
16. Doddanagouda  
s/of.Neelakantappa  
age: 39 yrs.  
agriculturist

RESPTS. CONTD..



17. Veeranagouda  
s/of.Basanagouda  
53 yrs., agriculturist
18. Siddangouda  
s/of.Basanagouda  
48 yrs., agriculturist
19. Bangadhar  
s/of.Siddanagouda  
28 yrs., agriculturist
20. Maragowda  
s/of.Doddanagouda  
39 yrs. agriculturist
21. Basanagouda  
s/of.Naganagouda  
53 yrs., Killedal  
agriculturist
22. Jambanna  
s/of.Bugappa  
49 yrs., agriculturist
23. Shankarappa  
s/of.Baxanna  
48 yrs.  
agriculturist
24. Baswaraj  
s/of.Shankarappa  
age: 25 yrs.  
agriculturist
25. Sharnappa  
s/of.Amaranna  
age: 29 yrs.  
agriculturist
26. Shivabasappa  
s/of.Amaranna  
age: 29 yrs.,  
agriculturist
27. Veeresh  
s/of.Muddayya  
26 yrs.,  
agriculturist

RESPONDENTS

all are re/of.Mukunda village  
Taluka: Sindhanoor.

(By Sri R.B. Deshpande, Adv.)



Cr.A. is filed under S.37B(1) & (3) Cr.P.C. by the State P.P. for the State praying that this Court may be pleased to grant leave to file an appeal against the judgment dt. 24.7.97 passed by the I Addl. Sessions Judge, Raichur in BC.No.79/94.

Cr.A. coming on for hearing this day, SALDANHA J. delivered the following:-

JUDGMENT

As many as 27 accused were arraigned before the trial Court and the principal charges were related to the formation of <sup>an</sup> unlawful assembly and rioting which were directed towards the murder of Govind Reddy and causing grievous and simple hurt to Rangareddy and Gopal Reddy. The incident had taken place on 13.3.1994 at about 5.30 PM. at Mukunda Village and was a sequel, as often happens to the local elections. It is true that one death had taken place and two other persons were injured and the version put forward by the prosecution witnesses was to the effect that due to political rivalry the group of 27 persons had initially obstructed and thereafter attacked the deceased and his companions. The learned trial Judge, for a

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change, as against what happens in many other similar cases, has analysed the prosecution evidence and has thereafter done a critical appraisal of it. The main reason why he has acquitted the accused is because there were injuries of some seriousness on accused Nos. 17, 20 and 21. There are a few other reasons which we shall deal with but the principal ground on which the prosecution case fails was because there <sup>was</sup> a consistent effort on the part of the witnesses to suppress the genesis of the injuries on the accused and the learned trial Judge has very rightly relied on a string of decisions of this Court and the Supreme Court in holding that the accused would certainly be entitled to <sup>the</sup> benefit of doubt because it is clear that the P.Ws. are keeping something back from the Court. We shall presently deal with <sup>the</sup> larger implications of this situation. That <sup>the</sup> State of Karnataka has assailed the correctness of that judgment through the present appeal.

2. The record of this case is rather voluminous and with the able assistance of the ~~trial~~ learned Additional S.P.P. and the learned Counsel who represents the respondents-accused we

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have done a total review both of the facts and the law. This is for purposes of deciding as to whether the order of acquittal is legally sustainable and if not, as to what is the course of action which the law provides for.

3. We need to prefix this judgment with the observation that the learned trial Judge has relied on three decisions namely:-

- (1) I.L.R. 1996 KARNATAKA, page 2622
- (2) A.I.R. 1972 B.C., page 464
- (3) 1995 (6) K.L.J., page 167

in support of the proposition that it is incumbent upon the prosecution to explain the injuries sustained by the accused. There is one more decision reported in 1999 Criminal Law Journal, page 1622 to which Mr. Deshpande, learned Counsel who represents the accused called our attention and in this latter judgment the law has been virtually crystallised and the Court has very clearly laid down that the principle reason why the explanation for the injuries on the accused <sup>must</sup> ~~is~~ be ~~is~~ forthcoming is because the absence of such an explanation seriously affects the credibility of the evidence. There is another

aspect of the law which we need to restate and which would be applicable in cases of the present type. Courts are fully aware of the fact that irrespective of the number of persons on either side, that none of these incidents are one-way traffic. Also, it is not the question as to which of the parties started the incident or the question as to which of them ultimately got the upper hand. Numbers are not the only criterion nor for that matter the type of weapons used because in different situations there is every possibility that deaths and injuries may occur not necessarily on the side of the smaller number of persons. Where there are more than five or ten persons on each side and a fight breaks out ~~traditionally~~ <sup>invariably</sup> it is at the stage when the opposite party fights back that the greater damage may be done and in such situations the question of paramount importance <sup>is</sup> as to who was the aggressor when the serious injuries were inflicted. As pointed out by us earlier, the genesis of the dispute or the development of the assaults or incidents is not the necessary criterion for purposes of answering this question. On the

aspect of credibility, where oral evidence is to be the basis of a conviction that evidence must be totally trustworthy and if there is a reservation or a doubt in the mind of the Court with regard to suppression then a conviction would be unjustified. It is precisely this aspect of the law that is material in the present case.

