Bhimanna vs State Of Karnataka on 4 September, 2012

Equivalent citations: AIR 2012 SUPREME COURT 3026, 2012 (9) SCC 650, 2013 AIR SCW 498, 2013 (1) AIR KANT HCR 746, 2013 CALCRILR 1 25, (2013) 3 KANT LJ 323, 2012 (3) SCC (CRI) 1210, 2012 (8) SCALE 457, (2012) 4 ALLCRILR 826, (2012) 3 CHANDCRIC 305, (2012) 3 ALLCRIR 3315, (2012) 3 UC 1758, (2013) 2 RECCRIR 533, (2012) 4 RAJ LW 3514, (2012) 8 SCALE 457, (2012) 4 CURCRIR 48, (2012) 4 CRIMES 69, (2012) 53 OCR 623

Author: B.S. Chauhan

Bench: P. Sathasivam, B.S. Chauhan

REPORTABLE

IN THE SUPREME COURT OF INDIA

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO. 46 OF 2005

Bhimanna
..Appellant

Versus

State of Karnataka
… Respondent

WITH

CRIMINAL APPEAL NO. 171 OF 2005

J U D G M E N T

DR. B.S. CHAUHAN, J.

1. Both these appeals have been filed against the impugned judgment and order dated 31st March, 2004 passed by the High Court of Karnataka at Bangalore, dismissing the Criminal Appeal No. 839 of 2001 and allowing Criminal Appeal No. 1132 of 2001, filed by the State. The High Court has dismissed the appeal of appellant Bhimanna, against the order of conviction under Section 302 by the trial court, but allowed the appeal of the State against the appellants in Criminal Appeal No. 171 of 2005 herein, reversing the judgment of the trial court, acquitting them of the charge under Section 302 of the Indian Penal Code, 1860 (hereinafter called 'IPC') and awarding them life imprisonment.

2. Facts and circumstances giving rise to these appeals are as follows :– A. As per the case of the prosecution, Yenkappa (A-1), appellant in Criminal Appeal No. 171 of 2005 is the father of Bhimanna (A-2), who is the appellant in Criminal Appeal No. 46 of 2005, and Suganna (A-

3), is the nephew of Yenkappa (A-1). Deceased Bheemanna was the nephew of Yenkappa(A-1). Yenkappa(A-1) owns land adjacent to the land of the deceased Bheemanna in revenue estate of village Buddinni, Police Station Ramdurga, in the district of Raichur. There was a dispute between Yenkappa and the deceased over the land of the deceased as, deceased refused to give him right of passage through his land. Thus, a Panchayat was convened in the village, wherein it was decided that neither of the parties will enter the others' land, to use the same as a pathway.

B. On 17.11.1999 at about 4.00 p.m., Yenkappa(A-1), alongwith Bhimanna (A-2) and Suganna (A-3), was returning home with agricultural implements i.e. axes and a plough. They attempted to use the land of the deceased as a pathway. The deceased Bheemanna, who was present on his land alongwith his wife Paddamma (PW.1) and mother, namely, Bheemava, obstructed the accused persons asking them not to pass through his land. Yenkappa(A-1) then started hurling abuses in filthy language and instigated Bhimanna (A-2) and Suganna (A-3) to assault the deceased. Thus, Bhimanna (A-2) and Suganna (A-3) began assaulting the deceased with axes over his head and right hand. Yenkappa (A-1) assaulted the deceased with "Meli" (Wooden part of a plough). Paddamma (PW.1) and Bheemava, mother of the deceased went to save the deceased, but they too, were threatened with assault. Similar threats were hurled when Rangayya (PW.6), nephew of the deceased and his father Hanumappa approached the place of occurrence. The accused persons left the place after assaulting the deceased, throwing away the axes and wooden part of the plough. Rangayya (PW.6) brought a bullock cart as asked by Paddamma (PW.1) from the village and the deceased was then taken to Ramdurga Police Station. Upon the advice of the police, the deceased was taken in a mini lorry, driven by Mahadevappa (PW.10) to Deodurga Hospital and when they reached there at 8.00 p.m., the doctor declared Bheemanna dead. On the basis of the complaint submitted by Paddamma (PW.1), an FIR was lodged at 8.15 p.m. under Sections 143, 147, 148, 302, 323 and 504 read with Section 149 IPC. Investigation was initiated by Rajashekhar (PW.14), Circle Inspector.

