

**(2010) 04 KAR CK 0085**  
**In the Karnataka High Court**  
**Case No : Criminal Appeal No. 1235 of 2000**

Ningappa Alias Bhyrappa Alias Ningegowda and Swamy Alias Swamygowda APPELLANT

Vs

The State of Karnataka RESPONDENT

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**Date of Decision :** 08-04-2010

**Acts Referred:**

Penal Code, 1860 (IPC) — Section 304, 324, 34

**Citation :** (2010) 04 KAR CK 0085

**Hon'ble Judges :** B.V. Pinto, J

**Bench :** Single Bench

**Advocate :** A.H. Bhagavan and A.N. Radhakrishna, for the Appellant; A.R. Sharadamba, AGA, for the Respondent

**Final Decision :** Allowed

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## Judgement

B.V. Pinto, J.—Being aggrieved by the order of conviction passed by the Principal, Sessions Judge, Mysore in S.C. No. 8/1996 by the Judgement dated 3.10.2000 convicting the first appellant (who is Accused No. 1) for an offence u/s 304 Part-I and sentencing him to undergo rigorous imprisonment for seven years and to pay a fine of Rs. 8,000/- in default to undergo rigorous imprisonment for a period of one year and also convicting the Appellant No. 2 (who is accused No. 3) for the offence u/s 304 Part-II and sentencing him to undergo rigorous imprisonment for a period of four years and to pay a fine of Rs. 3,000/- in default to undergo rigorous imprisonment for six months. These appellants have filed this appeal.

2. A-1 has been further convicted for offence punishable u/s 324 IPC and he has been sentenced to undergo rigorous imprisonment for a period of six months for the said offence.

3. This appeal was heard by this Court and by judgment dated 18.4.2006, this Court was pleased to allow the appeal in part and these appellants were

acquitted of the offences u/s 304 Part-I & II. They were convicted for the offence u/s 324 r/w. 34 IPC and the sentence imposed on them for offence u/s 324 IPC was confirmed.

4. Challenging the said order dated 18.04.2006, the State of Karnataka filed an appeal before the Hon'ble Supreme Court. By order dated 11.2.2009, the Apex Court was pleased to set aside the order dated 18.04.2006 passed by this High Court in Criminal Appeal No. 264/2009 and further pleased to remand the matter to the high Court for fresh consideration on merits with a direction to dispose of the appeal in accordance with law by a reasoned order. Hence, this matter is taken up for final hearing today.

5. The facts leading to this case are that on 29.9.1995 at about 7.30. p.m. at Aswalu Village, Hunsur Taluk, it is alleged that these two appellants along with seven others formed themselves into unlawful assembly with the common object of committing murder of the family members of one Ningegowda and in furtherance of common object, it is alleged that nine accused before Trial Court committed rioting armed with deadly weapons and in furtherance of common intention accused 1 to 4 therein assaulted prosecution witness CWs. 1, 5, 6, 9 and 10 by means of clubs and further assaulted CWs. 1, 5 9 and 10 by means of stones. It is the case of prosecution that A7 abetted commission of murder of Venkatesh Gowda and soon after, A1 to A3 intentionally committed murder of Venkatesh Gowda thereby they are alleged to have committed the offences under Sections 143, 148, 149, 324, 114 r/w. 302 IPC. After arrest of the accused, investigation was conducted and the police filed charge sheet against the appellants and 7 others and the case was committed to the court of Sessions. The Sessions court framed as many as 6 charges against the accused Nos. 1 to 9 therein, which are as follows:

1. Whether deceased Venkatesha Gowda died a homicidal death?

2. Whether the prosecution proves beyond reasonable and/or shadow of doubt that on 29.09.1995 at 7.30 p.m. at Aswalu Village, in front of the house of accused, the accused had formed themselves into an unlawful assembly with the common object of committing murder of the family members of C.W.5 Ningegowda, and thereby the accused had committed offence punishable u/s 143 IPC?

3. Whether the prosecution proves beyond reasonable and/or shadow of doubt that on the said date, time and place, the accused committed rioting in furtherance of common object, armed with deadly weapons like choppers, stones and clubs, and thereby the accused had committed offence punishable u/s 148 IPC?

