

**(2009) 02 SC CK 0028**

**In the Supreme Court Of India**

**Case No :** Criminal Appeal No. 264 of 2009 (Arising out of SLP (Criminal) No. 7461 of 2007)

State of Karnataka

APPELLANT

Vs

Ningappa @ Bhyrappa @ Ningegowda and Another

RESPONDENT

**Date of Decision :** 11-02-2009

**Acts Referred:**

Penal Code, 1860 (IPC) — Section 114, 143, 148, 149, 302

**Citation :** AIR 2009 SC 1934 : (2009) AIRSCW 1554 : (2009) 2 JT 375 : (2009) 3 KarLJ 429 : (2009) 2 SCALE 460 : (2009) 11 SCC 95 : (2009) 3 SCR 161 : (2009) 2 Supreme 21

**Hon'ble Judges :** Asok Kumar Ganguly, J;Arijit Pasayat, J

**Bench :** Division Bench

**Advocate :** Anitha Shenoy, for the Appellant; Kiran Suri, for the Respondent

**Final Decision :** Allowed

## Judgement

Arijit Pasayat, J.—Leave granted.

2. Challenge in this appeal is to the judgment of a learned Single Judge of the Karnataka High Court allowing the appeal filed by the respondents so far as their conviction for offence punishable u/s 304 (Part-I) of the Indian Penal Code, 1860 (in short 'IPC') is concerned. Learned Principal Sessions Judge, Mysore, in Sessions Case No. 8/1996 convicted respondent No. 1 in terms of Section 304 Part I IPC. So far as respondent No. 2 is concerned, he was convicted in terms of Section 304 Part II. The conviction of respondent Nos. 1 & 2 for offences punishable u/s 324 read with Section 34 IPC was confirmed.

3. It is not necessary to go into the factual aspects in detail in view of the order proposed to be passed.

4. Nine persons faced trial for alleged commission of offence punishable under Sections 143, 148, 149, 324, 114 read with Section 302 IPC. The prosecution related to an incident on 29.9.1995. The respondents were charged for alleged

intentional commission of murder of one Venkatesha Gowda (hereinafter referred to as 'deceased'). In order to substantiate the offence six witnesses were examined. The trial Court after analyzing the evidence on record, inter alia, concluded as follows:

The discussion supra clearly goes to show that the prosecution has been able to successfully prove that A1 had been guilty of offence punishable u/s 302 Part-I IPC, A3 had committed offence punishable u/s 304 Part II IPC. A1, A2 and A4 had committed offence punishable u/s 324 read with 34 IPC. A5 to A9 have not committed any offence, as how alleged. Hence, I hold that A5 to A9 are entitled for acquittal. But, the other accused will have to be convicted for the said offences.

5. The present respondents filed an appeal before the Karnataka High Court which was disposed of by the impugned judgment. We were shocked to find that the learned Single Judge by a cryptic and practically non- reasoned order has set aside the conviction of the respondents in respect of their conviction in terms of Section 304 Part-I and 304 Part-II respectively. There is practically no analysis of the evidence, more particularly of the eye-witness PWs. 1 to 3 and 9 and 10. They also claimed to have suffered injuries in the incident.

6. Additionally, dying declaration purported to have been made by the deceased has also not been discussed.

7. The Sessions Judge's order shows that he had analysed the evidence in great detail. The High Court did not make an effort to indicate as to how the conclusions were erroneous and/or contrary to evidence on record. The manner in which the appeal has been disposed of leaves much to be desired. Such casual disposal of appeal setting aside the conviction, is neither proper nor desirable.

8. In the circumstances, we set aside the impugned order and remit the matter to the High Court for a fresh consideration on merits. Needless to say, the High Court shall dispose of the appeal in accordance with law by a reasoned order.

9. The appeal is allowed.