

## **Shivalingappa Kallayanappa And Others vs State Of Karnataka on 31 August, 1994**

**Equivalent citations: AIR1995SC254, 1994(3)CRIMES176(SC), JT1994(5)SC444, 1994(3)SCALE897, 1994SUPP(3)SCC235, [1991]3SCR26, 1994(2)UJ646(SC), AIR 1995 SUPREME COURT 254, 1994 (6) SCC 145, 1994 AIR SCW 4403, 1994 AIR SCW 4406, 1994 CRILR(SC MAH GUJ) 578, (1994) 2 CURLR 1029, (1995) 2 MAHLR 158, (1995) 2 LAB LN 714, 1995 LABLR 201, 1994 SCC(CRI) 1694, 1994 SCC (SUPP) 3 235, 1994 (2) UJ (SC) 517, (1995) 1 LABLJ 214, (1994) 5 JT 444 (SC), (1994) 6 JT 26 (SC), 1994 (5) JT 444, (1995) 1 SCT 17, (1995) 1 PAT LJR 7, 1994 UJ(SC) 2 517, 1994 UJ(SC) 2 646, (1994) 69 FACLR 801, 1994 CRILR(SC&MP) 578, (1995) SC CR R 373, (1995) 1 EASTCRIC 67, (1995) 2 GUJ LH 47, (1995) 2 MAHLR 140, (1994) 3 CURCRIR 720, (1994) 3 ALLCRILR 233, (1994) 3 CRIMES 176, (1994) ALLCRIC 826**

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**Bench: M.M. Punchhi**

### **ORDER**

1. This is an appeal under Section 2 of the Supreme Court (Enlargement of Criminal Appellate Jurisdiction) Act read with Section 379 Cr. P.C. All the five accused (original accused nos. 1 to 5) in the case are the appellants. They were tried for offences punishable under Sections 147, 148, 302/149 and 326/149 I.P.C. The trial court acquitted them. The State preferred an appeal and the High Court reversed the order of acquittal and convicted the accused for the said offences and sentenced them accordingly. The prosecution case is as follows:

2. Basappa son of Shankarappa Bagewadi and Murigeppa son of Dundappa Bagewadi, the two deceased persons in the case, the accused and the material witnesses are all related to each other. A-1 to A-4 are the residents of Village Mattur and A-5 is a resident of Village Kankanwadi, Jamkhandi Taluk, Bijapur District. A-1 to A-4 are the sons of one Kallyanappa and the two deceased persons were the sons of brother of Kallyanappa. A-5 is a friend and neighbouring cultivator of A-1 to A-4. Kallyanappa and his brothers divided the joint family properties and got separated a long time back except with regard to the land in Survey No. 25. In the year 1975 when the Land Reforms Act came into force giving the rights of the cultivating tenants, Kallyanappa whose name had been entered in the record of rights as tenant of the said land, started claiming exclusive occupancy rights and made an application by himself for the grant of occupancy rights. He also started threatening his other brothers, filed a suit and obtained temporary injunction against them. The other brothers also made applications for the grant of occupancy rights in their names. By an order dated 13.10.1981, the Land Tribunal held that the brothers should be the joint tenants of the land and

accordingly granted the occupancy rights in their favour. Thereafter, according to the prosecution case, the two deceased, their brothers and their uncles occupied the land forcibly, erected a hut in the land and started cultivating the same. There was a standing crop in the land. On 25.12.1981 the two deceased and their brothers and some others, in all 10 persons, went to the hut in the land in occupation of A-1 and threatened him not to cut the sugarcane crop or make any changes in the said land and while going away, they also threw away the articles in the hut. A-1 then went to the Police Station at Banahatti and made a complaint before P.W. 15 Head Constable Shivappa and a case was registered. P.W. 15 went to the Village and apprehended four of the ten persons named in the complaint. Later in the evening sometime before sunset while the deceased Murigeppa and P.Ws. 2 and 4 remained in the field, P.W.I and two others went to the Village to bring food for others. At about 9 or 9.30 P.M. they returned to the land with the food. At about midnight when P.Ws. 1 to 3 were still sitting warming themselves near the fire, the two deceased and P.W. 4 were lying down on the ground feeling sleepy in front of the hut erected by them, A-1 to A-4 accompanied with A-5 went there armed with axes and sticks. A-1 and A-2 were armed with axes and A-3 to A-5 were armed with sticks. While A-1 assaulted deceased Murigeppa with the butt end of the axe, A-4 and A-5 assaulted P.Ws. 2 and 4 with the sticks in their hands. A-1 and A-2 also assaulted deceased Basappa and P.W. 3 with the butt end of the axes in their hands. P.W.I managed to run away and stood behind a tree and witnessed the occurrence. After so assaulting, the accused left the place. P.W.I came back to the scene of occurrence and found that the two deceased persons and P.Ws. 2 to 4 had sustained injuries. He went to the Village, informed his mother P.W. 7 and others, went to the Police Station and orally complained to P.W. 15, the Head Constable who reduced the complaint into writing. On the basis of the same, P.W. 15 registered the crime and issued the F.I.R. He went to the land and (bund P.Ws. 2 to 4 lying with injuries. He recorded the statements of P.Ws. 2 and 4 and sent all the three injured to the hospital. He also found the two deceased persons lying dead. He held the inquest over the dead bodies and sent the same for post-mortem and later he handed over the investigation to P.W. 19, the Circle Inspector.

