CASE NO.:
Appeal (crl.) 1026-1027 of 2003

PETITIONER:
Rudrappa Ramappa Jainpur and others

RESPONDENT:
State of Karnataka

DATE OF JUDGMENT: 02/08/2004

BENCH:
N. SANTOSH HEGDE & B.P. SINGH

JUDGMENT:
J U D G M E N T
WITH

CRIMINAL APPEAL NOS. 1028-1029 OF 2003

Nanagouda Shankargouda and others \005Appellants

Versus

State of Karnataka \005Respondent

AND

CRIMINAL APPEAL NOS. 991-992 OF 2003

Ashok Irangouda Patil \005Appellant

Versus

State of Karnataka \005Respondent

B.P. SINGH

This batch of appeals arises out of an incident which is alleged to have taken place on November 2, 1993 in village Utnal at about 7.00 p.m. in which one Sangondappa lost his life while several witnesses, namely PWs, 2, 3, 4, 5 and 6 received injuries at the hands of the assailants. The case of the prosecution is that there were nine persons who formed themselves into an unlawful assembly with the common object of causing the death of the deceased, and in pursuance of the unlawful object of that assembly the deceased was done to death and the prosecution witnesses abovenamed were injured.

The charge-sheet had been submitted against nine accused persons namely, Nanagouda (A-1), Appasab (A-2), Rudrappa (A-3), Siddappa (A-4), Ashok (A-5), Rannugouda (A-6), Raju (A-7), Lalsab (A-8) and Shankaragouda (A-9). However A-9 died during the pendency of the trial, but the remaining accused were tried by the IInd Additional Sessions Judge, Bijapur in Sessions Case No. 49 of 1994 charged variously under Sections 148/302/326 and 324 all read with Section 149 IPC. The learned Sessions Judge after an

exhaustive scrutiny of the evidence on record came to the conclusion that the case of the prosecution as against A-5, A-7 and A-8 was not established and he, therefore, acquitted them of all the charges levelled against them. He, however, found A-1 and A-2 guilty of the offence under Section 302 IPC and sentenced them to undergo imprisonment for life and to pay a fine of Rs.500/-, in default to undergo one month's rigorous imprisonment. He found A-6 guilty of the offence under Section 326 IPC and sentenced him to undergo rigorous imprisonment for three years and to pay a fine of Rs.500/-, in default to undergo one month's rigorous imprisonment. A-3 and A-4 were found guilty of the offence under Section 324 IPC and they were sentenced to undergo simple imprisonment for one month.

Several appeals were preferred by the accused as well as by the State of Karnataka. Criminal Appeal No.1821 of 2001 was preferred by the State against the acquittal of A-5, A-7 and A-8 by the trial court. Criminal Appeal No. 1829 of 2001 was preferred by the State contending that A-3, A-4 and A-6 had not been adequately punished by the Sessions Court. Criminal Appeal No.1300 of 2002 was preferred by the State for consolidating the appeals preferred by it and against the acquittal of A-3 to A-8 of the charges under Sections 148 and 302/149 IPC. A-1 and A-2 preferred Criminal Appeal No.1512 of 2001 against their conviction and sentence while A-3, A-4 and A-6 filed Criminal Appeal No.1402 of 2001 against their conviction and sentence.

The High Court by its impugned judgment and order of November 26, 2002 dismissed Criminal Appeal No.1512 of 2001 preferred by A-1 and A-2 against their conviction and sentence under Section 302 IPC. It also dismissed the appeal preferred by A-3, A-4 and A-6 against their conviction and sentence. So far as the State appeals are concerned, it dismissed Criminal Appeal No. 1829 of 2001 but partly allowed Criminal Appeal No.1821 of 2001 and found A-5 also guilty, who had earlier been acquitted by the trial court. It also partly allowed Criminal Appeal No.1300 of 2002 inasmuch as it held A-1 to A-6 guilty of the offences under Sections 302/149 IPC and 148 IPC and sentenced them to imprisonment for life and rigorous imprisonment for 3 years respectively. It did not pass any separate sentence against A-3, A-4 and A-5 under Sections 324 and 326 IPC. It also upheld the conviction of A-1 and A-2 under Section 302 IPC.

Before this Court A-1 and A-2 have preferred Criminal Appeal Nos. 1028-1029 of 2003 against the judgment and order of the High Court in Criminal Appeal Nos. 1512 of 2001 and 1300 of 2002. A-3, A-4 and A-6 have preferred Criminal Appeal Nos. 1026 and 1027 of 2003 against the judgment and order of the High Court in Criminal Appeal Nos. 1402 of 2001 and 1300 of 2002. Criminal Appeal Nos. 991-992 of 2003 have been preferred by A-5 against his conviction by the High Court in Criminal Appeal Nos.1821 of 2001 and 1300 of 2002.

