

In Re: Thippanna

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Court : Karnataka

Decided On : Jan-08-1971

Reported in : 1971CriLJ1640

Judge : K. Bhimiah and; M. Sadananda, JJ.

Appellant : In Re: Thippanna

Judgement :

K. Bhimiah, J.

1. This is an appeal against the conviction and sentence passed on the appellant by the Sessions Judge, Raichur, in Sessions Case No. 9/8 of 1968. The appellant has been found guilty of the offence Under Sections 324 and 302 IPC both the sentences to run concurrently.

2. The accused Thippanna, deceased Gundappa and the injured Narappa are the residents of the locality of Beeron Quilla, Raichur. The house of the accused is near the top of the hillock and the houses of the injured Marappa and the deceased Gundappa and other persons are near the hillock on a lower level. There is also a Hanuman temple on the top of the hillock and there is a street light in front of the said Hanuman temple. Marappa has an unmarried sister by name Nagamma. Marappa and his younger brother Gaddeppa and their parents all reside in the same house along with their sister. The incident took place on 15-12-1967 at about 7-30 p. m. in front of the house of the appellant. The appellant is

alleged to have caused the death of Gundappa by stabbing him with a knife on his chest and back and also inflicted injuries on Marappa by means of a knife. According to the prosecution, the accused and some of his relatives had gone to the house of Marappa and ask for the hand of Nagamma in marriage to the sister's son of the appellant and the parents of Marappa told the appellant and his relatives that he would consider the matter after consulting their other relatives. Thereafter, about 7 or 8 days later, the appellant and some of his relatives again went to the house of Marappa to enquire about the decision from the parents of Marappa in regard to their request. At that time also, the parents of Marappa told the accused and his relatives to wait for some time since they had to consider the proposal in consultation with their children. Then, the appellant and his relatives returned from the house of Marappa.

3. On the morning of the date of the incident which was a Friday, according to the prosecution, the appellant and his sister and one Narasappa again went to the house of Marappa and questioned the parents of Marappa as to why they had not given their consent to the marriage of Nagamma to the sister's son of the appellant and quarreled with them. At that time the appellant and Marappa quarrelled with each other and beat each other. But the persons who had assembled there, intervened and pacified them. The appellant and his sister and other relatives of his returned to their houses. In the evening at about 6 or 6-30 p. m. Marappa returned from his work to his house and at that time he saw his younger brother Gaddeppa .and his mother apd sister talking with the deceased Gundappa. Marappa took a 'lota' and went outside his house for answering calls of nature and proceeded towards the house of the appellant where the people of the locality usually go lor answering calls of nature, i.e., behind the house of the appellant near the boulders. When Marappa was returning from that place, and when he was passing in front of the house of the appellant, he saw the appellant on the Katta of his house and told the appellant that there was no use of quarrelling regarding his sister's marriage and if there was anything to be discussed, the appellant can come to his house and talk with him. Thereupon, it was stated that the appellant went inside his house and brought a knife with him and asked Marappa what he had to -say and that at that time, the appellant as well as Marappa exchanged hot words and thereafter the appellant gave a knife blow on

the chest of Marappa, and that Marappa after receiving that blow with the knife, was about to fall down crying, and at that time the appellant gave another blow with the knife on the abdomen of Marappa and Marappa fell down on the ground crying. It is also the case of the prosecution that this happened at about 7 or 7-30 p. m. and that at that time, the light was burning near the Hanuman temple and it was a full moon night, and that the appellant and Marappa were exchanging hot words, and after hearing the Galata, Gaddeppa, Marappa and deceased Gundappa came out from the house and ran towards the Katta of appellant's house and other persons ran towards that side. When Marappa fell down after receiving the injuries, the deceased Gundappa bent down to see Marappa and at that time the appellant gave a blow on the neck of the deceased Gundappa and after receiving the blow, Gundappa tried to get up, but the appellant again gave a blow on the chest of the deceased and thereafter the deceased Gundappa fell down on the ground. The prosecution witnesses who were assembled there seeing this incident tried to apprehend the accused, but the accused at that time inflicted some injuries on his own leg and tried to jump from the katta of his house, and while jumping he fell down into a ditch in front of his house and at that time the knife which he was holding slipped away from his hand and thereafter, the witnesses apprehended the accused and Gaddeppa the younger brother of Marappa took out the knife and all the persons took the accused to the police station at Sadar Bazar, Raichur and produced the accused before the Sub-Inspector of Police. Gaddeppa the younger brother of Marappa produced the knife and the Sub Inspector of Police along with the Circle Inspector of Police seized the blood-stained knife and blood-stained clothes of the accused under a panchanama and sent the accused to the Civil Hospital, Raichur, for treatment. The witnesses and the persons who had assembled at the place of the incident, seeing Marappa and Gundappa with bleeding injuries, took these two persons in a riksha to the Civil Hospital, Raichur and admitted them, but Gundappa who had received grievous injuries on his person died, and Marappa was treated as an inpatient. The Police after receiving the report of the death of Gundappa, the next day reached the Civil Hospital, Raichur, and conducted the inquest proceedings and seized the blood-stained clothes of the deceased and sent the dead body for postmortem examination and thereafter the police conducted the spot mahazar and seized the

blood stained earth from the scene of the offence, and thereafter sent the blood stained knife, blood stained earth and other articles to the Chemical Examiner, Bangalore, and recorded the statements of the witnesses and after completing the investigation, placed the charge-sheet before the First Class Magistrate, Raichur.

