

REPORTABLE

**IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION**

CRIMINAL APPEAL NO. 984 OF 2010

Krishnappa & Ors. Appellants

Versus

State of Karnataka by Babaleshwara
Police StationRespondent

WITH

CRIMINAL APPEAL NO. 1147 OF 2012
(Arising out of S.L.P.(Crl.) No. 5830 of 2012)

(CRL.M.P.No.23190 of 2011)

Tippanna Ningappa Kundargi and Anr. Appellants

Versus

State of KarnatakaRespondent

J U D G M E N T

H.L. Dattu, J.

- 1) Delay Condoned and Leave granted in SLP(Crl.) No. of 2012
(Criminal Miscellaneous Petition No.23190 of 2011).
- 2) Since both Criminal appeals arise out of the common judgment of
the High Court, we propose to dispose of the same by this common
judgment.

3) These appeals are directed against the common judgment and order passed by the High Court of Karnataka at Gulbarga in Criminal Appeal No. 1185 of 2006 and Criminal Appeal No. 824 of 2006, dated 16.06.2009, whereby and where under, the High Court has reversed the order of acquittal of accused Nos. A1, A15, A16, A21 and confirmed the order of conviction of accused Nos. A13 and A14 passed by the Sessions Judge, Bijapur, in Sessions Case No. 82 of 2002. The appellants are convicted under Section 302/149 IPC and sentenced to imprisonment for life.

4) The facts of the case, in brief, as put forth by the prosecution are:- Shri. Bhimappa Biradar (deceased), the father of the Complainant had long standing enmity with Mansani family and Sirabur family, as 30 years ago, members of Mansani and Sirabur family had murdered the grand father of the deceased. Subsequently, this enmity further intensified due to political rivalry and their relationship became more hostile.

5) It is the case of prosecution that, at 10.00 am on 15.09.2001, the deceased Bhimappa Biradar (for short 'Bhimappa') was sitting on the platform of village well and his son PW1 was getting his motor

cycle tyres filled with air in the shop of PW-11, situated right opposite to the village well. PW-4 (grand daughter of deceased) informed the Bhimappa (deceased) that his presence was required in his house; the Bhimappa (deceased) got up and started proceeding towards his house. At that time, Maningappa Sannasiddappagol (A1) holding axe, Tippanna Ningappa Kundaragi (A13) holding club, Shivappa Tippanna Kundaragi (A14) holding axe, Krishnappa alias Kristappa Shashappa Biradar (A15) holding club, Jaggappa Mallappa Biradar (A16) holding club, Prakash Mallappa Shirabur (A17) holding chopper and Malappa Shashappa Biradar (A21) holding club came running from the side of the well. In response to this, the Bhimappa (deceased) tried to flee away but the above accused persons caught hold of him. Thereafter, the deceased sat down pleading not to assault. A13 and A14 unperturbed to deceased's imploration for mercy, assaulted him with axe due to which deceased's fingers of hand got cut. He sustained severe head injuries and fell down on the ground. Thereafter, A1, A15, A16 and A21 dragged Bhimappa (deceased) to a couple of feet to the road. Then, A13, A14 and A17 again assaulted the Bhimappa (deceased) on the neck, shoulders and legs. The above accused also threatened the bystanders with dire consequences, if any one attempt to intervene to rescue the

deceased. Thereafter, A2 to A12, A18 to A20, A22 and A24 came running to the scene and assaulted the deceased with hands and kicked him. After this assault, the above accused persons went away from the scene along with their weapons.

- 6) After this incident, PW1 went to his elder brother Venkappa who was constructing a house and from there, they both went to Babaleshwar Police Station at about 11:15 am to file a complaint but PSI (SHO)-PW18 was on duty at some other village. On arrival of PW18, the written complaint of PW1 was lodged at 12:00 Noon. On the basis of said complaint, the First Information Report dated 15.09.2001 in Crime No. 122/2001 was registered and sent to the Court of CJM, Bijapur.

- 7) Thereafter, all the accused were arrested within a week from the date of incident. Further, recoveries of blood stained weapons used for the commission of offence were made under a mahazar. The blood stained clothing of the deceased along with blood stained weapons were sent to the Forensic Science Laboratory. The Serology report and FSL confirmed that stains on the articles found are of human blood.

