

**Basappa and ors. Vs. State**

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**Court :** Chennai

**Decided On :** Nov-27-1959

**Reported in :** 1960CriLJ1222

**Judge :** K.S. Hegde and; H. Ahmed Ali Khan, JJ.

**Appellant :** Basappa and ors.

**Respondent :** State

**Judgement :**

ORDER

**K.S. Hegde, J.**

1. The appellants were tried before the learned Sessions Judge of Bellary, in Sessions Case No. 14 of 1957 on his file, for the murder of one Mareppa on the midnight of 31 3 1957 at Benakal village, Bellary District. They are also tried for some other offences alleged to have been committed at the time of the said murder. They were convicted Under Section 302, IPC and sentenced to imprisonment for life. Further appellants 1 and 2 (Basappa and Badrigadu respectively) were convicted for an offence Under Section 324, for causing hurt to Mareppa, and sentenced to undergo rigorous imprisonment for three years. Appellant No. 31 (Chakalabandi Adavappa) was convicted for an offence Under Section 324 IPC for causing hurt to P.W. 2 (Mariswamappa) and sentenced to undergo rigorous imprisonment for three years. Appellant No. 4 (Phothagadu) was

convicted Under Section 326 IPC for causing grievous hurt to P.W. 2 (Mariswamappa) and sentenced to undergo rigorous imprisonment for three years. The several sentences imposed on the appellants were made to run concurrently.

2. Accused 1 and 2 are cousins. Accused Sections and 4 are brothers and all the accused are related to one another. The case for the prosecution is that in the village of Benakal there were two factions; one of the factions was led by A 1 (Basarroal by and the opposing faction was led by one Handihal Hanumanthappa; feelings between these two factions were very bitter; the deceased and P. W 2 (Mariswamappa) belonged to the faction of Handihal Hanvrninthappa, whereas all the accused belonged to the faction led by A 1. It is further alleged that on the night of 31 3 1957, two haystacks belonging to A 1 and A 3 caught fire; at that time the deceased, P.W. 2 and many others were attending a Baiana performance in Durgamma temple not far from the scene of occurrence; on seeing the haystacks ablaze, the deceased, P.W. 2 and many others went to the scene. With a view to have a nearer view of the burning haystacks, the deceased and P.W. 2 first stood on the roof of A 3' house and later on moved on to the roof of A 3' house which was close to the burning haystacks.

The party of the accused suspected that the deceased and P.W. 2 must have set fire to the haystacks and further they were there to enjoy the fun. Hence all the accused surrounded the deceased and attacked him ; at that time A 1, A 2 and A 4 were armed with battle axes and A 3 was armed with a bana stick; A 1 cut on the nape of the deceased's neck; immediately thereafter A 2 also cut him on his neck; at that stage the deceased jumped down from the roof; thereafter he was carried and thrown into the burning haystacks; at the same time A 4 cut P.W. 2 on his left elbow and A 3) hit him with the bana stick; P.W. 2 jumped from the roof and ran into his house: Later he went to Moka Police Station which is about 6 miles from the scene of occurrence and gave the first information in this case at about 3 A. M. on 1 4 1957. That first information is marked as Ex P 3 in this case. The police immediately came to the scene of occurrence but by the time they reached the scene,, the body of the deceased was almost burnt.

3. The Head of the Department of Forensic Medicine, Medical College Mysore (P.W. 4 Dr. A. T. Srinivasa Iyengar) who examined the burnt bones and flesh of the deceased, was unable to give any opinion as regards the cause of death. So also P.W. 7 (Dr. Y. Padmanabha Rao) who held the post mortem examination was not in a position to speak about the cause of death. P.W. 1 (Dr. B. N. Ramakrishniah) who examined P.W. 2 found two injuries on his person. One of them was a tapering cut wound 4" x 1/2" which exposed the bones of the elbow and the other was a lacerated wound 1" x W scalp deep situated 2" behind the right ear. He was of the opinion, that the injury on the elbow was a grievous one. There appears to have been some controversy in the Court below as to whether the bones and flesh recovered by the Police from the burning haystacks were those of the deceased Mareppa. There is little doubt in this case that Mareppa had died on the night of 5/13/1957 and the bones and flesh recovered by the police were those of the deceased. The trial Court, accepted the prosecution case on this point and its conclusions were not challenged before us. Hence it is unnecessary to go over that ground.