4. Whether the prosecution proves beyond reasonable and/or shadow of doubt that on the said date, time and place, A-1 to 4 assaulted CWs. 1,5,6,9 and 10 by means of clubs, A-5, 6 8 and 9 assaulted CWs. 1.5,9 and 10 by means of stones, and as such, the accused had committed offence punishable u/s 324 r/w IPC?

5. Whether the prosecution proves beyond reasonable and/or shadow of doubt that on the said date, time and place, A-7 abetted commission of murder of Venkateshagowda, and as such, A-7 had committed offence punishable u/s 114 r/w 302 IPC?

6. Whether the prosecution proves beyond reasonable and/or shadow of doubt that on the said date, time and place that A-1 and A-3 intentionally committed murder of Venkatesha Gowda and thereby the accused had committed offence punishable under Sections 302 r/w 149 IPC?

7. Whether the prosecution proves beyond reasonable and /or shadow of doubt that on the said date, time and place, A-2, 4 to 9 were the members of an unlawful assembly, the common object of which was to commit murder of Venkatesha Gowda, and as such, the accused had committed offence punishable u/s 149 IPC?

6. In order to prove the case of the prosecution, in all 26 witnesses have been examined and Ex. P1 to P43 were marked before the trial Court. The prosecution also produced MO1 to 11 to prove its case while the defence examined one Mr. Ramaswamy as defence witness.

7. After hearing the prosecution and the defence the learned trial judge was pleased to hold that the A1 is guilty of offence u/s 304 Part-I and A3 (Appellant No. 2) is guilty of offence u/s 304 Part-II. Besides, A1. 2 and 4 were also convicted for offence u/s 324 r/w. 34 IPC.

8. A2 and A4 before trial Court were sentenced for the period already undergone during the trial for the offences u/s 324 r/w 34 I.P.C. It is only A1 and A3 who are before this Court challenging the order of conviction.

9. Heard Sri. A.H. Bhagavan, learned Counsel appearing for the appellants and Smt. A.R. Sharadamba, learned AGA appearing for the State, perused the material on records.

10. The prosecution came to be registered on the basis of complaint of Karigowda (Pw-1) on 29.9.1995 at 10.00 p.m. before J.S. Srikantamurthy who is examined as Pw-25. It is stated in the complaint that there was property dispute between the father of the complainant PW1 and family of puttamma (A5) in respect of Sy. No. 101 and on 29.9.1995 the accused party had left more water to be flown into the property of the complainant. As a result the complainant's family could not store manure to the banana crop standing on the said property. PW-1 has alleged in the complaint that he had sent his son Rajanna requesting Puttamma not to allow the water to be flown to the property. The said Rajanna came back and informed in the house that one Byrappa and swamy were abusing him. At that time his brother Venkatesha was coming from the fields near the house of the Puttamma and at that time the accused by name Ningappa, Annegowda and others assaulted Venkatesh Gowda. The complainant went to the spot and found that Venkatesh Gowda had fallen and when asked Venaktesh

Gowda told that one Ningappa assaulted him with Machchu and one Annegowda assaulted with clubs and after saying so, he has lost the conscience. It is further stated in the complaint that the accused by name Sri. Swami Gowda, Ningappa, Yellappagowda, Annegowda, Puttamma and her daughter in law Puttaveeramma and others were holding chopper and various weapons and they were assaulting the persons on the complainant's side. The dead body of the deceased Venkatesh Gowda was thereafter lifted from the scene of offence and placed in front of the house of the complainant and the injured were sent to the hospital for treatment. Pw-1 in the complaint alleged that there were many witnesses by name Channaiah, Siddaiah, Boregowda and Amaregowda and Vasantha who have witnessed the incident and the persons who have assaulted the injured party.

11. PSI Srikantamurthy PW-25, has registered the aforesaid complaint in the Crime No. 301/1995 for the offence under Sections 143, 147, 148, 324, 302 r/w. 149 IPC and commenced the investigation. Having found that the 9 persons were involved in the offence, charge sheet was filed against the accused persons. It is also stated that another FIR was registered against the injured party in Crime No. 303/1995. It has been elicited that during the course of filing charge sheet against the accused in this case, "B" report was filed against the accused persons in Crime No. 303/1995.

