

## **Haramant Laxmappa Kukkadi And Ors. vs State Of Karnataka on 21 September, 1993**

**Equivalent citations: AIR 1994 SC 1546, 1994 CRILJ 1422, 1993(3)CRIMES459(SC), JT1993(5)SC381, 1993(3)SCALE820, (1994)1SCC736, AIR 1994 SUPREME COURT 1546, 1994 (1) SCC 736, 1994 AIR SCW 1163, 1994 SCC(CRI) 326, (1993) 5 JT 381 (SC), 1993 (5) JT 381, (1994) SC CR R 102, (1993) 3 CRIMES 459, (1993) 3 RECCRIR 621, (1994) 2 CHANDCRIC 41, (1994) ALLCRIC 11, (1994) MAD LJ(CRI) 720, (1993) 4 CURCRIR 364, (1994) 1 CRICJ 20, (1993) 3 ALLCRILR 369**

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**Bench: G.N. Ray**

JUDGMENT

K. Jayachandra Reddy, J.

1. These two appeals are filed under Section 379 Cr. P.G. read with Section 2 of the Supreme Court (Enlargement of Criminal Appellate Jurisdiction) Act. There are 11 appellants in Criminal Appeal No. 236/82 and they figured as original Accused Nos. 1,2,3,5,7,8,9,14,16,18 and 19 and original Accused Nos. 10,12 and 20 are the appellants in Criminal Appeal No. 237/82. They alongwith nine others were tried for offences punishable under Sections 148, 302/149 and also under Sections 323, 324 and 326 read with 149 I.P.C. The trial court convicted A-11 Venkappa Bhagavanthappa under Section 302 I.P.C. and sentenced him to undergo imprisonment for life and acquitted the rest. A-11 preferred an appeal against his conviction and the State of Karnataka also filed an appeal against the acquittal of the 19 other accused. The High Court dismissed the appeal filed by A-11 and he has not preferred any appeal in this Court. In respect of acquittal of other accused, the High Court, however, set aside the acquittal of the appellants and convicted them for the offences for which they were charged and sentenced them to undergo imprisonment for life and also various terms of imprisonment for the lesser offences. The sentences were directed to run concurrently. The acquittal of the remaining accused were confirmed by the High Court. Hence the present two appeals.

2. The prosecution case is as follows.

3. Chilmur is a small Village predominantly inhabited by shepherds. A-1 to A-20 being the residents of the said Village belong to shepherds community and are related among themselves. A-1, A-18 and

A-19 are brothers. A-17 is their elder sister and she was married to one Bhimangoudo Patil and she was desented. She came back to her parental house and was residing with her brothers. P.Ws 3,6,7,8,11 and 12 are brothers. P.W. 2 is their sister. She was married to one Fakirappa. The deceased Yallappa was the cousin brother of P.W. 6 and also the brother of A-2 and A-6. He got separated from them and was living separately. Another deceased Pandappa was only a child of one year and was the younger son of P.W. 3. Though the accused and these P.Ws are related, they were not on cordial terms. There used to be quarrels. On 23.6.79 there was such a quarrel. A-2, A-3, A-5 and A-11 allegedly assaulted P.W. 16 and a complaint was given and some of the P.Ws figured as witnesses in that case. There was another complaint against A-2 and others and the allegation was that they committed trespass and hurt. In that P.Ws 3, 8 and the deceased Yallappa figured as eye-witnesses. A-5 filed a complaint against P.Ws 8, 18 and some others. In that A-2 and A-9 figured as witnesses. The said complaint was referred to the police for investigation. On 14.7.79, P.W. 16 accompanied by P.Ws 3 and 8 went to the police station which is about six miles away and after sunset on that day P.W. 2 was preparing jawar breads and her daughter Yallappa was asked by her to get up and see as there was "danger of wolves". A-17 heard this and thought that P.W. 2 is indirectly calling her a wolf and there was a quarrel and there was exchange of abuses. A-17 dragged out P.W. 2 and pulled her saree. This was reported to P.W. 8 and others. Thereafter it is the prosecution case that A-1 to A-20 armed with sickles and sticks etc. went towards the temple shouting. Seeing them so coming, P.W. 8 followed by P.W. 4 went forward and asked them not to make galata. The accused started beating everyone who came in front of them. While A-2 and A-5 beat P.W. 8 with sticks, A-11 cut on P.W. 4 with an axe on the left side of the neck but it missed and the blow landed on the child Pandappa whom she was carrying and who was asleep resting his head on her shoulder. As the blow fell on the center of the head of the child, he died immediately. Hearing the galata, P.W. 5 came out of the house and received injuries at the hands of A-13. A-18 and A-19 cut on P.W. 9 with axe and sickle. P.W. 9 received severe injuries. In the meanwhile A-1 and A-3 assaulted the deceased Yallappa with sticks. A-10 cut him with axe on his hand and the deceased fell down. A-8 also cut P.W. 6 with a sickle. A-12 beat with a stick on the back of P.W. 7; A-13 hurled a stone at him. A-20 also assaulted P.W. 11 on his back with a stick. A-14 and A-20 also assaulted P.W. 11. Soon after the deceased Yallappa fell down, all the accused left the place. The deceased Yallappa and P.W. 9 who had sustained severe injuries were lying at the place of incident and they were taken to the katta. P.W. 16 went to the place of incident and he wanted to remove the injured immediately and tried to arrange a taxi to take them to the hospital. P.W. 19 who was contacted by P.W. 16 rang up the Police Station at Ramdurg. P.W. 27, the Police Sub-Inspector, went in a taxi to Chilmur reaching there at about 11 P.M. and he arranged to send the injured Yallappa and P.W. 9. They were taken to a hospital at Hubli. The Police Sub-Inspector recorded the complaint Ex.P. 7 from P.W.S and sent the same for registration of the crime. The other injured persons were also sent for medical examination. P.W. 28, Circle Inspector took over the investigation. Inquest was held on the dead body of the child. Meanwhile Yallappa was examined by the Doctor, P.W. 10, who admitted him. He noticed two lacerated wounds on him. Yallappa died two days later and the post mortem was conducted by another Doctor, P.W. 13 who found two stitched wounds and some abrasions and on dissection, he found two internal injuries; i) the entire scalp layer was contused and ii) Depressed comminuted fracture with radiating fissured fractures over the right parietal bone and right occipital, right temporal, left parietal and left side of the frontal bones. He found that brain showed large extradural blood clot. He also found that 2nd, 3rd, 5th and 6th ribs on the right side were

