

IN THE SUPREME COURT OF INDIA
 CRIMINAL APPELLATE JURISDICTION
 CRIMINAL APPEAL NO. 229 OF 2007

GOUDAPPA & ORS.

... APPELLANTS

VERSUS

STATE OF KARNATAKA

...RESPONDENT

J U D G M E N T

CHANDRAMAULI KR. PRASAD, J.

Appellant No. 1, Goudappa (Accused No.3), Appellant No.2, Chhannappa @ Ajjappa (Accused No.4) and Appellant No. 3, Mahadevappa (Accused No.5) aggrieved by their conviction and sentence, have preferred this appeal with the leave of the court.

Altogether five brothers namely, Basappa, Vipakshappa, Goudappa, Channappa @ Ajjappa and Mahadevappa were put on trial for offence under Section 143, 148, 452, 341, 302, 427, 504 and 506 read with Section 149 of the Indian Penal Code. The trial court acquitted accused no. 1, Basappa and accused no. 2 Vipakshappa of all the charges. Accused no. 3, Goudappa and accused no. 4, Channappa @ Ajjappa were, however, held guilty under Section 304, Part II read with Section 109 of the Indian Penal Code and sentenced to undergo simple imprisonment for one year. Accused no. 5, Mahadevappa has been convicted under Section 304, Part II of the Indian Penal Code and sentenced to undergo rigorous imprisonment for five years. They have, however, been acquitted of all other charges.

State of Karnataka, aggrieved by the order of acquittal of the aforesaid two accused and conviction of other three only under Section 304, Part II, instead under Section 302 of the Indian Penal Code and those convicted and sentenced also preferred separate appeals before the High Court. Both the appeals were heard together and disposed of by a common judgment. The High Court by the impugned judgment and order has set aside the judgment of acquittal and held all the accused guilty under Section 143 and 148 of the Indian Penal Code and sentenced them to pay fine of Rs. 1,000/- on each count with a default clause. Those three found guilty under Section 304, Part II read with Section 109 or under Section 304, Part II of the Indian Penal Code simplicitor have, instead, been convicted under Section 302/34 of the Indian Penal Code and sentenced to undergo imprisonment for life with default clause.

Matrimonial discord between deceased Channappa and Kalavathi, daughter of accused no. 1, Basappa is the cause of the crime. All the accused are brothers and reside in Village Navalur within Dharwad District of the State of Karnataka. Kalavathi was married to deceased Channappa, who was also the resident of the same village, houses of both being situated within a

distance of 100 ft. from each other. Marriage between them had taken place on 5th of May, 1996. The relationship between the couple was not cordial and, according to the prosecution, as usual the elders of the village convened a Panchayat in which the father of Kalavathi i.e. accused no. 1 Basappa wrote an undertaking (Exh. P-6) to counsel his daughter and not to blame anyone else, if any untoward incident happens. However, this did not bring peace and matrimonial harmony and Kalavathi left the matrimonial house without informing anybody. This was not liked by her husband, Channappa and he stopped her entry in the matrimonial house. All the accused thus nurtured ill-will against him.

According to the prosecution, on 9th of January, 1998 at about 9.30 P.M. the deceased Channappa, his brother Manjunatha (PW-1), mother Siddawwa (PW-2) and grandson of PW-2, Manjunath (PW-3) were watching TV. The deceased Channappa at that time was chewing paan and came out of the house to spit. Accused Basappa started abusing him alleging that he failed to keep his daughter, whereupon all the accused entered the house and accused no. 3 Goudappa and accused No. 4 Channappa @ Ajjappa caught hold of the deceased and accused no. 5 Mahadevappa stabbed him with jambia over the left side of the chest. The blow was so severe that it penetrated into the heart and liver. Prosecution has further alleged that accused no. 1, Basappa pelted stone over the door of the house whereas accused no. 2 Vipakshappa damaged its front door with an axe. Manjunatha (PW-1), Siddawwa (PW-2) and Manjunath (PW-3) claimed to have seen the incident. Manunatha (PW-1) conveyed the message to the Police Control Room and called Dr. Shamsuddin Kasimsab Jamadar (PW-18) for treatment, but noticing profuse bleeding, he advised to shift the injured to the Government Hospital. While arrangement to shift the injured was being made, Shashidhar (PW-24), the police constable, Manappa Siddappa Arer (PW-27), the Sub-Inspector of Police of Vidhyagiri Police Station and other two police constables came to the spot and the injured was shifted to Civil Hospital, Dharwad. He was examined by the doctor and declared dead. Manjunatha (PW-1) gave report to Manappa Siddappa Arer which led to registration of Crime No. 14 of 1998 under Section 143, 147, 148, 323, 427, 452, 302, 504 and 506 read with Section 149 of the Indian Penal Code.

