

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

DATED THIS THE 18TH DAY OF APRIL 2013

:PRESENT:

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

AND

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

CRL.A NO.2892/2011 C/W CRL.A NO.2926/2011

IN CRL.A NO.2892/2011:

BETWEEN:

BHAIRAPPA S/C. SADASHIV KAVATEKAR,
AGE: 42 YEARS, OCC: AGRICULTURE,
R/O: GADYAL, TQ: JAMKHANDI,
DIST: BAGALKOT.

...APPELLANT

(BY SRI. A R PATIL, ADVOCATE)

AND:

THE STATE OF KARNATAKA,
REP.BY THE ADDL. STATE PUBLIC PROSECUTOR,
SAVALGI POLICE STATION.

... RESPONDENT

(BY SRI. Y.V RAVIRAJ, AGA)

THIS CRIMINAL APPEAL IS FILED U/S 374(2) OF CR.P.C.
SEEKING TO SET ASIDE THE JUDGEMENT AND ORDER OF
CONVICTION AND SENTENCING THE APPELLANT DATED
29.09.2011 PASSED BY THE P.O., FAST TRACK COURT,
JAMKHANDI IN S.C.NO.82/2006 AND ACQUIT THE APPELLANT.

IN CRL.A NO.2926/2011:

BETWEEN:

PARASAPPA SADASHIV KAVATEKAR,
AGE: 32 YEARS, OCC: AGRICULTURE,
R/O. GADYAL, TQ: JAMAKHANDI.

...APPELLANT

(By SRI. M L VANTI, ADV.)

AND:

THE STATE OF KARNATAKA,
REP. BY SPP,
HIGH COURT OF KARNATAKA
CIRCUIT BENCH, DHARWAD.

... RESPONDENT

(BY SRI. Y.V RAVIRAJ, AGA)

THIS CRIMINAL APPEAL IS FILED U/S 374(2) OF CR.P.C. SEEKING TO SET ASIDE THE JUDGEMENT AND ORDER OF CONVICTION DATED 29.09.2011 PASSED BY THE DIST. & SESSIONS JUDGE, FAST TRACK COURT, JAMKHANDI IN S.C.NO.82/2006, FOR THE OFFENCES P/U/S 302, 324 & 504 R/W 34 OF IPC.

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

JUDGMENT

These two appeals arise out of the same judgment of conviction. Hence, both of them are taken up together for the purpose of disposal. While Criminal Appeal 2892/11 is filed on behalf of A1, Criminal Appeal 2926/11 is filed on behalf of A2 in S.C.NO.82/2006 on the file of the District and Sessions Judge, Fast Track Court, Jamkhandi wherein by judgment dated 29.9.2011, the learned Sessions Judge was pleased to convict both the appellants for the offence u/s.302, 324 and 504 r/w.34 of IPC and sentenced each of them to undergo imprisonment for life and to pay fine of Rs.1,000/- each for the offence u/s.302 of IPC in default of payment of fine to undergo S.I. for 6 months. Further, they are convicted for the offence u/s.324 of IPC and each of them are sentenced to undergo imprisonment for one year and to pay fine of Rs.2,000/- in default to undergo imprisonment for two months and further they are convicted for the offence u/s.504 of IPC and each of them are sentenced to undergo

imprisonment for one year and to pay fine of Rs.1,000/- in default to undergo S.I. for one month.

2. It is the case of the prosecution that the appellants/accused in furtherance of their common intention on 12.8.2006 at about 7.30 p.m. by the side of the cart track situated in the land of PW7-Mahadev did commit the murder of Gurappa Sadashiv Kavatekar by intentionally assaulting him with Koitha and sickle and in the course of the same transaction, they also caused simple hurt to PW1-Smt.Laxmi Bai and thereafter at about 8.00 p.m. in furtherance of their common intention, they committed murder of the deceased Somaling in the house belonging to the deceased situated within the limits of Savalagi police station and thereby have committed the aforementioned offences.

3. The case came to be registered on the basis of the complaint filed by Smt.Laxmi Bai w/o. the deceased Gurappa on 13.8.2006. The complainant has stated in her complaint that she hails from Athani Taluk and she has been given in

marriage to Sri.Gurappa s/o.Sadashiv Kavatekar of Gadyal village of the said Taluk about 14-15 years prior to the date of incident and out of the said marriage, they have begotten 5 children out of which the first one is a son by name Somaling, aged about 11 years, second to fifth are daughters viz. Shashikala, Geetha, Chandrawwa and Sujatha aged 8,6,4 and 2 years respectively. The complainant, her husband, their children and also her father-in-law – Sadashiv Kavetekar and mother-in-law Smt.Srimantewwa are residing together in the village and are carrying on agricultural work. Their land is situated about 2 kms away from their house and there is cart road leading to the said land. Her husband has got two brothers by name Bhairappa (A1) and Parasappa (A2) (appellants) and five years prior to the date of incident, all of them have separated and divided the property belonging to them. Parasappa is residing in Gadyal village along with his wife. Bhairappa is residing in the farm house by the side of the house of the complainant in a separate house. Both Bhairappa and Parasappa have not begotten any children.