4. The learned Magistrate, after recording the statements of the three witnesses to the actual commission of the offence, committed the accused to take his trial before the Court of Session, by his order dated 1-2-1968 Under Sections 302 and 326 IPC

5. The learned Sessions Judge framed fresh charges Under Sections 302 and 826 IPC the accused pleaded not guilty to the charges and claimed to be tried. The prosecution has examined six witnesses and no witness has been examined on behalf of the defence.

6. The eye witnesses who speak to the commission of the offence are P.W. 11 Marappa who was injured, P.W. 12 Gaddeppa the younger brother of Marappa, P.W. 13 Lachman and P.W. 14 Maha-boob. The motive for the crime is alleged to be the strained relations that existed between the appellant on the one hand and Marappa and his relatives on the other, P.W. 7 Ramanna and P.W. 9 Hanumakka and other witnesses speak to this. It is in evidence that before the date of the incident, on two occasions, the appellant and his relatives had gone to the house of Marappa and demanded the hand of Nagamma the sister . of Marappa to be given in marriage to the sister's son of the appellant. But on these occasions, the request of the appellant was turned down. Thereafter, the appellant, on the morning of the day of the incident, went to the house of Marappa along with his sister and quarrelled with Marappa and his parents as to why they are not consenting to the marriage of Nagamma with the sister's son of the appellant, and at that time, the appellant and Marappa quarrelled with each other and beat each other, thereafter the appellant went away to his house. Thus, the appellant had a grudge against Marappa and his relatives and therefore, stabbed Marappa and his close relative Gundappa. The appellant admits his first visit to the house of Marappa to demand the hand of Nagamma in marriage to his sister's son, but he denies that he went to the house of Marappa for the second and third time.

6-A. The points for determination are:

1. Whether there was ill-will between accused and P.W. 12 and his relatives?
2. Whether the appellant inflicted the injuries upon Gundappa, the deceased, and P.W. 11 Marappa?
3. Whether Gundappa died due to the injuries inflicted on him by the appellant?
4. Whether the conviction and sentence are sustainable?

7. P.W. 7 Ramanna is the brother-in-law of the appellant. He is the Pujari of the Hanuman temple. He is the resident of the same locality. He states in his evidence that 15 days prior to the date of the incident, he and the appellant along with one Basanna and another Narasappa together had gone to the house of Marappa to ask for the hand of Nagamma to be given in marriage to one Ramanna, the sister's son of the appellant. At that time, Venkappa the father of Marappa was present and he told the appellant that he would consult his other relatives about the proposal and thereafter the appellant and the witnesses both returned from the house of Marappa. This witness also says that 8 days afterwards, again the appellant and himself went to the house of Venkappa, the father of Marappa and at that time, Venkappa told the appellant that he would consult his sons and later on inform the appellant about the proposal and that thereafter, the witnesses and the appellant returned from the house of Venkappa.

8. P.W. 9 Hanumakka is the mother of Marappa. She has also stated that 15 days prior to the date of the incident, the appellant and P.W. 7 and other persons had gone to her house to ask for the hand of Nagamma in marriage to the sister's son of the appellant, that her husband told the appellant that he would inform later on after consulting his other relatives and the appellant and other persons returned. She also stated that 8 days afterwards again the appellant and P.W. 7 and others came to her house and enquired about the decision and that at that time also they told the appellant that he would inform about it later on and that the appellant and P.W. 7 returned. She also states that thereafter on a Friday i.e. the morning of the incident, the appellant and his sister Sihivamma had come to her house and

quarrelled with her and her son Marappa as to why they were not giving their consent to the marriage of Nagamma to the sister's son of the appellant and that at that time the appellant and her son Marappa both quarrelled with each other and that the inmates of the house and other people present intervened and thereafter the appellant returned to his house.

9. P.W. 11 Marappa has also stated that prior to the incident, the appellant and his relative had gone to his house twice and asked for the hand of Nagamma in marriage to Ramanna, the sister's son of the appellant and both the times they stated that they would inform later on and thereafter, the appellant returned to his house. This witness also states that on the morning of the day of the incident, on a Friday, the appellant again came to his house along with his sister and enquired him and his mother as to why they are not giving their consent to the marriage of Nagamma with Ramanna, and that the appellant picked up a quarrel and beat him with chappal and that he also beat the appellant. There was galata at that time and the inmates of the house and the people present intervened. From the evidence of these witnesses, it is clear that the relations between the parties had become strained due to the demand by the appellant for the hand of Nagamma to be given in marriage to his sister's son and: the evasive replies given by Marappa, the brother of Nagamma and the appellant and the appellant therefore should have nursed a grudge against Marappa and the members of his family. The first point is answered accordingly.

10. P.W. 11 Marappa states that about a year and six months back, on a Friday at about 6 or 6-30 p. m. he returned to his house from his duty and at that time his younger brother Gaddeppa (P.W. 12) and the deceased Gundappa were sitting and talking at that time, and that he took a lota' and went out to answer the calls of nature. He further states that in order to go for that purpose, he has to pass in front of the house of the appellant and that he had to go towards the back of the house of the appellant, and after some time when he was returning from that place, he saw the appellant standing on the katta of his house, and that at that time he told the appellant that there was no use quarrelling with regard to his sister's marriage and if there is anything to be talked about, the appellant can come to his house and they could talk about the marriage. The witnesses further states that the

appellant at that time went inside the house and came out and asked him what he had to say and thereafter a quarrel ensued between them and he and the appellant both exchanged hot words and immediately thereafter, the appellant gave a blow with a knife on his chest and after receiving that blow, he was about to fall crying and then the appellant gave another blow with a knife on the abdomen and then he fell down on the ground. This witness has stated that on hearing the galata, the deceased Gundappa and Gaddeppa came to the spot running. When the deceased Gundappa bent down to see the witnesses, the appellant struck Gundappa with the knife on' the back and as the blood was oozing from his wounds, he lost consciousness and does not know what happened thereafter. This witness also states that at the time of the incident there was sufficient light as one mercury light was burning near the Hanuman temple and there was also moonlight as it was a full-moon night. He further states that he regained consciousness in the Raichur Hospital. The statement of P.W. 11 is corro-