After usual investigation, police submitted the charge-sheet and all the five accused were ultimately committed to the Court of Sessions to face the trial. The trial court framed charges under Section 143, 148, 452, 341, 302, 427, 504 and 506 read with Section 149 of the Indian Penal Code. Accused pleaded not guilty and claimed to be tried. In order to bring home the charge, the prosecution has altogether examined 28 witnesses and a large number of documents (Exhibits P-1 to P-24) and material objects (M.Os. 1 to 14) were exhibited. Out of the aforesaid witnesses, Manjunatha (PW-1), Siddawwa (PW-2) and Manjunath (PW-3) claimed to be the eye-witnesses of the occurrence. Dr. Rajashekara (PW-6) has conducted the post-mortem examination on the dead body of the deceased. The defence of the accused is of total denial and they have led no evidence. There is consistent evidence of Manjunatha (PW-1), Siddawwa (PW-2) and Manjunath (PW-3) that relation of Kalawathi, daughter of accused no. 1 Basappa and her husband, the deceased Channappa was strained and the accused have virtually accepted this part of the prosecution story. Manjunatha (PW-1), has stated in his evidence that while he along with the other two eye-witnesses, Siddawwa (PW-2) and Manjunath (PW-3) and the deceased Channappa were watching TV, all the accused had assembled in the house of accused no. 3, Goudappa and were hurling abuses. According to this witness, the deceased Channappa was in the habit of chewing paan and, therefore, he had gone out of the house to spit. At that time accused no. 1 Basappa abused him alleging that he is not able to lead married life with his daughter. Immediately thereafter, all the accused entered into the house. At that time, accused no. 2, Vipakshappa was armed with an axe whereas accused no. 5, Mahadevappa was carrying a jambia. According to this witness, accused no. 3, Goudappa and accused no. 4 Channappa @ Ajjappa caught hold of the deceased Channappa whereupon accused no. 5, Mahadevappa assaulted the deceased with jambia on his chest. It has further been stated that accused no. 1, Basappa pelted stone over the door whereas accused no. 2, Vipakshappa damaged the front door with an axe. In the cross-examination, this witness has admitted that

all of them including the deceased Channappa, were inside the house and watching TV when the accused have come in front of their house and the occurrence had taken place inside the house. He has further admitted that in the first information report he had not mentioned about the availability of electric light in the house and in the street, at the time of the incident.

Siddawwa (PW-2), who happens to be the mother of the deceased, stated in her evidence that all the accused came to their house, abused and threatened them of dire consequences as the deceased was not accepting Kalavathi to lead a married life. She has further stated that accused no. 3, Goudappa and accused no. 4, Channappa @ Ajjappa caught hold of deceased's hands and accused no. 5, Mahadevappa gave jambia blow on his chest. Evidence of Manjunath (PW-3), the grandson of Siddawwa (PW-2), is the same as those of other two eye witnesses. In the cross-examination he had stated that the deceased Channappa was inside the house when the accused came to the spot.

Dr. Rajashekara (PW-6), who conducted the post-mortem examination on the dead body of the deceased Channappa, had found the following external injuries on his person:

"1. Punctured wound over the left side of the chest over 2, 3 and 4th intercostal space 3" below the junction of medial 1/3rd and later 2/3rd of clavicle bone 3" lateral to midline."

He also found the following internal injuries on his person:

"On opening of the skull brain was pale in colour. On examination of the chest, crack fracture of 2nd rib on the left side 3" from sterno costal junction. Plura opened at the site of the wound, which was described above. Containing blood with some clots and blood was about 1000 ml.

Larynx and trachea was intact and pale.

Lungs were intact and pale. Plura was opened over the left atrium of the heart.

Punctured wound over left atrium 1" x 1" clot blood at the margins and reddish in colour."

Mr. Basava Prabhu S. Patil, Senior Advocate appears on behalf of the appellants, whereas the respondent-State of Karnataka is represented by Ms. Anitha Shenoy.

Mr. Patil submits that the claim of Manjunatha (PW-1), Siddawwa (PW-2) and Manjunath (PW-3) to be the eye-witnesses to the occurrence and having witnessed the incident is fit to be rejected as, according to their own evidence, they were watching the television inside the house (PADASALE) at the time of occurrence, whereas the occurrence has taken place near the front door inside the house. In this connection, he has drawn our attention to the sketch map and points out that from the place where these witnesses were watching the television, the place where the deceased was assaulted is not visible. Ms. Shenoy, however, submits that the house where the incident had taken place is a small house and the distance between the place of occurrence and the PADASALE where they were watching

TV is hardly 20 ft. She further submits that after the accused persons entered into the house and saw the deceased Channappa, the latter had raised an alarm which attracted the attention of the witnesses and they came to the spot and, hence, witnessed the occurrence.