Her father-in-law and mother-in-law were residing with them and hence, her father-in-law Sadashiv had bequeathed about 13 acres of land in the name of her son Somaling. After the said act of her father-in-law both the brothers of her husband viz. Bhairappa and Parasappa were angry on her husband and children. It is stated in the complaint that on 12.8.2006, at about 9.00 a.m. herself and her mother-in-law Srimanthawwa and her children by name Shashikala and Geetha had gone to the fields to pick up green grams. Her son Somaling, daughters Chandrawwa and Sujata were in the house. Her husband had gone to a funeral ceremony in the village. At about 4.00 p.m. he returned from the ceremony and came to the field on his cycle. All of them started going back to the house. Thereafter when they reached the field of one Mahadev (PW7), both the accused came suddenly holding weapons in their hands. Bhairappa was holding a koitha used for cutting sugarcane. Parasappa was holding a sickle and they came near her husband Gurappa and by abusing him stating that by influencing their father, Gurappa had got

some land registered in the name of his son, Bhairappa assaulted her husband by means of the koitha on his left hand and thereafter Parasappa assaulted her husband on his right hand. Both the injuries started bleeding. At that time her husband threw the cycle and started running. Both the accused chased him and by saying that they would finish him, assaulted her husband. Parasappa felled her husband down on the land. At that time Bhairappa assaulted her husband by means of koitha on his head and back. Pararsappa assaulted her husband by means of sickle on his head and forearm. The complainant Laxmi bai and her mother-in-law Srimanthawwa attempted to extricate Gurappa from their clutches. However, the appellants abused them and thereafter Bhairappa assaulted her by means of the Koitha in his hand on her right forearm and also on her left foot and caused bleeding injuries. When she saw her husband he was dead. On seeing this both the appellants abused them by saying that they had already finished her husband and they would go and kill her son and so saying

they went towards the house of the complainant. It was about 7.30 p.m. The complainant and her mother-in-law thereafter followed the appellants who were going towards her (complainant's) house and while so going they saw the dead boy of her son Somaling fallen near her house. Her son Somaling had sustained a serious injury on his neck and blood was oozing out of the injury. Both Bhairappa and Parasappa informed her that they have killed her son also and thereafter by holding the weapons in their hands, both of them went towards Gadyal. It was about 8.00 p.m. when her son was murdered by the accused. It is further stated in the complaint that since both the appellants, sons of her father-in-law, being angry with the issue regarding the property being given to her son-Somaling have caused serious injuries on her husband and son by means of Koitha and sickle to which they later succumbed and they have also caused injuries on her by means of Koitha and hence, she has requested for taking action against the accused.

4. It is further stated in the complaint that since she could not come to the police station in the night for want of bus facility, there is some delay in giving the complaint. The PSI of Savalagi police station on receipt of the aforesaid complaint at 9.30 a.m. on 13.8.2006 registered the same in Crime No.85/2006 for offence u/s.302, 324,504 r/w.Section 34 of IPC and transmitted the FIR as per Ex.P23 to the court. Thereafter the PSI viz. PW19 S.Sanganatha commenced the investigation in the case. PW22-M.B.Sanked, the CPI Jamkhandi on receipt of the information from PW19 reached the police station and thereafter PW1 complainant was sent to the hospital for medical treatment. PW22 along with PW19 thereafter visited the scene of occurrence and PW19 was directed to secure the accused to the police station. PW22 took over the investigation from PW19 and visited the scene of occurrence and after securing the presence of the panchas he conducted inquest proceedings on the body of the deceased Gurappa as per Ex.P2. He obtained signatures of the pancha as per Ex.P2(a) and sent the dead body along with PC 221.

The photo of the deceased was also taken at the time of inquest proceedings as per Ex.P7. Thereafter, inquest proceedings were held on the dead body of Somaling as per Ex.P3 and signature of the witness was obtained as per Ex.P3(a). Photo of the said dead body was also obtained by PW22 and thereafter the dead body was sent to post mortem examination. PW22 thereafter prepared a spot panchanama about the scene of offence as per Ex.P4 and seized the cycle and the blood stained and unstained mud from the scene of occurrence where Gurappa had been murdered. Thereafter the blood stained mud and unstained mud were also removed from the place where Somaling's dead body was found on the same day. MOs 12 and 13 are the blood stained and unstained mud respectively seized from the scene of occurrence. A rough sketch of the scene of occurrence was also prepared by PW22 which is marked as Ex.P28. Thereafter, PW22 recorded the further statement of the complainant and also recorded the statements of CWs 16 and 14. On the same day at about 7.30 p.m. after

P.M.Examination on the dead body of the deceased Gurappa, clothes worn by the deceased viz. one dhoti, one white shirt and one baniyan and one underwear were seized in the presence of the witness as per Ex.P5. CWs2 and 3 are the signatories to the said Ex.P5. The articles are marked as MOs 5 to 8. Thereafter the clothes worn by the deceased Somaling were produced which were again seized in the presence of the witness. MOs 9 and 10 are the clothes worn by the deceased Somaling. After searching for the accused at various places on 15.8.2007 PSI FW19 has secured both the accused and produced them before PW22 who arrested them and interrogated them whereunder Bhairappa gave a statement as per Ex.P29 (admissible portions only), similarly Parasappa was also interrogated and his statement is recorded as Ex.P30 (admissible portions only).