11. P.W. 12 Gaddeppa is the younger brother of P. W, 11 Marappa. He deposes to the fact that about a year and six months ago, on a Friday at about 6 or 6-30 p. m. Marappa returned from his duty and at that time himself, his mother and Gundappa, the deceased, were talking in their house and then Marappa took a lota and went out to answer calls of nature and after some time he heard galata from the direction of the appellant's house. So, himself and Gundappa the deceased, both went towards the house of the appellant and when himself and deceased Gundappa proceeded towards the house of the appellant, he saw the appellant and Marappa who were exchanging hot words and when he and the deceased Gundappa were at a distance of 8 or 10 steps from the spot, the appellant gave a blow with the knife on the chest of his brother Marappa and thereafter gave another blow on the abdomen of Marappa and that Marappa fell down on the ground. At that time, the deceased Gundappa was ahead of him and went to the spot immediately and after bending down he was seeing his brother Marappa who was lying on the ground and at that time the appellant gave a blow with the knife on the back of the deceased after receiving the blow he cried out and at once tried to straighten himself and in the meanwhile, the appellant gave another blow with the knife on the chest of the deceased Gundappa. The

deceased fell down and thereafter the appellant inflicted some injuries on his own right knee with the same knife and tried to jump from the katta in front of his house fell down in the ditch and at that time, the knife which was in the hand of the appellant slipped away. So, the witness immediately went there and picked up the knife. Thereafter, himself and P.Ws. 13 and 14 and one Iranna caught hold of the appellant and meanwhile some persons gathered there, and himself and other persons took the appellant to the police station and both the injured persons were taken to the hospital in a riksha and the appellant was produced before the Sub-Inspector of Police, and the Circle Inspector who were present in the police station house, and gave the knife M.O. 1 to the Sub-Inspector of Police. He states that M.O. 1 was blood stained and the police seized the knife, and recorded his statement in the police station. He also identified the complainant as per Ext. P-9 and also identified the clothes of the deceased and also the clothes of the appellant.

12. P.W. 13 is Lachman who deposes that on the date of the incident at about 7 or 7-30 p.m. he and Mahaboob P.W. 14 were going from his house towards the Hanuman temple in order to deposit some amount towards chit fund and at that time he heard some 'galata' from the side of the house of the appellant; he and Mahaboob both went towards that side and when both reached just in front of Hanuman temple he noticed P.W. 11 Marappa and the appellant standing in front of the katta of the house of the appellant and at that time, the appellant stabbed P.W. 11 Marappa on his chest with a knife and the appellant gave another blow to Marappa on his abdomen and after receiving these blows Marappa fell down on the ground. He also states that at that time, Gaddeppa, P.W. 12 and the deceased Gundappa came running towards the spot and when Gundappa bent down to see Marappa, the appellant stabbed the deceased Gundappa on his back and thereafter the appellant gave another blow with the knife on the chest of the deceased and so Gundappa fell down on the ground. This witness has also stated that thereafter the appellant inflicted the injuries with the same knife on his knee and jumped from the katta of his house, but the appellant fell down in the ditch and at that time the knife slipped away from his hands. He also states that P.W. 12 took the knife, then the witnesses, Mahaboob and one Irappa and Gaddeppa caught hold of the accused and took him to the Police Station house, Raichur, and

by that time the other persons gathered and the injured persons were taken to the hospital in a riksha. The evidence of this witness is also to the effect that a light was burning near the Hanuman temple and there was also moon light as it was a full moon night. He has stated that in the police station P.W. 12 Gaddeppa produced the knife M.O. 1 before the Police.

13. P.W. 14 is Mahaboob and his statement also corroborates the statement of P.W. 13. It is also stated by him that about P/s years ago on a Friday at about 7 or 7-30 p.m. he and P.W. 13 were both coming from the shop of P.W. 13 and were going towards the Hanuman temple, to deposit the amount towards chit fund, and at that time they heard some galata from the direction of the appellant's house, and after hearing the same, they both went towards the house of the appellant and when they were about to reach the spot near the house, at a distance of 25 or 30 steps, they noticed P.W. 11 Marappa and the appellant and saw the appellant stabbing P.W. 11 on his chest with the knife and also giving another blow on the abdomen of P.W. 11. That in the meanwhile, P.W. 12 and the deceased Gundappa rushed to the spot Gundappa bent down to see Marappa, but immediately the appellant gave blow on the back of the deceased and when the deceased turned, again the appellant gave a blow on the chest of the deceased and then Gundappa fell down on the ground. It is also stated by him that thereafter, the appellant inflicted some injuries on his own knee and tried to jump from the katta of his house, but the appellant fell down in a ditch and the knife which was in his hand fell down in the ditch, and at that time himself, P.W. 13, P.W. 12 and one Iranna all rushed and caught hold of the appellant. P.W. 12 took up the knife M.O. 1. The knife was blood stained and they took the accused to the police station and handed over the appellant to the police and P.W. 12 handed over the knife MO. 1 to the police which was seized by the police. The evidence of this witness also reveals that at the time of the incident, the light was burning near the Hanuman temple and that the distance between the house of the appellant where the light was burning may be 15 to 20 steps and that there was moon light also since it was a full moon night.