We have bestowed our consideration to the rival submissions and we find substance in the submission of Ms. Shenoy. The house in question is a small house and the distance between the place where they were watching TV and the place of occurrence is about 20 ft. Further, there was an alarm raised by the deceased Channappa which attracted the witnesses and, thus their claim of being eye-witnesses of the occurrence cannot be rejected on this ground.

Mr. Patil then submits that, according to the evidence of the prosecution witnesses, when the deceased came out of the house to spit, the occurrence has taken place, but the dead body was found inside the house and, therefore, prosecution has not been able to prove the place of occurrence beyond all reasonable doubt. According to him, the consistent case of the prosecution is that the deceased along with other eye-witnesses were watching TV in the PADASALE and the deceased was assaulted when he came out of the house to spit. In this connection, he has drawn our attention to the sketch map which gives the details of the house and the place of occurrence. This, according to Mr. Patil, clearly shows that the occurrence has taken place inside the house. We do not find any substance in the submission of Mr. Patil and the same is fit to be rejected. For appreciation of this submission one has to bear in mind that the house where the occurrence has taken place is a small house and the dead body was found 7 ft. inside the front door. It is the consistent evidence of the prosecution witnesses that the deceased Channappa was chewing paan and came out of the house to spit when accused no. 1 Basappa abused him alleging that he failed to keep his daughter whereupon all the accused persons entered the house and the crime was committed. As stated earlier, the dead body was found 7 ft. inside the front door, we do not find any inconsistency in regard to the place of occurrence.

Mr. Patil lastly submits that, according to the prosecution itself, role attributed to accused no. 3 Goudappa and accused no. 4 Channappa @ Ajjappa is that they had caught hold of the deceased Channappa and from that it cannot be inferred that the crime was committed in furtherance of common intention. According to him, these appellants had not intended to cause the death of the deceased and, hence, cannot be convicted for the offence under Section 302 with the aid of Section 34 of the Indian Penal Code. In support of the submission reliance has been placed on the judgment of this Court in the case of Ramashish Yadav v. State of Bihar, (1999) 8 SCC 555:

"This being the requirement of law for applicability of Section 34 IPC, from the mere fact that accused Ram Pravesh Yadav and Ramanand Yadav came and caught hold of Tapeshwar, whereafter Samundar Yadav and Sheo Layak Yadav came with gandasa in their hands and gave blows by means of gandasa, it cannot be said that the accused Ram Pravesh Yadav and Ramanand Yadav shared the common intention with accused Samundar Yadav and Sheo Layak Yadav. Consequently, accused Ram Pravesh Yadav and Ramanand Yadav cannot be held guilty of the charge under Sections 302/34 IPC but accused Samundar Yadav and Sheo Layak Yadav did commit the offence under Sections 302/34, having assaulted deceased Tapeshwar on his head by means of gandasa on account of which Tapeshwar died. The accused Ram Pravesh Yadav and Ramanand Yadav are, therefore, acquitted of the charges levelled against them and they be set at liberty forthwith."

Ms. Shenoy, however, submits that from the manner in which the crime

has been committed and the role played by the aforesaid two appellants clearly show that the criminal act was done by several persons in furtherance of the common intention of all and, hence, each of such person shall be liable for the criminal act in the same manner as if it was done by him alone. Reference, in this connection, has been made to a decision of this Court in the case of Ramesh Singh v. State of A.P., (2004) 11 SCC 305.

We have bestowed our consideration to the rival submissions and the submission made by Ms. Shenoy commend us. Ordinarily, every man is responsible criminally for a criminal act done by him. No man can be held responsible for an independent act and wrong committed by another. The principle of criminal liability is that the person who commits an offence is responsible for that and he can only be held guilty. However, Section 34 of the Indian Penal Code makes an exception to this principle. It lays down a principle of joint liability in the doing of a criminal act. The essence of that liability is to be found in the existence of common intention, animating the accused leading to the doing of a criminal act in furtherance of such intention. It deals with the doing of separate acts, similar or adverse by several persons, if all are done in furtherance of common intention. In such situation, each person is liable for the result of that as if he had done that act himself. Section 34 of the Indian Penal Code thus lays down a principle of joint criminal liability which is only a rule of evidence but does not create a substantive offence. Therefore, if the act is the result of a common intention that every person who did the criminal act share, that common intention would make him liable for the offence committed irrespective of the role which he had in its perpetration. Then how to gather common intention? The common intention is gathered from the manner in which the crime has been committed, the conduct of the accused soon before and after the occurrence, the determination and concern with which the crime was committed, the weapon carried by the accused and from the nature and injury caused by one or some of them. Therefore, for arriving at a conclusion whether the accused had the common intention to commit an offence of which they could be convicted, the totality of circumstances must be taken into consideration.

