PETITIONER:
KRISHNEGOWDA AND OTHERS

Vs.

RESPONDENT:
STATE OF KARNATAKA

DATE OF JUDGMENT: 25/11/1999

BENCH:
M.B.Shah, G.B.Pattanaik

JUDGMENT:

Shah, J.

These appeals are filed by convicted accused wherein it is alleged that accused belong to Congress party and deceased No.1- Kengegowda belonged to Janata Party and was the Pradhan of Karimuddenahalli. Deceased No.2-Govindegowda was the younger brother of Kengegowda and he was President of the Milk Producers Co-operative Society and both were leaders of Janata Party. During the elections to the Mandal Panchayat in the year 1988, Kengegowda was elected to the Panchayat. Because of the said elections, disputes including criminal cases were pending in the Court. It is the prosecution story that on 02.5.1989 at about 5.30 p.m. deceased Kengegowda alongwith witnesses was sitting near Srikantachars shop and was chitchatting. At a distance of 8-10 ft. other witnesses were also sitting and chitchatting. That is, in all deceased Kengegowda, PW1 to PW6, CW5 and CW8 were present at the scene of offence. At that time, A1 to A3 followed by another 20 to 25 accused came running to the direction from the house of A12 holding choppers, clubs and stones etc. They all came in a group. As the aforesaid witnesses were about to get up, A1 to A3 assaulted deceased- Kengegowda by chopper, A4 and A5 assaulted him with clubs and other accused assaulted PW1 to PW6. They are all named and identified by the injured witnesses. It is also the say of the prosecution that after assaulting the deceased-Kengegowda and the witnesses, accused left and ran away from the place of offence towards the house of A12. Thereafter, they got information from PW9, son of the deceased Govindegowda, that his father was assaulted by the accused and that accused have chopped his legs and hands and he was lying near the High School ground. This information was sent at Police Station, which is 18 kms. away from the village. It is the say of PW 29, Police Sub-Inspector that a telephonic message was received at about 6.30 p.m. that some miscreants have assaulted Kengegowda and Govindegowda. On receipt of the said message, PW29 alongwith police constable reached the village at 7.00 p.m. and found deceased Nos.1 & 2 lying on different spots and they were alive at that time. He also found PWs 1 to 6 and 9, who were injured. After recording the statement of PW1, he sent deceased and PW3 to the

hospital for treatment. Thereafter, PW32 Inspector of Police came to the spot and recorded the statement of PWs 1, 2, 4, 5, 6 and 9 and after recording their statements they were sent to hospital for treatment. After recording the FIR, copy was sent to the Jurisdictional Magistrate, which reached him at 1.00 a.m. on 3.5.1999. Investigating Officer received the message on 3.5.1999 that the deceased have died. After completing the investigation, charge sheet was submitted and after committal SC No.87/89 was tried by the Principal Sessions Judge, Mysore. The Learned Principal Sessions Judge by his judgment and order dated 16th December, 1993 convicted the appellants accused No.1 to 22 for the offences punishable under Sections 148, 324, 326, 341 and 302 read with Section 149 of IPC for murder of Kengegowda. He acquitted accused Nos. 23 to 29. For second incident of murder, the learned Principal Sessions Judge arrived at the conclusion that there is a very strong suspicion regarding participation of the accused in commission of murder of Govindegowda. But after appreciating the evidence, the Court held that the prosecution has failed to prove the second incident which occurred near High School on Gaddige road.

Against the said judgment and order, the convicted accused preferred Criminal Appeal No.185/1994 and the State preferred Criminal Appeal No.494/1994 against the acquittal of accused Nos.23 to 29. The High Court by its judgment and order dated 24th July, 1996 dismissed both the appeals. That judgment and order is challenged in these appeals by the convicted accused.