14. From the evidence of these witnesses, it is clear that the incident took place at about 7 or 7-30 p.m. and there was a mercury light burning near the Hanuman

temple at a distance of 15 to 20 steps from the katta of the house of the appellant. P.Ws. 13 and 14 have stated that they were proceeding towards the Hanuman temple at that time and they heard a galata and both of them went towards the house of the appellant and saw the incident. Gaddappa P.W. 12 has stated that after hearing the galata himself and deceased Gundappa who were sitting in the house immediately came out of the house, went towards the house of the appellant from which direction they heard the galata and when he and Gundappa proceeded toward;; the house of the appellant, and when they were at a distance of 8 to 10 steps from the house of the appellant, he saw the incident, that Gundappa was ahead of him and Gundappa bent down to see Marappa who was lying on the ground; the appellant stabbed Gundappa on the back and that when the deceased tried to stand up, the appellant gave another blow with the knife on the chest of the deceased, thereafter the deceased fell down. P.W. 11 who was injured has stated that the appellant struck him on his chest and on his abdomen, that he fell down on the ground with the injuries and at that time Gundappa the deceased came and bent down towards him and that immediately the appellant stabbed Gundappa also. The statement of P.W. 11 is corroborated by the evidence of other eye-witnesses. There is no reason to disbelieve the evidence of these eye-witnesses.

15. Exhibit P-S is the sketch of the locality showing the situation of the houses of the appellant and the other persons as well as the Hanuman temple. That has been prepared by P.W. 10 Channa-veerayya, the supervisor of the P.W.D. He has stated that the house of the appellant and the Hanuman temple are situated in a hillock in the said locality on the top of the hillock, that there is a katta in front of the house of the appellant, that beyond this katta, there is a sudden fall and it is like a verticle form and to get down from the house of the appellant, one has to pass by the side of the boulders. It is also stated by him that the house of Marappa P.W. 11 is on a lower level towards the western side and the distance from the house of Marappa P.W. 11 and the place of occurrence may be 150 ft. It is also stated by him that from the edge of the Hanuman temple the place of the occurrence is about 56 feet and persons standing in front of the Hanuman temple can see the house of the appellant. It is further stated by him that in front of the Hanuman temple there is a tower bell and towards the west of the tower bell, there

is a mercury light. From the evidence of this witness it is clear that P.Ws. 13 and 14 who were standing near the Hanuman temple could see what was happening in front of the house of the appellant. Hence, P.Ws. 13 and 14 when they were standing in front of the Hanuman temple could see the appellant and P.W. 11 who were standing in front of the house of the appellant. They both saw the appellant jumping to the ditch after he had struck the deceased and P.W. 11 and they both rushed and caught hold of the appellant. P.W. 12 Gaddeppa also speaks to the same facts and that after stabbing, the appellant jumped into the ditch and that the knife in his hand slipped away from his hand, that at that time himself, P.W. 13, P.W. 14 and another Iranna caught hold of the appellant. He also states that while he was proceeding towards the house of the appellant, he saw the appellant and Marappa who were exchanging hot words, and the house of the appellant, he saw the appellant and Marappa who were exchanging hot words, and when he was 8 or 10 steps from the spot the appellant gave knife blows to Marappa and also to deceased Gundappa. There is no reason why their evidence should not be believed.

16. Portions of the statements of P.Ws. 11, 12, 13 and 14 made earlier have been marked as Exhibits D-1 to D-5 on behalf of the appellant. P.W. 11 has stated that he had not stated before the police-that he was not given the second blow on his abdomen and in his statement before the Magistrate, he had not stated this fact that in the morning of the incident that the appellant had beaten him with chappal and this portion of the statement can be said to be an omission. P.W. 13 in his deposition has stated before the Magistrate in his statement that he had heard the galata at about 7 p.m. from the rear portion of his shop, and at that time himself and P.W. 14 went to the spot where the quarrel was going on between the appellant and P.W. 12. He also denies having stated earlier as per Ex. D-1 that Marappa at the time of the quarrel went to the house of the appellant and asked him to give up. P.W. 14 in his deposition admits that he has not stated earlier that Gundappa the deceased went ahead of him and at that time the appellant stabbed him with the same knife on the chest and that when the deceased bent down again the appellant stabbed him with the same knife as Ext. D-2. This witness further states in his cross-examination that he had not stated before the committal Court as per Ext. D-3 that by the time they reached the spot, Marappa had already

been stabbed, and the appellant struck the deceased on his chest and the deceased bent down to see Marappa when the appellant gave another blow on the back with the knife. On the basis of these Exhibits D-1 to D-5, it is contended on behalf of the appellant that there are contradictions in the statements of these witnesses. But these are minor discrepancies. It is true that some of the eye-witnesses have stated that the appellant gave stabs with the knife on the left side of the chest of Marappa and also on the left side of the abdomen with the knife, and some of the prosecution-witnesses have stated that the accused gave a blow with the knife on the right side of the chest of Marappa and right side of the abdomen. The witnesses have also stated that the appellant stabbed the deceased on the chest and thereafter on the back of the deceased and the other witnesses stated that the appellant first gave blows on the back of the deceased and when the deceased tried to get up, the appellant gave a blow on the chest of the deceased. These discrepancies cannot be considered as material discrepancies, The evidence of P.Ws, 12, 13 and 14 indicate that they were standing at about a distance of 15 to 20 steps from the place of the incident. Hence, these discrepancies are natural. The eye-witnesses may not be able to remember the details which are too minor in nature about an incident at which time they were excited. Hence, in our opinion, j these omissions and contradictions cannot Effect the truth of the prosecution .case.

