

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). 1133-1134 OF 2005

APPALHA &amp; ORS.

Appellant (s)

VERSUS

STATE OF KARNATAKA

Respondent(s)

(With appln(s) for bail and office report )

Date: 16/03/2010 These Appeals were called on for hearing today.

CORAM :

HON'BLE DR. JUSTICE MUKUNDKAM SHARMA  
HON'BLE MR. JUSTICE H.L. DATTU

For Appellant(s) Mr. Ramesh Chandra Mishra, Adv.  
Dr. Merrra Agarwal, Adv.

For Respondent(s) Mr. Anil Kumar Mishra, Adv.  
Mr. Aditya Jain, Adv.  
Mr. Sanjay R. Hegde, Adv.

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

The Criminal Appeals are dismissed.

(Arvind)  
Sr.PA

(Sneh Bala Mehra)  
Court Master

(Signed order is placed on the file)  
IN THE SUPREME COURT OF INDIA

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NOS. 1133-1134 OF 2005

APPALHA &amp; ANR. ETC.

..APPELLANTS

VERSUS

STATE OF KARNATAKA

..RESPONDENT

ORDER

These appeals are directed against the judgment and order dated 6th June, 2001 passed by the High Court of Karnataka in Crl. A. No. 1449/1998 and Crl. A. No. 656/1999 by which the High Court has upheld the judgment and order of conviction and sentence imposed on the

appellants.

There were originally four accused persons who allegedly committed the offence by assaulting Janakamma, the deceased. The deceased was assaulted by a weapon like chopper on her head and on her face. Consequent to the aforesaid injuries, the deceased died. A First Information Report having been lodged with the police, a criminal case was registered and investigation was conducted. On completion of the same, the four accused persons were charge-sheeted.

During the course of the trial, several witnesses were examined. The accused persons were also examined under section 313 of the Criminal Procedure Code. On

2

completion of the trial, the trial Court convicted all the accused persons under section 302 of the Indian Penal Code and sentenced them to undergo life imprisonment.

Being aggrieved by the aforesaid judgment and order passed by the trial Court, the appellants appealed before the High Court. The High Court, however, maintained the order of conviction and sentence and dismissed the appeal. Being aggrieved by the said judgment and order the present appeals have been preferred, one by Manjunatha, accused No. 1 and the other by Appaiah and C.S. Suresh, accused Nos. 3 & 4 respectively and therefore two appeals are registered as against the same judgment in this Court.

The prosecution case in brief is that fifteen days prior to 21.01.1997, the deceased, Janakamma had caused injury to a he-buffalo of Appaiah which was in the custody of Manjunatha, accused No. 1. In view of the said incident, a Panchayat was called which was held in the village and in which the deceased was directed to pay a sum of Rs. 2,750/- by way of compensation to Manjunatha, accused No. 1. The amount was, however, not paid as

agreed to in connection with the aforesaid incident.

Deceased Janakamma also lodged a complaint with the Rural Police as per Ex. P. 23 on the basis of which a case was registered and a joint statement of Manjunatha, accused

No. 1 and Appaiah, accused No. 3 was recorded by the police in which an undertaking was given by both the accused not to indulge in any activities against the

3

deceased whereupon the matter came to an end.

On 21.01.1997 at about 7.30 p.m., the deceased as well as P.Ws. 1 and 2 noticed that a he-buffalo was allowed to enter into their land for grazing the paddy. On seeing the same, P.W. 1 ran towards the land to drive out the buffalo and she was followed by her mother Janakamma as well as by P.W. 2 Leela. While P.W. 1 was driving out the he-buffalo towards the house of A-1, Manjunatha and came near the channel located by the side of the land of A-1, Manjunatha, all the four accused persons assaulted the deceased, consequent to which she died.

On 22.02.1997 an F.I.R. was lodged whereupon a criminal case was registered against the accused persons. Pursuant to it the appellants alongwith Basavaraja were convicted and sentenced as aforesaid.

Having gone through the records, we find that P.Ws. 1 & 2 who were with the deceased at the time of the incident clearly stated before the Court that it is the appellants and Basavaraja who had committed murder by assaulting the deceased, P.Ws. further stated that they had also suffered some injuries in the process. We find no reason to disbelieve the evidence of P.Ws. 1 & 2 who are eye-witnesses to the occurrence. They are natural witnesses as also injured witnesses categorically stated about the specific role played by all the accused persons in the incident. Their statement in Examination-in-Chief remains unshaken even in their cross examination.

Counsel appearing for the appellants has submitted before us that there was grave provocation for the accused persons, as a result of which the incident had taken place. It is also submitted by him that the incident had happened not because of pre-meditation but due to some provocation which was given by the deceased and therefore the present case cannot be a case of conviction under section 302 IPC but it is a case of falling within the purview of the section 304 Part-II IPC.

We are, however, unable to accept the aforesaid contentions of the counsel appearing for the appellants, for the incident which is relied upon by the counsel appearing for the appellants for making out a case of sudden provocation is an incident that had happened 15 days prior to the date of incident.

On that day, the deceased had caused some injuries to the he-buffalo of Appaiah which was in the custody of Manjunatha. In respect of the said incident which had happened on 05.01.1997, some compensation was imposed by the Village Panchayat, which was to be paid by the deceased but the same was not paid and the deceased lodged a complaint, pursuant to which a criminal case was registered against the accused persons. Statement of A-4 was recorded by the

police wherein he had given an undertaking that he will not indulge in any activities against the deceased.

It

, thus, appears that the incident had happened on the said date due to uncalled for activities on the part of the

accused persons and therefore they had also given a n undertaking that they would restrain themselves from indulging in similar activities in the future.

Even on 21.01.1997 when the incident in question

had occurred the same had also happened because of a he-  
buffalo belonging to accused No. 3 Appaiah who was in the  
custody of A-1 Manjunatha, entering the paddy field of the  
deceased as also the P.Ws. 1 and 2. There was no  
provocation at all not to speak of sudden provocation for  
the incident either on the part of the deceased or on the  
part of PWs 1 & 2. On the other hand, a provocation, if  
any, was given by the accused persons themselves and  
therefore it cannot be said that the incident on  
21.01.1997 had occurred due to any sudden provocation  
given by the complaining party i.e., by the deceased or by  
PWs 1 & 2. We also find from the records that on  
21.01.1997 during the incident injuries were caused to the  
deceased as also to PWs 1 & 2 by giving them chopper blows  
which are deadly weapons and it is thus established that  
they were fully armed for causing injuries not only to the  
deceased but also to PWs 1 & 2. They had given the  
injuries on the vital part of the body of the deceased  
with considerable force, as is established from the Injury  
Report placed on the record. A bare perusal of the Injury  
Report would show that there were very grave injuries on  
the scalp as one half of the scalp was missing and right  
half of the skull vault and brain were missing and rest of

6

the skull was fractured into pieces. Such was the force  
which was used by the appellants for causing injuries to  
the deceased. We, therefore, find on a perusal of the  
evidence on record that a clear case of conviction under  
section 302 IPC is made out. Therefore, the contentions  
of the counsel appearing for the appellants are rejected.  
Consequently, both the appeals are hereby dismissed.

..... J  
[DR. MUKUNDAKAM SHARMA]

..... J  
[H.L. DATTU]

NEW DELHI  
MARCH 16, 2010