
(1993) 09 SC CK 0064

In the Supreme Court Of India

Case No : Criminal Appeal No. 445 of 1982

State of Karnataka

APPELLANT

Vs

Jinappa Payappa Kudachi and Others

RESPONDENT

Date of Decision : 21-09-1993

Acts Referred:

Penal Code, 1860 (IPC) — Section 100, 304

Citation : (1993) CriLJ 3915 : (1993) 3 Crimes 541 : (1993) 5 JT 328 : (1993) 3 SCALE 814 : (1994) 1 SCC 178 Supp

Hon'ble Judges : K. Jayachandra Reddy, J;G. N. Ray, J

Bench : Division Bench

Final Decision : Partly Allowed

Judgement

K. Jayachandra Reddy, J.—This appeal by the State of Karnataka is filed against the judgment of the Karnataka High Court questioning the acquittal of the six respondents-accused (original Accused Nos. 1 to 6). They along with eight others were tried for offences punishable under Sections 148, 302/149, 337/149 and Section 27 of the Arms Act. The trial court while acquitting the others convicted the respondents under Sections 148, 302/149, 326/149, 324/149 and 337/149 and sentenced them to imprisonment for life and various other terms of imprisonment for the other minor offences. A-3 alone was also convicted u/s 27 of the Arms Act and sentenced to undergo three years' R.I. and to pay a fine of Rs. 500/- in default of payment of which to suffer R.I. for three months. The sentences were directed to run concurrently. The six convicted accused preferred Criminal Appeal No. 174/78 and the State of Karnataka filed an appeal questioning the acquittal of the other accused and also filed another appeal for enhancement of the sentence of the six respondents-accused. The High Court dismissed the two appeals filed by the State and allowed the appeal filed by the six convicted accused. The Suite has come forward with the present appeal against the said order of acquittal.

2. The prosecution case is as follows.

3. A-1 to A-13 are the residents of Bastwad Village and A-14 is the resident of Patagwundi Village. A-1, A-10 and A-11 are full brothers and they have been living separately. They had another brother Nemanna who was subsequently murdered six months prior to the present incident. The other accused are related to each other. The three deceased persons in this case namely Babu Kallappa Kasai (D-1), Yallappa Devappa Kasai (D-2) and Paris Adappa Kamal (D-3) were cousin brothers and were living separately. P.W. 3 is the father of P.Ws 4 and 5 and P.Ws 1 and 2 belong to the party of the D-1. One Kulasambi filed a suit against her daughter-in-law Chutibi and Kallappa, father of D-1 for partition of some land. The said Kallappa was helping Chutibi and was cultivating her land as tenant. After his death, D-1 purchased 19 guntas of the said land from Chutibi and was also granted occupancy rights in respect of the remaining land. After his father's death, D-1 was helping Chutibi in the litigation and the deceased Nemanna, brother of A-1 was helping Kulasambi, the opposite party in the said litigation.

4. About six months prior to the present incident Nemanna was murdered. His son A-6 filed a complaint to the police against D-1 and D-2, P.W. 3 and five others. Yallappa, D-2 and one Paris Bhima Pathani were arrested. Since the police failed to file the charge-sheet, they were released by the Magistrate on bail and they returned to the Village about two months prior to the incident. Thus, there were ill-feelings and bitter enmity between the two groups. On the day of the incident namely 25.9.78 in the morning the three deceased persons, P.Ws 1 and 2 left Bastwad at 7 A.M. by bus for Belgaum to meet their advocate. They reached Belgaum by 8 A.M. P.W. 3 and one Sawant also got down from the bus and they went to Belgaum city for their own work. The three deceased persons and P.Ws 1 and 2 then met their advocate. They returned to the bus-stop to catch the bus to go to Bastwad. They were waiting at the bus-stop. Meanwhile, Accused Nos. 2, 6, 7 and 8 went on to the bus-stop each holding a satchel. At about 12.15 P.M. a bus came. P.Ws 1 to 3 and the three deceased persons boarded the bus and sat on the seats. Accused Nos. 2, 6, 7 and 8 stood near the entrance after getting into the bus. On the way, the bus stopped at Fort bus-stand. There Accused Nos. 1, 3, 4 and 5 boarded the bus. They were also holding a satchel each. The capacity of the bus was 39 passengers and about 20 to 30 passengers were standing. The bus stopped at a few stops. Thereafter it stopped near Bastwad cross for the passengers going to Kondaskoppa to get down. Some of them got down from the bus. At that time, a white car came from Bagewadi side and stopped near the bus. From that car, Accused Nos. 9 to 14 and a boy got down armed with a sickle each and they proceeded towards the bus. A-1 got down from the bus and went by the side of the bus and stood near the window where D-1 was sitting. He gave a blow with the sickle to the window glass of the bus and it broke into pieces. A-8, who was inside the bus, shouted "come, they are caught". On hearing that, D-1 got up from his seat and moved towards the right side seat and stood there resting on the seat. At that time, A-3 took out a country pistol and fired at D-1 which hit him on the neck. Then