3. On 26.12.1981, P.W.11, Dr. Gurappa examined P.Ws. 2 to 4. On P.W. 2, he found two lacerated wounds on the vertex and left shin and another lacerated wound on the right parietal region and contusions on the hands and shoulders. On P.W. 3, he found one lacerated wound on the left of vertex and two contusions on the scapular region. On P.W. 4, he found one 'acerated wound on vertex and another lacerated wound on left shin and two contusions on the little finger and middle finger. The same Doctor conducted the postmortem examination over the dead body of deceased Murigeppa and found 11 injuries. Injury No. 1 was a contusion with abrasion over left maxilla with depressed fracture with eye ball sunken and cornea torn. The other injuries namely contusions were on the hands and on the back of chest. He opined that the cause of death was due to shock and haemorrhage. The same Doctor also conducted post-mortem examination on the dead body of deceased Basappa and found six injuries and the injury on the head which resulted in the fracture of the skull bone was opined to have caused the death. P.W. 19 continued with the investigation. On 26.12.1981 A-1 appeared in the Police Station with blood-stained clothes and complained of assault on him by deceased Basappa and P.W. 2. P.W. 20, Dr. Gurupadappa examined A-1 and found a lacerated wound skull deep over the right parietal eminence and two contusions on the scapular region. After completion of the investigation, the charge-sheet was laid. The plea of the accused was one of denial. However, their defence was that the deceased and P.Ws. 1 to 4 and others came in a

body and when A-1 went out to see as to who they were, he was assaulted. In general they denied the prosecution case.

4. The learned Sessions Judge held that the occurrence did not take place in the manner as alleged by the prosecution and that there was delay in lodging the F.I.R. and that the presence of the eye-witnesses at the scene of occurrence cannot be believed and accordingly acquitted the accused. The High Court considered the evidence of the injured witnesses elaborately and held that the reasons given by the trial court for rejecting their evidence are highly unsound. The High Court also held that there was no ground to doubt the presence of P.W.I and accordingly accepted the evidence of the eye-witnesses and convicted the appellants.

5. Learned counsel for the appellants submitted before us that the occurrence took place during night and the evidence of P.Ws. 2 to 4 regarding the manner of occurrence is discrepant and artificial and that the presence of P.W.I has rightly been doubted by the trial court and that the delay in giving the F.I.R. would indicate that the case was set- up after due deliberations and that the prosecution has not explained the injuries on A-1 and therefore the benefit of doubt has rightly been given by the trial court to the accused and that the High Court erred in reversing the order of acquittal.

6. Since this is a regular appeal, we have gone through the evidence of the eye-witnesses and the other circumstantial evidence carefully. The fact that the two deceased persons met homicidal death and that P.Ws. 2 to 4 received injuries in the same occurrence is beyond dispute. When once presence of P.Ws. 2 to 4, they being injured, at the scene of occurrence is not doubted, then their evidence assumes great importance and unless there are strong grounds the same cannot be rejected on the basis of some minor discrepancies. P.Ws. 2 to 4 have deposed as to how the accused came and assaulted with their weapons. According to them A-1 and A-2 who were armed with axes, hit the two deceased persons with butt ends of the axes and A-3 to A-5 who were armed with sticks also assaulted them. P.W.I has given all the details regarding the occupancy of the land in Survey No. 25 and the litigation and other incidents. The fact remains that a hut was erected by the deceased and the same shows that they were occupying the land. The fact that they also raised the crop also shows that they were in possession of the portion of the land. The dispute actually arose between the deceased and the accused because of the standing crop. Therefore the defence suggestion that the deceased, P.Ws and others came and attacked A-1 does not appear to be true. No doubt A-1 also gave a complaint. Assuming that A-1 also received injuries during the same occurrence, we fail to see as to how he as well as other accused in these circumstances would get the right of self-defence. Even the trial court was not prepared. to go into that question.