C. The inquest was conducted over the dead body of the deceased Bheemanna in the presence of Panchas, including Basawarajaiah (PW.2). The post-mortem was conducted by Dr. Patil Prabhakar (PW.12). The investigating officer recovered the axes and the wooden part of the plough used in the crime and sent the same for FSL examination and, subsequently, the three appellants were also

arrested. After completion of the investigation, charge-sheet was filed against the appellants for the offences punishable under Sections 447, 504, 302 read with Section 34 IPC.

D. Upon conclusion of the trial in Sessions Case No. 40 of 2000, the learned Sessions Judge vide judgment and order dated 19.6.2001, convicted Bhimanna (A-2) for the offences punishable under Sections 447, 504, 302 read with Section 34 IPC and awarded him life imprisonment with a fine of Rs.2,000/-. So far as Yenkappa (A-1) and Suganna (A-3) are concerned, they were only convicted under Sections 447, 504 read with Section 34 IPC.

E. Being aggrieved, Bhimanna (A-2) preferred Criminal Appeal No. 839 of 2001 and the State of Karnataka filed Criminal Appeal No. 1132 of 2001 against the accused Yenkappa (A-1) and Suganna (A-3). The High Court has dismissed the appeal of Bhimanna (A-2) and allowed the appeal of the State convicting Yenkappa (A-1) and Suganna (A-3) also under Section 302 IPC.

Hence, these appeals.

3. Shri Basava Prabhu S. Patil, learned senior counsel appearing for the appellants, has submitted that Bhimanna (A-2) was wrongly convicted by the courts below under Section 302 read with Section 34 IPC, as the prosecution failed to explain adequately the genesis of the case. The deceased Bheemanna had no land in close proximity to the land of A-2. Therefore, the question of any dispute could not arise. The same was proved by way of cogent evidence and the courts below failed to appreciate the same in the correct perspective. The presence of witnesses, particularly Paddamma (PW.1) and Rangayya (PW.6), is doubtful, for the reason that Paddamma (PW.1) had given birth to a girl child only one month before the date of such incident, and it was thus highly unlikely, that in such a physical condition, she would be able to do any agricultural work. Bheemava, mother of the deceased, was in fact present at the place of occurrence, and has not been examined by the prosecution. Thus, the prosecution is guilty of withholding a material witness. Rangayya (PW.6) could not have been present there for the reason that he did not have land in close proximity to the place of occurrence. More so, it was not a pre- determined assault and the incident clearly occurred in the spur of the moment. The weapons used in the crime were basically agricultural implements with which the appellants had been working in their fields. The High Court reversed the judgment of the trial court so far as the acquittal of Yenkappa (A-1) and Suganna (A-3) is concerned, without applying the parameters laid down in this regard, by this Court. The High court erred in convicting A-1 and A-3 for the offences punishable under Section 302 IPC, as there is no evidence available to show, that all the accused acted in furtherance of common intention. Thus, conviction of either of the appellants under Section 302 IPC is not justified and the appeals deserve to be allowed.

4. On the contrary, Shri V.N. Raghupathy, learned standing counsel appearing for the State has opposed the appeals, contending that no fault can be found with the judgment of the High Court. After re- appreciation of the evidence on record, the High Court reached the correct conclusion that all three appellants were responsible for the homicidal death of Bheemanna. The deceased suffered 12 injuries. In the opinion of the Dr. Patil Prabhakar (PW.12), injury nos. 1 and 12 could have been caused by Bhimanna (A-2), and thus, as a natural corollary, injury nos. 2 to 11 would have been caused by Yenkappa (A-

1) and Suganna (A-3). Thus, not convicting them for the said injuries and restricting their conviction under Sections 447 and 504 read with Section 34 IPC cannot be justified. The trial Court's decision cannot be justified in regard to the fact that charges were not framed against A-1 and A-3 by it, for any other offence owing to the fact that, the same was not provided for by the Investigating Officer in the charge sheet filed by him. The High Court has rightly convicted Yenkappa (A-1) and Suganna (A-3) for the offences punishable under Section 302/34 IPC. The appeals lack merit and are liable to be dismissed.

