

S U P R E M E C O U R T O F I N D I A
RECORD OF PROCEEDINGS
CRIMINAL APPEAL NO(s). 528 OF 2005

CHANNABASAPPA & ORS. Appellant (s)

VERSUS

STATE OF KARNATAKA Respondent(s)

(With office report for direction)

Date: 19/10/2010 This Appeal was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE HARJIT SINGH BEDI
HON'BLE MR. JUSTICE CHANDRAMAULI KR. PRASAD

For Appellant(s) Mr. Ajay Kumar M,Adv.
Mr. B.S. Prasad, Adv.
Mr. A.S. Bhasme,Adv.

For Respondent(s) Mr. Ramesh K. Mishra, Adv.
Mr. Sanjay R. Hegde,Adv.

UPON hearing counsel the Court made the following
O R D E R

The appeal is partly allowed.

(RAJNI MUKHI) (VINOD KULVI)
P.A. COURT MASTER
(Signed Order is placed on the file) [Non-Reportable]

IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO.528 OF 2005

CHANNABASAPPA AND OTHERSAppellants
Versus
STATE OF KARNATAKA AND OTHERSRespondents

ORDER

HARJIT SINGH BEDI, J.

1. PW-2 (Siddanagowda) was a resident of village Bachimatti in Sholapur Taluk, District Gulbarga. About two months before the incident in question which happened on the 19th September, 1990, PW-2 had constructed a compound wall in his house and at that time, accused No.8

(Mahadevappa) had obstructed the ongoing construction and damaged the wall. PW-2 had thereupon filed a complaint against accused Nos.2 (Guranna), 3 (Irappa), 7 (Amarappa), 8 (Mahadevappa), 10 (Ningappa) and 11 (Amarappa) and two other persons. On the 19th September, 1990, about 7:00 am., PW-2 went towards his land to answer the call of nature and while he was doing so, accused No.1 (Chennabasasappa), accused No.2 and accused No.3 also reached that place. A-1 was holding an axe in his hands and the two others were carrying stones. Accused Nos.4 to 11, however, stood by at a distance from accused Nos.1 to 3. Accused No.1 assaulted PW-2 with an axe on his left hand and accused Nos.2 and 3 assaulted him with stones on the back portion of his head. Accused No.2 thereupon snatched the axe from the hands of the accused No.1 and caused an injury to PW-2 on his hands on account of which he sustained a fracture of the right hand. On the cries of PW-2 for help, PW-4 and several other witnesses reached the place of incident on which the accused ran away. PW-2 was, thereafter, taken to the Shorapur Police Station. PW-7, the Police Inspector sent him to the hospital for treatment and, subsequently followed him there and recorded his statement and on its basis, the first information report was drawn up at about 10:45 a.m.. On the completion of the investigation, the accused were brought to trial for offences punishable under Sections 147, 148, 447, 326 and Section 307 read with Section 149 of the Indian Penal Code.

2. The Trial Court, on an examination of the evidence, held that the case against the accused was not proved beyond doubt and the eye-witness account of PW-2 and his brother PW-3 (Basannagouda) did not inspire confidence, more particularly as they had given contradictory statements with regard to the participation of the eight accused who had caused no injuries and had been mere spectators. The Trial Court accordingly acquitted all the accused.

3. The matter was, thereafter, taken in appeal by the State before the Karnataka High Court. The High Court set aside the acquittal of accused Nos.1 to 3 under Section 326 read with Section 34 and keeping in mind that the incident happened in the year 1990 and the Judgment of the High court was being rendered in the year 2005, sentenced them to rigorous imprisonment for one year with a fine of Rs.1000/- each and in default of payment of fine to undergo simple imprisonment for two months. The High Court, however, dismissed the State's appeal against accused Nos.4 to 11.

4. It is in this situation that the present appeal has been filed by the three accused who have been convicted by the High Court.

5. We have heard learned counsel for the parties and gone through the records carefully.

6. The learned counsel for the appellants has challenged the findings recorded by the High Court with regard to the evidence of PWs-2 and 3, more particularly as the Trial Court had held them to be unreliable witnesses. We, however, find absolutely no reason to discard their evidence particularly PW-2 who is an injured witness. We also see that the FIR had been recorded within a very short time of the incident in which the entire prosecution story had spelt out including the factum of the motive.

7. The medical evidence also supports the ocular evidence, in that the doctor (PW-1) who had examined PW-2 on the 19th September, 1990, had found four injuries including a dislocation of the inter phalangeal joint of the left middle finger, a fracture of the left fibula, a fracture of the right forearm, and a comminuted fracture of the ulna and further stated that the injuries could have been caused by a hard substance such as a stick and iron rod and the incised wounds could have been caused by a sharp edged weapon.

8. We, however, feel that in this situation, a case under Section 326 of the Indian Penal Code cannot be made out against the appellants as it

appears that the axe in question had not been used from its sharp side. When cross-examined, the doctor also clarified this position. We also observe that two of the appellants were in possession of stones which could hardly be considered to be weapons of offence. We are, therefore, of the opinion that the conviction of the accused under Section 326/34 of the Indian Penal Code cannot be sustained on that account and they are liable for offences punishable under Section 325/34 thereof.

9. In this background, the learned counsel for the appellants has submitted that as of today, 20 years had elapsed since the date of incident and as the appellants, who were then young men, were beyond middle age and had already undergone about two months of the said sentence, some mitigation in the sentence was called for.

10. We, accordingly dismiss the appeal but reduce the sentence to that already undergone.

.....J.

(HARJIT SINGH BEDI)

.....J.
(CHANDRAMAULI KR. PRASAD)

OCTOBER 19, 2010
NEW DELHI.