Accused Nos. 1,2,14 and others assaulted him with sickles. D-1 fell down dead. A-4 and A-8 assaulted D-2 with sickles causing fatal injuries resulting in his instantaneous death. Then A-5 assaulted D-3 with a dagger and A-6 and A-8 assaulted him with sickles. D-3 fell down and rolled out of the bus with bleeding injuries. A-9 and A-10 assaulted P.W. 1 with sickles. A-2 and A-11 assaulted P.W. 3. The other passengers of the bus became frightened and got down from the bus and ran away. The conductor and the driver of the bus also ran away. A-3 fired one more shot from the pistol causing simple injuries to P.W. 6. P.Ws 4 and 5 were working at that time in a land near the Bastwad cross and on seeing the galata, they went near the bus. A-2 and A-12 assaulted P.W. 4 with sickles. P.W. 5, however, ran away, P.W. 2 got down from the rear door of the bus and ran away towards Halga. There he saw a white car and Accused Nos. 1,2,3 and 8 were in it. P.W. 2 felt that the car was following him. Being afraid, he ran inside the village. Sawant, who was also with him, went to the house of Jinnappa Patil and P.W. 2 went to the house of Gunda Desai, P.W. 11 and informed him about the incident. Thereafter P.W. 2, Sawant and P.W. 11 returned to the spot at about 2 P.M. In the meantime, the conductor and the driver of the bus went to Belgaum in a truck and informed their superiors and the police was also informed. Meanwhile, P.W. 28, the Head Constable of the Bagewadi Police Station was informed that some galata was going on. He made an entry and proceeded to Bastwad cross alongwith the staff. At the place of occurrence, he found two dead bodies lying with cut injuries and D-3 was lying seriously injured. He also noticed that P.Ws 1,3,4 and 6 were injured. A-4 also was found lying injured. By then a jeep from the control room came and a truck was secured and all the injured persons were sent to the hospital. P.W. 2's complaint was recorded by P.W. 29, a Police Constable who came in the jeep, on the basis of which the case was registered. The Circle Inspector conducted the inquest over the dead bodies of D-1 and D-2 and sent them for post-mortem. P.W. 31, Sub Inspector arrested A-1 to A-6 who were admitted to the Civil Hospital and seized a country pistol and sickles from them. On 26.9.78 P.W. 35, the Circle Inspector seized the bloodstained clothes from the persons of the accused and he recorded the statement of the injured witnesses. D-3 died in the hospital on 26.9.1978 and the post-mortem was conducted on his dead body also. After completion of the investigation, the charge-sheet was laid.

5. The defence of Accused Nos. 7 to 14 was one of total denial. Accused Nos. 1 to 6, however, stated that they boarded the bus at the City bus-stand on that day and they were standing near the rear door, while the three deceased person and P.Ws 1 and 2 were sitting on the seats and that each of them was armed with a satchel containing sickle, they threatened the accused and when the bus stopped near the Bastwad cross, P.W. 2 took out a pistol and others took out sickles and they started assaulting them and as they apprehended that they would be assaulted, the accused person took out their sickles and started assaulting them. P.W. 2 fired a shot but the accused did not know who was hit by the shot and A-6 hit with the sickle on the hand of P.W. 2 and his pistol fell down.

Then A-6 picked up the pistol and held as if he was about to fire. Then the rest of them assaulted the three deceased persons with their sickles. Seeing the galata, the passengers in the bus ran away. Then A-1 assaulted P.Ws 4 and 5 and all the six accused who were injured, got themselves admitted into the hospital. A-5 gave a complaint Ex.P. 60 to P.S.I., P.W. 31, who after investigation, filed the charge sheet. It may be mentioned that the case was committed to the Court of Sessions but the same ended in acquittal. The trial court acquitted A-7 to A-14 and convicted A-1 to A-6 who were injured and who admitted their participation. The High Court accepted all findings of the trial court, but held that A-1 to A-6 had the right of private defence and they were fully justified in causing the death of the deceased persons and they have not exceeded the right of private defence.