5. We have considered the rival submissions made by the learned counsel for the parties and perused the records.

6. At the time of autopsy, the following injuries were found on the body of the deceased Bheemanna:

> ?1. Incised wound of size 3" X 0.75" X brain deep situated in the middle of the head. Edges everted, blood clots and brain matter present. Underlying fracture of skull bone seen and felt.
>
> 2. Incised wound transversely situated in the dorsum of the fore arm 2.5" above the right wrist joint, size 3" X 0.5" X muscle deep. Clots present, edges everted and clear out.
>
> 3. Lacerated wound of size 1" X 0.5" X muscle deep situated in the temporo-maxillary area in left side. Clots present.
>
> 4. Lacerated wound of size 1" X 0.5 X muscle deep behind the pinna of left ear. Clots present.
>
> 5. Contusion of size 5" x 1" situated in the left side of the arm directed above downwards from shoulder.
>
> 6. Contusion of size 3" X 1" in the left shoulder obliquely above downwards.
>
> 7. Lacerated wound of size 3" X 0.5" X muscle deep situated in the anterior aspect of the fore arm in the middle.
>
> 8. Lacerated wound in the middle of the right leg anteriorly size 1" X 0.5" X muscle deep clots present.
>
> 9. Contusion in the left side of the back obliquely in the middle size 3" X 2".
>
> 10. Contusion in the right side of the flank side of the chest size 3" X 0.5".
>
> 11. Lacerated wound in the medial aspect of the right knee size, 2" X 0.5" X muscle deep. Clots present.

12. Contusion in the left-side of the chest in the lower end, size 3" X 0.5".

Upon dissection, Dr. Patil Prabhakar (PW.12) noticed the following internal injuries.

1. Fracture of front parietal bone in the middle of the head, size 1" X 0.25" X brain deep, brain matter visible and silted out. Fracture underneath, brain lacerated, size 1" X 0.5" X 0.5".

2. Fracture of thorasic rib 9the and 10 ribs anteriorly in the middle. Laceration of lower lobe of lung, size 1.5" X 0.5"

Blood present in the thorax about 200 ML.

7. So far as the injuries are concerned, Dr. Patil Prabhakar (PW.12) has clarified in his cross-examination that the injury Nos. 1 and 12 were grievous in nature and were actually responsible for the death of the deceased Bheemanna. Lacerated injuries were 5 in number, though the same were simple in nature and they could not have been caused by the blunt portion of an axe or by using a stick.

8. Paddamma (PW.1) deposed that her husband owned land, adjacent to the land of A-2. There was some dispute regarding the pathway between them. A Panchayat was convened to resolve the dispute, and the parties were restrained from using the others' land as passageway. She stated that she was working in the field alongwith her husband and mother-in-law on 17.11.1999. At about 4.00 p.m., the accused persons, while going to the village, after finishing their work in the adjacent field, wanted to pass through her land. Her husband raised an objection. Yenkappa (A-1) then started abusing the deceased and instigated the other accused persons to assault him. The appellants used axes, and the wooden part of a plough to injure her husband. Her husband, as a result, fell down. When she tried to save him, she too, was threatened by the appellants. Once her husband had fallen, the accused, however, stopped the assault. (A-2) threw down the "Meli" there and the accused left the place saying that the victim had fallen. Rangayya (PW.6), who came to the said place, was asked to bring a bullock cart from the village, in which they then took the deceased to the police station. Upon the advice of the police the deceased was taken to the hospital, where he was declared dead. She has also admitted in her cross-examination that the place of occurrence was about 1 km. away from her house and that she had given birth to a girl child one month prior to the date of occurrence of such incident. Her mother-in-law, who was also present at the place of occurrence was suffering from weak eye-sight, and no longer had good vision as a result of old age.

9. Rangayya, in turn, (PW.6), deposed that he was the cousin of the deceased and was working in his field. There was a dispute between the appellants and the deceased with respect to using the land of the deceased, as passage. He witnessed the appellants causing injuries to the deceased and he corroborated the version of events as given by Paddamma (PW.1). In his cross-examination, it was also stated by

Rangayya (PW.6) that the accused persons had filed a case against the deceased in court with respect to the aforementioned land dispute.

10. Venkat Rao (PW.8), Junior Engineer of PWD, after inspection and examination of the revenue record, prepared a site plan for the area, showing that the lands of the deceased and the appellants were, in fact, in close proximity to each other and were merely demarcated by a bund.

