

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

DATED THIS THE 10TH DAY OF APRIL 2013

:PRESENT:

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

AND

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

CRIMINAL APPEAL NO.2879/2011

BETWEEN

TIRUPATEPPA @ TIRUPATI  
S/O BHEEMAPPA PUJAR  
Age : 53 YRS  
OCC:AGRICULTURE  
R/O:BALUTIGI TANDA, TQ:YALBURGA  
DIST:KOPPAL

... APPELLANT

(By Sri. B V SOMAPUR - ADV.)

AND

THE STATE OF KARNATAKA  
REP. BY YALBURGA P.S  
REP. BY STATE PUBLIC PROSECUTOR  
CIRCUIT BENCH, DHARWAD

... RESPONDENT

(By Sri.V.M.BANAKAR - ADDL SPPL )

THIS CRIMINAL APPEAL IS FILED U/S 374(2) OF CR.P.C.  
SEEKING TO SET ASIDE THE IMPUGNED JUDGEMENT AND  
ORDER PASSED BY THE FAST TRACK COURT-I, KOPPAL, IN  
S.C.NO.38/2003, DATED 06.04.2006 AND THE  
APPELLANT/ACCUSED NO.1 BE ACQUITTED.

THIS CRIMINAL APPEAL COMING ON FOR FINAL HEARING THIS DAY, **B.V.PINTO J.**, DELIVERED THE FOLLOWING:

**JUDGMENT**

This appeal is by the appellant challenging the judgment and order dated 6.4.2006 passed by the Sessions Judge and Fast Track Court-I at Koppal in S.C.No.38/2003 convicting the appellant of the offence u/s.302 of IPC and sentencing him to undergo R.I for life and to pay fine of Rs.15,000/- in default to undergo R.I. for one year for the aforesaid offence and also convicting him for the offence u/s. 323 of IPC and sentencing him to undergo R.I. for three months with a direction that both the sentences shall run concurrently.

2. It is the case of the prosecution that on 13.3.2003 at about 7.00 p.m., in the court yard situated in front of the cattle shed of the deceased Tulajappa at Balutagi Tanda within the limits of Kalburgi police station, the appellant along with accused 2 and 3 intentionally committed murder of the deceased Tulajappa by means of an axe and thereby he

is alleged to have committed an offence punishable under Section 302 of IPC. It is further the case of the prosecution that the appellant herein on the same day, place and time voluntarily caused hurt to the complainant-Parasappa s/o.Tulajappa by means of an axe, thereby he is alleged to have committed an offence punishable under Section 324 of IPC. It is also further the case of the prosecution on the aforesaid date, place and time the accused has caused hurt to PW8-Shankravva thereby he is alleged to have committed an offence punishable under Section 323 of IPC. Apart from this according to the case of the prosecution A2 and A3 have also assaulted on PWs 6 and 7 Smt.Ratnawwa and Devawwa by means of club and thereby committed an offence punishable under Section 324 r/w.34 of IPC.

3. The prosecution in this case commenced with the filing of the complaint by PW5-Parasappa who is the son of the deceased Tulajappa. In the said complaint it is stated that the complainant and his family are residing at Balutagi

Tanda, Koppal Dist. The relatives of the complainant viz. the accused are also residing in their neighbourhood. About 4 to 5 months prior to the date of incident which took place on 13.3.2003 the legs of one hen was broken and two hens belonging to the complainant were stolen by the son of A1 and in this connection, panchayath had taken place in the village. The panchayath had imposed a fine of Rs.600/- on the son of the first accused which was paid by the accused. On 13.3.2003, Thursday father of the complainant by name Tulajappa came back from Gajendragad at about 6.00 p.m. and he was sitting on a heap of stones in front of his house. He observed that leg of one of their hen had broken and on seeing this, he started abusing. On hearing the abuse of the deceased, the first accused along with the second accused (son) and the wife of the first accused all together came to the place where his father was sitting and started abusing. There is some open place in between the two houses and at that place both of them started quarrelling with each other. At that time, the first accused brought on axe and assaulted

