

**IN THE HIGH COURT OF KARNATAKA
CIRCUIT BENCH AT DHARWAD**

Dated this the 27th Day of March 2013

Present

THE HON'BLE MR.JUSTICE B.V.PINTO

And

THE HON'BLE MR.JUSTICE H.S.KEMPANNA

Criminal Appeal No.2745/2011

Between:

1. Sri. Balappa Yellappa Kaleri,
Age: 42 years, Occ: Agriculture,
R/o: Jakkanaikankoppa,
Tal: Bailhongal, Dist: Belgaum.
2. Sri. Laxmappa @ Laxman Kaleri,
Age: 32 years, Occ: Agriculture,
- Rest do -
3. Smt. Yailavva Lagamappa
Mareppanavar @ Kaleri,
Age: 37 years, Occ: Household work,
- Rest do -
4. Smt. Kamalavva Balappa Kaleri,
Age: 35 years, Occ: Household work,
- Rest do -

... Appellants

(By Shri. Srinand.A.Pachhapure, Advocate)

A n d :

The State of Karnataka,
By Nesargi Police Station,
Now Rep. by SPP

...Respondent

(By Shri. Y.V.Raviraj, Addl. Government Advocate)

This criminal appeal is filed under section 374(2) of Cr.P.C. seeking to set aside the judgment of conviction and order of sentence dated 05.10.2010/06/10/2010 passed by the Presiding Officer, Fast Track Court & Addl. Sessions Judge, Bailhongal in S.C.No.192/2009 for the offences punishable under Sections 302, 307, 504, 114, 341 read with section 34 of IPC and acquit the appellants.

This criminal appeal coming on for Hearing this day, **B.V.Pinto, J.**, delivered the following:

JUDGMENT

This appeal is filed by the accused in S.C. No.192/2009 challenging the judgment dated 05.10.2010 passed by the Presiding Officer, Fast Track Court, Belgaum, convicting them for the offences under Section 302 read with 34 IPC and sentencing each of them to undergo imprisonment for life and to pay a fine

of Rs.50,000/- each and, in default, to undergo rigorous imprisonment for five years for the offence under Sections 302 and 114 read with 34 IPC and further sentencing them to undergo imprisonment for life and to pay fine of Rs.50,000/- each in default to undergo rigorous imprisonment for five years for the offence under Section 307 and 114 read 34 IPC and further convicting and sentencing accused Nos.3 and 4 to undergo simple imprisonment for one month and to pay a fine of Rs.250/- each in default to undergo simple imprisonment for 15 days for the offence under Section 341 read with 34 IPC and further convicting accused No.3 for the offence under Section 504 IPC and sentencing him to undergo simple imprisonment for one year and to pay fine of Rs.500/- in default to undergo simple imprisonment for two months, and further convicting accused Nos. 1 to 4 for the offence under Section 506 read with Section 34 IPC and sentencing each of them to undergo simple imprisonment for one

year and to pay a fine of Rs.1000/- each, in default, to undergo simple imprisonment for three months/.

2. It is the case of the prosecution that accused No.3 by name Yallavva Lagamappa Mareppanavar was arrested in connection with a case in Crime No.111/2008 of Nesargi Police Station since she was involved in the excise case. She was released on bail and she returned to her house and suspecting that the deceased-Ningawwa had informed the police by giving information about the activities of accused No.3, she instigated accused Nos.1, 2 and 4 and abused the deceased in filthy language and all the accused went to ask the deceased about the information given to the police by going to the house of the deceased. At that time, it is the case of the prosecution that accused Nos.3 and 4 wrongfully restrained the deceased and accused No.1 abused the deceased in filthy language and threatened that they would not leave her alive and