11. The trial Court after appreciating the evidence on record, came to the conclusion that all three accused (A-1 to A-3) did not act in furtherance of any common intention. Bhimanna (A-2) was solely responsible for the death of the deceased. Therefore, Bhimanna (A-2) alone could be convicted under Section 302 IPC and further under Sections 447and 504 read with Section 34 IPC. However, Yenkappa (A-1) and Suganna (A-3) acted without sharing any common intention with Bhimanna (A-2). Thus, they could not be convicted under Section 302 IPC and could be convicted only under Sections 447 and 504 read with Section 34 IPC. The court further held that Yenkappa (A-1) and Suganna (A-3) could also be convicted for the offence of causing injury Nos. 2 to 11, but no charge had been framed under any of the Sections 323, 324, 325, 326 and 327 IPC in this regard. Therefore, no punishment could be awarded to them for the same. The trial Court held as under:

"The prosecution has proved the charge under Section 302 read with Section 34 IPC only against Bhimanna and further the other charges under Sections 447 and 504 read with Section 34 IPC are proved against Yenkappa (A-1) and Suganna (A-3). Even though this court has accepted that A-1 and A-3 have also assaulted by Mos. 1 to 3 respectively, on the deceased, but those assaults are not the direct result of death of the deceased Bheemanna. Moreover, in the charge- sheet, there is no incoporation of charges such as Sec. 323, 324, 325, 326 or 327 of IPC against these accused. Hence, in the absence of such specific charge regarding causing bleeding injuries by deadly weapons, by these A-1 and A-3, this court is unable to convict them under any such charge, which is admittedly not incorporated in the charge-sheet and also not framed against them by this court." (Emphasis added)

12. The High Court, without reversing the finding recorded by the trial court, that there was no meeting of minds of all the accused with respect to causing such grievous injuries to the deceased, held that, as Yenkappa (A-1) and Suganna (A-3) had also been charged under Section 302/34 IPC, they too, could be convicted under Section 302 IPC and hence allowed the State appeal convicting them also under Section 302/34 IPC. The High Court held as under:

"In view of the above, we are of the clear view that the trial court though rightly held that all the accused had committed the offences punishable under Sections 447 and 504 read with Section 34 of IPC and A-2 has committed the offence punishable under Section 302 of IPC, it has erroneously held that A-1 and A-3 cannot be held guilty for

> the offence of murder punishable under Section 302 of IPC, even though, Section 34 of IPC was invoked by the prosecution. So, we do not agree with the observations made in Para Nos. 36 to 39 of the impugned judgment and conclusion arrived at by the trial court so far as AI and A3 are concerned with regard to their guilt for the offence under Section 302 read with Section 34 of IPC.
>
> In the result and for the foregoing reasons, Criminal Appeal No. 839/2001 filed by A-2 is dismissed whereas, Criminal Appeal No. 1132/2001 filed by the State is allowed and Accused No. 1 and 3 are held guilty for the offence punishable under section 302 read with 34 of IPC also and accordingly convicted and sentenced to undergo imprisonment for life like that of A-2." (Emphasis added)
>
> 13. Thus, it is evident that both the courts below after appreciating the evidence available on record, came to a conclusion regarding the participation of all three appellants. The trial court could convict Yenkappa (A-1) and Suganna (A-3), only for the offences punishable under Sections 447 and 504 IPC, for want of framing of charges under any other section of IPC.
>
> 14. It is a matter of great regret that the trial court did not proceed with the case in the correct manner. If the trial Court was of the view that there was sufficient evidence on record against Yenkappa (A-1) and Suganna (A-3), which would make them liable for conviction and punishment for offences, other than those under Sections 447 and 504/34 IPC, the court was certainly not helpless to alter/add the requisite charges, at any stage prior to the conclusion of the trial.

Section 216 of the Code of Criminal Procedure, 1973 (hereinafter called 'Cr.P.C.') empowers the trial Court to alter/add charge(s), at any stage before the conclusion of the trial. However, law requires that, in case such alteration/addition of charges causes any prejudice, in any way to the accused, there must be a fresh trial on the said altered/new charges, and for this purpose, the prosecution may also be given an opportunity to recall witnesses as required under Section 217 Cr.P.C.

15. In Hasanbhai Valibhai Qureshi v. State of Gujarat, AIR 2004 SC 2078, this Court held:

> "Therefore, if during trial the Trial Court, on a consideration of broad probabilities of the case, based upon total effect of the evidence and documents produced is satisfied that any addition or alteration of the charge is necessary, it is free to do so, and there can be no legal bar to appropriately act as the exigencies of the case warrant or necessitate."

16. Such power empowering alteration/addition of charge(s), can also be exercised by the appellate court, in exercise of its powers under Sections 385(2) and 386 Cr.P.C.