The facts of the case are that the deceased Sangondappa and the accused as well as some of the prosecution witnesses are related to each other. The occurrence took place on November 2, 1993. According to the prosecution, the deceased and his family members as well as the accused were on cordial terms till about 2 weeks before the date of occurrence. 15 days earlier, an occurrence is alleged to have taken place which strained the relationship between the parties. The case of the prosecution is that Srikanth, son of the deceased, had assaulted the younger brother of A-1 when he tried to remove the public tap in village Utnal. According to the prosecution, this provided the motive for the offence.

On November 2, 1993 at about 7.00 p.m., according to the prosecution, all the nine accused variously armed with axes, sticks and cycle chains came to the house of the deceased. It is not disputed that A-5 to A-7 do not belong to village Utnal but belong to another village Masabinal. It is alleged that they are related to A-1. When the accused approached the house of the deceased they were noticed by the deceased and his family members. PW-2, Shivabai, wife of the deceased warned her husband as well as her son Irasangappa (PW-16) and the son of the brother of the deceased Shantappa (PW-11) that they should not leave the house apprehending danger at the hands of the approaching mob. In fact she took PW-11 and PW-16 inside and kept them in a room, but her husband Sangondappa, deceased, paid no heed to her warning and proceeded towards the front door of his house saying that the accused will not harm him. The case of the prosecution is that on reaching the house of the deceased, A-1 assaulted the deceased with an axe causing an injury behind his right ear. The remaining accused dragged the deceased to a point in-front of the house of Bapuraya (PW-4). There the deceased was assaulted by the members of the mob. While A-2 assaulted the deceased on his chest with the blunt portion of the axe, the others assaulted him with sticks and cycle chains. Many neighbours rushed to the place of occurrence which included PW-1, PW-3, PW-4, PW-5 and PW-6. The neighbours who rushed to the rescue of the deceased were also assaulted. We shall consider the details of the assault on the prosecution witnesses at the appropriate place. As a result of the assault, the deceased fell down and the accused ran away believing him to be dead. All along, according to the prosecution, A-9 (since deceased) exhorted the other accused not to spare the deceased saying that he would spend any amount of money to save them.

The evidence on record discloses that a telephonic message was received in Police Station Bijapur about an occurrence having taken place in Village Utnal. PW-46 Police Inspector Batakurki immediately left for Utnal with a police party. On reaching the village he found all the injured including the deceased waiting at the bus stand. Soon a bus came and all the injured were sent to Bijapur hospital accompanied by a constable. Sangondapa, deceased, however breathed his last while on way to Bijapur hospital.

On coming to know that the injured had been brought to the hospital, PW-44 H.C. Mulla went to the hospital and recorded the statement of Shivabai (PW-2) Ext.P/2 between 10.45 and 11.30 p.m. He then came back to the police station and registered Crime No.247 of 1993 at 11.40 p.m. under Sections 143/147/148/ 324/302/504 and 506 read with Section 149 IPC. On return from village Utnal PW-46 took up the investigation of the case. He held inquest proceeding on the dead body of the deceased at the Bijapur hospital and thereafter visited the place of occurrence and took other steps in the course of investigation. The body of the deceased was sent for postmortem examination which was conducted by Dr. Sangappa (PW-30) and the post-mortem report is Ext.P/22. The injured witnesses were examined by PW-29, Dr. Ramappa. On the following morning the statements of the witnesses were recorded by the police in the course of investigation. After investigation PW-46 filed the charge-sheet against the accused who were put up for trial before the IInd Additional Sessions Judge, Bijapur in Sessions Case No. 49 of 1994.

The trial court on appreciation of the evidence on record came to the conclusion that the charge under Sections 302/149 was not proved. According to the trial court there was no common

object of the assembly, and each of the accused acted on his own. On an analysis of the evidence on record it came to the conclusion that the participation of A-5, A-7 and A-8 was highly doubtful and, therefore, acquitted them of all the charges levelled against them. It held that A-1 and A-2 were the only persons who assaulted the deceased and the injuries caused by them resulted in his death. They were, therefore, guilty of the offence under Section 302 IPC. A-6 was found to have caused a grievous injury to PW-4. He was accordingly found guilty of the offence under Section 326 IPC. A-3 and A-4 were found guilty of the offence under Section 324 for causing minor injuries.