5. On the basis of the information given by Bhairappa, he took the police to the hay-stack in a land and recovered a koitha and also a blood stained shirt worn at the time of

commission of offence. It is seized under Ex.P9 in the presence of PWs 3 and 13 who are the witnesses to the said pancha. MOs 1 and 3 are the materials seized under Ex.P9. Thereafter Parasappa led the police and the pancha near the jowar stack and recovered one sickle and one red coloured shirt and handed over the same to PW22 who seized the same in the presence of the pancha as per Ex.P10. MOs 2 and 4 are the said sickle and shirt recovered at the instance of accused No.2. PW22 also obtained the photographs as per exhibits P11 and P12. The Investigating Officer has thereafter requested the Asst. Engineer PWD department to prepare the sketch of the scene of occurrence and the same was got prepared through him. Since Bairappa had sustained injury on his leg he was forwarded to the hospital for medical treatment. The said accused had sustained injury on his leg while assaulting Gurappa. Thereafter, both the accused were forwarded before the Court who were remanded to judicial custody. On 20.8.2006 PW22 received the post mortem report of both the deceased-Gurappa and Somaling which is

marked as Ex.P16 and P18 respectively. Thereafter, PW22 forwarded the weapons used by the accused to the medical officer seeking his opinion regarding the injuries caused by the said weapons and the medical officer has furnished his opinion regarding the weapons seized in the case as per Ex.P17. On 30.8.2006 the materials were sent for FSL and on 1.9.2006 the constable has reported the submission of the articles to the FSL, Belgaum. On 11.9.2006 the complainant's wound certificate was secured from the Primary Health Centre Savalgi which is marked as Ex.P13. The medical certificate in respect of the injured Bhairappa is marked as Ex.P14. The sketch marked by the PWD department is received and marked as Ex.P22. Thereafter PW22 has filed the charge sheet against the accused persons.

6. On receipt of the charge sheet the learned Magistrate committed the case to the court of Sessions, Bagalkot which was later on made over to Sessions Court at Jamkhandi. The said Court after framing the charges against the accused for

which they pleaded not guilty, got examined 22 witnesses and got marked exhibits P1 to P34 and produced material objects MOs 1 to 15. The defence of the accused was one of total denial and they got examined DW1- Somashekara and also got marked exhibits D1 and D2. By judgment dated 6.6.2008 the Fast Track Court Jamkhandi convicted both the accused/appellants for the offences u/s.302 of IPC and Bhairappa (A1) for the offence u/s.324 of IPC and sentenced them accordingly. Being aggrieved by the said order of conviction and sentence, both the accused have approached this court in CrI.A 2519/2008 and after hearing, by judgment dated 12.1.2011 this Court was pleased to allow the said appeal and remanded the matter to the court below with a direction to permit the accused/appellants to cross examine PWs 20 to 22 and further to consider the application filed u/s.311 of Cr.P.C. for recalling PWs 8 to 12. The learned Sessions Judge after receipt of the records from the High Court allowed the application filed by the appellants and permitted to cross examine PW8 and also PWs 20, 21 and 22

and on 26.7.2011 the accused further cross examined PW8. Further they did not chose to cross examine PWs 9 to 12. After hearing the prosecution and the defence, the learned Sessions Judge was pleased to pass the judgment on 29.9.2011 convicting the accused and sentencing them as herein before mentioned. It is this judgment of conviction and order of sentence which is challenged in this appeal.

7. PW1 is the complainant- Laxmi Bai. She has stated before the court regarding the contents of her complaint given to the police. She has stated that she and her husband deceased Gurappa have got five children, out of which Somaling is the eldest son and they have got four female children. She has stated that A1 is the elder brother of her husband and A2 is the younger brother of her husband and her father-in-law had given certain properties in the name of their son Somaling since both the accused were not having any children. It is also stated by PW1 before the Court that both the accused were not willing to take care of their parents

and therefore, both her father- in- law and mother-in-law were residing with them and they were taking care of them. In this connection there was quarrel between the accused and her husband and accused were insisting that they should not take care of their in laws. It is also stated by PW1 that there were two court cases between her husband and the accused and that the accused had assaulted their father Sadashiva and therefore, her father-in-law has filed cases against the accused. It is further stated by her that on the date of incident she had gone to the field along with her two daughters and mother-in-law to pick up green gram leaving the other two daughters and her son in the house. Since somebody in the village had expired, her husband had gone to the funeral and he came back at about 4.00 p.m. on the day, which was a Saturday. Her husband came on a bicycle. He was there in the field for about 1½ hours and after finishing the work her husband was coming in the cycle whereas they were coming by walk. After about one hour when they reached the land of one Oppalapura accused came suddenly

holding koitha and kudugol (sickle) in their hands and Bhairappa was holding koitha used for cutting sugarcane. Parasappa was holding the sickle. By abusing her husband saying that he had grabbed the property of their father by getting the land written in the name of his son, Bhairappa assaulted on his left hand and Parasappa has assaulted on the right hand. Her husband left the cycle and ran for some distance. Both the accused followed her husband and Parasappa grappled him and felled him on the ground and at that time Bhairappa assaulted her husband on his neck. This incident is witnessed by herself her mother-in-law and her two children. When she went to extricate her husband, Bhairappa assaulted her on her left forearm and on her right leg and caused injuries to her. Appellants have thereafter threatened them saying that they would not leave at this and that they would also finish the seed of their family and so saying they went away along with the weapons in their hand. When she saw her husband he had already died. He had sustained injuries on his head, neck and back in all about 10