Bearing in mind the principle aforesaid, when we proceed to consider the case of these two appellants namely, accused no. 3 Goudappa and accused no. 4 Channappa @ Ajappa, we have no hesitation in coming to the conclusion that the deceased Channappa was done to death in furtherance of their common intention. All the accused had assembled at one place and the moment deceased came out of the house to spit, one of the accused started abusing him. They were armed with axe and jambia and by catching and immobilizing the deceased these two accused facilitated the assault by accused no. 5. Accused no. 5 stabbed the deceased with jambia over the left side of the chest and the blow was so severe that it penetrated into the heart and liver. The fact that these appellants held the deceased and facilitated the other accused to give the fatal blow and made no effort to prevent him from assaulting the deceased leads to irresistible and inescapable conclusion that these two appellants shared the common intention with accused no. 5. The intention of accused no. 5 is clear from the nature of weapon used and the severity of attack which was in the area of chest penetrating deep inside up to heart and liver which caused the death of the deceased.

The view which we have taken finds support from the judgment of this Court in the case of Ramesh Singh (supra) in which it has been observed as follows:

"Once the prosecution evidence tendered through PWs 1 to 3 is accepted, then it is clear that when A-2 and A-3 held the hands of the deceased, they had some intention in disabling the deceased. This inference is possible to be drawn because the appellants in their statement recorded under Section 313 CrPC did not give any explanation why they held the hands of the deceased which indicates that the

appellants had the knowledge that A-1 was to assault the deceased. The fact that the appellants continued to hold the deceased all along without making any effort to prevent A-1 from further attacking, in our opinion, leads to an irresistible and an inescapable conclusion that these accused persons also shared the common intention with A-1."

However, we hasten to add that each case rests on its own facts and mere similarity of the facts in one case cannot be used to determine a conclusion of fact in another. Whether the crime was committed in furtherance of common intention is determined on appreciation of evidence laid in that case and the similarity of facts in one case may not be decisive to come to a definite conclusion of fact in another. Hence, answer of such question has to be found in the facts of a given case. In this connection, it is apt to reproduce the following passage from the case of Pandurang v. State of Hyderabad, AIR 1955 SC 216:

"But to say this is no more than to reproduce the ordinary rule about circumstantial evidence, for there is no special rule of evidence for this class of case. At bottom, it is a question of fact in every case and however similar the circumstances, facts in one case cannot be used as a precedent to determine the conclusion on the facts in another. All that is necessary is either to have direct proof of prior concert, or proof of circumstances which necessarily lead to that inference, or, as we prefer to put it in the time-honoured way, 'the incriminating facts must be incompatible with the innocence of the accused and incapable of explanation on any other reasonable hypothesis'. (Sarkar's Evidence, 8th Edn., p. 30)"

From the discussion aforesaid, it is evident that the High Court has not committed any error in setting aside the judgment of acquittal and holding all the accused guilty under Section 143 and 148 of the Indian Penal Code and convicting the appellants under Section 302/34 of the Indian Penal Code and sentencing them to undergo imprisonment for life with default clause.

In the result, we do not find any merit in the appeal and it is dismissed accordingly.

.....J.
(A.K. PATNAIK)

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

NEW DELHI,
MARCH 11, 2013.
ITEM NO.1A
(For Judgment)

COURT NO.12

SECTION IIB

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.229 OF 2007

GOUDAPPA & ORS.

Appellant (s)

VERSUS

STATE OF KARNATAKA

Respondent(s)

Date: 11/03/2013 This Appeal was called on for pronouncement of judgment today.

For Appellant(s) Mr. R.D. Upadhyay,Adv.

For Respondent(s) Ms. Anitha Shenoy,Adv.

Hon'ble Mr. Justice Chandramauli Kr. Prasad pronounced the Reportable Judgment of the Bench comprising of Hon'ble Mr. Justice A. K. Patnaik and His Lordship.

The appeal is dismissed in terms of the signed reportable judgment.

| (Sanjay Kumar) Court Master | (Indu Satija) |
| |Court Master | |

(Signed reportable judgment is placed on the file)
