



REPORTABLE

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

CRIMINAL APPEAL NO. 328 OF 2012

SUBHASH @ SUBANNA & ORS.

Appellant(s).....

VERSUS

**STATE OF KARNATAKA
MINISTRY OF HOME AFFAIRS**

Respondent(s).....

J U D G M E N T

PRASANNA B. VARALE, J.

1. By way of present appeal, the appellants challenged the judgment and order dated 20th April, 2011 passed by the High Court of Karnataka in Criminal Appeal No. 3601/2010, thereby confirming the conviction and sentence of the Trial Court in Sessions Case No.213/2009 which had convicted appellants (accused Nos. 1, 2 and 4) under Section 302 of IPC and sentenced

them to life imprisonment. Additionally the High Court also upheld the conviction and sentence of appellant Nos.1 and 3 (accused Nos 2 & 4) under Sections 324 and 326 of IPC as awarded by Trial Court.

2. The First Information Report No.18/2009 was lodged at Kamalpur Police Station, Gulbarga against the accused persons for commission of offences under Section 143, 147, 148, 504, 323, 324 and 302 r/w Section 149 of Indian Penal Code, on the basis of complaint submitted by Kumari Sangeeta D/o Mahadevappa Natikar. The Complaint refers to the incident occurred on 18th February, 2009 at 7.00 a.m. (we may refer to this incident as a prequel to the fateful incident which occurred on the same day in the evening). It was submitted in the report that a day earlier i.e., on 17th February, 2009, uncle of the complainant brought fire wood which was dumped on the way, blocking the path of the complainant. Thus, Sangeeta tried to reach the said path to throw dust, at that time she found that her pathway was covered with the fire wood. As such, she demanded an explanation from her uncle Subhash. She raised question as to why the way is blocked, to which her uncle Subhash, his wife and his children responded by abusing Sangeeta. Sangeeta then returned to her house. Her

father, mother and brothers by that time had already left for the fields. In the evening, her father and brothers i.e. Mahadevappa, Hanumantha and Sharanappa, respectively were apprised about the incident which took place in the morning. Her father Mahadevappa then proceeded towards the house of uncle – Subhash and made an enquiry as to why the way was blocked. Subhash and the other family members started abusing Mahadevappa and then they assaulted Mahadevappa with a stick on his forehead and face, causing grievous injuries to Mahadevappa.

3. Dattatrey (appellant No.2), who was carrying chopper laid an assault on the forehead and head of Mahadevappa, causing grievous injuries to Mahadevappa. Digambar (appellant No.3) threw a big stone below the right knee of Mahadevappa, resulting in grievous blood injuries. Then Digambar picked up a stone in his hand and hit Mahadevappa on his face causing injury.

4. Sangeeta, her brother Sharanappa and mother who had followed Mahadevappa, saw the attack on Mahadevappa and younger brother of Sangeeta made an attempt to intervene in the attack, who was in turn attacked by Digambar, receiving injuries

on his hand and palm. On hearing hue and cry, residents of the area namely; Parameshwar S/o Ningappa Pujari and other neighbours rushed to the spot. When Mahadevappa was brought to his house, he was unconscious as he had received grievous injuries. Uncle of Sangeeta, Shivasharanappa along with other persons namely; Sharanappa and Parameshwar Poojari arranged for a jeep and Mahadevappa was admitted in the Government Hospital, Gulbarga. The Doctors of the Gulbarga Hospital declared Mahadevappa dead and his body was sent for autopsy.

5. On lodging of the First Information report, the Investigating Agency was set in motion. By completing the necessary formalities of the investigation, such as recording the statement of witnesses, drawing “panchanama”; spot mahazar, seizure mahazars etc. and by collecting the medical evidence in the form of post mortem report issued by the concerned medical officer, charge sheet came to be filed against the accused persons.

6. Accused persons pleaded not guilty and were subjected to trial.

7. On appreciation of the evidence, the learned Sessions Judge convicted the appellants and sentenced them for the offence

punishable under Section 302 to undergo life imprisonment and also pay fine of Rs. 10,000/- each (in default S.I. for two years each). Accused nos. 2 and 4 were also convicted for offence punishable under Section 324 of Indian Penal Code and sentenced to undergo R.I. for one year and to pay fine of Rs. 1,000/- each (in default S.I. for six months each). Accused 2 and 4 were also convicted for offence punishable under Section 326 of Indian Penal Code and were sentenced to undergo R.I. for three years each and to pay fine of Rs. 2,000/- each (in default S.I. for one year each). Whereas accused No.3, 5 and 6 were found guilty for the offences punishable under Section 323 of Indian Penal Code and sentence to pay fine of Rs. 500/- each (in default S.I. for two months each). The entire sentence imposed against accused 2 and 4 was directed to run concurrently.