to 12 injuries and the injuries were bleeding. Her husband died after struggling. When her mother-in-law went to extricate her son, even she was pushed by the appellants and so saying they went towards the house of the complainant. Her mother-in-law also followed them. It was about 7.30 p.m. when she came weeping near her house, she saw her son having been murdered near the door of their house and the appellants going away from the house saying that they have assaulted her son. Her son Somaling's dead body had fallen near the door of their house and he was bleeding. He had sustained injury on the left side of his neck. The appellants declared that they had taken away the last seed of their family and went towards Gadyal. She has stated that by the light of the house she has seen everything. The place where her husband is murdered is $\frac{1}{2}$ kms away from their farm house. She has further stated that her children Chandrawwa and Sujatha were at the door of their house. It is in the evidence of PW1 that she does not know how to read and write. However, she has stated that Bhairappa was wearing a

brown coloured shirt and Parasappa was wearing red coloured shirt and they were wearing dhoti and pant which were blood stained. PW1 had also stated that her father-in-law had given 13 acres of land in the name of their son and hence the accused were enmical towards their son. Her father in law was admitted in Jamkhandi hospital on the date of murder and since there were no one in the family as both her husband and son were murdered, she could not go to the police station to give a complaint and on the next day morning she went to Savalagi police station and gave a complaint. She has also stated that since both male members of the family were murdered, nothing occurred to her mind and hence she went to the police station in the first vehicle on the next day morning and hence there was delay in giving the complaint. She has taken one person along with her at the time of going to the police station and after ascertaining the contents of the complaint as true, she has put her LTM on the complaint and given the same to the police station. PW1 has been thoroughly cross examined by

the defence. It is suggested that intentionally there is a delay in filing the complaint and that though she could have gone in the night, in order to concoct a false case, she has taken time and hence false complaint has been filed against the accused.

8. PW2 Suresha is a witness to the panchanamas Exs.P2 to P6 which are inquest proceedings, spot panchanama and the panchanama for seizure of the clothes of both the deceased. However, this witness has been treated hostile by the prosecution, insofar as the identity of the clothes seized by the police. PW3 Parasappa and PW13 are the witnesses to the recovery panchanama under which police have recovered the weapons. Among them PW3 has turned hostile to the case of the prosecution whereas PW13 has supported the case of the prosecution.

9. PW4 Dr.Kaibusaba has treated PW1 on 13.8.2006 at about 11.00 a.m. who had suffered injuries on her right hand and also on her left foot. He has issued the certificate as per

Ex.P13 and has opined that the injuries sustained by her are simple in nature. He has also stated that on 15.8.2006 he has examined A1 Bhairappa who had sustained an injury on the backside of his left heel. The said certificate is marked as Ex.P14. PW5 Dr.Rajesaba Baragi has conducted post mortem examination on the dead body of the deceased Gurappa on 13.8.2006. He has stated that the deceased Gurappa had sustained in all 13 injuries as found in the post mortem examination certificate marked as Ex.P16. He has further stated that he has examined the weapons viz. Koitha and the sickle produced before him and has stated that the injuries found on deceased Gurappa are possible if he is assaulted by MOs 1 and 2 produced before him. He has further stated that on the same day at about 2.30 p.m. he has conducted post mortem examination on the dead body of the deceased Somaling and has stated that the deceased had sustained two visible injuries on his neck and that the arteries had been cut and blood had come out from the said arteries. He has issued post mortem examination report as per Ex.P18 and

has stated that the death is due to the excessive bleeding as a result of the injuries sustained on the neck. He has also opined that the injuries found on the deceased Somaling are possible if he is assaulted with MO1- koitha.

10. PW6-Chandrawwa is a child witness who has been examined on behalf of the prosecution. She has stated that on the date of incident she has seen the accused assaulting Somaling. She has stated that herself, her brother-Somaling and her sister Sujatha were in the house. Accused came and assaulted her brother Somaling by means of a knife by dragging him. The said knife is a weapon used for cutting the sugar cane. Her brother had sustained bleeding injuries. A1-Bhairappa thereafter took the koitha in his hand. A2-Parasappa was there in the field. The defence has suggested that there was no light at the time of occurrence and that she is deposing falsely at the instance of her mother. After the remand of the case by this Court in Cr1.A 2519/2008, PW6 has been further cross examined by the defence and it is

elicited in the further cross examination that the day on which his father and brother died, was a Saturday and on that day she was in the house and so also her mother and her grandmother. She came to know about the death only on Sunday. Thereafter, they went near the field. The Public Prosecutor treated this witness as hostile and it is elicited in the cross examination of this witness that on that day of giving evidence she had come along with PW8, her grandmother and wife of A1 to the court. It is further elicited that both appellants are her uncles and both of them are in Jamkhandi Sub Jail. It is further elicited that she had gone to the Sub jail along with PW8 to meet the accused. It is suggested by the learned Public Prosecutor that in order to help her uncles she is deposing falsely at the instance of her grand mother, but this suggestion has been denied by PW6.