also abused the son of the deceased in vulgar language. Thereafter, accused No.1 assaulted the deceased with sickle on her neck and accused No.2 assaulted with axe on the right hand of the deceased and caused her death. When the son of the deceased tried to rescue his mother, accused No.1 assaulted the son of the complainant by name Fakkirappa Bheemappa Chachadi on his neck with his sickle by repeatedly giving two blows and accused No.2 assaulted Fakkirappa Bheemappa Chachadi with an axe on his chest and accused nos.3 and 4 twisted him and assaulted him with stones with an intention to cause his death, under such circumstances, if by that act, he had died, the accused would have been guilty of murder and caused hurt to the son of the complainant. It is further the case of the prosecution that all the accused threatened them with dire consequences if they revealed the incident to any person or to the police, thereby all the accused are alleged to have committed the offences under Sections

341, 302, 504, 506, 307 and 114 read with Section 34 of Indian Penal Code.

3. The investigation in this case commenced with P.W.24-Sunil Ramappa Kamble, Inspector of Police of Nesargi Police Station receiving the information of the incident that took place on 10.11.2008 at about 11.00 p.m. when he was the Station House Officer. An anonymous call came from Jakkanayakana koppa village stating that one Ningavva has been murdered. On the basis of the said information, P.W.24 immediately rushed to the scene of occurrence and visited the house of the deceased. One person had fallen unconscious with injuries in front of the house. On enquiring the father of the said injured i.e., Bhimappa Irappa Chachadi, he stated that his wife Ningawwa had been assaulted by the accused by sharp edged weapons and had been murdered. Immediately, the injured Fakirappa Bhemappa Chachadi, who is the son of the

complainant-Bhimappa Irappa Chachadi, was shifted to the District Hospital. The dead body of the deceased was shifted to the Government Hospital at Bailhongal for post-mortem examination, after conducting the inquest proceedings over the dead body and taking photographs of the scene of occurrence. P.W.24 received the written complaint of the husband of the deceased viz., Bhimappa Irappa Chachadi, who is examined as P.W.6, and after going back to the police station, registered the same as Crime No.112/2008 at about 1.30 in the mid-night and transmitted the FIR to the Court. Ex.P.10 is the said complaint in which he has identified his signature. FIR is marked as Ex.P.38. P.W.27, who was the inspector of police during the relevant point of time, on receipt of the information from P.W.24 at about 6.00 a.m. on 11.11.2008, visited the Hospital at 6.30 a.m. He examined the dead body of the deceased Ningawwa and observed the injuries on the neck of the deceased so also the injuries on other parts of the body. He has

conducted the inquest proceedings and prepared the inquest panchanama as per Ex.P.9. After taking the photographs of the dead body, he requested the Medical Officer to conduct post-mortem examination on the dead body of the deceased. P.W.27, thereafter, visited the scene of occurrence at Jakkanayakana Koppa village and prepared the spot mahazar as per Ex.P.4. He has also seized the blood-stained mud and unstained mud from the scene of occurrence and so also the stones stained with blood, seized and sealed the same. He also prepared the panchanama for the seizure of the articles mentioned above. After releasing the dead body subsequent to conducting post-mortem examination on the same, the same was handed over to the relatives of the deceased on acknowledgement. P.W.27 has seized the clothes worn by the deceased and found on the dead body under panchanama Ex.P.17. P.W.27 has thereafter recorded the statement of eye-witnesses viz., P.Ws.1 to 3, 7, 10,11 and 13 on the same day and got prepared

the sketch of scene of occurrence through an engineer of Public Works Department. Continuing his investigation, P.W.27 has arrested the accused on 12.11.2008 through the police staff and recorded the voluntary statement of the accused, on the basis of which the motor cycle used by the accused for commission of the offence, is seized as per Ex.P.27 and also the clothes worn by the accused at the time of the offence, so also the sickie produced by accused No.1 and blood-stained shirt worn by accused No.1. P.W.27 also recovered a shirt and axe used for commission of the offence by accused No.1 based on the voluntary statement made by accused No.2 and subjected the same to PF. After subjecting the accused to judicial custody by producing him before the Magistrate, P.W.27 sent the materials collected for chemical examination to the Forensic Science Laboratory and, thereafter, continued the investigation and, on completion of the

same, filed a charge-sheet against the accused for the aforesaid offences.