8. Accused Nos. 3, 5 and 6 accepted the judgment and order of the Sessions Court as they have not filed any appeal to the High Court against the judgment and order of Sessions Court, whereas accused Nos.1, 2 and 4 filed their appeal to the High Court of Karnataka. As stated above, the High Court of Karnataka upheld and confirmed the order of the Trial Court.

9. The learned counsel for the appellants submitted that assuming that the prosecution was successful in establishing the death of the deceased and the presence of the appellants on the spot, as well as the active role played by the appellants; the entire material collected by the prosecution shows that it was the deceased who came to the house of the accused and then there was a quarrel and verbal exchange between them. The act of the accused persons, the verbal exchange and the provocation by the deceased and his family members prompted the appellants to exercise the right of their private defence.

10. Learned counsel for the appellants further submits that the evidence collected by the prosecution also shows that the incident was a reaction of the appellants to a provocation by the deceased and his family members. The element of intention of the appellants is not established by the prosecution. Thus, the submission of the learned counsel for the appellants was that the act of the appellants would not attract Section 302 of Indian Penal Code against them and the offences would be at the most, an offence under Section 304 part 2 of Indian Penal Code.

11. Per contra, learned counsel representing the State of Karnataka supported the judgment and order passed by the High Court of Karnataka, upholding the judgment and order of the Sessions Court.

12. We have gone through the record. The prosecution in support of its case, examined as many as 31 witnesses and is supported by P.W.18 Ramalingappa, P.W.19 Smt. Mallamma, P.W.20 Shobhavati, P.W.21 Sangeeta, P.W.22 Sharanappa, P.W.23 Hanmanth, P.W.24 – Prameshwar, P.W.25 Shivasharanappa and P.W.12 Dr. Balachandra Joshi. The majority of other witnesses, who are neighbours of the deceased Mahadevappa, have turned hostile.

13. P.W.17 Sareppa, turned hostile and he has not supported the prosecution on the aspect of dispute between the complainant's family and the accused family. He supports the case of prosecution that land of deceased and accused are abutting to each other.

14. P.W.18 Ramalingappa supports the version of complainant – Sangeeta, that to reach the land of deceased Mahadevappa, they have to pass through the land of the accused and there was a

dispute between Mahadevappa and appellant No.1 on the issue of way.

15. Now, to establish the death of Mahadevappa being a homicidal one, the prosecution mainly draws support from the testimony of P.W.12 Dr. Balachandra Joshi who in his testimony before the Trial Court states that he was working as Senior specialist since June, 2006 in Government Hospital, Gulbarga. On 19.02.2009 he had conducted post mortem on the dead body of Mahadevappa in between 12.30 p.m., to 2.00 p.m., and he noticed the following external injuries:

1. *“Cut Lacerated wound on the forehead between the eye brows measuring 6 x 2 x bone deep underlying major bones fractured.*
2. *Lacerated wound on the face left side at the angle of the mouth, margins irregular underlying upper jaw bone fracture and loosening of teeth left side cheek bone also fractured.*
3. *Cut lacerated wound on chin measuring 5 x 3 cm x bone deep, evidence of bleeding was present, underlying mandible bone was fractured.*
4. *Cut lacerated wound on the frontal region of the scalp and forehead in the middle*

measuring 10 x 3 cm x bone deep clot formation present.

5. *Cut lacerated wound scalp on left side frontal region measuring 10 cm x 4 cm x bone deep clot formation present.*

6. *Cut lacerated wound on scalp on the top slightly to the right side 12 cm x 4 cm x bone deep, evidence of haemorrhage or bleeding present clot formation present.*

7. *Punctual wound on the right side of leg below the right knee measuring 6 x 5 x 3 cm underlying leg bone fracture.*

8. *Fracture of 3rd, 4th, 5th ribs on the anterior side on right side of chest wall. All the above injuries are ante mortem in nature.”*

16. He further states that, in his opinion cause of death is shock and haemorrhage to the brain due to injury and multiple fracture injuries.

17. Nothing could be elicited in his cross-examination and P.W.12 Dr Balachandra Joshi stood firm on the aspect of the homicidal death of Mahadevappa.

18. As stated above, even the appellants are not seriously disputing the homicidal death of Mahadevappa. Insofar as their

presence and active role played by them is concerned, P.W.21 Sangeeta provides all the necessary details in her testimony about the morning incident i.e., prequel and about the actual incident which took place in the evening. Though she was subjected to a detailed cross-examination, her version remains to be unshaken and appears to be a truthful version of the incident.

19. Similarly, P.W.19 Smt. Mallamma, who is the daughter of the deceased Mahadevappa (elder sister of Sangeeta), P.W.22 Sharanappa (s/o Mahadevappa and brother of Sangeeta), P.W.23 Hanumanth (brother of Sangeeta, Mallamma and Sharanappa), also supported the case of prosecution on the aspect of the presence and active role played by the appellants causing the homicidal death of Mahadevappa.

