

Supreme Court of India

Yallappa vs State Of Karnataka on 14 December, 1993

Equivalent citations: 1994 SCC (1) 730, JT 1994 (1) 5

Author: G Ray

Bench: Ray, G.N. (J)

PETITIONER:

YALLAPPA

Vs.

RESPONDENT:

STATE OF KARNATAKA

DATE OF JUDGMENT 14/12/1993

BENCH:

RAY, G.N. (J)

BENCH:

RAY, G.N. (J)

REDDY, K. JAYACHANDRA (J)

CITATION:

1994 SCC (1) 730 JT 1994 (1) 5

1994 SCALE (1) 9

ACT:

HEADNOTE:

JUDGMENT:

The Judgment of the Court was delivered by G.N. RAY, J.- This appeal is directed against the judgment passed by the Division Bench of the Karnataka High Court on August 14, 1981 in Criminal Appeal No. 599 of 1980, thereby allowing the appeal so far as accused 7, 11 and 13 were concerned, and partly allowing the appeal preferred by accused 1, 2, 3 and 5 against the order of conviction and sentence passed by the learned Sessions Judge, Belgaum, in Sessions case No. 40 of 1980. Accused 1 to 13 had faced the trial by the Sessions Judge, Belgaum, in Sessions Case No. 40 of 1980 for the offences under Sections 143, 147, 148, and under Section 302 read with Section 34 IPC. Accused I was also tried for offence under Section 30 of the Arms Act. The learned Sessions Judge by the aforesaid order dated September 25, 1980 acquitted accused 4, 6, 8, 9, 15 and 12 but convicted accused 1, 2, 3, 5, 7, 11 and 13 under Sections 143, 147 and 148 IPC and sentenced to six months' rigorous imprisonment for the said offences. He also convicted all the said accused persons under Section 302 read with Section 149 IPC for murder of Lakshmappa and were sentenced to suffer imprisonment for life. They were further convicted under Section 324 read with Section 149 IPC and

were sentenced to imprisonment for six months. Accused I was further sentenced to imprisonment for three months for the offence under Section 30 of the Arms Act. It was directed that all the sentences should run concurrently. Against such conviction and sentence of the said accused persons, they preferred an appeal against the Division Bench of the Karnataka High Court being Criminal Appeal No. 599 of 1980. The State of Karnataka also preferred an appeal being Criminal Appeal No. 189 of 1981 before the Karnataka High Court against the acquittal of accused 4, 6, 8, 9, 10 and

12. Both the said two appeals were disposed of by the Karnataka High Court by the judgment dated August 14, 1981 and the appeal preferred by the State being Criminal Appeal No. 189 of 1989 against the acquittal was dismissed by the High Court but the Criminal Appeal No. 599 of 1980 preferred by the convicted accused persons was allowed so far as accused 7, 11 and 13 were concerned and they were acquitted of all the charges. The conviction and sentence of accused I under Section 30 of the Arms Act were upheld by the High Court and the conviction and sentence of accused 1, 2 and 5 under Section 302 read with Section 149 IPC was modified as conviction and sentence under Section 302 read with Section 34 IPC and sentence of life imprisonment passed against the said accused was upheld. The conviction of accused 1, 2, 3 and 5 under Section 324 read with Section 149 for assaulting PW 3 was modified as conviction under Section 324 read with Section 34 IPC and conviction of accused 1, 2, 3 and 5 under Section 324 read with Section 149 IPC for assaulting PW 2 was set aside. The conviction and sentence of all the said accused persons under Sections 143, 147 and 148 were also set aside by the High Court. Accused 2, 3 and 5 have preferred the instant appeal against their conviction and sentence as passed by the Karnataka High Court in the said Criminal Appeal No. 599 of 1980.

2. The undisputed fact of the case as noted by the High Court are that accused I is the husband of accused 9 and son of accused 12 and brother of accused IO and father-in-law of accused 13 and 5. Accused 3, 4 are the sons of accused 2. Accused 6 is the wife of accused 2. Accused 8 is the cousin sister of accused I and accused II is the servant of the farm of accused 1. Accused 7 is the husband of accused 8 and accused and accused 9 to 13 live in a garden land known as 'Haroora Hola' at a distance of about one furlong away from the Village Durbundi, The other accused persons were residents of the Durbundi village.