- 8) After investigation, the police charge-sheeted all the accused persons for committing offences punishable under Sections 143, 147, 148, 504, 506 (Part II) and 302 read with Section 149 IPC.
- 9) The Principal Sessions Judge, Bijapur had taken cognizance of the offence under Section 193, Cr.P.C. and registered the case as S.C. No. 82/2002. The learned Judge, on the basis of the allegations made in the charge-sheet, framed the charges against all the accused persons under Sections 143, 147, 148, 504, 506(Part II) and 302 read with Section 149 IPC. The accused pleaded that they are totally innocent and have been falsely implicated.
- 10) In order to prove the charges, the prosecution examined 18 witnesses in support of their case. The accused persons did not lead any evidence, whatsoever. The learned Sessions Judge, after recording the statement of the accused persons under Section 313 of the Cr.P.C. and after considering the evidence on record, has come to the conclusion that A13, A14 and A17 are directly responsible for the death of deceased and therefore, guilty of murder punishable under Section 302 read with Section 149 of IPC. The learned Sessions Judge acquitted A1, A15, A16 and A21 on the ground that their acts are not solely responsible for the death of the deceased as

they were merely holding Kalli Katagi and just prevented the deceased from escaping the assault made by A13, A14 and A17 and further, the post mortem report does not disclose any abrasion or injury by use of Kalli Katagi.

11) Aggrieved by the judgment and order so passed by the learned Sessions Judge, the appellants, A13, A14 and A17 preferred Criminal appeal No. 824 of 2006 before the High Court. Similarly, the State had carried the matter in Criminal appeal No. 1185 of 2006 before the High Court against the acquittal of A1, A15, A16 and A21.

12) The High Court, after perusing the entire evidence on record, allowed the appeal filed by the State and found it fit not to accept the conclusion of acquittal arrived by the learned Sessions Judge with regard to acquittal of A1, A15, A16 and A21, convicting them of charges punishable under Section 302 read with Section 149 of the IPC and sentencing them to undergo imprisonment for life. The appeal filed by the appellants- A13 and A14 came to be dismissed and the order of conviction and sentence passed by the Learned Sessions Judge was confirmed by the High Court. The High Court has allowed the appeal filed by A-17 (Prakash Mallappa Shirabur)

and the conviction passed against A17 was set aside and he was acquitted.

13) Feeling aggrieved by this judgment of conviction and order of sentence passed by the High Court, the present appellants-accused are before us in these appeals.

14) Shri. T.S. Doabia, learned Senior Counsel appears for the accused- A1, A15, A16 and A21 and accused A13 and A14 are represented by Ms. Rajani K. Prasad. Ms. Anita Shenoy, learned Counsel appears for the State of Karnataka.

15) Shri. T.S. Doabia, learned Senior Counsel contends that the view taken by the Trial Court was just and proper and the High Court ought not to have interfered with an order of acquittal. Learned Senior Counsel also submitted that the Trial Court in its judgment has given plausible and cogent reasons for acquitting these accused as there was no overt act on their part which has caused the death of the deceased in terms of Section 149 of IPC. He would submit that these accused were just carrying Kalli Katagi and had not dealt any blow by their Kalli Katagi on the deceased and this fact is corroborated by the post mortem report of the deceased. Therefore,

they are not responsible for the murder of the deceased and deserves to be acquitted. He would submit that PW1's evidence as an eye witness is under serious doubts because PW9 in his deposition says that PW1 and his brother came to the spot after 30 minutes of the occurrence of the offence and asked him to accompany them to Police Station to file a complaint. He would further submit that there are contradictions in the statements of the eye witnesses regarding the arrival of the accused on the spot. PW1 stated that the accused came from behind the bench of the well. PW3 stated that they came from behind the road. PW4 says they came from back side of the well, whereas, PW2, PW5 and PW6 stated that they came from the right side of the well. He would further contend that there is another contradiction in the depositions of the eye witnesses with respect to the fact whether deceased was dragged or lifted to the road after the initial assault on his body. The statements of PW1, PW3, PW4 and PW6 shows that the deceased was dragged to the road but the statement of PW2 and PW5 shows that the deceased was lifted to the road. Shri. Doabia would rely on the decisions of this Court in *Sahdeo v. State of U.P.*, (2004) 10 SCC 682 and *State of Uttar Pradesh v. Kishanpal*, (2008) 16 SCC 73 in support of his submissions.

16) Ms. Rajani K. Prasad, learned Counsel would submit that there is a delay in registering the FIR and subsequent delay in submitting the same to the Court. She would contend that the incident took place at 10:00 am in the morning but the FIR was registered at 12:00 Noon, after two hours of the occurrence of such a grievous nature of incident. She would further submit that this FIR was delivered to the Court of C.J.M., Bijapur at 6.45 PM, after much unexplained delay, in order to manipulate the facts of occurrence of offence.