20. P.W.29 – Dr. Basawaswamy, supported the case of the prosecution on the aspect of Sharanappa and Sangeeta receiving the injuries.

21. Dr. Basawaswamy in his testimony states that on 18.02.2009 he examined Sharanappa s/o Mahadevappa who was injured. He

came to the hospital with a history of assault and on his examination Dr. Basawswamy noticed the following injuries:

1. *“2 x 1 cm incised wound over the dorsal aspect of right little finger bleeding present, margins are clean cut.*
2. *Swelling present over the dorsal aspect of the right hand.*
3. *Abrasion over the dorsal aspect of right forearm size 3 x 3 cm.*

Taken X ray of right hand, crack fracture of 5th metacarpal bone.

Wound No.2 is previous in nature, other wounds are simple in nature might have been cause by sharp and blunt object. Age of the injury about less than 4 hours.”

22. Similarly, on the very same day, he examined another injured by name Sangeeta D/o Mahadevapa and noticed the following injuries:

1. *“Tenderness present over the left elbow.*
2. *Contusion over the posterior aspect of lower 1/3rd of left arm measuring 3 x 2 cm.*
3. *Tenderness present over the left palm.*
4. *Tenderness present over the posterior aspect of left shoulder.*

23. Thus, version of Dr. Basawaswamy supports the case of the prosecution on the aspects i.e., the presence of the prosecution witnesses Sharanappa and Sangeeta on the spot and their attempt to interfere to save their father Mahadevappa from the attack of the accused/appellants, and receiving injuries in that process.

24. Now, although the learned counsel for the appellants vehemently submitted before us that the act of the appellants was in exercise of the right of private defence and as such, offence under Section 302 of Indian Penal code is not attracted against them, we are, however, unable to accept this submission on appreciation of the evidence.

25. P.W.21 the star witness of the prosecution i.e., Kumari Sangeeta – the complainant and injured eyewitness, clearly states about the incident (prequel) which took place in the morning i.e., a quarrel between herself and accused No.2 initially and then abuses by accused Nos.1 and 3 to her. Then she states that on return of her father Mahadevappa to their home in the evening, she apprised him about the morning incident, after which Mahadevappa then proceeded to house of the accused to make inquiry about the incident and that he was immediately followed

by her and her younger brother after which she speaks about the role played by each of the accused–appellants.

26. She states that appellant No.1 thrashed her father with stick on his head, appellant No.2 assaulted her father with chopper (koita) on his head and forehead, then accused No.4 threw a stone on his right knee and he picked up another stone and punched it on the mouth of her father. Her mother Shobhavati and her brothers also stated about the active role played by the accused–appellants.

27. P.W.25 Shivasharanappa though he had not witnessed the evening incident, but he stated about the morning incident i.e., the quarrel between the complainant and accused on account of blocking the way.

28. As stated above, on careful scrutiny of the version of the witnesses, it clearly shows that though it was the submission of the counsel for the appellants that the deceased himself went to the house of the accused and picked up a quarrel with the accused persons upon provocation by the deceased, the appellants exercised their right of private defence, yet on the assessment of

the evidence of the prosecution, we were unable to find any such provocation by the deceased Mahadevappa.

29. The evidence clearly show that Mahadevappa was alone, he went to the house of appellants to make an inquiry, but he had not entered in his house and on the contrary, accused No.1 Subhash s/o Shivaray Natikar thrashed the deceased using stick on the head of Mahadevappa. Accused No. 2 – Dattatrey s/o Subhash Natikar thrashed the head of Mahadevappa using chopper. Using a dangerous weapon like chopper (koita), he assaulted Mahadevappa on his head and forehead. As if this was not sufficient enough, accused No.4 –Digambar threw a stone on the right knee of Mahadevappa and then picking up another stone hit it on the face of deceased.

30. The prosecution evidence further reveals that neither Sharanappa nor Sangeeta were carrying any weapon. Even though the evidence further reveals that there was a verbal exchange, but there is nothing to show that this verbal exchange was in the form of a provocation by the deceased to the appellants.

31. Though the learned counsel for the appellants raised this ground before this Court, no such ground is raised either at the

time of examination of the witnesses or even in 313 statements of the appellants, i.e. at the trial stage.

32. The learned counsel for the appellants also made an attempt to submit before us that the prosecution failed to show that the appellants were carrying any intention to lay an assault on the deceased Mahadevappa as Mahadevappa himself went to the house of appellants.