4. The principal submission canvassed by the learned Addl. S.P.P. was that the evidence of PW.1 and PW.2 particularly supported by the medical evidence of PW.2 Dr. Akka Mahadevi and the other supportive material on record very clearly establishes that it was in the course of the incident that one death took place and the remaining injuries occurred. The main submission of the learned Counsel was that this evidence clearly passes the test of scrutiny in so far as the witnesses have withstood cross-examination and he goes on to state that merely because the witnesses have not explained the injuries that their otherwise credible evidence cannot be treated as tainted. The usual submission was canvassed that when there were a large number of persons present that it would have been perhaps

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difficult for the witnesses to have been able to watch and explain every aspect of the incident and the non-mention and non-explanation of the injuries is perhaps because of this handicap and not through any conscious desire to suppress. We have attached due weight to this submission but we still find it difficult to overcome the basic legal position in law which very clearly postulates that it is <sup>the</sup> duty and an obligation on the part of the prosecution to explain the injuries. The obvious reason for this is because this aspect is closely in <sup>ter</sup> link with the allied issue, namely the question as to whether the accused were acting offensively or defensively.

5. In a situation in which there is a legitimate explanation for the injuries that are sustained by the accused it adds to the credibility of the prosecution witnesses. ~~Whether~~ <sup>Where</sup> a deliberate attempt has been made to suppress, as in the present case, it becomes abundantly clear that we are embarking upon a grey area and more importantly that there are many unanswered question marks. In such a situation, when the Court <sup>creates</sup> ~~retains~~ the incident, the obvious aspect

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that surfaces is the question as to whether the persons who claim to have been the victims were as innocent as they make themselves out to be or whether they had also assumed an aggressive posture. If there is an explanation for the injuries or more importantly if there is a justification for the injuries because the law does not require that a victim has to be a non-violent recipient of violence when the law confers a total immunity on a victim who fights back, a serious difficulty arises in the mind of the Court when deliberate and repeated attempts <sup>are</sup> <sub>made</sub> to suppress the injuries on the accused. Normally, the assumption is that those injuries could only have been caused by the opposite party though we cannot rule out the possibility of this happening <sup>otherwise</sup> when there is a total free for all. Whatever be the position, what we need to take cognizance of is that the learned trial Judge has conclusively held that the evidence which is otherwise reasonably good gets tainted because of the suppression factor and that it cannot form the basis of a conviction. Despite the vehement submissions on the part of the learned Addl.S.P.P.,

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we cannot depart from the well settled position in law as far as this is concerned and consequently, it is absolutely essential for us to uphold the findings recorded by the learned trial Judge.

5. There is one more aspect of some consequence in this case which is that the injured persons were examined at the Medical College Hospital, Bellary by Pw.20 Dr.Akka Mahadevi who is the same doctor who has examined the injuries<sup>ed</sup> and the deceased. PW.21 was admitted to that hospital and shockingly enough, it has come in the evidence of PW.15 the A.S.I. that it was the same police officer who had sent the three accused persons to the hospital for treatment. For some strange reason, he staunchly maintains the position that he was unaware of these injuries. He has relentlessly clung on to the position that he was unaware of the seriousness of the injuries even though the defence has brought out that a written complaint Ex.D-4 had been filed by the accused who was injured and, what really compounds the entire matter is the fact that this complaint was lodged with the very same police officer. The defence has also brought it on record that despite

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injuries of some consequence on the accused a counter case was not even registered and that a 'B' report was submitted. This brings us to the other very important aspect of the law namely the principle that the Court has got to <sup>be</sup> satisfied that the investigation was fair and impartial. It is again well settled law particularly in criminal jurisprudence that if the Court finds that the investigation has been biased then the prosecution has to pay for it. The aforesaid material conclusively establishes that the investigation was on-sided. It was virtually anti-accused or pro-complainant and if the manner in which the investigation was conducted was coloured, it reduces the level of confidence that a Court can repose in such an investigation. These are very deep seated issues of the law. We are very happy to note that the learned trial Judge has also very correctly grasped <sup>these principles</sup> and given application <sup>to them</sup> and which ultimately worked backwards and destroyed <sup>an</sup> even otherwise good record. In the face of such material, the trial Court found it impossible to record a conviction and we have no hesitation in confirming that view.



9. There are well defined principles that govern the powers of the High Court in an appeal against acquittal. First of all, where the trial Court has not overlooked any aspect of the evidence where <sup>the</sup> evaluation has been judiciously done, where the conclusions are logical and legally correct, there is virtually little or no scope for the High Court to interfere. This is the view propounded in the decision reported in 1999 (2) Crimes 365 and we hasten to add, that the Apex Court had several years back laid down the dictum that the presumption of innocence with which an accused commences gets doubly reinforced through an order of acquittal and that the High Court should be very slow in interfering with the decision of the trial Court unless it is demonstrated that it is manifestly wrong, perverse or in breach of well defined principles and totally results in not only failure of justice but miscarriage of justice. These are the principles which we have borne in mind and even though the learned Addl. S.P.P. was insistent that an equally valid parallel view is possible on this record and that a conviction is sustainable, we have



refrained from accepting that argument because it is equally well <sup>settled</sup> ~~settled~~ law that where the decision of the trial Court is plausible and sustainable that ~~the~~ High Court is virtually debarred from <sup>upholding</sup> ~~accepting~~ a different conclusion merely because one is possible.

8. After a total and thorough review of the facts and the law, in the light of the well settled principles that we have alluded to in this judgment, we see no justifiable ground on which the decision of the trial Court can be interfered with. The appeal accordingly fails on merits and stands dismissed. The bail bonds of the respondents-accused to stand cancelled.

Sd/-  
Judge

Sd/-  
Judge

GS/-