

REPORTABLE

IN THE SUPREME COURT OF INDIA

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NOS.69-70 OF 2008

Vithal Laxman Chalawadi & etc.

...Appellants

Versus

State of Karnataka Rep. by P. Prosecutor

...Respondent

J U D G M E N T

T.S. THAKUR, J.

These appeals under Section 379 of the Cr.P.C. read with Section 2(a) of the Supreme Court (Enlargement of Criminal Appellate Jurisdiction) Act, 1970 arise out of a judgment and order dated 22nd September 2006 and 12th December 2006 passed by the High Court of Karnataka

whereby State appeal No.715 of 2000 has been partly allowed and Crl. Appeal No. 705/2000 allowed, the appellants convicted under Section 302 IPC and sentenced to undergo imprisonment for life with a fine of Rs.5,000/- each and in default of payment of the same to undergo rigorous imprisonment for six months. The facts giving rise to the filing of these appeals may be summarized as under:

Padavva one of the sisters of accused no. 1 to 4 was engaged to get married to the deceased-Ramesh brother of PW-1 Guralingappa. Soon after the engagement was over a loan of Rs.30,000/- was advanced to the accused for purchase of a commercial vehicle. Since the loan was not repaid by the accused, the vehicle was taken over and parked in front of the house of PW-1 Guralingappa. This led to some bitterness between the two families which took a turn for the worse when deceased-Ramesh refused to marry Padavva on the ground that she was hard of hearing. To add confusion to the situation, Survana (PW-9) younger sister of

Padavva and the accused, fell in love with Ramesh and decided to marry him. The things came to a head when the deceased took Survana away to Bijapur and got his and Survana's marriage registered. This enraged the accused no end as they felt that the deceased had spoiled the life of their sister Padavva by refusing matrimony even after getting engaged to her.

According to the prosecution on 25th December, 1995 at about 4.00 p.m. accused nos.1 to 4 went to the house of Mahadevappa Basappa Dodamani (accused no.5) and Yellappa Yamanappa Neelanaik (accused no. 6) for a meeting. From there they came to the house of the Guralingappa (PW-1) around 6.30 p.m. looking for Ramesh-deceased. They were let into the house where they questioned the deceased about his marriage to Survana (PW-9) without their consent. This led to an altercation between the two parties in the course whereof accused Vithal Laxman Chalawadi is alleged to have assaulted the

deceased with a knife. When Guralingappa (PW-1) and his mother, Smt. Putalawwa (PW-6) intervened, they too were assaulted. PW-6 mother of the deceased is alleged to have received a chappal blow from accused No.3 on her face. The injured Ramesh was rushed to the hospital but declared dead on arrival. A charge-sheet was eventually filed against six persons for commission of offences punishable under Sections 143, 451, 323, 324, 355, 504, 506, 302, 109 and 149 IPC. Principal Sessions Judge, Bijapur, before whom the accused were tried, acquitted four of them while convicting the remaining two under Section 323 and Section 324 IPC respectively. The Court held that the prosecution had failed to prove the charge of murder against the accused. According to it all that was proved was that a quarrel had taken place at the house of Guralingappa (PW-1) and his brother deceased-Ramesh and that accused no.1 Nijappa had caused an injury to the deceased using a dangerous weapon constituting an offence punishable under Section 324 IPC. Accused no.3 was also convicted but only for

causing a simple injury with a Chappal to PW-6 mother of the deceased and convicted under Section 323 IPC.

Two appeals were filed against this judgment and order of the Sessions Judge. While Criminal Appeal No.705 of 2000 was filed by the convicts, Criminal Appeal No.715 of 2000 was filed by the State against the acquittal of the accused. The High Court has, as noticed earlier, allowed Criminal Appeal No.705 of 2000 while partly allowing Criminal Appeal No.715 of 2000 filed by the State. The High Court has taken the view that the prosecution had established its case against accused 1 to 4, namely, Vithal Laxman Chalawadi, Umesh Laxman Chalawadi, Gangappa Laxman Chalawadi and Nijappa Laxman Chalawadi for the commission of an offence punishable under Section 302 read with Sec. 34 IPC. They were accordingly sentenced to undergo imprisonment for life for the offence of murder. The acquittal of the remaining accused persons, Mahadevappa Basappa Dodamani and Yellappa Yamanappa Neelanaik was

affirmed by the High Court. The present appeals assail the correctness of the said order of conviction and sentence.

Appearing for the appellants Ms. Rajni K. Prasad argued that the evidence adduced by the prosecution did not establish the charges framed against the appellants and that the Trial Court was justified in holding so. She contended that there were material contradictions between the depositions of the alleged eye-witnesses to the occurrence. She submitted that while Guralingappa (PW-1) and PW-6 were the brother and the mother respectively of the deceased, the other two eye-witnesses, namely, Chandrakant (PW-7) and Lakshman (PW-8) were not present on the spot at the time of the occurrence and were wrongly described by the prosecution as eye-witnesses. She contended that even if the prosecution version was taken as proved against appellant, Umesh Laxman Chalawadi, who is alleged to have taken the knife from appellant, Vithal Laxman Chalawadi to assault the deceased, appellant,

Gangappa Laxman Chalawadi was unarmed and is not alleged to have inflicted any injury on the deceased or anyone else except a chappal blow allegedly given to the mother of the deceased. Conviction of appellant no.3 for the offence of murder was in that view not justified argued the learned counsel.