4. On appearance of the accused before the Court, the prosecution, in order to prove its case, has examined, in all, 28 witnesses and got marked Ex.P.1 to P.51 and produced M.Os.1 to 14. The defence of the accused was one of total denial. However, they have not chosen either to produce any document or examined any witness in their defence. The learned Sessions Judge, after hearing the prosecution and the defence was pleased to convict the accused and sentenced them as aforesaid. The convicted accused have filed this appeal.

5. Heard Shri. Srinand A.Pachhapure, learned counsel appearing for the appellants and Shri Y.V.Raviraj, learned Additional Government Advocate for the State.

6. Learned counsel for the appellants submits that the complaint in this case is not clear in stating the specific overt acts of the accused and that there is no coherence though the complaint is given by P.W.6 who is the husband of the deceased and an eye witness to the incident. It is his submission that there are absolutely no overt acts attributed to accused Nos.3 and 4 except stating that they have assaulted by hands and, therefore, accused Nos.3 and 4 could not have been convicted by the learned Sessions Judge. It is also submitted by him that though the prosecution has examined P.W.1 to 3 as eye witnesses, all of them have turned hostile to the case of the prosecution and the witnesses who have supported the case are only the near relatives of the deceased Ningawwa. Hence, the prosecution has not proved the case against the accused beyond reasonable doubt for want of independent and reliable witnesses regarding the incident. He further submits that out of the witnesses

who have deposed against the accused, P.Ws.7, 11 and 13 are child witnesses and their version cannot be taken for the purpose of conviction unless there is corroboration to their testimony. He further submits that all the three witnesses are the children of the deceased and they are highly interested in the case. It is further submitted by him that P.W.10-Fakirappa Bhimappa Chachadi has categorically stated while deposing before the Court that nothing has been done to him, but, at the same time, he has further stated in the witness box that accused have assaulted him. It is the submission of the learned counsel that P.W.10, who is an injured witness, is uncertain as to specific overt acts and, therefore, the Trial Court could not have relied on the evidence of P.W.10 for the purpose of holding the accused guilty. It is his submission that there being no independent and reliable, clear and cogent evidence, the accused could not have been convicted. It is his further submission that there is no evidence on record to show

that accused No.3, who, according to the prosecution, is the root cause of the incident had instigated other accused to commit the crime and therefore, he submits that the prosecution has failed to prove the genesis of the crime and hence a doubt is created about the entire prosecution case which entitles the accused for an order of acquittal since the prosecution has not proved the case beyond reasonable doubt.

7. Shri. Y.V.Raviraj, learned Addl. Government Advocate, on the other hand, submits that P.Ws.7, 11 and 13, though, are child witnesses, they are aged about 14, 11 and 13 years respectively who cannot be termed as child witness. In the cross-examination of all these three witnesses nothing has been elicited by the defence so as to dislodge their version before Court. Nothing has been brought on record to show as to why they should falsely implicate the accused instead of real culprits. It is submitted that the incident having taken

place in the house of deceased-Ningawwa the aforesaid witnesses being her children, it is quite natural that they were present in the house when the incident happened. He has further submitted that on a plain reading of the evidence of P.Ws.7, 11 and 13, there is no exaggeration in the evidence of these three witnesses regarding the incident and all three of them have clearly stated that the accused had come armed with the weapons and abusing their mother assaulted her and caused her death while also assaulting P.W.10-Fakirappa Bheemappa Chachadi. It is also his submission that P.W.6-Bhimappa Irappa Chachadi, who is the husband of the deceased, and P.W.10 also have corroborated the evidence of other three witnesses in respect of the incident and that P.W.10 though, at one instance, has stated that when his mother was killed nothing happened to him at the very next breath, he has stated that the 1st accused assaulted him by means of sickle on his chest and that he had sustained