17. It is urged on behalf of the appellant that P.W. 12 is the brother of the injured P.W. 11 and he is not an independent witness and that P.Ws. 13 and 14 have stated that at that time, . they were going towards their home after depositing the chit amount and that they heard a galata from the direction of the house of the appellant, they went there and witnessed the incident. P.Ws. 13 and 14 are not in any way related either to P.W. 11 or to the deceased. They are independent witnesses and there is no reason to discard their evidence. There is also nothing to show that these witnesses are inimically disposed towards the appellant. Hence, there is no reason to disbelieve their evidence.

18. It is next contended on behalf of the appellant that though according to the prosecution, one Iranna was also pre- sent at the time of the incident and he also joined the other P.Ws. in catching hold of the appellant and bringing him to the

police station, he has not been examined though he is an eye-witness to the commission of the crime and that if he had been produced before Court, the real facts would have been established as to the innocence of the appellant. But the public prosecutor filed an application in the trial Court stating that this Iranna has been won over by the appellant and that he is not likely to support the case of the prosecution and speak to the real facts and that the prosecution does not propose to examine him. Thus in our opinion, is sufficient explanation for the non-examination of the said Iranna and his non-examination cannot be said to weaken the prosecution case.

19. The case for the defence is that at the time of the incident', Marappa P.W. 1.1, Gaddeppa P.W. 12 and Gundappa the deceased and other persons had all gone to the house of the appellant and at that time they were drunk, they called the appellant to come out of the house, that Marappa gave a blow with a knife on the right ieg of the appellant and the appellant thereafter after receiving that blow immediately went inside the house and closed the door and that at that time the lights went off and that the appellant does not know who stabbed P.W. 11 and the deceased, and that M.O. 1 knife does not belong to him. But P.Ws. 12, 13 and .14 have categorically stated that they huve seen the appellant stabbing the deceased Gundappa. P.W. 11 Marappa who has been injured has also categorically stated that he was talking with the appellant and at that time the appellant went inside the house and brought out a knife M.O. 1 and with that knife he stabbed him and also deceased Gundappa. The appellant in his statement Under Section 342 stated that the deceased Gundappa was advancing monies to the people of that locality and that P.Ws. 13 and 14 and Iranna were collecting the amounts on behalf of the deceased, on that clay he was in his house and was taking his meals and at that time these persons came to his house and asked him to come out. That P.W. 11 gave him a blow with the knife on his leg, so he immediately went inside and closed the door of his house, fell down in his house and at that time these persons were drunk and he does not know what has happened, after some time three police constables came to his house and took him to the police station. There is no material to support the contention that the deceased Gundappa was advancing money to the persons of the locality and that P.Ws. 13, 14 and Iranna were collecting the amount on behalf of the deceased. There is no suggestion made to

these witnesses during their cross-examination that there is enmity between the appellant on the one side and these prosecution witnesses on the other. The appellant has also not stated in his statement Under Section 342, Cr.PC that these witnesses were inimically disposed towards him. It has therefore been proved that the appellant inflicted the injuries on the deceased Gundappa and P.W. 11 Marappa.

20. After Gundappa died due to the stab injuries, the Medical Officer sent the report to the police and thereafter the police of Raichur conducted inquest proceedings of the dead body and seized the blood-stained clothes and sent the dead body to the post-mortem examination. The medical officer conducted the post-mortem examination. P.W. 2 Murugappa the Assistant Surgeon, District Hospital, Raichur, has stated in his evidence that on 16-12-1967 the Police of Sardar Bazar, Raichur, had sent a requisition for conducting the post-mortem over the dead body of the deceased Gundappa and that he has conducted the post-mortem. He has found six external injuries on the person of Gundappa which are described as hereunder:

1. A small abrasion, irregular about 2 cm. in size on the left zygomatic and maxillary junction, just below the left eye. It was darkish-brown in colour.
2. Two small abrasions on the right nasalabial fold.
3. A small linear abrasion on the right zygomatic area 'A' in length.
4. Three small abrasions like big dots on the left side of the frontal bone, just above the left eye-brow.
5. There was a wound with sharp and retracted margins, showing subcutaneous tissue and fat on the right side of the chest, just above the nipple starting from nipple to lateral side through areola.
6. A stab wound, small 1" 2" deep, spindle shaped, sharp margin. Blood was trickling down through the wound. It was on the left lateral side of the spine at 4th and 5th Thoracic spinal level, just 1" away from the spine. After opening the chest it was found by-passing the probe that the wound was piercing through posterior

thoracic wall and fracture of 5th rib and inter-costal vessels and parietal layer of the pleura and descending aorta at the same level which caused the blood and blood dots in the left side of the chest cavity.

He also states that he noticed the fracture of 5th rib at vertebra costal junction and this corresponded to external injury No. 6 and the parietal layer of the pleura on the left side of the chest on the posterior side just covering on the para vertebral region was ruptured and this was also due to external injury No. 6. This witness further states that after seeing M.O. 1 the knife injuries Nos. 5 and 6 could be caused by the knife M.O. 1 and that injury No. 6 could cause the death of a person in the ordinary course of nature. Injury No. 6 was on left side of the back of the deceased and this injury No. 6 had passed descending aorta of the heart and due to the piercing the aorta was cut and he further states that he was of opinion that the death was due to internal haemorrhage due to puncture of the descending aorta of the heart and he has identified the report as per Ext. P-4. He has also stated that all the injuries on the dead body were found to be fresh at that time.