4. The existence of the alleged factions was not disputed before us. In fact, the case for the appellants is that they had been falsely implicated in this case as they belonged to the faction opposed to that of P.W. 2. The immediate occasion for the attack on the deceased and P.W. 2 according to the prosecution, is the burning of the haystacks. This is clear from the evidence of P.W. 2, P.W. 8 (Saranappa), P.W. 5 (Mari Durgappa), P.W. 11 (Talur Mareppa), P.W. 9 (Basappa) and P.W. 10 (Mukkanna). Their evidence is corroborated by the evidence of P.W. 12 (Marisiddanna Gnada) as well by the observations made by the Police. The observation panchanama is marked as Ex, P 25.

5. As regards the assault on the deceased and on P.W. 2, we have the evidence of P.W. 2, P.W. 3 and P.W. 6. The presence of P.W. 2 at the scene of the occurrence cannot be denied. He himself has sustained injuries. Undoubtedly he belongs to the faction of the deceased and he was an enemy of the accused. But his evidence gains considerable support from Ex P 3. the first Information laid before the police. It may be remembered that this information was laid before the police almost within three hours after the occurrence and that at a place which is

about 6 miles from the scene of occurrence. There was little time to concoct a false story. The evidence of P.W. 2 is fully corroborated by P.W. 3 (Saranappa) and P.W. 6 (Talur Mareppa). Their houses are very near the scene of occurrence and hence they are natural witnesses. It is true that P.W. 3 is the brother in law of P.W. 2 and P.W. 6 is the maternal uncle of the deceased. Hence undoubtedly they are interested witnesses.

6. As regards the throwing of the body of Mareppa into the burning haystacks, we have the evidence of P.W. 6 and P.W. 5 (Mari Durgappa). P.W. 5 is the younger brother of P.W. 2. The learned Counsel appearing on behalf of the appellants laid strong emphasis on the fact that all the witnesses examined in this case are near relations of either the deceased or P.W. 2. He urged that we should not place reliance on their evidence, particularly in view of the existence of the factions,

7. It was also urged that though a large number of persons have witnessed the occurrence, no disinterested witness has been examined to support the prosecution case. This is true. But in a factious village, people who are really neutral, will be reluctant to come forward as witnesses to support one or the other side, lest they should invite trouble for themselves. This is a common tendency. The fact that the deceased was killed and P.W. 2 was injured on the night of 31/3/1957 admits of no doubt. It is also clear that they were attacked at the time and place mentioned by the prosecution. The sequel of events as disclosed by the prosecution witnesses appear to be natural. But above all, there is the first information (Ex. P 3) which is of utmost importance in this case. In these circumstances, we feel convinced that we can safely rely on the testimony of P.Ws. 2, 3, 5, and 6.

8. According to the evidence of P.W. 1, the injury caused on the elbow of P.W. 2 is a grievous injury. The prosecution evidence shows that the said injury was caused by A 4 (Pothugadu). Hence A 4's conviction Under Section 326 IPC is justified. Some attempt was made to show that the injury in question was a simple injury. But it is unnecessary to go deep into the matter, as the sentence of three years imposed for this offence cannot be said to be excessive, even if we opine that the injury in question was a simple injury. Similarly the conviction of A 3 (Adivappa)

Under Section 324 IPC for causing hurt to P.W. 2 cannot be questioned.

9. Now coming to the murder of the deceased, we are faced with certain difficulties, as the Doctors were not able to give any definite opinion as regards the cause of his death. To some extent we are left to conjecture as to what was the direct cause of his death. The proved facts are : When the deceased was standing on the roof of A 3, all the four accused armed with deadly weapons surrounded him; A 1 and A 2 cut him on the neck with battle axes, after receiving two cuts he jumped down from the roof and fell down motionless; soon after all the four accused hurried in and threw him into the burning haystacks. From these facts it is clear that the intention of the appellants was to kill him. But which particular act caused his death is not quite clear.