In Kantilal Chandulal Mehta v. State of Maharashtra & Anr., AIR 1970 SC 359, this Court while dealing with the power of the appellate Court under the earlier Code held:

> "The power of the Appellate Court is set out in Section 423 of the Cr.P.C and invests it with very wide powers. A particular reference may be made to Clause(d) of sub-section (1), as empowering it even to make any amendment or any consequential or incidental Order that may be just or proper. Apart from this power of the Appellate Court to alter or amend the charge, Section 535 Cr.P.C, further provides that, no finding or sentence, pronounced or passed shall be deemed to be invalid merely on the ground that no charge has been framed unless the Court of Appeal or revision thinks that the omission to do so, has occasioned failure of justice, and if in the opinion of any of these courts a failure of justice has been occasioned by an omission to frame a charge, it shall order a charge to be framed and direct that the trial be recommenced from the point immediately after the framing of the charge."

17. Thus, we are of the considered opinion that the trial court committed a grave error in acquitting Yenkappa (A-1) and Suganna (A-3) for the offence of causing injuries to the deceased, in spite of there being sufficient evidence on record against them in this respect, simply for the reason that the police did not file a charge-sheet in relation to such offences committed by them. Thus, the trial court should have altered/added the requisite charge(s) and proceeded with the case in accordance with law.

18. In such a fact-situation, a question also arises as to whether a conviction under any other provision, for which a charge has not been framed, is sustainable in law. The issue is no longer res integra and has been considered by the Court time and again. The accused must always be made aware of the case against them so as to enable them to understand the defence that they can lead. An accused can be convicted for an offence which is minor than the one, he has been charged with, unless the accused satisfies the Court that there has been a failure of justice by the non-framing of a charge under a particular penal provision, and some prejudice has been caused to the accused. (Vide :

> Amar Singh v. State of Haryana, AIR 1973 SC 2221).
>
> Further the defect must be so serious that it cannot be covered under Sections 464/465 Cr.P.C., which provide that, an order of sentence or conviction shall not be deemed to be invalid only on the ground that no charge was framed, or that there was some irregularity or omission or misjoinder of charges, unless the court comes to the conclusion that there was also, as a consequence, a failure of justice. In determining whether any error, omission or irregularity in framing the charges, has led to a failure of justice, this Court must have regard to whether an objection could have been raised at an earlier stage, during the proceedings or not. While judging the question of prejudice or guilt, the court must bear in mind that every accused has a right to a fair trial, where he is aware of what he is being tried for and where the facts sought to be established against him, are explained to him fairly and clearly, and further, where he is given a full and fair chance to defend himself against the said charge(s).

19. This Court in Sanichar Sahni v. State of Bihar, AIR 2010 SC 3786, while considering the issue placed reliance upon various judgments of this Court particularly in Topandas v. State of Bombay, AIR 1956 SC 33; Willie (William) Slaney v. State of M.P., AIR 1956 SC 116; Fakhruddin v. State of Madhya Pradesh, AIR 1967 SC 1326; State of A.P. v. Thakkidiram Reddy, AIR 1998 SC 2702; Ramji Singh & Anr. v. State of Bihar, AIR 2001 SC 3853; and Gurpreet Singh v. State of Punjab, AIR 2006 SC 191, and came to the following conclusion :

> "Therefore,..... unless the convict is able to establish that defect in framing the charges has caused real prejudice to him and that he was not informed as to what was the real case against him and that he could not defend himself properly, no interference is required on mere technicalities. Conviction order in fact is to be tested on the touchstone of prejudice theory." A similar view has been reiterated in Abdul Sayeed v. State of Madhya Pradesh, (2010) 10 SCC 259.

20. In Shamnsaheb M. Multtani v. State of Karnataka, AIR 2001 SC 921, this Court explained the meaning of the phrase 'failure of justice' observing that the superior court must examine whether the issue raised regarding failure of justice is really a failure of justice or whether it is only a camouflage. The court must further examine whether the said aspect is of such a nature, that non-explanation of it has contributed to penalising an individual, and if the same is true then the court may say, that since he was not given an opportunity to explain such aspect, there was 'failure of justice' on account of non compliance with the principles of natural justice. The expression 'failure of justice' is an extremely pliable or facile an expression which can be made to fit into any situation of a case.