11. PW7 is a hear-say witness. PW8- Shashikala is another daughter of the deceased who was aged 8 years. She has stated that on the date of the incident she had gone along

with her mother, grandmother and her sister to the field in connection with green gram harvesting. At about 4.00 p.m. her father came near the land and they were working till 6.00 p.m. and after collecting the green gram in the gunny bags all of them were returning home. After going for about 1 km. her father was going on the cycle and at that time both appellants came and abused her father and assaulted him. A1 was holding a koitha used for cutting the sugarcane and A2 was holding a sickle. They assaulted her father on his left hand and right hand. Her father left the cycle and started running. At that time both the accused followed her father and assaulted him. Herself, her mother and grandmother started weeping and thereafter, her mother went to separate the accused from her husband. At that time Bhairappa assaulted her mother by means of a knife. Her mother sustained injuries. Due to the assault by the accused, her father died. It is stated by PW8 that after assaulting on her father accused went towards the village. Thereafter they also went along with their grandmother towards the house. When they

reached the house her grandmother was weeping near her brother who had fallen dead by sustaining injury on his neck. She came to know that accused Bhairappa had assaulted her brother. She has also stated before the Court that she had narrated these facts to the police at the time of her questioning. She had also identified the weapons and clothes used and worn by the accused and also the clothes worn by their father and their brother at the time of their death. It is suggested to PW8 that she is deposing falsely at the instance of her mother. This PW8 has also been further cross examined on 26.7.2011 after the matter was remanded by this Court and in the further cross examination it is elicited that she was not present on the date of occurrence as she was attending classes and that they came to know only after seeing the dead body on the next day at about 6.30 a.m. She has also admitted that the dead body of her brother had fallen in front of their farm house. The learned Public Prosecutor after requesting the court to treat this witness as hostile has elicited that she had also gone to visit the accused

in Jamkhandi Jail. She has admitted that A1 and A2 are in jail. However, for the suggestion that she had also gone to visit them, she had denied the said suggestion. It is further suggested to her that at the instance of her grandmother she is deposing falsely after the case is remanded for further cross examination.

12. PW9 Srimanthewwa is the mother of deceased Gurappa and Grandmother of deceased Somaling. She has also stated regarding the motive of the accused who are none other than her sons who committed murder of the deceased-Gurappa and her grandson-Somaling. Her version is similar to that of PWs 1 and 6. In the cross examination it is elicited that she is deposing falsely since she is looked after by her deceased son. However, she had admitted that her husband had given 13 acres of land to Somaling though she had requested her husband not to give the said land to Somaling. She had also admitted that the accused were aggrieved because of the allotment of 13 acres of land in the name of

her grandson Somaling. However, she has stated that there was no enmity for the accused against Somaling. She has further denied the suggestion that the accused were proclaiming that they would murder the deceased.

13. PW10 Sadashiv is the father of the deceased and the accused. However, he was not present at the time of incident as he had gone to Jamkhandi and returned to Gadyal on 13.8.2006. However, he has stated regarding the earlier instances in which he had given a complaint to the police against the accused in which accused had assaulted him and broken his hand. However, he has further stated that one of cases ended in compromise and another is pending as on the date of his giving evidence.

14. PWs 11 and 12 are the witnesses before whom the accused are alleged to have made extra judicial confession, but they have turned hostile.

15. PW14 is the Executive Engineer who has prepared the sketch of the scene of occurrence as per Ex.P22. PW15 is

the photographer who has taken the photographs as per Ex.P7, 8, 11 and 12.

16. PW16 is the constable who has carried the FIR to the Magistrate Court at Jamkhandi as per Ex.P23 and submitted a report as per Ex.P24. PW17 is a constable who has collected the clothes of the dead body after the post mortem examination and produced the same before the Investigating Officer which are marked as MOs 6 to 10. PW18-Head Constable has taken the materials to the FSL Belgaum. PW19 is the PSI whose part has been discussed earlier.

17. PW20 is the pancha who has been treated as hostile to the prosecution. This PW20 has been further cross examined after the case was remanded by this court and it was suggested that he was not present while drawing the panchanama and that he has signed the panchanama in the panchayath office which suggestion he has admitted in the cross examination.

18. PW21 is the constable who has assisted in conducting of inquest proceedings on the dead body and later carried the dead body of Gurappa in the hospital for post mortem examination after which he has handed over the dead body to PW1-Laxmibai. He has also collected the clothes worn by the deceased as per MOs 9 and 10 and produced them before the Investigating Officer. PW22 is the Investigating Officer who has conducted the investigation, particulars of which have been mentioned in the earlier part of this judgment. .

19. Heard Sri.A.R.Patil, learned counsel for appellant-Bhairappa (A1) and Sri.M.L.Vanti, Learned counsel for appellant-Parasappa (A2) and Shri. Y.V Raviraj the learned Addl. Government Advocate for the Respondent-State.