12. Sri. A.H. Bhagavan, learned Counsel appearing for the appellants submits that first he would argue regarding the nature of the offence which is made out against the Appellant No. 1 and probable involvement of A3 in the offence in this appeal. It is stated that as against acquittal of the other persons, the State has not filed any appeal. In so far as the accused persons other than these two appellants, the judgment has become final. The conviction of Accused No. 2 and 4 has also not been challenged by the accused in this Court and hence findings and sentence on them also has become final.

13. Since the challenge in this appeal is in respect of conviction of A1 and A3 in the said trial. I deem it proper to discuss evidence against these two persons only, for limited purpose of finding out whether the prosecution has made out the case against these two appellants.

14. Pw-1 - Karigowda, is the complainant. He has stated as per the statement given by him in the complaint. In his evidence, he has categorically stated that Accused 1 Ningappa assaulted Venkatesh Gowda with the chopper and with the same chopper A3 Swamigowda assaulted him on the pubic region. He immediately fell unconscious. Pw2 - Biligowda S/o. Ningegowda, has also stated in his evidence as follows: "I went to the house of Puttamma at about 7.30 p.m. A1 Ningappa assaulted my son with a chopper on his head when he was returning from the land. My son fell down. With the same chopper A3 assaulted my son on pubic region". This Pw-2 is the father of deceased. Pw-3 Kempe Gowda, who is the eyewitness turned hostile to the case of the prosecution but he has spoken about the circumstance in respect of the offence including the

presence of A1 to A4 at the spot. PW-4 Channaiah, is the another eyewitness and he turned hostile to the case of the prosecution though speaks about the presence of A1 A2 and A5 in his examination in chief. Pw-5 Madegowda, is the punch witness. He has taken Pw-2, Pw3 and Samigowda to K.R. Hospital in the van for treatment and he is attesting witness to the Mahazar. He along with the appellant had gone to the scene of the offence on the next day, when seizure Mahazar drawn by the police. Pw-6 is Varalakshmi, wife of the deceased. She has also categorically stated that A1 Ningappa holding the chopper came towards her husband and assaulted him on the head with the chopper; A3 took the same chopper from A1 and assaulted her husband on the pubic region. Pw-7 -Vasanth is also an eyewitness, who has reiterated the version of the other eyewitness. Similarly the evidence of PW-9 - Swamygowda. PW-10 - Revanna, Pw-13 - Kalegowda, Pw-14 - Raju, Pw-15 - Shivanna corroborates the evidence of PW-1. They are all the eyewitness to the incident and in an unclenching terms have deposed the part played by A1 and A3. Whereas PW-11 who is the mother of the deceased while reaffirming the part played by A1, has stated that A2 - Annegowda had given second blow on the deceased. Pw-21 Dr. Rudramurthy, has conducted the postmortem examination and has examined the deceased Venkatesh Gowda and has given the opinion that the death is due to shock and hemorrhage as a result of injury sustained and further he has said that the death is homicidal in nature. From the evidence of all these witnesses it is clear that the deceased Venkateshgowda died homicidal death by means of injuries caused on his persons by Ningegowda A1 and Swamigowda A3.

15. I have gone through the evidence of all other witnesses and the document including serologist report produced by the prosecution. I have also gone through reasoning given by the learned sessions Judge holding A and A3 guilty of committing death of the deceased. Therefore after careful consideration of the discussion held by the learned Sessions Judge, I am of the opinion that no second view can be made about the finding of causing death of the deceased Venkatesh Gowda by the accused persons and also the reasoning given for acquittal of the accused persons 5 to 9. In this view of the matter I hold the conviction of A1 and A3 for the offence u/s 304 is proper and based on sound reasoning.