7. Now coming to the actual occurrence, P.W.I deposed that A-1 assaulted Murigeppa with the butt end of the axe and A-4 and A-5 started assaulting P.W. 2. He also deposed that A-1 and A-2 assaulted deceased Basappa and P.W. 3. Seeing the same he ran away and concealed himself under a tree at a distance of 20 yards. Then, after the accused left, he came to the scene of occurrence and found the two deceased and the injured witnesses lying. Thereafter he went and made a complaint to the police. P.W. 2, an injured witness stated that all the five accused came from the side of the hut of A-1. A-1 and A-2 were armed with axes and A-3 to A-5 were armed with sticks. He further deposed

that A-1 assaulted the deceased Murigeppa with butt end of the axe and A-1 and A-2 attacked deceased Basappa with butt ends of the axes and A-4 and A-5 assaulted him and also the deceased Basappa. To the same effect is the version given by P.Ws. 3 and 4, the other two injured witnesses. None of these witnesses has even stated that A-3 participated in the attack on either of the deceased persons. According to the eye-witnesses A-3 is alleged to have assaulted P.Ws. 2 to 4 alongwith other accused. The medical evidence amply corroborates the evidence of these witnesses in respect of the overt acts attributed to all the accused. The medical evidence shows that the fatal injuries on the two deceased persons were inflicted with butt end of the axe and they are attributed to A-1 and A-2. The other injuries found on the two deceased persons correspond to the overt acts attributed to A-4 and A-5. The injuries found on the witnesses accordingly correspond to the overt acts attributed to all the accused.

8. We are unable to see as to how the learned -Sessions Judge could give a finding that the occurrence did not take place in the manner spoken to by the P.Ws. The learned Sessions Judge mainly concentrated on the evidence of P.W.1 who is not an injured witness and held that his presence was doubtful and on that basis rejecting the evidence of the injured witnesses also, held that the prosecution version can be a result of due deliberations. In our view, the reasons given by the learned Sessions Judge for rejecting the evidence of the injured witnesses are wholly unsound.

9. From the above discussion it is established by the prosecution that A-1 to A-5 formed into an unlawful assembly variously armed and participated in the occurrence during which two deceased persons died and P.Ws. 2 to 4 received injuries. The next question is whether the common object of the unlawful assembly was to commit the murders. Whether there was such a common object or not, depends upon various facts. A-1 and A-2, though armed with axes, did not use the sharp side but only gave one or two blows on the heads with the butt ends. A-4 and A-5 who were armed with sticks dealt blows only on the legs and or on the hands which were not serious. A-3 did not participate in the attack on any of the two deceased persons. These circumstances show that the common object of the unlawful assembly cannot be said to be to cause murders and at any rate it cannot be said that all the accused shared the same and that they had knowledge that the two deceased persons would be killed and with that knowledge continued to be the members of the unlawful assembly. However, taking all the circumstances of the case into consideration, the common object can be held to be only to cause grievous hurt. A-1 and A-2, however, dealt blows with the butt ends of the axes on the two deceased persons and the injuries on the heads caused by them proved to be fatal. Having given our earnest consideration to this aspect of the case, we are of the view that A-1 and A-2 must be held liable for their individual acts and they would be liable to be punished under Section 302 I.P.C. and A-3 to A-5 under Sections 326/149 I.P.C. so far as the attack on the two deceased persons is concerned.

10. Accordingly the conviction of A-1, Shivalingappa Kallayanappa Bagewadi and A-2, Neelkanthappa Kallayanappa Bagewadi under Sections 302/149 I.P.C. is altered to one under Section 302 I.P.C. simpliciter but the sentence of imprisonment for life is confirmed. The conviction of A-3, Sangappa Kallayanappa Bagewadi, A-4, Mahadev Kallayanappa Bagewadi and A-5, Mahalingayya Kadayya Hiremath under Sections 302/149 I.P.C. and the sentence of imprisonment for life are set aside. Instead they are convicted under Sections 326/149 I.P.C. So far A-4 and A-5 are concerned, they

also participated in the attack on the two deceased persons whereas A-3 did not participate in the attack on the two deceased persons. Taking this aspect into consideration, we sentence A-4 and A-5 to undergo seven years' R.I. and A-3 to undergo three years' R.I. under Sections 326/149 I.P.C. In respect of the attack on injured witnesses, the convictions and sentences of all the accused under Sections 326/149 I.P.C, as awarded by the High Court, are confirmed. All other convictions and sentences awarded by the High Court are also confirmed.

11. In the result, the appeal stands dismissed so far as A-1 and A-2 are concerned and allowed partly in respect of A-3 to A-5 as indicated above.