3. PW 2 is the mother of deceased Laxmappa and Mallappa. PW 4, Shivappa, is the younger brother of deceased Laxmappa and Mallappa, PW 3, Dundavva, is the Udki wife of deceased Laxmappa. The deceased, Laxmappa was residing in a rented house at Durbundi village with PW 3 and PWs 2, 4 and deceased Mallappa were residing in a new house at Bandiwawad road at Durbundi village. The father of accused I and the father of the deceased Laxmappa and Mallappa were full brothers.

4. It is the prosecution case that the deceased Laxmappa was demanding tenancy rights in the garden land of 'Haroora Hola' over which a proceeding was initiated before the Land Tribunal at Gokak between accused and the deceased Laxmappa. The Land Tribunal granted occupancy rights of 'Haroora Hola' in favour of accused 1 by its order passed on October 6, 1979. Accused I made a complaint on December 25, 1979 alleging that the deceased Laxmappa had assaulted him with a sickle. On such complaint a criminal case in Crime No. 169 of 1979 under Sections 324 and 506 IPC

was initiated by the Police at Ghataprabha Police Station and a charge- sheet was filed against the deceased, Laxmappa. It is the further case of the prosecution that on March 3, 1980 at about 8.00 or 8.30 a.m., accused 3, 4 and 5 quarrelled with the deceased Laxmappa when the deceased Laxmappa restrained them from going in a cart and he demanded a share in the land. The said accused person assaulted Laxmappa causing bleeding injury on his head. By about 9.00 a.m., the deceased Laxmappa went home and shouted that he would not leave those accused persons unless he would be given his share in the land. Thereafter, PW 3 brought PW 2 from her home to the house of the deceased Laxmappa and PW 2 pacified the deceased Laxmappa and at the instance of PW 19, Kallappa, the chairman of the village Panchayat and Dalpathi put the deceased Laxmappa and PW 3 in the house and locked the house from outside and proceeded to her house. PW 4 when he came out of the school for playing, heard some noise (galata) at the house of the deceased Laxmappa and came there and finding Laxmappa injured and in an agitated mood, went to the land where other deceased Mallappa was working and Mallappa came to the house of Laxmappa. The deceased Mallappa opened the lock of the house of Laxmappa. Thereafter, both the deceased Laxmappa and Mallappa proceeded to the house of PW 2 to discuss with their parents about the incident and PWs 3 and 4 followed them. PW 2 had gone little ahead of them. While the deceased Laxmappa and Mallappa were passing through Hukkeri Oni and were near the house of Kichidi Yallappa, accused I fired with the double barrel gun (MO 10) at the said deceased persons. The said shot hit deceased Laxmappa and when he was about to fall the other deceased Laxmappa rushed towards him. Then accused I fired a second shot which hit the deceased Mallappa and both the deceased persons fell down. The other accused persons, namely, accused 2, 7 and 9 having sickles in their hands and accused 3 and 5 having axes and the other accused having sticks in their hands were also with accused at that time. When the deceased Laxmappa and Mallappa fell down, accused 2, 7 and 9 with sickles and accused 3 and 5 with axes and accused 11 and 13 with sticks assaulted both the deceased persons. Accused 4, 5, 8 and 12 instigated the accused to assault the deceased. PW 2 was a few steps ahead of the deceased persons and hearing gunshot turned round and went forward to rescue the deceased. PW 4 also went to rescue the deceased. Accused 3 assaulted PW 2 with the axe on her head and back. The accused persons thereafter left the place saying that both the deceased who had been demanding share in the land were not living. Both the deceased succumbed to the injuries on the spot. PW 2 thereafter went to the Panchayat Office and narrated the occurrence to PW 19, Kallappa. PW 20, Venkappa, who was sitting with PW 19, recorded the statement of PW 2 (Ext. P-2) at the request of PW 19 who was not in a position to write properly. PW 19 thereafter visited the spot and posted PW 13, Panchayat Peon, to watch the dead bodies and got his report prepared from PW 20 (Ext. P-49) and proceeded to Ghataprabha Police Station along with Exts. P-2 and P-49 and reached the police station by about 12 noon.