21. P.W. 1 Veer Basvantrao, District Surgeon, Raichur, states that on 15-12-67 at about 8-50 p.m. Marappa, P.W. 11, was brought to the hospital and that he treated him and that he saw the patient in a state of shock and he found the four injuries on the person of Marappa P.W, 11, namely-

1. There was a wound on the left side of the chest near Manabrium sternum in 1st and 2nd intercostal space region. It was oblique in direction, margins were sharp, spindle shaped, 5 x 2.5 cm. subcutaneous tissue and intercostal muscles were visible through it.
2. Superficial wound 1.2x2.5 cm. in deep on the upper and lateral part of right forearm, margins were sharp and it was oozing blood.
3. One Comma shaped wound 2.5x5 cm. x skin deep. The direction was from above downwards and outwards on the anterior part of left 11th intercostal space.
4. A linear scratch 4' long, oblique in the left hypochondria region.

He also states that the patient was treated as an inpatient from 15-12-67 to 28th December 1967 and he was discharged on 28-12-67. He states that these injuries except injury No. 4 had been caused by a sharp weapon and that injuries Nos. 1 to 3 could be caused by a weapon like M.O. 1 and that the banian and dhoti of the injured had become blood-stained and his waist also was heavily blood stained. He issued the certificate Ext. P-1. He also states that when the injured was brought to the hospital the injuries were fresh. The evidence of P.Ws. 11, 12, 13 and 14 are fully corroborated by the evidence of these two witnesses. It is therefore held that the prosecution has proved that Gundappa died due to the injuries inflicted on him by the appellant.

22. It is also the case of the prosecution that the appellant stabbed P.W. 11 and the deceased Gundappa and inflicted injuries on his own person, thereafter tried to jump down from the katta in front of his house and fell down in the ditch. .When the appellant was produced by the prosecution witnesses, before the Sub-Inspector of Police, the police authorities sent the appellant to the hospital for treatment. The medical officer PAV. 1 has stated that on the same night the appellant Thippanna was also brought to the hospital for treatment and he found the following three injuries on his person:

1. He had a W long wound with margins sharp spindle shaped and oblique. The injury was bleeding from centre. This wound had trailed in a linear scratch for 4". It was 1/8" broad and superficial and skin deep, and it was situated on the right knee.

2. There was bruising of the left eyebrow, and it was transverse 1"x2".

3. One abrasion in diameter over the front aspect of left knee.

He also states that all these injuries were simple in nature, and that injury No. 4 which was found on the right knee of the appellant could be caused by the knife M.O. 1. He states that injuries 2 and 3 could be caused by a blunt substance or even by a fall. He has issued the certificate Ext. P-2. P.Ws. 12, 13 and 14 have stated that the appellant after stabbing P.W, 11 and the deceased Gundappa inflicted injuries on his own person and thereafter tried to jump from the katta of his

house but that the appellant while jumping fell down in the ditch which is in front of his house. There is no reason to disbelieve these statements. The prosecution has therefore explained the reason for the injuries sustained by the appellant on his own person.

23. At the time the appellant was handed over to the police, the clothes of the appellant were blood-stained. P.W. 12 had picked up the knife M.O. 1 which fell from the hand of the appellant. P.W. 15 Abdul Shukur has stated that on 15-12-67 he was called by the police to act as a pancha witness. At about 8-30 p.m. he went there and saw in the Sadar Bazar police station the appellant who was in police custody. At that time, the clothes of the appellant were blood stained. The police seized those clothes. The appellant had sustained an injury on his right leg, that P.W. 12 produced the blood stained knife before the police and the police seized the knife under the panchanama Ext. P-10. He identifies the signature in Ext. P-10 and also the clothes of the deceased M.Os. 1, 10 and 11.

24. P.W. 3 Yenkanna is the mahazar witness of the Mahazars Exhibits P-5, P-6 and P-7. He was called by the police to attend the inquest proceedings over the dead body of the deceased Gundappa and at that time the police seized the clothes of the deceased and the panchas noticed the portions of the blood stains on the clothes, the bush shirt of the deceased and also on the banian of the deceased. They also noticed two stab injuries on the person of the dead body, one was on the back of the deceased and the other was on the chest of the deceased towards the left side. This witness further speaks to the spot mahazar conducted by the police and has stated that he noticed the blood on the katta which was in front of the house of the appellant and also on some stones and also on the mixture of mortar and sand and the police seized the blood stained earth, blood stained stones and sealed separately in earthen pots, that there was a trail of blood from the house of the appellant upto the steps of the hillock. He has also spoken to the panchanama Exhibit P-6. He has also spoken to the panchanama Exhibit P-7 as to the seizure of the clothes of the deceased by the Sub-Inspector of Police and has identified M.Os. 2 to 6 to be those of the deceased. Hence, the panchanamas have been proved.

25. The clothes of the deceased and the knife M.O, 1 were sent to the Chemical Examiner, Bangalore, for examination and after examining these articles, he has sent the report Ex. P-II. These articles were sent to the Serologist and the Serologist has sent the report Ext. P-12. Ext. P-11 shows that the presence of human blood was detected on the knife, lungi, Banian, earth and stones. Ext, P-12 indicates that on the shirt, lungi, stones and other articles human blood was found. In respect of the scrapings from the knife M.O. 1, the report of the Serologist is that the blood stains on the knife were disintegrated and therefore their origin could not be determined. But all the eye-witnesses have categorically stated that the appellant stabbed P.W. 11 and the deceased Gundappa with the knife M.O. 1 and that the knife was picked up after the incident by P.W. 12 and that at that time, the knife M.O. 1 was blood stained.