injuries. It is the submission of the learned Government Advocate that all the witnesses are rustic villagers and that they will not be having knowledge of intricacies of the incidents or the consequence of recording the depositions. Their version before the Court is natural, unblemished and clear. They have clearly stated regarding assault on the deceased-Ningawwa and also on P.W.10-Fakirappa Bhimappa Chachadi who also fell unconscious at the time of the incident. Hence, he submits that the prosecution has proved the case against the accused beyond reasonable doubt by adducing cogent and clear evidence and therefore, he submits that this appeal may be dismissed.

8. P.W.24-Sunil Ramappa Kamble, Sub-Inspector of Police on reaching the scene of occurrence took the statement from Bhimappa Irappa Chachadi who is the husband of the deceased. The said complaint is marked as Ex.P.10. The complainant has stated in

his complaint that he is residing in Jakkanayakana koppa village along with his wife Ningawwa aged about 40 years and eight children. On 8.11.2008, there was a raid by the police in connection with the illicit distillation of the liquor and at that time, accused No.3 by name Yallowwa wife of Laganappa Mareppanavar and Yallappa were arrested by the police and were taken to the police Station. On 10.11.2008 both of them had come back by securing bail and at about 7.00 p.m. accused No.3 along with her brother by name Balappa Yallappa Kaleri-accused No.1, Laxman Yallappa Kaleri-accused No.2 and the wife of accused No.1 by name Kamalavva Balappa Kaleri-accused No.4 by holding sickle and axe in their hands came to their house and started abusing them saying that they have made them to be caught by the police and so saying accused assaulted son Fakkirappa by means of sickle on his chest. When his son fell down after sustaining injuries, the accused asked for his wife and at that time, they

assaulted his wife by means of sickle and axe and killed her. His wife Ningawwa fell down by sustaining injuries. It was about 8.00 p.m. At that time, the people in the locality have seen the incident and they have phoned up to the police station and he is giving complaint to the police as the police had come there. It is stated by him that the accused Balappa Yallappa Kaleri, Laxman Yallappa Kaleri, Yellavva Lagamappa Kaleri and Kamalavva Balappa Kaleri had committed the murder and assaulted his son and hence, he is giving the complaint. P.W.24 has registered the said case in Crime No.112/2008 for offences under Sections 302 and 307 read with 34 of Indian Penal Code.

9. Out of the eye witnesses examined before the Court, P.W.1-Basappa, P.W.2-Mahadev Gowdappa, P.W.3-Chandrappa Basavanneppa Hanuman and P.W.4-Shivappa Sadappa Madival have turned hostile to the case of the prosecution and they have not supported

the prosecution case. P.W.5-Hanamant Yallappa Hanchinmani, is a witness to Ex.P.4, which is the panchanama of the scene of occurrence.

10. P.W.6-Bhimappa Irappa Chachadi, is the complainant. He has stated before the Court that about one year back, his wife has been murdered by the accused. Accused No.1 assaulted his wife and his son Fakkirappa had also sustained injuries on his neck and chest. However, he has not supported the case of the prosecution sofar as his eyewitness account is concerned. He has stated that when the police came, he has given the complaint to the police. After he is treated as hostile, the Public Prosecutor cross-examined P.W.6 and in the cross-examination of P.W.6, he has stated regarding the case of the prosecution which is recorded by the learned Sessions Judge in the form of answers to the suggestions made to the said witness by the Public Prosecutor.

11. P.W.7-Nagappa is the son of the deceased. He is aged about 14 years. The learned Sessions Judge had put certain questions to him since he was a child witness. After being satisfied that P.W.7 was giving sensible answers to the questions, oath was administered to P.W.7 and he was examined as a witness.