5. PW 29, Mohammed Usman, the Sub-Inspector of Police, Ghataprabha Police Station, on receipt of Exts. P-2 and P- 49 registered a case in Crime No. 27 of 1980 under Sections 147, 148, 302, 324, 323 and 149 IPC and under Section 25(1) of the Arms Act and issued FIR as per Ext. P-88 and sent up express reports to his superiors. Exts. P-2 and P-49 reached the hands of the Magistrate at Gokak by about 2.00 p.m. on May 3, 1980. PW 29, the Sub-Inspector of Police then proceeded to Durbundi village and at the time of holding inquest, PW 31, the Circle Inspector of Police, Hukkeri, (PW 31) also arrived at the investigation place and took up investigation from PW 29. The inquest was prepared on the dead bodies of the deceased Laxmappa as per Ext. P-68 and Mallappa as per Ext.

P-69 and the spot Mahazar (Ext. P- 70) was also recorded and bloodstained earth, three bloodstained pellets were seized and sealed. During inquest, the statement of PWs 2, 3, 4, 5, 6, 7, 8 and two others were also recorded. PW 22, the Medical Officer of General Hospital, Gokak held the postmortem over the dead bodies of Laxmappa and Mallappa and prepared the postmortem reports being Ext. P-55 and P-56. The said Medical Officer recovered three pellets and a wad from the body of the deceased Mallappa at the time of autopsy. PW 31 recorded injury Mahazar of PW 2 and seized and sealed the bloodstained saree of PW 2 (MO 1) and he also recorded the injury Mahazar of PW 3 as per Ext. P-72 and seized and sealed the shirt of the deceased Laxmappa (MO 2) when he had come home with the bleeding injury on his head. PW 31 in the afternoon of March 10, 1980 arrested accused 3, 4, 5, 11 and 13, and it is the prosecution case that the voluntary statement of accused 5 was recorded by him (Ext. P-97). The said accused 5 disclosed that he would produce an axe kept concealed in the land of one Ramakrishna Naik at Mallapur village underneath the sugarcane fodder. Thereafter, PW 31 secured panchas including PW 26 and seized and sealed a bloodstained axe (MO 3) under Mahazar Ext. P-

80. PW 31 also recorded voluntary statement of accused 3 Ext. P-98 that the said accused would produce an axe from the land of Ramakrishna Naik kept concealed underneath the sugarcane fodder, and PW 31 secured panchas and seized and sealed MO 5 a bloodstained axe under Mahazar Ext. P-81. A similar voluntary statement was also recorded by PW 31 (Ext. P-99) that he would produce 7 sticks kept concealed by him in the maize crop in the land of Laxman Naik. PW 31 secured panchas and sealed and seized the said 7 sticks (MO Nos. 51 to 57). The said PW 31 also arrested accused 7 and 9 on March 19, 1980 and as per voluntary statement of accused 7, recorded by PW 31, a sickle kept concealed by him in the land of Ramakrishna near a hillock, was also recovered and such sickle was also seized and sealed being MO 8. The voluntary statement of accused 9 as per Ext. P-101 that she would produce a sickle kept concealed by her in the land of Ramakrishna near a hillock, was also recorded by PW 31 and such sickle was also seized and sealed being MO 9 under Mahazar P-84.

6. The accused persons denied the accusations made against them. The prosecution relied on the evidences of PWs 2, 3, 4 and 12 with regard to the occurrence and also the postmortem report and evidence of the doctor PW 22. The prosecution also relied upon the evidence of PWs 9, 10, 11, 19 and 20 to the effect that they had seen PWs 2, 3 and 4 following the deceased persons immediately prior to the occurrence and they had also seen PWs 3 and 4 running out from the scene of occurrence and bawling out immediately after the occurrence.

7. Relying on the prosecution case, the learned Sessions Judge passed the conviction and sentence against the accused persons as indicated hereinbefore but he acquitted accused 4, 6, 8, 9, 10 and 12 from all the charges made against them. The doctor, PW 22, who held the autopsy over the dead bodies of Mallappa noted several injuries on the person of the deceased and opined the cause of the death that it was due to shock and haemorrhage as a result of rupture of heart and lungs caused by gunshot injury, and he had further stated that the external injury 2 with its corresponding internal injury was sufficient in the ordinary course of nature to cause death. PW 22 found 4 out injuries, 4 incised injuries and a penetrating injury on the dead body of the deceased Laxmappa, and he opined that the external injury 8 could be a gunshot injury and the death was due to shock as a result of

haemorrhage caused by cut injury on the neck i.e. injury

4.