20. Sri.Patil, learned counsel for A1 submits that at the outset there is an inordinate delay in filing the complaint before the police. He submitted that the FIR has reached the Magistrate at 19.00 hours on 13.8.2008 and therefore, there

is almost 22 hours of delay from the time of occurrence till the FIR has reached the court. He submitted that the said delay has been conveniently used to falsely implicate the accused. It is his further submission that the conduct of PW1 is suspicious. Though her husband was murdered at about 7.30 p.m. she has not tried to attract the villagers and approach the police on the same night, but she has appeared before the police station only at about 9.30 a.m. on 13.8.2006. Nothing prevented her from taking the assistance of the villagers and neighbours to go to the police station immediately and lodge a complaint. He submits that the inordinate delay in filing the complaint is fatal to the case of the prosecution. It is his further submission that though PW1 admits in her cross examination that the saree worn by her was blood stained, the police have not seized the saree to show that she was an eye witness to the occurrence. It is also her case that she was assaulted by A1 and therefore, the police necessarily should have seized the saree worn by her to prove that she had sustained bleeding injuries. It is

therefore, submitted by him that the entire case of the prosecution is a concocted one. The learned counsel further submits that the evidence of other eye witnesses viz. PWs 6 and 8 is also artificial in nature, in that if the case of the prosecution is that after killing the deceased Gurappa, accused have straight away gone to kill Somaling in the house, nothing prevented PWs 1, 6, 8 and 9 to raise alarm in the village and to gather the support of the villages since it is the case of PWs 1 and 9 that accused had declared at the place where Gurappa was murdered that they would go and kill Somaling also. In the circumstances it is submitted by him that the entire case regarding the murder of Somaling appears to be artificial and that both of them must have been done to death at some other place and time and by some other persons, and that the accused have been falsely implicated. The learned counsel further submits that PW1 as well as PW9 have categorically stated that the relationship between the accused and the deceased Gurappa was cordial and that they were on talking terms. It is also elicited that

the earlier case between the father of Gurappa and accused 1 and 2 had ended in compromise and therefore, there was no reason for misunderstanding or fight between the accused and the deceased. The learned counsel further submits that it is an admitted fact that both accused were not having any children and therefore, the deceased Somaling was the only person to whom the properties would go at some future point of time and therefore, there was no need for the accused to kill Gurappa or Somaling, the deceased as, admittedly in the absence of any children born to accused, the property would ultimately go to Somaling and therefore, the motive put forward by the prosecution is artificial and false.

21. It is further submitted by him that PW5 the medical officer has not noted the size of the wound in his post mortem examination report and therefore, the report cannot be locked into for the purpose of establishing the guilt of the accused. On this point the learned counsel submits that the evidence adduced by the prosecution is not trust worthy and

therefore, he submits that the accused is entitled to an order of acquittal. It is further submitted by him that there is no charge for the offence u/s.504 of IPC. The learned Judge has convicted them for the said offence, hence it be set aside.

22. The learned counsel for A2 also adopts the arguments of the learned counsel for A1 and further submits that the motive aspect as projected by the prosecution is not proved properly and that A2 has not suffered any injury and therefore, his involvement in the case is totally false and therefore, he may be given the benefit of doubt. It is further submitted by him that the prosecution has not proved that there was light in the vicinity on the date of accident. It is submitted that as there was no light, the identification of the accused was not possible and hence, for these two reasons, the appeal deserves to be allowed.

23. Sri.Y.V.Raviraj, learned AGA, submits that the evidence of PW1 is in full corroboration with the complaint lodged by her. Both in the complaint and in her evidence she

has stated as to why she could not come out of the house in the night hours and therefore, she could only go to the police station on the next day morning. It is submitted by the learned AGA that having lost both her husband and her son, her father-in-law not being in the house on the date of incident and since there were no male assistants, PW1 naturally could not have gone out of the house after the ghastly incident, the cause for which being none other than her brothers-in-law. In the circumstances, the delay has been explained by the prosecution properly and that immediately after getting up in the morning i.e. on 13.8.2006 she has gone to the police station in the first bus available from the village and therefore, no fault can be found in the submission of the FIR in this case. He further submits that the evidence of PWs 6 and 8 is clear and cogent and they corroborate with each other insofar as the participation of the accused in the murder of the deceased. It is obvious that after the matter was remanded to the trial Court by this Court, PWs 6 and 8 have been won over by the accused which is obvious from the

fact that both of them have admitted that the accused are in Sub Jail and one of them has, in fact, visited and spoken to the accused. It is further submitted that PW9 being the mother of the deceased-Gurappa as well as the accused and the grandmother of Somaling, she is in a precarious condition as she is equally related both to the accused as well as to the deceased and it is quite, but natural that she would now try to save her sons. Further the prosecution has proved from the evidence of PWs 1, 6 and 8 that the accused have committed murder of deceased and the learned Sessions Judge has rightly convicted the accused later by judgment dated 6.6.2008. Though the trial Court had not convicted the accused for the offence u/s.504 of IPC in the earlier judgment, in the present judgment the accused have been convicted for the offence u/s.504 r/w.34 of IPC and the same is based on the evidence on record. He submits that the said order may be sustained in view of the clear evidence tendered before court by PWs 1, 6 and 8. Hence, he submits that the appeal may be dismissed.

24. On a careful consideration of the evidence on record and the submissions made by either side, the points that arises for our consideration are:-

- (i) Whether the prosecution has proved that the deceased Gurappa and deceased Somaling have died a homicidal death?
- (ii) Whether the prosecution further proves that the appellants are liable for the said death of the deceased?
- (iii) Whether the order of the trial Court is perverse and is required to be modified or altered?