6. In this appeal, learned counsel appearing for the State of Karnataka submitted that the prosecution evidence established beyond all reasonable doubt that A-1 to A-6 atleast participated in the occurrence, inflicting many injuries resulting in the death of the three deceased persons and many injuries resulting in the death of the three deceased persons and many injuries to the witnesses and they were necessarily aggressors and that the High Court grossly erred in holding that they had the right of private defence. Learned counsel for the respondents-accused on the other hand submitted that the prosecution had not at all explained the injuries on the accused persons and thereby suppressed the genesis of the occurrence. Therefore the High Court was right in acquitting the respondents-accused.

7. The effect of non-explanation by the prosecution about the injuries on the accused persons depends on the facts and circumstances of each case. Normally if there is such non-explanation, it may at the most give scope to argue that the accused had the right of private defence or in general that the prosecution evidence should be rejected as they have not come out with the whole truth particularly regarding the genesis of the occurrence. In the instant case, the occurrence took place in the bus itself at the Bastwad cross. A-1 to A-6 admitted their presence and also admitted their participation. The evidence of the injured witnesses amply establishes that these six accused participated in the occurrence causing the death of the three deceased persons and causing serious injuries to P.Ws 1,3,4 and 6.

8. Since the High Court has acquitted these six accused giving them the benefit of the right of self-defence, it may not be necessary for us to discuss the entire evidence of the injured witnesses again. However, we have carefully gone through the evidence of the injured witnesses as well as other circumstances and we are in agreement with the findings of both the courts below that these accused were present and participated in the occurrence as stated above. They were also injured. Therefore the only question that remains for consideration is whether they are entitled to the general exception u/s 100 I.P.C or whether they have exceeded the same. In consideration the question whether the accused exceeded the right of private defence, the court has to consider the part played

by the accused persons, gravity of the offences committed and the nature of the attack made by them. The Doctor, who conducted the post-mortem on the dead body of D-1 found 20 incised injuries all-over the body and also a firearm injury and on dissection, he found a fire-arm pellet embedded in the lower part of the neck. Almost all the incised injuries were of serious nature. On D-2 Yallappa he found six serious incised injuries. On internal examination he found that abdominal wall was injured on the left loin region and peritoneum was cut horizontally. On D-3, the Doctor found 18 incised injuries of serious nature. On internal examination, he found clotted blood in the plural cavity and injuries to the lungs. On P.Ws 1,3,4 and 6 also there were a number of injuries. On P.W. 1, there were eight incised injuries, on P.W. 3, there were three incised wounds with a fracture, on P.W. 6 there were two gun-shot injuries and on P.W. 4 there were four incised injuries. The same doctor also examined accused persons also. On A-1, he found five incised injuries which were simple in nature. On A-5 there were only two incised wounds which were also simple. On A-2, there were three incised wounds which were simple and one of them was only a superficial one. On A-3, nine incised injuries were there and all of them were simple and some of them were superficial. On A-4, the Doctor found five incised injuries and all of them were simple. As can be seen from the prosecution evidence, the accused were in larger number and at any rate even accepting that A-1 to A-6 had the right of private defence, but having regard to the fact that they attacked three deceased persons inflicting a number of injuries including fire-arm injuries and also a number of injuries on P.Ws 1,3,4 and 6, it would show that they have certainly exceeded the right of self-defence. What is more this occurrence has taken place in a public place in a bus where several people had gathered. In such a situation there could not have been reasonable apprehension of death or grievous hurt. In any event, the right does not extend to the extent of causing the death of three persons and inflicting so many injuries on them as well as on the witnesses.

9. For these reasons, while agreeing with the High Court that A-1 to A-6 exercised the right of self-defence, we are of the view that they have exceeded the same. In the result the acquittal of the respondents-accused is set aside. They are convicted u/s 304 Part I I.P.C. The occurrence has taken place a long time back namely in the year 1978 and also that the accused suffered some injuries, we think that the ends of justice will be met by sentencing each of them to undergo four years R.I. The acquittal in respect of other offences, however, need not be disturbed. Accordingly the appeal is partly allowed.