12. In his evidence before the Court PW.7-Nagappa has stated that on the date of incident his mother was murdered between 7.00 and 7.30 p.m., in the evening which incident happened in his presence. The accused had committed murder by means of a sickle. Accused No.1 was holding a sickle, accused No.2 was having nothing in his hand. Both accused Nos.1 and 3 came and assaulted his mother. In this connection the complaint has been given. It is further stated by PW.7 that his brother Fakirappa has also been

assaulted on his neck and chest by sickle by accused No.1. This PW.7 has been thoroughly cross-examined by the defence. However nothing could dislodge his evidence regarding the incident.

13. PW.10 is injured Fakirappa. He has stated that about two years back his mother has been murdered by accused No.1 Balappa, assaulting by sickle on the neck of his mother. He has also stated that accused No.2 has also assaulted his mother on her stomach. The accused No.3 was suspecting that his mother was instrumental in accused No.3 being arrested in an excise case and hence after coming out of the jail the accused No.3 has caused the murder of his mother. It is also stated by PW.10 that the accused have abused them while going away from the scene of occurrence. It is further stated by PW.10 that the accused No.1 came and held the neck of his mother and even though his mother

requested not to kill her and to leave her, the accused have committed the murder. He has also stated that he sustained injuries on his chest and neck, by the assault caused by accused No.1 on his chest by sickle. He has stated that accused No.2 assaulted him by means of stone on his stomach. The accused No.1 has cut him by sickle. However accused Nos.3 and 4 have not done anything to him. Thereafter he was taken to the hospital where he has been treated by PW.12 the Medical Officer. It is suggested in the cross-examination that no such incident has happened and that the accused were not there at the scene of occurrence at the time when his mother was murdered. However PW.10 has denied the said suggestions. It is further suggested to PW.10 that his mother the deceased is having several enemies in connection with sale of illicit liquor and further that the deceased was consuming illicit liquor every day, which suggestions have been denied by

PW.10. PW.11-Vidya is the daughter of the deceased and the complainant-PW.6. She has also stated that the accused have committed the murder of the deceased. She has also narrated in her evidence before the Court the specific overt-acts of the accused No.1 holding a sickle and also the 2nd accused holding an axe and assaulting on her mother. It is in her evidence that the accused Nos.3 and 4 held some sharp stones and assaulted on the stomach of her brother Fakirappa and her brother has also sustained injuries on his neck and chest and was bleeding. It is in the evidence of PW.11 that due to the instigation of the accused No.3 the incident has happened, in which her mother has been murdered by the accused. A thorough cross-examination of PW.11 by the defence also could not discredit the eye witness account of the PW.11 regarding the murder of the deceased and injuries caused on PW.10.

14. PW.13-Minaxi is yet another eye witness to the incident. She is aged about 13 years and after ascertaining her capacity to differentiate between the truth and untruth the learned Sessions Judge has administered oath on her and in her evidence she has also stated regarding the assault by the accused on her mother and about her mother's death on the date of incident, so also part played by accused Nos.3 and 4 in assaulting her brother Fakirappa by means of stones and causing injuries to him.

15. PW.12-Dr.Malakappa is the Medical Officer at District Hospital, Belgaum, who has treated PW.10 Fakirappa on 11.11.2008 and has stated that Fakirappa had sustained injuries as per the wound certificate Ex.P.20 issued by him in this respect. He has stated that PW.10 had sustained bone deep cut lacerated wound extended from right anteriorline to supra sternal

nouth crossing just 2 cms. above the right nipple.

16. PW.12 has opined that the injuries sustained by PW.10 are simple in nature and that such injuries could have been caused by MO.9 sickle. PW.28 Dr.Pushpa H.R. is the Medical Officer at Bailhongal. She has conducted postmortem examination on the body of the deceased Ningavva on 11.11.2008. She has issued the postmortem examination report as per Ex.P.49. It is in the evidence of PW.28 that the deceased Ningavva had suffered 4 grievous injuries on her body and the cause of death is due to partial decapitation of the head and traumatic haemorrhage as per Ex.P.49.