25. We answer point Nos.1 and 2 in the affirmative and point No.3 in the negative, for the following:

REASONS

26. The prosecution case has been spoken to clearly by the complainant PW.1 Laxmibai and also the same is supported by PW.8 Shashikala and PW.9

Srimantewwa, mother-in-law of PW.1. The evidence of these three witnesses clearly establishes that on 12.8.2006 at about 7.30 a.m. on the way leading to Kalbilagi village situated by the side of the land of Mahadev, the deceased Gurappa had sustained injuries by means of weapons used by accused Nos.1 and 2 namely koitha and sickle by which they have assaulted on the deceased Gurappa. The complaint lodged by PW.1, which is marked as Ex.P.1 also further corroborates the evidence of PW.1 regarding this aspect. PW.1 has narrated the incident and assault by accused Nos.1 and 2 by means of weapons seized and produced as MOs.1 and 2. The evidence of PW.5 Dr.R.S.Baragi who has conducted postmortem examination on the dead body of the deceased Gurappa further indicates that the deceased had sustained fatal injuries and has died an homicidal death. Under the circumstances we are of the opinion that the deceased Gurappa has died an homicidal death and that the said death is caused by the accused Nos.1 and 2 by means

of MOs.1 and 2. The evidence of PW.1 as mentioned above further discloses that the accused after killing Gurappa have come to the house of the deceased Somaling and assaulted him by means of koitha and sickle and caused injuries on deceased Somaling who also succumbed to the injuries. PW.9 Srimantewwa is an eye witness to the incident so also PW.3 Shashikala. This fact has also been mentioned in the complaint of PW.1 marked as Ex.P.1. The evidence of PW.8 Shashikala, PW.9 Srimantewwa coupled with the evidence of PW.1 Laxmibai clearly establishes that the deceased Somaling had suffered injuries at the hands of accused Nos.1 and 2. PW.5 Dr.R.S.Baragi who has conducted the postmortem examination on the dead body of the deceased has stated that deceased Somaling had sustained injuries on his neck and that the death is due to the injury sustained by Somaling on his neck as a result of which the main arteries were cut and the wind pipe has been damaged. PW.5 has further stated that the death is due to excessive

bleeding. He has further stated that the injuries caused on the deceased Somaling may be caused by the weapons like MOs.1 and 2. Under the circumstances the prosecution has further established that the deceased Somaling has died a homicidal death and that the said injuries found on the deceased are caused as a result of assault by accused Nos.1 and 2 by means of weapons MOs.1 and 2.

27. The counsel for the appellants have submitted that there is inordinate delay in filing the complaint. It is seen from Ex.P.1 complaint that the said complaint has been received by the PSI, Savalagi P.S., at about 9.30 a.m. on 13.8.2006 and thereafter the case has been registered. It is mentioned in the said complaint that since PW.1 could not get the bus facility, she did not come to the police station in the night itself and therefore there is a delay in filing the complaint. While in the witness box PW.1 has stated that since her husband and son has been killed, she

could not give the complaint. She has stated that, only herself and her mother-in-law were present in the house on the night and therefore on the next day at 8.00 a.m. she left the house and reached police station at 9.00 a.m. and gave the complaint. It is also mentioned by PW.1 that, since her husband and son were murdered, she could not find a way out and therefore she got first bus on the next day morning and came to the police station. She has also stated that since she herself could not write the complaint, she has brought one person to the police station and the said person has written the complaint according to her dictation. Learned counsel for the appellants submit that this explanation given by the complainant PW.1 is an after thought and is not found in the complaint at all except saying that she came to the police station on the next day due to non availability of bus facility.

28. Sri Y.V.Raviraj, learned Addl. Government Advocate submits that the complainant has stated in

her evidence that except the two deceased persons there were no other male members in the family and in view of the fact that the accused were none other than the brothers-in-law of the complainant, it is quite natural that the complainant could not dare to go out of the house in the night hours to lodge a complaint and therefore the said explanation that she could not see a way out in the night to go to the police station and to lodge a complaint is a reasonable and true explanation for the delay caused in filing the complaint. Hence, we are of the considered opinion that having regard to the factual situation in which the close relatives of the deceased namely brothers of deceased Gurappa have committed the ghastly act of murdering their own brother by koitha and sickle, a woman of the nature of PW.1 would have naturally be insecure to go out of the house. Added to that the accused have also murdered their only son and therefore we are of the opinion that so far as delay in

filing the complaint is concerned, the prosecution has given proper explanation.

29. Sri A.R.Patil, learned counsel for the appellant further submitted that the conduct of the complainant in this regard is questionable in the sense that no person would have kept quiet till the next day morning and she would have at least attracted the attention of other neighbours in the village and would have immediately gone to the police station and lodged a complaint. The evidence of PW.1 is to the effect that after seeing her husband fallen down as a result of injury sustained by him, she left the dead body of her husband there itself near the cart road and came to the house. This conduct of the complainant PW.1 is not a normal human conduct and therefore he submits that PW.1 being an eye witness to the incident of assault on deceased Gurappa is a concocted story and that cannot be believed. It is also further submitted by him that being a wife it is her evidence that she has not touched

the body of her husband nor she tried to examine the injuries sustained by the deceased Gurappa which conduct is against the normal behavior of a woman.

