

Supreme Court of India

State Of Karnataka vs Mallu Kallappa Patil And Others on 24 November, 1993

Equivalent citations: AIR 1994 SC 784, 1994 CriLJ 952, 1994 Supp (3) SCC 352

Bench: K J Reddy, G Ray

JUDGMENT

1. These two appeals arise out of common judgment of the Karnataka High Court in Crl. Appeals Nos. 454 of 79 and 150 of 1980.

2. Before the trial Court altogether 19 accused were tried for offences punishable under Sections 148, 447/149, 302/149, 324/149 and 337/149, I.P.C. The trial Court acquitted ten persons and convicted the remaining nine. They preferred an appeal to the High Court. The State also preferred an appeal challenging the acquittal of the other accused. However, out of them the State excluded A-11, A-12 and A-13 from the array of the respondents. The High Court on reappraisal of the evidence convicted A-4, Babu Sitanna Kanabarkar and A-9 Bharna Tanappa Patil under Section 302 read with Section 34, I.P.C. and sentenced each of them to undergo imprisonment for life holding that the Prosecution has proved that these two accused inflicted injuries on the deceased Appaji More. The High Court convicted A-1, Mallu Kallappa Patil and A-2 Yeshwant Koha-hanna Kesarkar under Sections 323 read with 34, I.P.C. and sentenced each of them to undergo R.I. for three months and to pay a fine of Rs. 100/- in default of payment of which to further undergo R.I. for one month for causing hurt to P.W. 1. The High Court acquitted the other convicted accused and dismissed the appeal filed by the State. Aggrieved by the said order the State has filed these two appeals against all the accused including A-4 and A-9 but not against A-11, A-12 and A-13 whose acquittal have not been challenged by the State before the High Court. The prosecution case is as follows :

The accused and the material witnesses belong to Village Attiwada. P.W. 9 also belongs to the same Village. All the other material witnesses and the deceased belong to ; Village Beekinakere. These two villages are situated at a distance of 11/2 miles from each other within the jurisdiction of Kakati Police Station House Belgaum Taluk. Both the Villages were in Group Panchayat of Bekkinakere. Accused Nos. 1, 2, 7 and 14 were the members of the said Village Panchayat Committee. Attiwada village has a Government pasture land. P.W. 9 and few others had applied for the grant of the said land in their favour. The Government granted four acres to each of them including P.W. 9. Some of the accused objected for the grant of the said land. But their objections were over-ruled. There is a well or spring in the said pasture land. The dispute arose between the parties for the use of the water. A civil suit was filed by P.W. 9 and others against A-1 and four other accused. An injunction was sought ! and an ex-parte injunction was granted in their favour on 22-4-78. On 26-4-1978 Bharna Ningappa More filed a complaint against 21 persons, including Accused Nos. 1, 2, 5, 6, 7, 8, 10 and 14 alleging trespass. The case was registered and the charge-sheet was filed. There were other complaints also and; thus there were disputes and bitter enmity between the two parties.

3. According to the prosecution after the land was granted in favour of P.W. 9 and Bharna More, they levelled the land and cleaned the well and installed a pump set for taking water for irrigation purposes. They got a good crop and the accused were jealous of it. There were other disputes regarding the contract for cleaning the well and for levelling the lands. On 13-2-79 P.Ws. 1 to 5, 10