On appeal the High Court came to the conclusion that so far A-7 and A-8 are concerned their acquittal was well merited. So far as the other accused are concerned, the High Court held that they were all members of an unlawful assembly, the common object of which was to commit the murder of the deceased. It, therefore, held A-1 to A-6 guilty of the offence under Section 302/149 IPC as also of the offence under Section 148 IPC. It affirmed the finding of the trial court that A-1 and A-2 had caused injuries resulting in the death of the deceased and they were, therefore, also guilty of the offence under Section 302 IPC. The High Court, however, passed no separate sentence against A-3, A-4 and A-6 for their conviction under Sections 324 and 326 IPC.

The question which arises for consideration before us is whether the High Court was justified in coming to the conclusion that A-1 to A-6 alongwith A-9 (since deceased) formed themselves into an unlawful assembly, the object of which was to commit the murder of the deceased. Before we deal with this moot question, we shall deal with some other aspects of the matter which can be conveniently disposed of at this stage.

So far A-7 and A-8 are concerned, the courts below have concurrently held them not guilty of any offence. We propose to consider at this stage the question as to whether the deceased was assaulted by any other accused, apart from A-1 and A-2. In this connection we notice that the trial court has meticulously considered the evidence on record. So far as the assault on the deceased by A-1 and A-2 is concerned, the evidence is consistent that these two caused injuries to the deceased. So far as the other accused are concerned, the evidence is not consistent. PW-2, the informant, alleged in the course of her deposition that A-6 and A-7 had also assaulted the deceased with the wooden handle of the axe and a cycle chain respectively. However, the informant in her first information report did not say so and, therefore, her evidence in court as against A-6 and A-7 assaulting the deceased was not found acceptable by the trial court.

PW-6 asserted that A-4, A-5 and A-7 had also assaulted the deceased but it was found that he had not said so in the course of investigation in his statement recorded under Section 161 Cr. P.C . The trial court, therefore, did not accept this part of the evidence of PW-6. PW-4 stated that as many as 5 other accused, apart from A-1 and A-2 assaulted the deceased and in this connection he involved A-3, A-4, A-6, A-7 and A-8. No other witness had stated so and, therefore, the trial court did not accept this part of his evidence. On the other hand PWs. 3, 5 and 8 deposed that only A-1 and A-2 had actually assaulted the deceased. On the basis of such evidence on record, we do not find any fault with the finding of the trial court that only A-1 and A-2 assaulted the deceased and no other accused assaulted him.

So far as the assault on injured witnesses is concerned, the trial court found that PW-2 stated that she had been pushed by A-4

with the blunt portion of the axe. PW-3 alleged that A-3 assaulted him with stick. PW-5 made an allegation of assault against A-4 but he had not made such a statement in the course of investigation under Section 161 Cr. P.C. The trial court, therefore, did not accept his allegation as against A-4. Similarly PW-6 had alleged that A-2 and A-7 had assaulted him but this fact was conspicuously absent from his statement under Section 161 Cr. P.C. PW-4 stated that he had been assaulted by A-4 and A-6. So far as the allegation against A-4 is concerned, PW-4 did not involve him in the assault on him in his statement recorded under Section 161 Cr. P.C. The trial court, therefore, concluded that in the assault on other witnesses only A-3, A-4 and A-6 had participated. A-5, A-7 and A-8 had not taken part in the assault on either the deceased or injured witnesses. As noticed earlier A-7 and A-8 have been acquitted by the trial court as well as by the High Court. We are of the view that A-5 is also entitled to the benefit of doubt because we are satisfied, on the evidence of record, that he did not take part in the assault, even though he may have been present when the occurrence took place. The High Court was not justified in setting aside his order of acquittal.