30. Insofar as this submission is concerned, it is to be noted that each individual has got his own way of expressing the disaster. It is in the evidence of PW.1 so also in the evidence of other two witnesses that the accused had proclaimed that they would finish one more seed of the family and thereafter they ran towards the house of the deceased announcing that they would kill Somaling also. In this context being a mother of Somaling, PW.1 had rushed to the house leaving the dead body of her husband without even touching it. The said conduct of PW.1 cannot be said to be unnatural. Under the circumstances we are of the opinion that the evidence tendered by PW.1 cannot be suspected at all so far as she being an eye witness to the incident of assault on the deceased Gurappa.

31. It is also further submitted by Sri A.R.Patil, learned counsel for the appellant that though such a hue and cry took place in which two dead bodies had fallen, no villagers have come to the spot either at the time of or subsequent to the incident and that the entire village came to know of the incident only on the next day. He submits that this again is an unnatural fact which cannot be believed at all. Where there had been murder of two persons in one family, there would have been hue and cry and all the neighbours would have been attracted towards the deceased family and the neighbours would have come forward to assist the family both in shifting the dead bodies/injured in the night itself.

32. So far as this aspect is concerned, the accused have not produced any material to show that there are houses nearby or that there are people residing around. Under the circumstances it cannot be said that in a village of the nature in which the

incident has taken place, there could have been any persons being attracted by the noise raised in the incident. Nothing prevented the accused from examining the witnesses to show that in an audible distance there are residential houses. Therefore we are of the opinion that the said submission also does not enure to the benefit of the accused to hold that the incident has not occurred in the manner alleged by the prosecution.

33. So far as the delay in submission of FIR is concerned, we have observed that the FIR has reached the learned Magistrate at 19.00 hours on 13.8.2006. PW.16 P.C.No.1365 has stated that the FIR was handed over to his hands at about 10.30 a.m. on 13.8.2006 and he has travelled through the Chikkalagi cross and thereafter he has gone to the residence of the Magistrate through Kadadal and Belagali route and has reached the residence of the Magistrate about 7.00 p.m. Though PW.16 has been examined, nothing

worthwhile has been elicited to show that either the FIR has been belatedly submitted before the Magistrate or that there is an undue delay in submission of the FIR. It is elicited in the evidence of PW.16 that there are no proper bus facilities in the road between Savalagi and Jamakhandi and that it requires about 1½ hours for the said road. He also denied the suggestion that in order to help the prosecution he is deposing falsely. It is also mentioned in the evidence of PW.16 that there was a flood enroute the residence of the Magistrate, which has caused the delay in transmission of the FIR to the Court. On a careful consideration of the entire evidence of PW.16 we are of the opinion that there is no undue delay in transmitting the FIR to the Court.

34. Coming to the point of appreciation of the evidence of eye witnesses and also the complaint we are of the view that there is no reason as to why PW.1 as well as PWs.6 and 8 should falsely implicate the

accused who are none other than the brothers-in-law of PW.1 and paternal uncles of PWs.6 and 8. There is no such circumstance or material brought on record by the accused to show that there was such bitter enmity between them so as to implicate them falsely in this ghastly incident. Further no prudent person would leave the real assailants of their close relatives and would falsely implicate the other relative in the crime of murder. Under the circumstances we have no other go except to accept the evidence of PWs.1, 6 and 8 and also to hold that the death of the deceased is as a result of assault by accused Nos.1 and 2 and therefore we are of the opinion that the accused have committed the act of murder of the deceased Gurappa and Somaling.

35. So far as the conviction for the offence under Section 504 of IPC is concerned, through there is no charge for the said offence framed by the learned Sessions Judge, the evidence on record clearly

establishes that at the time of incident both the accused Nos.1 and 2 were armed with weapons nameiy koitha and sickle and that they have criminally intimidated PWs.1, 8 and 9. The evidence of PWs.1, 8 and 9 in this aspect is also very clear that besides assaulting PW.1 when she came to extricate her husband from the clutches of accused Nos.1 and 2, the accused have also threatened PW.1 by holding weapons in their hands. Under the circumstances the offence under Section 504 of IPC is also proved against the accused Nos.1 and 2. Since there is a charge for the offence under Section 302 of IPC and that the facts include the threatening also, we are of the considered opinion that non-framing of charge for the offence under Section 504 of IPC does not cause injustice or prejudice to the accused. More particularly since the sentence for the said offence merges with the sentences for the offence under Section 302 of IPC, as the sentences are directed to run concurrently.

36. We have gone through the judgment passed by the trial Court. On a careful appreciation of the evidence on record and also on a scrutiny of the judgment of the trial Court we do not find that the judgment of the trial Court is perverse or against the settled principles of law, but the same is based on the evidence on record. Therefore we find no irregularities or illegality in the order of conviction passed by the learned Sessions Judge and hence the appeals are liable to be dismissed.

37. In view of what is discussed above, we find no merits in these appeals and accordingly the same are dismissed.

**Sd/-
JUDGE**

**Sd/-
JUDGE**

RS/MRK/-