

(1997) 12 SC CK 0098

In the Supreme Court Of India

Case No : Criminal Appeal No's. 634 and 635 of 1989

The State of Karnataka

APPELLANT

Vs

Shivappa Gurusiddappa and Others Etc.

RESPONDENT

Date of Decision : 10-12-1997

Acts Referred:

Penal Code, 1860 (IPC) — Section 148, 149, 302, 304, 323

Citation : (1998) ACR 629 : AIR 1998 SC 1536 : (1998) AIRSCW 581 : (1998) 1 ALD(Cri) 363 : (1998) 1 ALT(Cri) 224 : (1998) CriLJ 1253 : (1998) 1 JT 41 : (1998) 1 SCALE 9 : (1998) 1 Supreme 199

Hon'ble Judges : G.B. Pattanaik, J;G. T. Nanavati, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

Judgment pronounced by Nanavati, J.—These two appeals arise out of the common judgment of the High Court of Karnataka in Criminal Appeal Nos. 334/86, 341/86 and 425/86. Criminal Appeal No. 634/89 is filed by the State of Karnataka against 13 respondents originally accused Nos. 1 and 5 to 16 and who had filed a separate appeal in the High Court. Criminal Appeal No. 635/89 is filed against 3 respondents, original accused Nos. 2 to 4 and who had also filed a separate appeal before the High Court.

2. The prosecution case was that P.W. 4 had a share in the land bearing No. 180/1 and that accused Nos. 1 to 4 were obstructing him in cultivation of the said land. P.W. 4 had, therefore, on the day prior to the day of incident file an application before the police complaining against accused Nos. 1 to 4. On 4.10.1984 between 12.30p.m. and 1.45p.m. all the 16 accused armed with deadly weapons went to the said field to take possession of the land. In the field Rudragowda, Siddagowda, Balasaheb Eragowda P.W.3 Irappa, P.W. 4 Kadappa, P.W. 5 Mahadev, P.W. 7 Sadashiva and P.W. 9 Ningappa were present. All the accused started beating those persons as a result of which 4 persons namely, Rudragowda, Siddagowda, Balasahed & Eragowda lost their lives and PWs 2,3,4

and 5 received injuries. All the 16 accused were tried for various offences including the offence punishable u/s 352 IPC. The trial court relying upon the evidence of PWs 2, 3, 4, 5, 7, 8 and 9 held that all the accused had unlawfully confined PWS 3 and 4 and tied them with a rope and that they killed those 4 deceased and injured the prosecution witness and therefore they were all guilty for the offences punishable under sections 148, 302 read with 149 IPC, 342 read with 149 IPC and 323 read with 149 IPC.

3. All the 16 convicted accused challenged their conviction before the High Court. The High Court on reappreciation of the prosecution evidence found that really accused Nos. 1 to 4 were in possession of the disputed land and the deceased and their companions wanted to take back forcibly possession of the said land and therefore whatever acts the accused had committed were in exercise of their right of private defence. However, considering the number of injuries found on the dead persons and places from where the dead bodies were found, the High Court held that they were also chased by the accused and given more blows and thus they had exceeded the right of private defence. The High Court had also found that only accused nos. 1 to 4 were present in the field and it was doubtful if any of the accused nos. 5 to 16 was present there. The High Court, therefore, giving benefit of doubt acquitted accused 5 to 16 and convicted accused nos. 1 to 4 for the offence punishable u/s 304 Part I I.P.C.

4. In these appeals, State is challenging the acquittal of accused nos. 5 to 16. What is urged by the learned counsel for the appellant is that inspite of the compromise, PW-4 had remained in possession of the field and the High Court ought to have accepted the evidence of the eye witnesses in view of the fact that only on the previous day PW-4 had given an application to the police complaining about the attempt made by the accused to deprive him of his possession. It is difficult to accept this contention as in view of the compromise the defence version that accused Nos. 1 to 4 were in possession of the land appears more probable. Under the compromise they were to retain possession on payment of certain amounts. It is also an admitted position that amounts which were payable to P.W. 4 and his brothers were in fact paid to them. It is therefore unlikely that P.W. 4 continued to remain in possession of land even after that compromise and payment of the said amount. The version of the defence that P.W. 4 and his brothers had relinquished their share in the land appears to be more probable. The High Court was, therefore, right in holding that the accused Nos. 1 to 4 were in possession of the land and not P.W. 4. It was also contended by the learned counsel for the appellant that High Court was in error in holding that the prosecution had not explained the injury on the person of accused No.4. As rightly pointed out by the High Court it was a belated explanation and was in fact an improvement. None of the prosecution witnesses had stated before the police that during that incident A.4 had received any injury. While deposing before the court they stated that injury which was found on the person of A.4 was as a result of a blow which A.8 wanted to give to one of the accused but accidentally fell on A.4. This explanation cannot be believed because A.4 had, in

fact, received 3 injuries during that incident as proved by the evidence of the doctor P.W. 6. It therefore clearly appears that P.W. 4 and his brothers and the persons accompanying them had tried to take possession of the land by using force. That is how accused No. 4 had come to be injured in that incident.

5. As accused 1 to 4 were in possession of land and as A 4 was attacked, they had the right of private defence of their property and person. It is no doubt true as pointed by the High Court, number of injuries found on the dead persons were many and were not justified in causing so many injuries. In doing so they had exceeded the right of private defence. They have been rightly convicted u/s 304 Part I IPC. As we do not find any substance in these appeals they are dismissed. The appellants are ordered to surrender to custody.