We shall now consider the evidence on record which relates to the involvement of A-9 (since deceased). It is no doubt true that A-9 died during the pendency of the trial, but his involvement in the occurrence is of some significance particularly on the question as to whether the accused had formed themselves into an unlawful assembly with the object of killing the deceased. This is because the case of the prosecution is that when accused persons proceeded towards the house of the deceased, A-9 was exhorting them to kill the deceased assuring them that he would spend whatever money was required for their defence. PWs. 9 and 10 deposed that they were called to the house of A-9 and told by A-9 that persons had come from village Masabinal and that they had decided to beat the deceased. Inspite of their dissuading him from doing so, the accused persons proceeded towards the house of the deceased and committed the offence. Of the several witnesses examined on this aspect of the matter, PWs. 3, 4, 5, 6 and 8 do not ascribe any role to A-9. PW-2 did not mention his name in the course of investigation and for the first time while deposing in Court stated that he was exhorting his accomplices to finish the deceased. Similarly PW-7 deposed that A-9 was exhorting his accomplices to finish the deceased but as stated by the Investigating officer, PW-46, he had not said so in the course of investigation when his statement was recorded under Section 161 Cr. P.C. So far as PWs. 9 and 10 are concerned, the story that they had been called by A-9 who disclosed to them their intention of assaulting the deceased does not find place in their statements recorded under Section 161 Cr. P.C. as deposed to by the Investigating officer, PW-46. This part of the story was for the first time narrated by them in the course of their deposition. The trial court has considered these discrepancies in the testimony of the above mentioned witnesses. It held that the presence of PW-7 was doubtful because she being the daughter-in-law of PW-2, she would not have omitted her name from the First Information Report when she mentioned the presence of so many other witnesses. In any event, as earlier noticed, PW-7 in her statement recorded in the course of investigation did not mention about exhortation by A-9. For the same reason we find the versions of PW-2, PW-9 and PW-10 not reliable in so far as they relate to the involvement of A-9. Admittedly A-9 did not cause any injury to anyone and the only role ascribed to him was of exhorting his companions to finish the deceased. We find this part of the story to be unacceptable.

In view of the foregoing, we are of the considered view that in the occurrence that took place, only A-1 and A-2 assaulted the

deceased while A-3, A-4 and A-6 assaulted some of the prosecution witnesses. So far as A-9 (since deceased) is concerned, his involvement in the occurrence is doubtful. Similarly the evidence does not establish the involvement of A-5. A-7 and A-8, as earlier noticed, have been acquitted by the trial court as well as by the High Court.

The next question is as to the offence made out against the appellants. The trial court was of the view that there was no unlawful assembly at all and the appellants whose involvement was proved could be punished for their individual acts. Accordingly it found A-1, A-2 guilty of the offence under Section 302 IPC and A-3, A-4 and A-6 guilty of the offences under Sections 324 and 326 IPC. The High Court on the other hand was of the view that A-1 to A-6 had formed themselves into an unlawful assembly, the common object of which was to commit the murder of the deceased and they were, therefore, guilty of the offence under Section 302/149 IPC.

Having regard to the facts of the case we have no doubt that A-1, A-2, A-3, A-4 and A-6 had formed themselves into an unlawful assembly. But the moot question which arises, at this stage, is as to whether the common object of the unlawful assembly was to commit the murder of the deceased or whether the common object was to give him a beating and cause grievous hurt to him. To answer this question scrutiny of the medical evidence on record is necessary to find the nature of injuries inflicted. It also involves looking into other circumstances of the case.

The injured witnesses were examined by Dr. Ramappa (PW-29). He found no external wounds on PWs. 1 and 2. PW-3, according to him, had suffered an abrasion on left hand anklets which could have been caused by her bangles but she had also suffered a lacerated wound on the left shoulder which was a simple injury. On PW-4 he found one abrasion behind the right shoulder and four of his ribs fractured. Obviously the injury was grievous in nature. PW-5 had an abrasion behind his head which was a simple injury. Similarly, PW-6 suffered an abrasion which was a simple injury. It is, therefore, apparent that apart from PW-4 the other five witnesses had suffered very minor injuries. The post-mortem on the body of the deceased was conducted by Dr. Sangappa (PW-30). He found the following ante mortem injuries on the deceased:-

"1. Abrasion wound on right side of head i.e. behind ear, measuring 4 x 1 inch broad and deep to the bone, lower bone was broken.

2. Lacerated wound on left side of face, chin,

3. Lacerated wound on left side of chest.

4. Abrasion lacerated wound crossed to right side on ribs, measuring 6 x 1 inch.

5. Incised wound on left side below shoulder.

6. Abrasion wound on centre finger of right side hand and on left index finger.

7. His chest, neck leveled, below it air was filled, ribs were broken and wound was in lungs, the hole was found through it air was passing in smooth vessel and spreading on to chest & necks. It is called surgical

ampixoma.