25A. P.W. 9 Hanumakka deposes that after hearing the galata, herself, P.W. 12, and deceased Gundappa rushed towards the house of the appellant, that thereafter she and other inmates of her house followed them., and she went and reached the spot and she saw the appellant being caught by P.Ws. 14, P.W. 12 and P.W. 13 and Irarina, that P.W. 11 had received two injuries one on the chest and one on the abdomen, and his clothes had become blood stained, that the deceased Gundappa had received injuries -on the chest and back and the clothes of the deceased as well as Marappa were blood stained and at that time, other persons had gathered, thereafter both the injured persons were taken to the hospital in a riksha. This witness had reached the spot just after the incident and has seen the appellant and the injured persons there.

26. P.W. 16 Shantgeri is the Investigating Officer. He has stated that when the appellant was brought by the witness, he arrested him and seized the blood stained clothes on the appellant and the knife M.O. 1 under Mahazar and sent the appellant to the hospital for treatment, Thereafter, he conducted the inquest proceedings on the dead body and sent a requisition to the Medical Officer for conducting the post-mortem examination over the shouting dead body and conducted the spot panchanama and sent the blood stained clothes, earth, knife, to the Chemical Examiner and recorded the statement of the witnesses and after completing the investigation placed the charge sheet. It has therefore to be held

that the prosecution has proved that the injuries found on the body of the deceased as well as those found on P.W. 11 were caused by the stab wounds inflicted by the appellant on them with the knife M.O. 1 and that the deceased died due to the injuries inflicted on him by the appellant.

27. The Medical Officer P.W. 1 has stated that the injuries found on the person of Marappa'P.W. 11 are simple in nature. Hence, though the charge was Under Section 326, I.P.C. the learned Sessions Judge was right in convicting the accused for an offence Under Section 324, I.P.C.

28. Considering the nature of the injuries sustained by the deceased, the parts of the body where injuries have been inflicted and the weapon M.O. 1 which is a big and sharp weapon with the blade of six inches with which the injuries were inflicted, the learned Sessions Judge has convicted the appellant for an offence Under Section 302, I.P.C.

29. It is elicited in the cross-examination of P.W. 11 that he has stated before the Magistrate as follows:-

at that time Gundappa came there and asked the accused that why the accused had beat me so much and then Gundappa caught hold of the accused and then the accused beat the deceased Gundappa with a knife on his back.

On the basis of this statement, it is contended by Sri Bhujanga Rao, the learned Counsel for the appellant, that there must have been a sudden fight which developed between the appellant on the one side and deceased Gundappa on the other, and that though according to the prosecution, Gundappa was related to P.W. 11, the prosecution has not made out the ill-will entertained by the appellant against the deceased Gundappa. He relied upon the decision reported in (1964) 1 Mys LJ 543 : ((1965) 2 Cri LJ 288) (Mohamad Ghouse v. State of Mysore) and contended that one offence committed by the appellant would fall under Exception 4 to Section 300 and it amounted to an offence of culpable homicide not amounting to murder. In the case, the deceased Abdul Sattar who was witnessing the 'Thamasha' in connection with the last day of Muharram on the night in question, and the appellant came along with a number of persons shouting 'Din

Din and pushed aside the people that had gathered there including the deceased Abdul Sattar and his friends. The appellant and his followers had no 'punja' with them at the time. The deceased objected to the act of 'Din Din' without carrying punja. Thereupon there was some exchange of hot words between Abdul Sattar and the appellant. Thereafter, the appellant pulled out a knife and inflicted injuries on Abdul Sattar, Abdul Sattar cried out, walked a few paces and fell down and thereafter, the appellant threw away the knife M.O. 1 and ran towards the taxi-stand. The appellant had also sustained a number of bleeding injuries on his persons. P.W. 14 found that the appellant fell down and stated that the appellant fell down almost exhausted near his car which he had parked near the taxi stand and the appellant was being chased by a large number of persons and he put him to the ear and brought him to the police station and the Sub-Inspector of Police recorded the bleeding injuries on the person of the appellant and sent the appellant to the Victoria Hospital for treatment. The appellant was an inpatient in the hospital for 14 days. The doctor who treated him found the appellant in a critical condition and he was not able to make any statement. The duty doctor gave blood transfusion at the time he was admitted to the hospital. It was observed at page 550 as follows:-

The only other question for consideration is whether the appellant is guilty of the offence of murder or of a lesser offence. Though the eye-witnesses for the incident namely P.W. 15 Mohammed Ziauddin, P.W. 16, Abdul Sameed, P.W. 17 Mohammed Hussain and P.W. 18 Ameer do not admit that either Abdul Sattar or #any one of his friends inflicted the injuries found on the person of the appellant, we have no doubt in our minds that the injuries were received by the appellant during the quarrel and at the place of the incident in which Abdul Sattar died. Admittedly the appellant and the deceased were utter strangers to each other. There was no motive for the appellant to commit the offence. There was no previous ill-will between the appellant and the deceased. It is during a sudden quarrel that ensued on account of the rude behaviour of the appellant to which deceased Abdul Sattar took exception, a fight between them took place. There was absolutely no premeditation. In these circumstances, we are of opinion that the offence committed by the appellant falls under Exception (4) of Section 300 of the I.P.C. and can only be of culpable homicide not amounting to murder.

The decisions of the Supreme Court reported in : 1957 CriLJ420 and : 1957 CriLJ586 were followed. In : 1957 CriLJ586 , there was a fight between two parties. In para 4 of the judgment, it has been observed that 'the prosecution had to admit that the deceased Lakha Singh had a small 'lota' about 4 feet long and Tara Singh had a 'Dattar' which they used against the accused's party, with the result that Darshu rmd Jumman received injuries from Lakha Singh and Tara Singh and had wiped off the blood,' In para 16 of tha same judgment, it has been observed as follows: 'We may also consider that each one of the parties would have anticipated meeting the rival faction on the road and if such an eventuality took place, each one of them might have apprehended some trouble. For this purpose, it is but natural that they would have armed themselves in order to protect themselves.

