

IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL Nos.1938-1939/2011

AMBALAPPA

Appellant(s)

VERSUS

NAGAPPA & ORS. ETC.

Respondent(s)

O R D E R

Heard learned counsel for the parties.

The complainant is before this Court challenging the Order dated 04.02.2011 of the High Court whereby the High Court has acquitted six out of seven accused in a case relating to the offences punishable under Sections 143, 147, 148, 149, 302 of the Indian Penal Code, 1860 (For short, the 'IPC') and has converted the findings for the offences punishable under Section 302 of the IPC to 304 Part-II of the IPC in the case of the remaining accused, who was accused No.2.

The prosecution story in brief is that on 11.03.2006, the accused who were seven in number went inside the house of Balappa (PW-6) dragged him out of his house and, thereafter, started inflicting blows on him. PW-6 was about 70 years of age and the assailants/ accused persons and Balappa were also related to one another and there was a property dispute between them which had resulted in the said incident.

Be that as it may, the deceased and his father being the neighbours of PW-6 came out of the house to rescue PW-6 from the assailants and while doing so, Siddappa, who was 32 years old son of the complainant, was stabbed by Sharanappa which resulted in his

death on the spot.

Pursuant to the FIR dated 12.03.2006, the Police after the investigation filed a charge-sheet against seven persons. Accused No.2 is a person who was assigned the role of stabbing which ultimately resulted the death of Siddapa.

The prosecution, in order to establish a case, examined 11 witnesses apart from placing other documents and evidence including forensic reports. The postmortem was conducted on which it was stated that the cause of death was as follows:-

"opinion as to cause of death

cause of death is hemorrhage and shock due to stab injury to stomach. Time of death prior to pm is 14 to 20 hours"

"injuries

1. stab wound over Lt. Last intercostal space medial to midline i.e. 3.5" away from the midline of the abdomen. Size 2.5X 1c.m., depth enters the cavity.

After dissection injury entered sub diaphragmatic area and injured to stomach.

2. Abrasion over Rt. Side of the neck above the Rt. Medial end of the clavicle size 6X1/4 c.m."

We have seen the Post-Mortem report. The wound inflicted by A2 is from a sharp-edged weapon which went deep inside the left side of the stomach of the deceased. The examination-in-chief of PW-1, Dr. S.S. Kattimani dated 14.03.2008 who conducted post-mortem of deceased shows as follows:

"Male dead body aged about 32 years well built and well nourished. Body is supine position, eyes are partially closed. Stab wound on the left last inter costal space, medial to memory line, i.e., 3.5" away from midline of the abdomen size of the wound is length 2.5cm and width is 1cm.

Depth cannot be measured as wound is entered in abdominal cavity.

Abrasion over right side of the neck above right side medial end of the clavicle size 6 x 1/4 cm.

On dissection I found that internal organs were intact except stomach. Stomach was injured, stab wound over anterior lateral upper part of stomach present. Blood is seen more than 350ml in dark red color.

Now I see the said knife. I am of the opinion that the injury appearing on the stomach of said deceased Siddappa could be caused with a knife which is present before court-the said knife is marked as M.O.-1."

After examining the entire evidence on record, the High Court gave a categorical finding that the prosecution has not been able to establish its case beyond reasonable doubt as far as accused No.1 and accused No.3 to 7 are concerned that they had shared any common object or common intention of causing death or to injure either deceased or PW-6. At the same time, there is a categorical finding that it was the accused No.2 i.e. Sharanappa who gave the

fatal blow on the abdominal of the deceased which caused his death. However, the High Court observed that this blow even by accused No.2 viz. i.e. Sharanappa was without premeditation and that itself would not amount to murder but it would amount to culpable homicide not amounting to murder and therefore, the finding under Section 302 IPC was converted into finding of Section 304 Part II of IPC and it was held that there was no intention to kill the accused though he had knowledge that this blow may cause the death of the deceased. We find absolutely no reason to disturb any of the findings of the High Court on the aspect of the acquittal of accused No.1 and accused Nos.3 to 7 and also we do not find any justifiable reason to interfere with the finding of conviction as regards accused No. 2. All the same, we are of the considered view, particularly considering the nature of injury caused to the deceased, even though there was a single stab wound, the sentence awarded is not sufficient, and it does not meet the ends of justice.

The High Court was of the view that as there was one single blow with a knife, it will not be a murder but a culpable homicide not amounting to murder under Section 304 Part II. We have already upheld the conviction here under Section 304 Part II. Yet, we do not agree with the sentence awarded by the High Court to accused No. 2, who was released on the sentence already undergone which we have been informed was of 4 years 11 months and 27 days (a little less than 5 years).

The injury no.1 is a deep stab wound in the abdomen. It is sufficient to cause death. The nature of injury and the statement

of doctor who did the post mortem gives the detail of this injury, which we have referred above.

In our considered opinion, in order to meet the ends of justice, the sentence and the fine have to be increased. We, therefore, convert the sentence from that already undergone (which was about 5 years) to 6 years and also increase the fine (Rs.60,000/-as awarded by the High Court) to Rs.1,50,000/- which shall be deposited before the trial Court and the trial Court shall immediately within two months from today shall ensure that the amount is deposited in the account of the complainant or, in his absence, in the account of his nearest blood relative. We also make it clear that this fine of Rs.1,50,000/- will be in addition to Rs.60,000/-. We further make it clear that if the fine amount is not deposited within the stipulated time, the respondent (accused no.2) shall undergo further sentence of six months. The accused i.e. Shri Sharanappa shall surrender within four weeks starting from April 1, 2024, and shall surrender on or before April 29, 2024. The Registry shall communicate the copy of this order to the concerned court, for onward compliance.

Pending applications, if any, shall stand disposed of.

The appeals stand disposed of accordingly.

.....J.
(SUDHANSHU DHULIA)

.....J.
(PRASANNA B. VARALE)

NEW DELHI;
March 13, 2024

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). 1938-1939/2011

AMBALAPPA

Appellant(s)

VERSUS

NAGAPPA & ORS.

Respondent(s)

Date : 13-03-2024 These appeals were called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE SUDHANSHU DHULIA

HON'BLE MR. JUSTICE PRASANNA BHALACHANDRA VARALE

For Appellant(s) Mr. Vishwajeet Singh, Sr. Adv.
Mr. Pankaj Singh, Adv.
Ms. Vibha Bhatt, Adv.
Mr. Suryansh Singh, Adv.
Mr. T. N. Singh, AOR
Mr. Vikas Kumar Singh, Adv.
Ms. Rajshree Singh, Adv.

For Respondent(s) Mr. Sachin Patil, Adv.
Mr. Satyajeet Kharde, Adv.
Ms. Chandan Ramamurthi, AOR

Mr. V. N. Raghupathy, AOR
Mr. Manendra Pal Gupta, Adv.
Mr. Prakash Jadhav, Adv.
Mr. Ravichandra Jadhav, Adv.
Mr. Sanjeev Kumar, Adv.

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

Heard learned counsel for the parties.

The appeals stand disposed of in terms of the signed order.

Pending application(s), if any, shall stand disposed of.

(RASHMI DHYANI PANT)
COURT MASTER (SH)(AVGV RAMU)
COURT MASTER (NSH)

(signed order is placed on the file)