21. The court must endeavour to find the truth. There would be 'failure of justice' not only by unjust conviction but also by acquittal of the guilty, as a result of unjust failure to produce requisite evidence. Of course, the rights of the accused have to be kept in mind and safeguarded but they should not be over emphasised to the extent of forgetting that the victims also have rights. It has to be shown that the accused has suffered some disability or detriment in the protections available to him under Indian Criminal Jurisprudence. 'Prejudice', is incapable of being interpreted in its generic sense and applied to criminal jurisprudence. The plea of prejudice has to be in relation to investigation or trial and not matters falling beyond their scope. Once the accused is able to show that there has been serious prejudice caused to him with respect to either of these aspects, and that the same has defeated the rights available to him under jurisprudence, then the accused can seek benefit under the orders of the Court. (Vide: Nageshwar Sh. Krishna Ghobe v. State of Maharashtra, AIR 1973 SC 165; State by Police Inspector v. T. Venkatesh Murthy, AIR 2004 SC 5117; Rafiq Ahmed @ Rafi v. State of U.P., AIR 2011 SC 3114; and Rattiram & Ors. v. State of M.P. through Inspector of Police, AIR 2012 SC 1485).

22. The instant case is required to be examined in the light of the aforesaid settled legal propositions.

The trial court has framed charges against all the appellants under Sections 447 and 504 and Section 302 read with Section 34 IPC and the points to be determined were also framed by the trial

court as under:

> i) Whether the accused on account of their enmity with the deceased, trespassed on to his land with common object, and committed the offence under Section 447 read with Section 34 IPC.
>
> ii) Whether the accused on the said date, time and place, intentionally insulted the deceased by abusing him and thereby deliberately provoked him, knowing that it would cause him to break public peace, and therefore, committed the offence under Section 504 read with Section 34 IPC.
>
> iii) Whether the prosecution proved that the accused on the said date, time and place after trespassing on to the land of the deceased picked a quarrel with him due to earlier enmity, and assaulted him thereby committing the said murder under Section 302 read with Section 34 IPC.

iv) Whether the prosecution proved that the accused have committed the offence under Sections 447, 504 and 302 read with Section 34 IPC with common object beyond all reasonable doubt.

23. The trial court came to the conclusion that there was no meeting of minds and all three appellants did not act in furtherance of any common intention. Therefore, Yenkappa (A-1) and Suganna (A-3) could not be convicted under Section 302 read with Section 34 IPC and they were convicted only under Sections 447 and 504 IPC and sentences were awarded to them setting off the period spent by them in custody during trial. The trial court was patently in error in holding that, in spite of the fact that two accused were clearly responsible for causing injury Nos. 2 to 11, they still could not be convicted for any offence for want of framing of charges under any other penal provision. In such an event, the trial court would be justified in altering/adding the requisite charge(s) or even without such alteration/addition, punishing them for the said offences, considering the intensity of the injuries as the same could be an offence minor than the offence punishable under Section 302 IPC.

24. The High Court came to the conclusion that, as the charge under Section 302/34 was also framed against Yenkappa (A-1) and Suganna (A-

3), they too, were liable to be convicted under Section 302. Such a conclusion is not justified, as the High Court has not reversed the finding recorded by the trial court that all three accused did not act in furtherance of any common intention.

25. We have examined the number and intensity of the injuries and the role played by each of the appellants. There is ample evidence on record particularly the deposition of Paddamma (PW.1), wife of the deceased to show that when her husband fell down after receiving the said injuries, the accused stopped the assault. Bhimanna (A-2) threw down the “Meli” and all the accused left the place of occurrence saying that the victim had fallen. This clearly establishes that the appellants did not intend to kill the deceased and it all happened in the spur of the moment upon a heated

exchange of words between the parties, after criminal trespass by the appellants on to the land of the deceased. Therefore, it does not seem to be a pre-determined or pre-meditated case. Ends of justice would, therefore, be met, if all the three appellants are convicted under Section 304 Part-I read with Section 34 IPC and sentences are awarded accordingly. As a result, all the appellants are convicted under Sections 447, 504 and 304 Part-I read with Section 34 IPC.

Bhimanna (A-2) has already served more than 13½ years in jail. Therefore, he is awarded sentence as already undergone and it is directed that he be released forthwith, unless wanted in some other case. Yenkappa (A-1) and Suganna (A-3) are awarded a sentence of 10 years RI. All of them have already served the sentences awarded for the offences punishable under Sections 447, 504/34 IPC.

Learned counsel for the appellants has pointed out that Yenkappa (A-1) and Suganna (A-3) have already served near about 10 years. They be released from jail after serving the sentence of 10 years, if not already served and are not wanted in some other case.

In view of the above, both the appeals stand disposed of.

.....J. (P. SATHASIVAM) .....J. (Dr. B.S. CHAUHAN) New Delhi, September 4, 2012