and 13 others including the deceased Appaji More had gone to the said land for cleaning the well and levelling the land of P.W. 9 at about 8 a.m. They worked till 11 a.m. They had their food thereafter and continued to work by 12-30 p.m. It is alleged that all the 19 accused accompanied by 20-30 others, including the women and children came there and begin to fill up the well with earth and stones. P.Ws. 1 to 5, 10 and others asked them not to do so as they had taken the contract work of cleaning the well and levelling the land. The accused did not pay heed to the request and began to fill up the well and also started pelting stones on P.Ws. 1 to 5 and others who began to recede back. The deceased who was lame in one leg each lagged behind. It is alleged that all the accused surrounded the deceased and P.W. 1. A-3 assaulted the deceased with axe on his hands and A-4 assaulted the deceased with axe on head. A-9 assaulted him Koltha on his chest. A-14 threw chilly powder on the face of the deceased. A-1 and A-2 assaulted P.W. 1 with sticks. A-5 assaulted P.W. 1 on his head with axe. Other accused were throwing stones at them as a result of which P.W. 10, P.W. 3 and few others sustained injuries. After inflicting the injuries on the deceased as well as on P.W. 1 they left the place. The people from Bekkinakere found the injured P.W. 1 and the deceased. P.Ws. 3, 4 and 10 took P.W. 1 to the road side and boarded a bus went to the Civil Hospital, Belgaum. P.W. 10 thereafter went to the Police Station House at Kakati and gave a written complaint as per Ex. P. 12. P.W. 14 registered a case and issued the FIR. On the same day A-16 gave a written complaint alleging that they were beaten and FIR for minor offences was registered. Investigations continued. The accused were arrested and some weapons were recovered. After completion of the investigation the charge-sheet was filed.

4. The case mainly rested on the testimony of P.Ws. 1 to 5 and 10 and the accused pleaded not guilty.

5. The doctor P.W. 8, who conducted the post-mortem, found 15 injuries on the deceased. Out of them some were abrasions. Some were lacerations and the doctor noticed fracture of right radius and on internal examination he found that the skull was fractured and that was the cause of the death.

6. The learned Sessions Judge while acquitting ten of the accused convicted A-1 to A-5, A-7, A-9, A-14 and A-15. As stated above both, the convicted accused and the State preferred appeals to the High Court. The High Court having examined the evidence of the eye-witnesses held that there was no unlawful assembly and it all happened during a quarrel regarding the filling up of the well and the Section 149, I.P.C. could not be applied in such a situation, but convicted only those accused whose overt acts were proved. The High Court, however, acquitted A-3 and A-14 against whom overt acts were attributed holding that the medical evidence did not support the version against them. The High Court, however, held A-4 and A-9 guilty under Section 302 read with Section 34, I.P.C. holding that the overt acts attributed to them namely attack on the deceased were established. Likewise A-1 and A-2 were convicted for their individual acts for causing simple hurt to P.W. 1.

7. In these appeals learned Counsel for the State submits that all of the 10 accused were armed and all of them were throwing stones and the evidence is also to the effect that all of them came in the group and, therefore, it is reasonable to infer that they are the members of the unlawful assembly whose common object was to commit the murder. We see no force in the submission. According to the evidence of the eye-witnesses a large group of persons from Attiwala Village including women,

children as well as the accused came there to object the cleaning of the well. The dispute was whether the prosecution party had the right to clean the well. It was how the whole incident happened. It was only during that incident A-4 and A-9 whose overt acts were said to have resulted in inflicting injuries on the deceased. It must also be borne in mind that there was long standing enmity particularly in respect of the dispute about the cleaning of the well and levelling of the land. The prosecution version was to the effect that the whole group consisting of women, children and men came to the spot to raise the dispute regarding the cleaning of the well by the prosecution party. It cannot be said that all of them were members of the unlawful assembly with the common object to attacking the deceased. It is during the quarrel that took place some of the accused particularly A-4 and A-9 committed certain acts of violence on the deceased and P.W. 1. Therefore, the High Court has rightly held them guilty for their individual acts. In a situation like this, the Court has always to keep in mind by-standers or others coming from the village cannot be said to be members of the unlawful assembly with the common object of attacking the deceased as well as P.W. 1. The individual acts have to be taken into consideration to avoid large scale convictions of the persons by virtue of the application of Section 149, I.P.C. The view taken by the High Court appears to be quite reasonable. We see no grounds to interfere. These appeals are dismissed accordingly.