The learned Principal Sessions Judge has appreciated the entire evidence in great detail. The High Court has also considered the evidence led by the prosecution. The courts relied upon the evidence of injured witnesses PW1 to PW6 and the evidence of PW10 to PW12 who are eye- witnesses to convict the accused. Both the courts analysed the evidence and arrived at the conclusion that all injured witnesses have specifically assigned roles to accused Nos.1 to 5 in assaulting deceased Kengegowda. Injured witnesses also specifically deposed before the court as to who assaulted them and other injured witnesses. The court also considered the fact that evidence on record discloses that accused came in a group with deadly weapons, such as choppers, clubs etc., with a common object of assaulting the deceased, Kengegowda. In view of these concurrent findings of courts below that there was an unlawful assembly consisting of convicted accused with a common object to murder Kengegowda, who was of rival faction, it is not necessary for us to re-evaluate the evidence in its entirety. The evidence of the injured prosecution witnesses is corroborated by the medical evidence. Further, within a short span of one and a half-hour, FIR disclosing the names of the accused was lodged.

The learned counsel appearing on behalf of the appellants after referring to the evidence on record was not in a position to challenge the findings that:-

(1) There were rival groups and elections disputes including criminal cases were pending; and

(2) The accused came together and assaulted the deceased Kengegowda and injured witnesses.

However, he has produced, for our perusal, a chart showing overt acts attributed to the accused by witnesses and submitted that those accused, who were not armed with any weapon or who were alleged of having stones may be given the benefit of doubt. He has submitted that in a case where large number of assailants and victims are involved it would be prudent to follow the rule of appreciation of evidence stated by this Court in Masalti v. State of U.P., {(1964) 8 SCR 133} (para 16) which is as under:-

Mr. Sawhney also urged that the test applied by the High Court in convicting the appellants is mechanical. He argues that under the Indian Evidence Act, trustworthy evidence given by a single witness would be enough to convict an accused person, whereas evidence given by half a dozen witnesses which is not trustworthy would not be enough to sustain the conviction. That, no doubt is true; but where a criminal court has to deal with evidence pertaining to the commission of an offence involving a large number of offenders and a large number of victims, it is usual to adopt the test that the conviction could be sustained only if it is supported by two or three or more witnesses who give a consistent account of the incident. In a sense, the test may be described as mechanical; but it is difficult to see how it can be treated as irrational or unreasonable

He further submitted that the aforesaid rule of appreciation of evidence is followed by this Court in Binay Kumar Singh etc. v. State of Bihar {(1997) 1 SCC 283} and Baddi Venkata Narasayya & Ors. v. The State of Andhra Pradesh {JT 1997 (9) SC 293}.

In our view, this aspect is also considered by the learned Sessions Judge in paragraph 51 wherein the Court has held that the presence and assault by A1 to A5 is spoken to by injured eye-witnesses, presence of accused A6 to A8, A10 and A11 is spoken to by PW5, presence of A6 is also spoken to by PW6, presence of A9, A13 and A17 is spoken to by PW2, presence of A15, A16 and A18 is spoken to by PW4, presence of A1, A20 and A22 is spoken to by PW3 and presence of A12 who abetted the offence is spoken to by PW14. PW1 to PW6 have stated the presence of A14, A19 and other acquitted accused, which establishes that the evidence of these witnesses discloses the presence of A1 to A22 in the incident. The learned Sessions Judge has also considered the evidence of each witness assigning specific overt acts to the accused. Considering the chart produced by the learned counsel for the appellants for our perusal and the findings given by the learned Sessions Judge, it cannot be said that the court has not followed the rule of appreciation of evidence in a case where large number of assailants and victims are involved, as laid down by this Court in Masaltis case (Supra). The chart given by the learned counsel clearly indicates that two or more persons have specifically spoken the presence of the accused. Witnesses have given consistent account of the incident and the role played by the individual accused. In this particular case, the injured eyewitnesses have consistently, since beginning, assigned specific role to a particular accused and this aspect has been properly considered by the learned Sessions Judge. In this view of matter, in our view, there is no question of giving benefit of doubt to accused No.14-Tammegowda and accused No.22- Somegowda, as contended by the learned counsel for the appellants. As per

the chart, the presence and overt acts of accused No.14-Tammegowda is deposed by PW1 and PW6 and that of accused No.22-Somegowda is established by PW1 and PW3 and that at the relevant time he was having club.

In view of the aforesaid finding given by the learned Principal Sessions Judge and confirmed by the High Court, we do not think that there is any substance in these appeals.

These appeals are dismissed accordingly.

JUDIS