As regard appellant, Umesh Laxman Chalawadi, learned counsel urged that there was no evidence to show that he was armed with a knife nor was any knife recovered from him. The allegation that accused no. 4 had assaulted Ramesh-deceased with the very same knife as was used by the other two accused was a clear attempt to rope in as many members of the opposite party as possible. Given the strained relationship between the parties an attempt to falsely implicate persons who had not caused any hurt to the deceased or other members of his family could not be ruled out. The case against appellant, Umesh Laxman Chalawadi was at any rate doubtful, contended the learned counsel.

Mr. Sanjay R. Hegde, counsel for the respondents on the other hand argued that the High Court had correctly appreciated the evidence and come to the conclusion that the accused-appellant had gone to the spot with the common intention of committing the murder of the deceased-Ramesh against whom the accused had animosity on account of the insult which they perceived had been caused to their sister Padavva by refusing to marry her and instead marrying Survana (PW-9) without their consent. The depositions of the eye-witnesses to the incident had stood the test of cross-examination and were rightly believed by the High Court, argued Mr. Hegde.

That the relationship between the two families was strained on account of the refusal of the deceased to marry Padavva and in preference tying the knot with the younger sister of the accused without their consent has been sufficiently established by the material on record. It was also not disputed either before the High Court or even before us

that the deceased-Ramesh had died a homicidal death having suffered as many as 17 injuries which Dr. Goudappa Shankareppa Baragi (PW-16) noticed in the course of post-mortem examination. Out of the said injuries injury nos. 16 and 17 were fatal injuries resulting in shock and hemorrhage and eventual death of the victim. In support of its case the prosecution had relied upon the depositions of four eye-witnesses to the incident. While PW-1 Guralingappa and PW-6 Smt. Putalawwa are the brother and mother respectively of the deceased who were themselves injured in the incident, PW-7 Chandrakanta and PW-8 Lakshman reached the spot when they heard noise coming out of the house of the deceased only to find accused 1 to 4 assaulting the deceased with a knife. A careful analysis of the depositions of the eye-witnesses leaves no manner of doubt in our mind that Nijappa who has since died was the first to assault the deceased with his knife. We are also satisfied that the version given by the injured eye-witnesses PW-1 Guralingappa and PW-6 Smt. Putalawwa that appellant,

Vithal Laxman Chalawadi had then taken the knife from Nijappa to inflict injuries on the body of the deceased is credible and has been rightly relied upon by the High Court. We, therefore, have no hesitation in holding that Vithal Laxman Chalawadi was responsible for inflicting injuries attributed to him by the eye-witnesses that resulted in the death of the deceased-Ramesh. We accordingly uphold the conviction and sentence imposed upon appellant, Vithal Laxman Chalawadi.

As regards the role of appellant, Gangappa the evidence on record suggests that he gave a chappal blow to PW-6 the mother of the deceased-Ramesh. There is no other overt act attributed to accused-appellant No.3 who appears to have joined the melee when tempers ran high. The allegation that he exhorted accused 1 and 2 to kill the deceased has not in our opinion been satisfactorily proved to justify his conviction for murder with the help of Section 34 IPC. The nature of the evidence on record and the role that appellant, Gangappa is alleged to have played, does not, in

our opinion, establish that the appellant no. 3 shared the common intention with Nijappa and Vithal to commit the murder of deceased-Ramesh. The conviction of accused-appellant No.3 for the offence of murder punishable under Section 302 IPC read with Section 34 IPC is, therefore, not sustainable. The evidence, however, proves beyond a reasonable doubt that appellant, Gangappa assaulted PW-6 Putalavva with a chappal. His conviction under Section 323 IPC by the Trial Court and the High Court deserves to be affirmed.

That leaves us with the case of appellant, Umesh Laxman Chalawadi about whom the depositions of the prosecution witnesses has not made out a clear case to justify his conviction for the offence of murder. Appellant, Umesh Laxman Chalawadi has, according to the prosecution, used the same knife which the accused no.1 had used for inflicting injuries on the deceased and which was then taken by Vithal Laxman Chalawadi to assault the deceased. While

we have accepted the prosecution version to the extent it suggests that Vithal Laxman Chalawadi had taken the knife from Nijappa, we consider it wholly unsafe to attribute any injury to the deceased by the use of the same knife having regard to the nature of the evidence on record. Suffice it to say that the prosecution case against Umesh Laxman Chalawadi is not free from doubt, the benefit whereof must go to said appellant.

In the result, conviction and sentence of appellant, Vithal Laxman Chalawadi for the offence under Section 302/34 IPC recorded by the High Court is affirmed. Conviction and sentence of appellant, Gangappa Laxman Chalawadi is set aside and he is acquitted of all the charges framed against him except the charge under Section 323 IPC. His conviction under Section 323 IPC is maintained but the sentence reduced to the period already undergone. The conviction and sentence of appellant, Umesh Laxman Chalawadi is set aside and he is acquitted of the charges framed against him giving him the benefit of doubt.

Appellants, Umesh Laxman Chalawadi and Gangappa Laxman Chalawadi, if in jail, shall be released forthwith if not required in any other case. The appeals are accordingly disposed of.

.....J.
(MARKANDEY KATJU)

.....J.
(T.S. THAKUR)

New Delhi
October 19, 2010