17) *Per Contra*, Ms. Anitha Shenoy, learned Counsel appearing for the State would submit that Section 149 of IPC would squarely apply to the accused in the present case as once the membership of unlawful assembly is established, then, every member of the group is vicariously liable. She would submit that the testimony of all the eye witnesses unanimously depicts that all the accused were carrying weapons and have taken active participation in the occurrence of the offence. She would submit that the incident occurred in a very short span of time, therefore any parrot like version cannot be expected from the eye witnesses. She would submit that the Statement under Section 166 Cr.P.C. was recorded on the same day of the incidence. She would further submit that FIR mentions the name of all the accused persons and this has been further corroborated by two

independent witnesses and one witness is related to both the complainant and the accused. She would also submit that Kalli Katiga has been recovered from accused- A1, A15, A16 and A21, who had prevented the deceased from escaping the assault from A13, A14, A17 and they further dragged the deceased towards the road after the first assault and thereby facilitated A13 and A14 for assaulting the deceased for the second time.

18) In response to the submissions of Shri. Doabia that PW1 came later to the scene, Ms. Shenoy would contend that PW1 came back to the scene after half an hour along with his brother as explained by PW9 in his deposition and this was certainly not the first time he came to the spot. She would further submit that there is no delay in filling the FIR as the Complainant had to travel nearly 30 km on the mud road to reach the Police Station and thereafter, he waited for half an hour for the Sub Inspector of Police to arrive at the Police Station.

19) In the backdrop of aforesaid arguments advanced by the parties, we will examine the contentions advanced by the learned Counsel for the parties with regard to the role of accused and application of Section 149 of IPC.

20) It is now well settled law that the provisions of Section 149 IPC will be attracted whenever any offence committed by any member of an unlawful assembly in prosecution of the common object of that assembly, or when the members of that assembly knew that offence is likely to be committed in prosecution of that object, so that every person, who, at the time of committing of that offence is a member, will be also vicariously held liable and guilty of that offence. Section 149 IPC creates a constructive or vicarious liability of the members of the unlawful assembly for the unlawful acts committed pursuant to the common object by any other member of that assembly. This principle ropes in every member of the assembly to be guilty of an offence where that offence is committed by any member of that assembly in prosecution of common object of that assembly, or such members or assembly knew that offence is likely to be committed in prosecution of that object. [*Lalji v. State of U.P.*, (1989) 1 SCC 437; *Allauddin Mian v. State of Bihar*, (1989) 3 SCC 5; *Ranbir Yadav v. State of Bihar*, (1995) 4 SCC 392]. The factum of causing injury or not causing injury would not be relevant, where accused is sought to be roped in with the aid of Section 149 IPC. The relevant question to be examined by the court is whether the accused was a member of an unlawful assembly and not whether he actually took active part in the crime or not. [*State v. Krishan*

Chand, (2004) 7 SCC 629; *Deo Narain v. State of Uttar Pradesh*, (2010) 12 SCC 298].

21) We have carefully perused the relevant records and statements of the eye witnesses in the case. In our opinion, the prosecution has clearly established with ample evidence that accused- A13 and A14 had murdered the deceased. We are in agreement with the view taken by the Trial Court and High Court. Therefore, the High Court is right in dismissing the appeal against the order of conviction passed by the learned Sessions Judge.

22) We are also of the opinion that accused- A1, A15, A16 and A21 were members of the same assembly which has caused the murder of the deceased, in terms of Section 149 IPC, as they had dragged the deceased after first assault and contributed in preventing the deceased from escaping the assault of A13 and A14. Therefore, accused A1, A15, A16, A21 are guilty of murder along with A13 and A14 under Section 302 read with Section 149 IPC.

23) We are afraid that the decisions relied on by Shri. Doabia, learned Senior Counsel would not come to assist the accused, as in the present case, there is clear evidence of overt act on the part of the

accused- A1, A15, A16 and A21 who dragged the deceased and prevented him from escaping the fatal assault to his body.

24) Moreover, the delay in registering FIR is justified as the complainant had to travel 30 kms on a mud road to reach the Police Station from the scene of crime. Also, the absence of S.I. in the Police Station further contributed in delay in registering the FIR.

25) In the result, we do not find any infirmity in the impugned judgment and order passed by the High Court. Therefore, these appeals deserves to be dismissed and, accordingly, they are dismissed.

Ordered accordingly.

.....J.
(H.L. DATTU)

.....J.
(CHANDRAMAULI KR. PRASAD)

**NEW DELHI,
JULY 31, 2012.**