8. The High Court *inter alia* came to the finding that the prosecution had clearly established the defence under Section 302 read with Section 34 IPC against accused 1, 2 and 5 accordingly convicted them under Section 302 read with Section 34 IPC by modifying the conviction under Section 302 read with Section 149 IPC as imposed by the learned Sessions Judge. The High Court set aside the conviction of accused 1, 2 and 5 under Sections 143, 147 and 148 of the IPC but convicted accused 1, 2, 3 and 5 under Section 324 read with Section 34 IPC for assaulting PW 3. The High Court further set aside the conviction of accused 1, 2, 3 and 5 under Section 324 read with Section 149 IPC. The conviction of accused 1 under Section 30 of the Arms Act was upheld by the High Court.

9. The learned counsel for the appellant has contended that PWs 2, 3 and 4 are close relations of the deceased and they are interested witnesses having sufficient animus against the accused persons. Apart from that, there are inherent improbabilities in their depositions and there are also contradictions in their evidences. It has also been contended by the learned counsel for the appellant that PW 22, the doctor who held the postmortem on the body of the deceased Laxmappa found a cut-injury on the neck being injury 4 and had opined that due to shock and haemorrhage caused by the cut-injury, Laxmappa had died. Such cut- injury therefore cannot be attributed to accused 1 and the said fact runs counter to the depositions of the eyewitnesses. It has also been contended that PW 2 was ahead of the deceased persons and it was not probable that the said witness could see the gunshot injuries. PWs 3 and 4 were not present at the spot but they came forward to rescue the deceased when according to the prosecution PW 3 was injured and thereafter PWs 3 and 4 went to the village. Hence, they had not seen the murderous assault caused on the two deceased persons. In the aforesaid circumstances, the conviction for causing death to the said two deceased persons cannot be sustained, and the appeal against conviction under Section 302 read with Section 34 IPC against the appellants should be set aside by this Court. It has also been contended that the ingredients of the common intention of the appellants have not been established by the prosecution and the learned Sessions Judge had also not convicted the appellant under Section 302 read with Section 34 IPC. It has been contended by the learned counsel for the appellant that the High Court on mere probabilities and conjecture had passed the conviction against the appellants under Section 302 read with Section 34 IPC and such conviction on conjecture should be set aside. The learned counsel for the appellants has contended that there were disputes and differences between the accused and the deceased but simply on that account, the conviction for the murder not clearly established by cogent and reliable evidences can be based.

10. Such contentions of the learned counsel for the appellants were, however, disputed by the learned counsel for the respondent and it has been strongly contended by the learned counsel for the respondent-State of Karnataka that the incident of murder had taken place in a broad day light before the eyes of a number of persons who have deposed very convincingly how the murder of the said two deceased and assault on the prosecution witnesses had taken place. There is no material contradiction in the evidences of the eyewitnesses and the evidences of the eyewitnesses stand fully corroborated by the postmortem report and the injuries noted by the doctor. Simply because some

of the eyewitnesses are close relations of the deceased, their evidences cannot be discarded. The learned counsel for the State has, therefore, submitted that there is no merit in the appeal and the same should be dismissed.

11. After considering the respective submissions of the learned counsel for the parties and the materials on record, it appears to us that the convictions against the appellants as awarded by the High Court are fully justified and should not be interfered with. We have looked into the evidences carefully and it appears to us that the prosecution case for murdering the deceased Laxmnappa and Mallappa by the appellants has been clearly established. In our view, the High Court is also justified in convicting accused 1, 2, 3 and 5 under Section 324 read with Section 34 IPC. It may be noted in this connection that common intention can generate on the spot itself and such common intention can be reasonably inferred from the facts and circumstances of the case and nature of injuries caused by the accused. The manner in which the injuries were caused to PW 3 and others, warrants the conviction under Section 324 read with Section 34 IPC. In the aforesaid facts, no interference against the conviction and sentences is called for. As we do not find any substance in this appeal, the same is dismissed. The accused-appellants, if on bail, should be taken to custody to serve out the sentence.