fractured. He opined that injuries Nos. 1 and 2 were caused as a result of two different blows and the third injury was due to a fall on rough surface. The accused were arrested and after completion of the investigation, the charge-sheet was laid. The accused pleaded not guilty.

4. The learned Sessions Judge concluded that the child Pandappa and Yallappa, the two deceased met with homicidal death. He also held that P.Ws 3,4,6,7,8,9 and 11 sustained injuries. He, however, doubted the ability of the witnesses to identify the accused as the occurrence took place during darkness and that since the witnesses were interested, their evidence did not inspire confidence and accordingly acquitted the accused except A-11. He, however, held A-11 guilty for causing the death of the child. The High Court, while reversing the order of acquittal, held that the learned Sessions Judge grossly erred in rejecting the evidence of the injured eye-witnesses merely on the ground that they are interested and that they could not have identified the accused.

5. We have gone through the judgment of the Sessions Court and the reasons given by him are absolutely unsound and the view taken by him is unreasonable. P.Ws 3 to 9 and 11 were injured and their presence at the scene of occurrence can not be doubted. P.W. 9, among them received fairly serious injuries. All the particulars are mentioned in the FIR. The injuries on these witnesses as well as on the two deceased persons would go to show that quite a number of accused persons participated in the attack. In addition to that circumstantial evidence namely the observation report of the scene of occurrence and recoveries also corroborate the evidence of the injured eye-witnesses. We have gone through the evidence of each of these injured witnesses. They have given the details of the occurrence and also clearly named the assailants. The High Court has convicted mostly such of those accused to whom specific overt acts were attributed and to that extent corroborated by the medical evidence. Therefore there is overwhelming evidence establishing the participation of these accused who are figuring as appellants before us.

6. The next and most important question is whether the common object of the unlawful assembly was to commit murder and whether by applying Section 149 all of them can be convicted under Sections 302/149 I.P.C The prosecution case is that one year's old child accidentally received the injury on the head caused by A-11. From the said attack on this child, it cannot be inferred that the common object of the unlawful assembly was to commit murder. Then we are left with the death of Yallappa. Though some of the accused were armed with axes and other cutting weapons, but they did not inflict even a single injury on the deceased. Yallappa was admitted into the hospital and P.W. 10 who examined him found the following injuries:

1. Lacerated wound of 3-1/2" x 3/4" over the vertex. Blood clots present.
2. Lacerated wound 4" x 3/4" situated obliquely over the left parietal region 3-1/2" above the left ear.

P.W. 10 did not find any other injury. As a matter of fact he clarified it in cross-examination by stiling that these are the only two injuries which he noticed. He also opined that these injuries could have been caused only by a blunt weapon. As already noted, Yallappa died two days later and P.W. 13, who conducted the postmortem, also found that the two injuries were on the head resulting in

fissured fracture of the skull. He, however, noticed on internal examination fracture of some ribs for which there were no corresponding external injuries. He opined that it could be due to a fall or some pressure being applied. The evidence of the direct witnesses is to the effect that A-1, A-3 and A-10 beat the deceased with sticks. But the Doctor found only two injuries on the head and Yallappa died two days later. If really the common object of the unlawful assembly was to commit murder, one would naturally expect such of those accused who were armed with deadly weapons to use them. The nature of the two lacerated injuries found also would show that the assailants did not use much force or cause much violence. As a matter of fact, a number of injuries were found on the eye-witnesses but on deceased Yallappa on whom there were only two lacerated wounds. The common object of the unlawful assembly has to be inferred from the membership, the weapons used and the nature of the injuries as well as other surrounding circumstances.

7. Shri Javali, learned senior counsel appearing for the State submitted that all the accused went in a body and attacked. Therefore every one of them would constructively be liable by virtue of application of Section 149 I.P.C. Going in a body cannot be a decisive factor in inferring the common object. Many other factors, as mentioned above, have to be taken into consideration. In a given case, the prosecution has to prove that the person concerned was not only a member of the unlawful assembly at some stage but also shared the common object of the unlawful assembly at all the crucial stages. Having given our earnest consideration, we think it is highly unsafe to convict all the appellants under Sections 302/149 I.P.C. Taking the medical evidence into consideration and the nature of the weapons used on the deceased Yallappa, we are of the view that the common object of the unlawful assembly was to cause grievous hurt. Accordingly we set aside the conviction of the appellants under Sections 302/149 I.P.C. and sentence of imprisonment of life awarded thereunder. Instead we convict them under Sections 326/149 I.P.C. and sentence each of them to undergo seven years R.I. The other convictions and sentences awarded by the High Court are confirmed. The sentences shall run concurrently. If the accused are on bail, they shall surrender to serve out the remaining period of the sentence. Subject to the modification of sentence, both the appeals are dismissed.