Tulajappa by dealing one blow on his head. At that time, the other accused also started assaulting him. The appellant also assaulted the complainant on his forehead and caused an injury to an extent of 1". Mother of the complainant-Rathnawa and sister of the complainant-Devawwa, were also assaulted by A2 and A3 by means of a club on their head and nose. His sister Shankrawwa-PW8 also sustained injuries due to kicking of the appellant on her stomach. PW9-Venkatesh, CW16-Rathnappa also saw the incident and the time was 7.00 p.m. The accused assaulted his father by means of axe and clubs. His father fell down sustaining grievous injuries and lost his conscience. The deceased and the injured were removed in the autorickshaw belonging to PW12. The doctor at Yelburga hospital suggested that the injured and others be taken to another hospital and thereafter at about 9.30 p.m. he reached the police station and he has given an oral complaint to the police. It is stated in the complaint that due to the quarrel regarding the theft of hens and breaking the leg of the chicken, accused have assaulted his father,

mother, sisters and himself and therefore, he prayed to take suitable action in accordance with law against the accused.

4. PW15-Siddayaswamy, the PSI of Yelaburga police station received the said complaint and registered the same in Crime No.15/2003 for the offence u/ss. 323, 324, 307, 504 r/w.34 of IPC and transmitted the FIR as per Ex.P8. Complaint is marked as Ex.P6. PW15 thereafter commenced the investigation. At about 11.30 in the same night he received the information that Tulajappa succumbed to the injuries at 10.45 p.m. and therefore, a memo was filed before the Magistrate's Court to add Section 302 of IPC. Thereafter PW15 handed over further investigation of the case to PW16. PW16 the Inspector of police took over the investigation on 14.3.2003 and thereafter he visited the scene of occurrence at Balutagi Tanda and instructed the PSI and staff to arrest the accused. He thereafter prepared the spot mahazar and recorded the statement of PW5 and also recorded the statements of PWs 6,7,9,14,17 and others. The accused was apprehended by PW15 and produced before PW16. Accused

was questioned by PW16 and at the instance of the accused, the C.P.I. recovered MO1-Axe used for commission of the offence by the accused and also recovered MOs 2 and 3 used by A2 and A3 for commission of offence. He also visited the hospital and recorded the statement of the injured Parasappa and his mother and sisters. He further seized the clothes worn by the injured which were blood stained. The dead body of Tulajappa was subjected to inquest proceedings on the next day and thereafter the dead body was subjected to post mortem examination. On 22.3.2003 he also received the wound certificates of the complainant, his mother and sisters. On 12.4.2003 he sent the clothes seized in the case to the FSL office for their opinion. The Scientist at the FSL office requested him to produce the blood samples of the injured persons. On 9.4.2003 the injured were taken to Yelburga Government Hospital and there the blood samples were taken in a sealed cover and the same was forwarded to the Forensic Science Laboratory. On 14.4.2003 PW16 secured the opinion of the doctor who has treated them. PW16 thereafter

requested the officers of PWD Department to furnish the sketch of the scene of the occurrence and on 27.4.2003 PW16 has filed the charge sheet against the accused. Documents have been marked through PW16 which consisted of Ex.P7 post mortem report, Ex.P13-sketch and other documents. After filing of the charge sheet, the accused were committed to the court of Sessions and they have pleaded not guilty to the charge framed against them.

5. Thereafter, the prosecution in order to prove its case has in all examined 21 witnesses and got marked exhibits P1 to P21 and produced MOs 1 to 11. Total denial of the prosecution case is the defence of the accused. The learned Sessions Judge by the impugned judgment and order convicted and sentenced the accused as aforesaid.

