Supreme Court of India
Mahantappa &0Rs vs State Of Karnataka on 12 November, 1998
Author: M Mukherjee
Bench: M.K.Mukherjee, B.N.Kirpal

PETITIONER:
MAHANTAPPA &0RS.

Vs.

RESPONDENT:
STATE OF KARNATAKA

DATE OF JUDGMENT: 12/11/1998

BENCH:
M.K.MUKHERJEE, B.N.KIRPAL

ACT:

HEADNOTE:

JUDGMENT:

JUDGMENT M.K. MUKHERJEE,J.

Seventeen persons, including the ten appellants before us, were tried by the Sessions Judge, Raichur for rioting, murder and other cognate offences and acquitted. Assailing their acquittal the respondent-State of Karnataka filed an appeal in the High Court during the pendency of which three of them died and, resultantly, the appeal as against them abated. Of the surviving fourteen, the High Court upheld the acquittal of three and, reversing the acquittal of the other eleven (who were arrayed as Al, A2, A4 to AIO, A12 and A1.3 before the trial Court and will henceforth be so referred to), convicted them under Section 148 I.P.C. and 302, 307, 449, 436 and 201 1.P.C., all read. with Section 149 I.F.C. A9 died thereafter and the remaining ten filed the instant appeal under Section 379 of the Code of Criminal Procedure.

2.(a) According to the prosecution case on October 10, 1985, at or about 1O A.M. the accused persons formed themselves into an unlawful assembly armed with various weapons in village Bappur and, in prosecution of their common object, accosted Veerabhadrappa (P.W.I) and Pampansgowda (the deceased), when they came out of the hotel of Pampayya (P.W.4) and assaulted the former with a sword near the house of one Nabeebi, Thereafter they chased P.W.I and the deceased who, being frightened, took shelter in the nearby house of Meelamma (P.W.5), after

bolting the door of the house from inside. They then attempted to set the house of P.W.8 on fire by pouring kerosene soaked lighted cotton inside the house. Finding no other alternative when P.W.8 opened the door of her house, the accused persons trespassed into it, assaulted P.W.I and dragging the deceased out of the house killed him with the weapons they were carrying. They then threw the dead body in the hut of one Hajamara Mahantappa and set it on fire with a view to destroying the evidence of the murder.

(b) P.W.I then went to the Police Station at Turvihar and lodged a complaint. A case was registered on that complaint and P.W.I was sent to the local hospital for treatment, Kalakappa (P.W.27), Inspector of Police, took up investigation of the case and want to the scene of offence. He held Inquest upon the dead body and, after sending it for post-mortem examination, went in search of the accused persons. Though he failed to apprehend any of them on that day he found a tractor with trailer parked in front of the cafe shed of A3 containing various weapons like sticks, sword, spear and axe. He attached those articles and the tractor. Later on. In course of the investigation he apprehended the accused persons and seized some weapons pursuant to their statements. On completion of investigation he submitted charge-sheet against them.

3. The accused persons pleaded not guilty to the charges framed against them and contended that they had been falsely implicated due to enmity.

4. In course of the trial the prosecution examined twenty seven witnesses. The defence, however, did not examine any witness but exhibited certain documents in support of their case. Of the witnesses examined by the prosecution Veerabhadrappa (P.W.I), Shankarappa (P.W.2), Yankappa (P.W.3), Pampayya (P.W.4), Mahanthappa (P.W.6) and Neelamma (P.W8) figured as eye witnesses,

5. Relying upon the evidence of the doctor (P.W.16), the trial Court first held that the deceased met with a homicidal death and P,W,1 sustained injuries as alleged by the prosecution; and then proceeded to consider the evidence of the five eye witnesses. On consideration thereof it observed that none of them could be relied upon as their testimony was unsatisfactory and inconsistent. Accordingly the trial Court held that the incident did not take place in the manner alleged by the prosecution and acquitted the accused.

6. In appeal, the High Court first observed that the inconsistencies referred to by the trial Court were insignificant and it was not at all justified in discarding the evidence of the eye witnesses on that score. The High Court then detailed and reappraised the evidence of the eye witnesses and found the same reliable and fully corroborated by other evidence. Thus, accepting the case of the prosecution, it convicted the appellants and A9 but gave benefit of doubt to A15, A16 and A17 in absence of satisfactory evidence to prove their participation in the incident.

7. This being a statutory appeal we have, with the assistance of the learned counsel for the parties, gone through the entire evidence on record and the judgments of the Courts below. Our such exercise constrains us to say that the judgment of the trial Court Is, to say the least, perverse. The so called evidential infirmities, for which the eye witnesses have been disbelieved, are so trivial that the trial Court should not have referred to the same, much less, relied upon. To eschew prolixity we

refrain from referring to ail of them except a few to demonstrate the approach of the trial Court in dealing with the same. In disbelieving P.W,1, the trial Court observed that he was not a position to say the number of blows given by each of the accused on his person nor could he say on which part of his body such blow was inflicted. Similar details he (P.W.I) could not give about the assault on the deceased. For identical reasons he disbelieved the evidence of some of the other eye witnesses. On a careful analysis of the evidence of the eye witnesses we have no hesitation in concluding that the incident took place in the manner alleged by the prosecution. In drawing this conclusion we have drawn inspiration from the fact that the evidence stands amply corroborated by the objective findings of the Investigating Officer about the burnt houses and that of the doctor regarding injuries found on the person of the deceased and P.W.I.

8. The next question that needs an answer is whether the prosecution has been able to conclusively prove the participation of the appellants in the incident. Having given our anxious consideration to this aspect of the matter we find that the participation of Al, A2, A4, A5 and A8 and their active notes in the incident stands established by the evidence of two or more eye witnesses. We, therefore, find no hesitation in upholding the convictions of the above five appellants. So far as A6 and A7 are concerned, they were identified by P,W,2 only as two of the miscreants. Considering the fact that a large number of persons were involved in the gruesome incident we do not feel It safe to sustain their convictions relying solely on the identification by one witness only. We, therefore, give them benefit of reasonable doubt. As regards AIO and A13 there is no satisfactory evidence to conclusively hold that they were members of the unlawful assembly. In other words, their presence at the scene of the crime as onlookers cannot be ruled out. Coming now to A12 we find that he has not been named in the F.I.R. lodged by P.W.I even though he had named all other accused persons therein as the miscreants. He is also, therefore, entitled to the benefit of reasonable doubt.

9. On the conclusions as above, we uphold the impugned order of conviction and sentence recorded against Mahantappa (Al), Giriyappa (A2), Yankanagouda (A4), Mallanagouda (A5) and Waddar Mariappa (A8) - who are the appellant Nos. 1,2,3,4 and 7 respectively in this appeal and set aside the same so far as it relates to Shekharappa (A6), Devanagouda (A7), Nagappa @ Dodda Nagappa (AIO), Bhimanna @ Sanna Nagappa (A12) and Bheemanagouda (A13) - the other appellants in this appeal. Let A6, A7, AIO, A12 and A13, who are appellant Nos. 5, 6, 8, 9 and 10 before us, and are in jail, be released forthwith unless wanted in connection with some other case. The appeal is, thus, disposed of.