In para 25, it is stated as follows:-

The matter has to be viewed in this way, it is clear that there was no premeditation and therefore when the contending factions met accidentally and attacked each other, the conflict resulted in a sudden . fight, in the heat of passions, upon a sudden quarrel and without the accused having taken undue advantage or acted in a cruel or unusual manner. On the finding that both the parties had arms, there was no undue advantage taken by either. Hence, Exception (4) to Section 300, I.P.C. applies with the result that the offence is Under Section 304 (Part I), I.P.C.

It is clear from the above observations that there was a fight between the two parties and that both parties were armed and further there was no undue advantage taken by the accused. In the case reported in : 1957 CriLJ420 also, there was a sudden free fight between the party of the accused and the party of the deceased. The evidence established that the deceased party was also armed with dangerous weapons and though the appellant had received only minor injuries the other accused had received incised wound, which could have been caused only by a sharp edged weapon. It was observed in Para 7 of the judgment as follows;

In these circumstances, there can be no doubt, as is clear from the testimony of witnesses, that the deceased's party was also armed with dangerous weapons,

and when two such contending parties, each armed with sharp edged weapons, clashed and in the course of a free fight some injuries were inflicted on one party or the other, it cannot be said that either of them acted in a cruel or unusual manner. It would be otherwise if the deceased and his party were unarmed or armed with weapons which were not lethal or dangerous and the accused's party used sharp weapons. In that case, the accused must be deemed to have acted in a cruel or unusual manner. The elements of such action are absent in the present case.

It was therefore held that the case against the accused fell within the Exception 4 of Section 300, I.P.C. In this case also, the party of the deceased was armed with dangerous weapons. It is clear from the observation referred to above, that the accused must be deemed to have acted in cruel or unusual manner if the deceased and his party unarmed or armed with weapons which were not, lethal, or dangerous and the party of the accused used sharp weapons. It is on the ratio of these two decisions of the Supreme Court that their Lordships of this Court held that Exception 4 to Section 300,; I.P.C. applied to the facts of the case reported in (1964) 1 Mys LJ 543 : (1965) 2 Cri L.T 288. Since the accused in that case had also been inflicted with severe injuries, it was assumed that the members of the party of the deceased Abdul Sattar had also been armed with dangerous weapons, since otherwise, severe injuries found on the body of the accused could not be explained.

30. In this case, it is not the case of the defence that any of the P. Ws. 11, 12, 13 and 14 or the deceased Gundappa were armed with any weapons, least of all with any lethal. or dangerous weapons. No such suggestion has been made in the cross-examination of the prosecution witnesses. The accused has not also stated so in his statement made Under Section 342, Cr, P.C. It is not the case of the defence that the injured P.W. 11 or the deceased Gundappa or P.Ws. 12, 13 and 14 were armed with knives or clubs. In the two decisions of the Supreme Court referred to above, the party of the deceased were armed with dangerous weapons. In the decision of this Court, which followed the two decisions¹ of the Supreme Court, the Court assumed that the party of the deceased were armed with dangerous weapons having regard to the serious injuries sustained by the

accused himself. Hence, the principle of the three decisions is of no help to the appellant. He inflicted injuries on P.W. 11 and the deceased Gundappa with a knife which had a sharp edged blade of six inches length. According to the case of the prosecution, Gundappa, a close relative of P.W. 11, only rushed to help P.W. 11 who had already been injured by the stab wounds inflicted by the appellant. In view of the observation of the Supreme Court in : 1957 CriLJ420 , it must be held that the accused must be deemed to have acted in a cruel or unusual manner since the deceased and the . P.Ws. were unarmed and the accused used a sharp weapon M.O. 1.

31. The learned Public Prosecutor has relied on 1937 Madras Weekly Notes, 1236 (Velayudhan Nair v. Emperor) wherein it has been held that where the victim was not armed and the accused has taken undue advantage of the situation, Exception 4 to Section 300, I.P.C. will not apply even if there is provocation and there was a sudden fight during which the offence was committed. In that case, angry words passed between the accused and the deceased and the appellant did not go to the scene of occurrence with any intention of assaulting the deceased. There was obviously no pre-meditation about the crime. The deceased was stabbed as a result of a Sudden quarrel. It was held that in order to bring the act within the exception, it must be shown that the accused did not take undue advantage or act in a cruel or unusual manner. It was observed that when a person takes out a knife and stabs another person who is unarmed, he undoubtedly takes undue advantage and acts in a cruel manner, and that the acts of the accused cannot be treated' as One falling 'within the Exception 4 to Section 300, I.P.C. .

32. The evidence of the eye-witnesses is to the effect that it is the accused himself who inflicted the injury on his own right knee with M.O. 1 after he had stabbed P.W. 11 and the deceased. It was suggested on behalf of the appellant that the injury must have been caused by a sharp weapon by one of the party of the deceased. It is not likely that if the accused had been attacked by the party of the deceased with a sharp weapon, such a minor injury as the one found on the right knee of the accused would have been caused. on the other hand, only serious injuries would certainly have been caused on the accused. Hence, it must be held that the case of the appellant does not come within the Exception 4 to Section

300, I.P.C.

33. Hence, the conviction and sentence passed by the learned Sessions Judge are confirmed and the appeal is dismissed.

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