6. Being aggrieved by the order of conviction passed by the trial Court, accused Nos.2 and 3 have filed appeal before this court in CrI.A.1079.2006, whereas the State had filed the appeal in CrI.A.1645/2006 challenging the order of acquittal

of A2 and A3. This Court by judgment dated 3.11.2011 dismissed the appeal filed by the State and confirmed the judgment of conviction passed by the trial Judge but reduced the sentence imposed on the appellants/A2 and A3 to the period of detention undergone by them. It is accused No.1 who is convicted for the offence of murder who has filed this appeal.

7. Out of the witnesses examined, PWs 1 and 3 are the signatories to inquest panchanama of the deceased. PW2 Ningappa is the younger son of the deceased. PW2 has stated before the court that he is one of the four children of deceased Tulajappa. His father was eking out his livelihood by looking after some hen. About 4 to 5 months prior to the date of incident which took place on 13.3.2003 the legs of one hen was broken and two hens belonging to the complainant were stolen by the son of appellant and in this connection, panchayath was convened in the village. The panchayath imposed a fine of Rs.600/- on the son of the appellant which

was paid by the appellant. He has further stated that on 13.3.2003 at about 11.00 p.m. when he was in Hubli he came to know that his father has been assaulted by the accused.

8. PW3 is a signatory to Ex.P2 which is the spot panchanama. PW3 is also a signatory to the seizure panchanama wherein MOs 1 to 3 were seized at the instance of the accused. It was suggested to PW3 that he is not a witness to the incident. PW4 Manappa is a witness to the seizure of the clothes worn by the injured as per Ex.P4. He identified MOs 4 to 8. PW4 is also a panch for the seizure of the clothes of the deceased as per Ex.P5. PW5-Parasappa is son of the deceased Tulajappa and PW7-Devawwa. He has stated in his evidence in respect of the theft of the two hens and the breaking of one leg of a hen, his father had given a complaint against the son of Accused No.1 to Panchayath and a penalty of Rs.600/- was paid by the accused towards compensation. Accused No.1 and his sons are residing together. The panchayathdars viz PW1 and PW13 were also

present at the time of holding panchayath. After the accused paid the compensation, the enmity between them increased. On the date of the incident i.e. on 13.3.2003 Thursday, his father, deceased Tulajappa came back from Gajendragad at about 6.00 p.m. and he was sitting on a heap of stones in front of the house. He observed that leg of one of their hen had broken and he started abusing. A1 thinking that the deceased was abusing them, came out of his house along with an axe and by telling that the deceased is abusing them, dealt a blow on the head of his father. Along with the first accused, the second accused and the wife (A3) of the first accused also came to the place along with club. On seeing that his father was assaulted, complainant went to extricate his father. The appellant (A1) also assaulted the complainant on his forehead and caused an injury to an extent of 1". Mother of the complainant by name Rathnawwa and sister of the complainant-Devawwa, were assaulted by A2 and A3 by means of a club on their head and nose. His sister Shankrawwa PW8 also sustained injuries due to kicking by

the appellant on her stomach and chest. The complainant, one PW9-Venkatesh and CW16-Rathnappa also saw the incident and the time was 7.00 p.m. The accused assaulted his father by means of axe and clubs. His father fell down sustaining grievous injuries and lost his conscience. The deceased and the injured were removed in the auto rickshaw belonging to PW12 to the hospital. The doctor at Yelburga Government Hospital suggested that the deceased and others be taken to Gadag hospital and therefore they took them to Gadag hospital. PW5 has stated that he came to Yelburga police station and he has given a complaint as per Ex.P6. At about 10.45 p.m. on that day itself his father expired and thereafter he informed the same to his brother at Hubli. On being informed he came to the Gadag hospital itself at night. Thereafter, the procedures such as inquest proceedings, P.M. Examination were completed taken by PW5 the S.I. of police. In the cross examination it is elicited by the defence that the deceased was abusing right from 6.00 p.m. when he came back from Gajendragad and while sitting in front of his house

on the stones and after about one hour the accused came and assaulted on the head of the deceased. It is elicited that the shed of the accused and the house of the accused is situated within a distance of 10 ft. and in front of the cow shed, house of complainant is situated and in front of the said cow shed, there is heap of stones on which the deceased was sitting at the time of incident. It is suggested that the accused have not at all committed the offence, but the said suggestion is denied by PW5.