17. The other witnesses examined in this case include PW.19 the Constable who has transmitted the FIR to the Court, PW.20, WPC Shobha who has apprehended the accused Nos.3

and 4, PW.21 the ASI who has apprehended the accused Nos.1 and 2, PW.22 Fakirappa Head Constable who has carried the materials to the Forensic Science Laboratory, PW.23 Ashok, the engineer who has prepared a sketch of the scene of occurrence and other witnesses who have assisted in the investigation of the offences.

18. On a careful consideration of the above materials from the evidence of eye witnesses and also from the evidence of PW.28, the Medical Officer it is clear that the deceased Ningavva has suffered a homicidal death. It is also further clear from the evidence of PW.12 Dr.Malakappa that Fakirappa has sustained injuries on his person, which was caused by a weapon like sickle. Under the circumstances the prosecution has established beyond reasonable doubt that the deceased Ningavva has suffered an homicidal death and

PW.10 has received injuries by means of sickle which is a lethal weapon.

19. On a perusal of the evidence of the eye witnesses namely PWs.7, 10, 11 and 13 it is established by the prosecution that the accused have committed fatal injuries on the person of the deceased Ningavva on the date of offence and caused her murder. The witnesses have also spoken clearly as to the act of the accused in attempting to commit murder of PW.10 Fakirappa by means of sickle and axe. It is in the evidence of eye witnesses that on sustaining injuries from the hands of the accused, PW.10 had fallen on the ground at the scene of occurrence itself and he has been shifted by the neighbouring persons. The learned Sessions Judge on a careful consideration of the above materials has come to the conclusion that the accused have committed the offences of

murder and attempting to commit murder of Ningavva and Fakirappa, respectively.

20. We have given our careful consideration to the entire materials on record. It is true that as pointed out by the learned counsel for the appellant that there are minor discrepancies in the narration of the incident by the eye witnesses, one cannot lose sight of the fact that the incident has happened at about 8.00 p.m. and that a number of people were present at the scene of occurrence. The witnesses are rustic villagers and therefore there is possibility of minor discrepancies in the narration of events. However on a threadbare consideration of the eye witnesses account given by PWs.7, 11, 10 and 13, we are of the considered opinion that all the four accused have actively taken part in the incident and they have together committed the murder of the deceased Ningavva with a common intention of

causing her death and also further assaulted on PW.10 with an intention to cause his murder as well. Under the circumstances we have no hesitation to hold that the learned Sessions Judge has rightly convicted the appellants for the offences mentioned above and sentenced them accordingly.

21. We have also given our consideration to the quantum of compensation imposed on the appellant and having regard to the facts and circumstances of the case we do not find that the said sentence is either harsh or excessive but is commensurate with the act complained of. Under the circumstances we hold that there is no merit in this appeal and the same is liable to be dismissed. Accordingly the appeal is dismissed.

22. It is seen that the accused Nos.3 and 4 are on bail by virtue of the order of this Court dated 19.10.2011. Their bail bonds are cancelled

and they are directed to surrender themselves before the trial Court to serve out the remaining part of the sentence imposed on them, failing which the trial Court is directed to take steps to execute sentence as ordered.

23. It is seen that the learned Sessions Judge has sentenced the accused for life imprisonment and to pay fine of Rs.50,000/-, in default to undergo rigorous imprisonment for five years. We are of the opinion that the said default sentence is not commensurate with the provisions of the law. Hence it is necessary that the said default sentence be reduced to one year. Similarly the default sentence for the offence under Section 307 of IPC is reduced from 5 years to one year, while keeping the rest of the sentence intact, so also the order directing the sentences to run concurrently.

24. In the result, the order of conviction and sentence imposed on the appellants is confirmed while the order of default sentence is modified to one year for the offence under Section 302 of IPC as well as for offence under Section 307 of IPC.

**Sd/-
JUDGE**

**Sd/-
JUDGE**

KMS/MRK/-