33. We are unable to accept even this submission. The evidence clearly shows that there was a dispute on account of the way on 18.02.2009 leading to quarrel between P.W.21-Sangeeta and accused No.2 initially and then accused No.1 and 3 abused Sangeeta. Mahadevappa proceeded to the house of accused persons for making an enquiry, as he was appraised by Sangeeta when he returned to their home. The evidence also shows that accused no.1 was armed with stick, accused no.2 was armed with chopper and accused no.4 picked up the stones lying on the spot.

34. P.W.22 Sharanappa clearly states in his deposition before the Court that the appellant no.2 who was armed with chopper threatened his father by uttering the words “I shall finish you” and then assaulted his father with the chopper. Thus, the evidence of

these injured eyewitnesses clearly shows that the intention of the accused person was to do away with Mahadevappa. It may not be out of place to state here that the High Court while considering the submission on this aspect of exercising their right of private defence referred to the judgement in the case of **Darshan Singh v. State of Punjab and Another**¹ relied on by the learned counsel for the appellant. The apex Court in this judgment observed in para 33 as follows:

“The basic principle underlying the doctrine of right of private defence is that when an individual or his property is faced with a danger and immediate aid from the State machinery is not readily available, that individual is entitled to protect himself and his property. The right of private defence is available only to one who is suddenly confronted with the necessity of averting an impending danger not of self-creation. That being so, the necessary corollary is that the violence which the citizen defending himself or his property is entitled to use must not be unduly disproportionate to the injury which is sought to be averted or which is reasonably apprehended and should not exceed its legitimate purpose.”

Now, if this principle is applied and the facts of the present case are appreciated, it is clear that the victim Mahadevappa was unarmed, whereas the accused persons who were armed led a

¹ AIR 2010 SC 1212

brutal attack on the victim Mahadevappa by stick, by koita and stone.

35. The learned advocate for the State was justified in placing reliance on the judgment of this Court in the matter of **Virsa Singh v. State of Punjab**.² The relevant paras are as follows:

“13. In considering whether the intention was to inflict the injury found to have been inflicted, the enquiry necessarily proceeds on broad lines as, for example, whether there was an intention to strike at a vital or a dangerous spot, and whether with sufficient force to cause the kind of injury found to have been inflicted. It is, of course, not necessary to enquire into every last detail as, for instance, whether the prisoner intended to have the bowels fall out, or whether he intended to penetrate the liver or the kidneys or the heart. Otherwise, a man who has no knowledge of anatomy could never be convicted, for, if he does not know that there is a heart or a kidney or bowels, he cannot be said to have intended to injure them. Of course, that is not the kind of enquiry. It is broad-based and simple and based on common sense: the kind of enquiry that “twelve good men and true” could readily appreciate and understand.

14. To put it shortly, the prosecution must prove the following facts before it can bring a case under Section 300 “thirdly”.

15. First, it must establish, quite objectively, that a bodily injury is present.

16. Secondly, the nature of the injury must be proved; These are purely objective investigations.

² AIR 1958 SC 465

17. Thirdly, it must be proved that there was an intention to inflict that particular bodily injury, that is to say, that it was not accidental or unintentional, or that some other kind of injury was intended.

18. Once these three elements are proved to be present, the enquiry proceeds further and.

19. Fourthly, it must be proved that the injury of the type just described made up of the three elements set out above is sufficient to cause death in the ordinary course of nature. This part of the enquiry is purely objective and inferential and has nothing to do with the intention of the offender.

20. Once these four elements are established by the prosecution (and, of course, the burden is on the prosecution throughout) the offence is murder under Section 300 “thirdly”. It does not matter that there was no intention to cause death. It does not matter that there was no intention even to cause an injury of a kind that is sufficient to cause death in the ordinary course of nature (not that there is any real distinction between the two). It does not even matter that there is no knowledge that an act of that kind will be likely to cause death. Once the intention to cause the bodily injury actually found to be present is proved, the rest of the enquiry is purely objective and the only question is whether, as a matter of purely objective inference, the injury is sufficient in the ordinary course of nature to cause death. No one has a licence to run around inflicting injuries that are sufficient to cause death in the ordinary course of nature and claim that they are not guilty of murder. If they inflict injuries of that kind, they must face the consequences: and they can only escape if it can be shown, or reasonably deduced, that the injury was accidental or otherwise unintentional (emphasis supplied).”

36. Accordingly, considering all the aspects, we are of the opinion that the High Court of Karnataka committed no error in upholding and confirming the judgment and order of Trial Court/Sessions Court, we see no ground to interfere, the appeal thus fails and is dismissed.

37. The order dated 31.07.2018 of this Court by which bail was granted to the appellants is hereby recalled. The appellants are directed to surrender before the Trial Court within a period of four weeks from today.

.....**J.**
[SUDHANSHU DHULIA]

.....**J.**
[PRASANNA B. VARALE]

NEW DELHI;
APRIL 10, 2024.