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**(1992) 09 SC CK 0021**

**In the Supreme Court Of India**

**Case No : Criminal Appeal No. 406 of 1991**

Lakkappa Ningappa Ittappannavar and Others

APPELLANT

Vs

State of Karnataka

RESPONDENT

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**Date of Decision : 22-09-1992**

**Acts Referred:**

Penal Code, 1860 (IPC) — Section 302, 304

**Citation :** (1993) 1 ALT(Cri) 7 : (1993) 1 ALT(Cri) 227 : (1992) 3 Crimes 540 : (1992) 5 JT 596 : (1992) 2 SCALE 724 : (1993) 2 SCC 755 Supp : (1992) 2 UJ 738

**Hon'ble Judges :** N. M. Kasliwal, J;Kuldip Singh, J;B.P. Jeevan Reddy, J

**Bench :** Full Bench

**Advocate :** Ranjit Kumar, for the Appellant;

**Final Decision :** Allowed

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## **Judgement**

Kuldip Singh, J.—Lakkappa, Ningappa and four others were tried for the murder of Shiddappa and Nagappa. The trial court convicted them under Sections 447, 326 and 302 read with Section 149 of the Indian Penal Code and sentenced them to life imprisonment under 302 I.P.C., 2 years under 326 I.P.C. and 3 months under 447 I.P.C. On appeal, filed by all the accused, the High Court gave benefit of doubt to accused No.6 and acquitted him, the conviction and sentence of accused No.2 Ningappa u/s 302 I.P.C. was upheld and so far as accused Nos. 1 and 3 to 5 were concerned they were acquitted of the charge u/s 302 read with Section 149 I.P.C. but were convicted u/s 304 Part II read with Section 149 I.P.C. and sentenced to five years rigorous imprisonment. The conviction and sentence of accused Nos. 1 to 5 for offences under Sections 447 and 326 read with 149 I.P.C. was upheld. This Court granted special leave only to accused Nos. 1 and 2. The SLP of accused Nos. 3 to 5 was dismissed by this Court.

2. We may notice the prosecution story in a nutshell. The lands of the accused and the deceased are adjacent to each other. There was dispute regarding the boundary between the two parties for the past about 5 to 6 years. On the date of

occurrence 10/12 persons had gone to deceased Nagappa's land for plucking chillies. At the same time the accused were also working in their fields. The bullocks of the accused strayed into the land of deceased Nagappa. The deceased-party started abusing the accused party. The abuses led to the fighting and in the process Nagappa and Shiddappa belonging to the complainant party died as a result of injuries inflicted on them by the accused. It is the prosecution case that appellant 2 assaulted the deceased with bayou (an agricultural implement). The High Court came to the conclusion that injuries on the person of the deceased were caused as a result of altercation at the spur of the moment. The High Court on appreciation of evidence came to the conclusion that the common object of the unlawful assembly was to cause injuries to the deceased persons and not to commit the murder. So far as Ningappa, appellant 2 was concerned the High Court found that even after the deceased fell down, he continued to press the neck of deceased Shiddappa with byakolu which resulted in his death. On this reasoning the conviction of appellant No.2 u/s 302 I.P.C. was upheld.

3. Learned Counsel appearing for appellant Ningappa has contended that there is no material on the record to distinguish his case from other accused persons who were convicted u/s 304 Part II I.P.C. According to him the High Court was not justified in maintaining the conviction of Ningappa u/s 302 I.P.C. We see considerable force in the contention of the learned Counsel. The prosecution witnesses have deposed that both Ningappa and accused 6 Basappa throttled the neck of the deceased with their respective weapons. The High Court disbelieved this part of the prosecution story and acquitted accused No.6. We are of the view that the eye-witnesses having been disbelieved partly, resulting in the acquittal of accused No.6 it would not be safe to believe them qua appellant 2, We give appellant-Ningappa benefit of doubt and acquit him of the charge u/s 302. We, however, convict him under 304 Part II and sentence him to rigorous imprisonment for five years.

4. Learned Counsel for appellant 1 Lakkappa has not been able to show any material to distinguish his case from the other accused convicted u/s 304 Part II I.P.C. Both the courts have believed the prosecution story that appellant 1 participated in the assault. We are not inclined to interfere with the concurrent findings reached by the courts below. We, therefore, dismiss the appeal of appellant 1 and maintain his conviction and sentence. He is on bail. He shall surrender to his bail-bonds to undergo the remaining sentence. The appeal is partly allowed in the above terms.