8. Lacerated wound on right side of chest lower side just outside, one rupees coin type wound was found."

According to him there was no injury to the brain nor was death caused by injury No.1 on the head. In his view death was the cumulative effect of the injuries suffered by the deceased. The doctor has not stated any one of the injuries was sufficient in the ordinary course to cause the death. According to him death was due to shock and hemorrhage as a result of injuries to vital organs. The medical evidence, therefore, discloses that though the deceased had suffered serious injuries, none of them by itself was sufficient to cause the death in the ordinary course. The death was the result of the cumulative effect of all the injuries. Apparently, therefore, even though A-1 and A-2 were armed with axes, as deposed to by the witnesses, they caused injuries to the deceased only from the blunt side of the axes. Injury No.1 was no doubt caused by the sharp side of the axe but that injury was not of a very serious nature, though having fractured a bone, it was grievous in nature. Having regard to the nature of the injuries and the other facts and circumstances of the case we are of the view that the object of the unlawful assembly was not to commit the murder of the deceased but certainly to cause grievous hurt to him. Learned counsel for the appellants drew our attention to paragraph 9 of the judgment reported in 1994 Supp (3) SCC 235 : Shivalingappa Kallayanappa and others vs. State of Karnataka where in similar circumstances this Court found the appellants guilty of the offence under Sections 326/149 IPC and only two of the accused who had caused injuries resulting in the death of the deceased were held liable for their individual acts and punished under Section 302 IPC. That was also a case where some of the appellants, though armed with axes, did not use the sharp side but only gave one or two blows on the head with the butt ends. Some of the accused, who were armed with stick dealt blows only on the legs and/or on the hands which were not serious. In these circumstances this Court came to the conclusion that the common object of the unlawful assembly could not be said to be to cause murders and at any rate it could not be said that all the accused shared the same and that they had knowledge that the two deceased persons would be killed and with that knowledge they continued to be the members of the unlawful assembly. It was observed that whether there existed a common object of the unlawful assembly to commit murder depended upon various factors.

It is true that when such a question arises for consideration by the Court, no judgment can be cited as a precedent howsoever similar the facts may be. As was observed by this Court in Pandurang and others vs. State of Haryana : AIR 1955 SC 216 each case must rest on its own facts and the mere similarity of the facts in one case cannot be used to determine a conclusion of fact in another. In the instant case, we find that the alleged motive for the commission of the offence was rather flimsy. Members of the prosecution party as well as the members of the defence party were related to each other and so were most of the witnesses. It is also the consistent case of the prosecution that till 15 days before the occurrence their relationship was cordial. Only two weeks before the occurrence the son of the deceased had assaulted the younger brother of A-1 who had tried to dismantle the public tap in the village. This could hardly provide a motive for committing the murder of the deceased. The grievance, if any, was against the son of the deceased and in any event, even if it is assumed that this

may have led to ill will between the parties, it would be too much to infer that for this reason the appellants would have decided to commit the murder of the deceased. The injuries found on the witnesses are simple in nature except the fracture of ribs suffered by PW-4. The injuries were not on vital parts of the body. It, therefore, does not appear that A-3, A-4 and A-6 shared the common object to commit murder. So far as the deceased is concerned, injury no.1 caused by A-1 did not endanger the life of the deceased nor was any one of the other injuries sufficient in the ordinary course of nature to cause the death of the deceased. The serious injuries found on the chest of the deceased by the doctor were caused by use of the axe from its blunt side. Death was the cummulative effect of all the injuries. These facts do indicate that the appellants did not intend to cause the death of the deceased, and the object of the unlawful assembly could not be to cause the death of the deceased. Of course they must have known that if they assaulted the deceased with such weapons as they carried, it may result in grievous hurt to him. We are, therefore, of the view that in the facts and circumstances of this case, the appellants must be held to have formed an unlawful assembly, the common object of which was to cause grievous hurt to the deceased. They are, therefore, guilty of the offence under Sections 326/149 IPC. Since none of the injuries found on the person of the deceased was in itself sufficient in the ordinary course to cause death, neither A-1 nor A-2 can be held guilty of the offence under Section 302 IPC on the basis of their individual act.

In the result Criminal Appeal Nos. 991-992 of 2003 are allowed and A-5 is acquitted of all the charges levelled against him. Criminal Appeal Nos. 1026 to 1029 of 2003 are partly allowed and the appellants therein are acquitted of the charge under Sections 302/149 IPC and A-1 & A-2 of the charge under Sections 302 IPC. They are, however, found guilty of the offence under Section 326/149 IPC and sentenced to undergo rigorous imprisonment for five years each and to pay a fine of Rs.500/-, in default to undergo imprisonment for one month each. In view of the conviction of the aforesaid appellants under Section 326/149 IPC we do not consider it necessary to pass separate sentence against them under Sections 148 and 324 IPC. The appellants must now surrender to their sentence subject to the provisions of Section 428 Cr. P.C.