16. Sri. A.H. Bhagavan, learned Counsel appearing for the appellant submitted the following facts for consideration. In so far as involvement of A3 is concerned it is mentioned in the FIR that the complainant had seen the deceased falling down and they lifted him and when enquired, he told that Ningappa had assaulted with the Machchu and Annegowda assaulted with club (Donne) and immediately lost consciousness. It is the submission of Sri. A.H. Bhagavan, learned Counsel appearing for the appellant that this evidence if taken into consideration, would exclude part of A3 - Swamigowda, while confirming part played by A1. He has further submitted that PW-11 is none other than the mother of the deceased and she has stated in her evidence before Court that after A1 assaulted the deceased with the same chopper and snatching from A1

and A2 assaulted deceased on his pubic region. It is his submission that it is very clear that the deceased has firstly implicated A2 and thereafter A3 has been implicated regarding injury on the deceased. On a careful observations of PM report it is seen that the deceased has suffered only two injuries one on the head, another on his waist part of pubic region and both injuries are incised injuries. The injury on the head is attributed to A1 by all eye witnesses and the injury on the waist cannot be fairly attributed to A3, since there is divergent material in so far as A3 using the weapon to assault the deceased. Apart from that the evidence of PW-11 and PW-1 read together does not inspire confidences in respect of the part played by A3. Hence he submits that A3 deserves to be given benefit of doubt. However having regard to the version of a number of eyewitnesses as discussed above, I am of the opinion that the prosecution has brought out clear and cogent evidence in respect of A1 and A3 regarding their participation in the crime.

17. Sri. A.H. Bhagavan, learned Counsel appearing for the appellant submits that the nature of the offence proved against A1 and A3 required to be considered on the following grounds:

1) The complaint Ex. P1 starts with the wording that there is some dispute between the family of PW1 and Puttamma A5. It is in the evidence of Pw-1 that the accused are related to them. This A5 is the aunt. The husband of puttamma and PW1's father are direct brothers. However, it elicited in the evidence that there was dispute regarding house property between two parties. It is also seen from the material on record that there were frequent, quarrels between two parties. Even if one goes by version in the FIR about 10 people from the appellant side and about 10 to 12 people from the deceased side had gathered at the scene the offence. It is also seen that the death occurred at about 7.30 p.m. and the month was September. It is the case of prosecution that they saw the incident with the help of the street light. Pw-25 states that a counter case has been registered as against the injured party also, in crime No. 303/1995.

18. It could be seen that it was a fight between two family groups and therefore it is not as if the accused intended to kill the deceased or they had intention to kill him. The fight started in connection with allowing water to the fields of complainant party by the accused persons. Therefore, I am of the firm opinion that the offence alleged against A1, that is the appellant conies u/s 304 Part-II. The other accused against whom similar allegation were made have been acquitted by the learned Sessions Judge. Their acquittal has not been challenged. Similarly the "B" report is filed and the same is also not challenged by the complainant side. Therefore, this is fight a between two families. For the foregoing discussions I hold that the offence against appellant No. 1 u/s 304 Part-I may be altered to the one u/s 304 Part-II having regard to the nature of weapon used.

19. Now, so far as the sentence to be imposed against the appellant No. 1, after giving my serious thoughts to the entire case on record and the manner in which

the offence is committed and having regard to the nature of injuries and weapon used. I am of the opinion that rigorous imprisonment for 3 years and fine of Rs. 10,000/- for the offence u/s 304 part-II would meet the ends of justice. This is particularly so because the injury is on the head of the deceased. So far as Appellant No. 2 (A3) is concerned, he has snatched the weapon from A1 and assaulted on the waist of the deceased. It is on record that at that time many persons on the side of complainant were present at the scene. So, I am of the considered view that Appellant No. 2 shall be awarded a sentence of one year rigorous imprisonment and a fine of Rs. 10,000/- for the offence u/s 304 part-II I.P.C. So far as the conviction of A1 for offence u/s 324 I.P.C. concerned, the same deserves to be confirmed so also the sentence there on.

20. In the result, the appeal is allowed in part. The conviction of Appellant No. 1 for offence u/s 304 part-I and the sentence for the same is set aside. A1 is convicted for the offence u/s 304 part-II and directed to undergo R1 for 3 years and to pay a fine of Rs. 10,000/- in default simple imprisonment for 6 months. A1 is further convicted for offence u/s 324 I.P.C. and sentenced to undergo R1 for 6 months. Both sentences to run concurrently. Appellant No. 2 is directed to undergo rigorous imprisonment for one year and to pay fine of Rs. 10,000/- in default to undergo simple imprisonment for one year for offence u/s 304-II I.P.C.

Fine amount if recovered shall be paid to PW-6 wife of the deceased.