9. PW6 is the daughter of the deceased who is an injured eye witness to the said incident. PW7 Devawwa, wife of the deceased, is also another injured. Their statements in respect of the incident is similar and both of them have stated that they have been assaulted by A2 and A3 at the time of incident. PW8 Shankrawwa is also another injured. Her evidence is also similar to that of PWs 6 and 7. PW9 Venkatesh is an eye witness to the incident. He has stated that on the date of the incident, at about 6.00 p.m. appellant

has assaulted on the head of the deceased when he was sitting in front of his house and one Shivappa, PW10 was sitting in front of his house. PW9 has also stated regarding the part played by A2 and A3 in assaulting PWs 6, 7 and 8. He has also identified the weapons MOs 1 to 3 used for commission of murder of the deceased and injured respectively. The evidence of PW10 is also similar to that of PW9 in respect of the incident.

10. PW11 is the medical officer at the Dist. Hospital, Gadag. He has stated that on 14.3.2003 he has conducted post mortem examination on the dead body of the deceased at about 12 noon. He has stated that the injured had sustained injuries on his forehead and also left side of his head. He has also stated that the skull has been broken and that there were about 8 fractures on the head. There was also scratch injury on the chest and there was profuse bleeding in the brain. After conducting the post mortem examination he has issued the post mortem examination certificate as per Ex.P7.

The investigating officer has shown the weapons MOs 1 to 3 and he has opined that the injuries caused by the deceased could have been caused by the weapon MO1- axe.

11. PW12 Ningappa is the owner of the autorickshaw who has stated that on the date of the incident at about 7.30 p.m. he has carried the injured to Yelburga Government Hospital. PW13 Sakrappa is the panchayatdar regarding the theft of hens and breaking the leg of a hen belonging to the complainant's father and he has stated that a sum of Rs.600/- was imposed as penalty on the appellant for having stolen the chicken of the complainant and his father, the deceased. PW14 Rudrappa is a resident of Balutagi Tanda who has assisted PWs 5 and 6 in shifting the injured persons to the hospital.

12. PW15 was the PSI at the relevant time who has received the complaint from PW5 at about 9.30 p.m. and thereafter registered a case in Crime No.15/2003 and thereafter, sent the FIR to the court. He has also received the

intimation regarding the death of the deceased on the same night at about 11.30 p.m. and thereafter filed memo before the court and prayed to add Section 302 of IPC. PW16 is the CPI whose part in the investigation has been discussed in the earlier part of this judgment. PW17 is the head constable who has visited the hospital and conducted inquest proceedings on the dead body of the deceased after the deceased was taken to the Gadag hospital. PW18 has furnished the sketch of the scene of occurrence as per Ex.P13. PW19 is the constable who has carried the FIR to the court of the Magistrate. PW20 is the head constable who has carried the materials to the FSL in Crime No.15/2003 and has furnished the report to the investigating officer. PW21 Dr.Mahesh is the medical officer at Yelaburga Government Hospital who has examined PWs 5 to 8 on the date of incident and furnished medical certificates as per Ex.P15 to P18. Apart from the same, he has also examined the deceased at the first instance. It is from the above materials on record

that the learned Sessions Judge has convicted the appellant and sentenced him accordingly.

13. Heard Shri. B.V.Somapur the learned counsel for the appellant and Shri V.M.Banakar, the learned Addl. SPP for the State.

14. The learned counsel appearing for the appellant submits that having regard to the fact that the deceased himself is the cause for the incident and in that according to the case of the prosecution itself it is the deceased who started abusing by sitting in front of his house on the date of incident. He has provoked the accused in commission of the offence. Under the circumstances, he submits that the incident has happened in the background of the abuses hurled by the deceased himself and therefore, the incident has happened in the spur of a moment without any intention. Under the circumstances he submits the act committed by the accused comes down to one under Section 304 of IPC and

the appellant cannot be convicted for the offence punishable under Section 302 of IPC.