There are three possibilities, i.e., (1) he might have died because of the cuts given on his neck; (2) he might have been burnt to death; and (3) he might have died due to the jumping from the roof. If death had been caused either by cutting or by burning, there is no dispute that the appellants are guilty of an offence under Section 302 I.P.C read with Section 34 I.P.O. But it is contended that according to the evidence of P.W. 1, death might, also have been caused as a result of his jumping from the roof which was about 12 feet in height. We are not satisfied with P.W. 1's evidence on this point. We think, it is very unlikely that the jumping in question could have resulted in his death. Even, if the evidence of P.W. 1 is accepted as correct, then also the appellants are guilty of murdering the deceased.

The deceased jumped from the roof as a direct result of the cuts given to him. It was a normal and necessary consequence of the acts of the appellants. Four persons armed with deadly weapons attacked an unarmed person on the roof of a house. Hence the choice before the victim was either to allow himself to be hacked to death or take a chance by jumping from the roof, In the circumstances of the case, it cannot be said that the attack on the deceased was not the direct cause of his death. It is not a sound contention to say that the appellants intended to kill the deceased by cutting him, but before they could do so, he tried to escape by jumping from the roof and in that attempt he died.

The attack on the deceased is undoubtedly the direct cause of his death and the appellants cannot escape from the consequences of their acts. At whatever point of time the deceased might have died, the facts proved do not leave us in any doubt that the accused intended to kill him and that when they threw him to the burning haystacks they could not have done so in the belief that he was already dead. The accused have not taken the plea that at the time when they threw the deceased into the) burning haystacks they were under the impression that the deceased was already dead. The sequence of events is such, they could not have entertained any such belief. It is clear that they intended to burn him alive.

There is then the intention of the accused to cause death and there are two or may be three, acts committed by them which together, or, separately have caused the death-acts so closely following upon and so intimately connected with each other that they cannot be separated and assigned the one to one intention and the other to another but must both be ascribed to the original intention which prompted the commission of those acts and without which neither would have been done. If the intention is to kill and a killing results, the accused succeeded in doing that which they intended to do and if the acts follow closely upon one another and are intimately connected with one another, then in our opinion murder has been committed. Similarly when the facts proved suggest that the accused acted with reckless indifference and ignorance whether the body they handled was alive or dead, then also they must be held guilty of murder an offence which they intended and was caused by their acts.

In this case, the incidents ran into each other and the action was continuous, the action being continuous it is impossible to resolve the incidents into two or three, wholly separate actions. In the circumstances of this case it cannot be said that these separate actions, were inspired by different motives or committed for different reasons. The accused must be treated as having done one act with the intention of causing death and as having succeeded in carrying out their design and they are therefore guilty of murder. Hence it was appropriate to frame separate charges for separate incidents.

10. No case, directly bearing on this point was read to us. But in Emperor v. Gaijan Singh reported in A.I.R. 1931 Lah 27 a Bench of the Lahore High Court held that where the action, which ultimately results in the death of a person is continuous and it is impossible to resolve the different incidents into wholly separate actions, inspired by different motives and committed for different reasons the person, who did that act must be deemed to have done it with the intention of causing death and having succeeded in carrying out his object and must be therefore held to be guilty of murder. The facts of that case are distinguishable from the facts of the present case but the principle of law, laid down, which we consider as the correct principle, is equally applicable to the facts of the present case,

11. From the surrounding circumstances of this case, the more reasonable view to take is that the deceased was burnt to death. But for the reasons already mentioned we are inclined to take the , entire transaction as one and continuous, the final step being the burning of the deceased. In that View also the accused are guilty of murdering the deceased. There was no point in convicting appellants 1 and 2 for causing hurt to the deceased. Hence their conviction Under Section 324 IPC is set aside. In other respects the appeal fails and the same is dismissed.