15. Sri.V.M.Banakar, learned Addl. SPP submits that the accused/appellant has used the axe and has assaulted on the head of the deceased. The deceased has sustained fatal injury from the appellant and has died on the same day. Hence, he submits that the intention of the accused to commit murder is very clear. He also submits that the prosecution has proved the motive to commit the crime due to previous enmity. Hence he submits that the appeal may be dismissed.

16 On a careful consideration of the above material on record it is seen that the witnesses viz. PWs 5, 6, 7 and 8 who are the injured witnesses have categorically spoken regarding the fact that A1, the appellant herein, has assaulted the deceased by means of an axe on his head. PW9-Venkatesh and PW10-Shivappa, who are independent witnesses, have also corroborated the evidence of injured eye-witnesses. The

said evidence of the injured witnesses and the eye witnesses has been further corroborated by the evidence of PW11- Dr.H.Nagaraj who has conducted post mortem examination on the dead body of the deceased. Under the circumstances, having regard to the opinion given by PW11 it is established beyond reasonable doubt that the deceased Tulajappa has sustained homicidal death and that the said death is caused by the act of accused No.1, the appellant herein by assaulting with axe on his head on 13.3.2003 at about 7.00 p.m.

17. This Court in Criminal Appeals 1645/2006 and 1079/2006 has confirmed the order of conviction passed on A2 and A3 insofar as the offence punishable u/s.324 of IPC is concerned. The said finding of the fact has become final. However, independently of the same, we have appreciated the evidence on record and we find that the judgment of conviction passed by the learned Sessions Judge insofar as this fact is concerned cannot be found fault with.

17. However, insofar as the nature of offence committed by the appellant, on a careful perusal of the material on record we find sufficient force in the submission made by the learned counsel for the appellant. It is elicited in the cross examination of PW5 that his father came from Gajendragad on the date of incident at about 6.00 p.m. and he sat in front of his house over the stone heap and started hurling abuses on seeing that the leg of one of his hen being broken. It is only at 7.00 p.m. the accused came out with an axe on his hand and therefore, for the period of almost one hour, it is the deceased who was abusing in front of his house. The spot panchanama-ExP2 and the sketch- Ex.P13 indicates that the distance between the house of the accused and the house of the deceased is about 10 ft. and therefore, the abuses made by the deceased would have been clearly audible to the accused. Under the circumstances it is obvious that being irritated by the abuses made by the deceased and also in view of the fact that there was an issue regarding the theft of chicken and breaking of leg of a hen earlier also, accused

would have been provoked to commit assault on the deceased. Under such circumstances, we are of the considered opinion that the act committed by the accused/appellant does not amount to culpable homicide amounting to murder, on the other hand, it amounts to culpable homicide not amounting to murder punishable under Section 304 of IPC. We have also come to this view having regard to the evidence on record that appellant has dealt one blow which would indicate at that point of time he had no intention to commit murder on the deceased.

18. Having regard to the facts and circumstances of the case, as stated above, so far as the sentence is concerned, we are of the considered view that a sentence of 8 years R.I. would meet the ends of justice.

19. Accordingly, we pass the following :-

ORDER

- i) The appeal is allowed in part;

- ii) The order of conviction of the appellant for the offence u/s.302 of IPC is altered to one u/s.304(I) of IPC. Consequently the sentence of imprisonment for life is set aside and the appellant is sentenced to R.I. for 8 years and to pay fine of Rs.15,000/- I.D. to undergo R.I. for three months;
- iii) Insofar as the conviction and sentence for the offence under Section 324 of IPC is concerned, the same is confirmed. The order regarding sentences to run concurrently and the order regarding payment of compensation to PW6 are kept intact.

**SD/-  
JUDGE**

**SD/-  
JUDGE**

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