

Gedda Raminaidu and Others

Vs

State of Andhra Pradesh

Criminal Appeal No. 106 of 1974

(Syed M. Fazal Ali, A. D. Koshal JJ)

22.01.1980

JUDGMENT

FAZAL ALI, J. –

1. This appeal by certificate is directed against a judgment of the Andhra Pradesh High Court convicting the appellants under Section 148, IPC to one year RI, appellants 1, 2 and 3 under Section 395/397 to 7 years' RI and appellants 4 to 12 under Section 395 to 5 years' RI. The facts of the case have been detailed in the judgment of the High Court.

2. Counsel for the appellants submitted before us that having regard to the proved facts of the case the appellants could not be said to have committed any offense under Section 395 or 397, IPC because they sought merely to assert a bona-fide claim of right fishing in the tank which they believed to belong to the government. The concurrent findings of fact of the court below, viz., Sessions Judge and the High Court, which are based on a fair and complete consideration of the oral and documentary evidence led by the prosecution is that the tank in question belonged to private persons viz., the complainants which was leased out to them from year to year. During the period of the occurrence PW 6 was person to whom the tank was leased. According to the prosecution as many as 400 persons variously armed with deadly weapons came to the tank, tried forcibly to take away fishes from the tank and when the witnesses protested they were threatened with dire consequences and even with the fear of death if they tried to interfere with the act of theft sought to be committed by the appellants. The court below have accepted the prosecution case in toto. The appellants have not produced a single document to show that the tank belonged to the government or that there was any iota of evidence to support the appellants stand that they had any bona fide claim to the tank. It is well settled that the question of bona fide claim to the tank. It is well settled that the question of bona fide claim of right arises only where the accused show to the court's satisfaction that their belief is reasonable and based on some documents or title, however weak it may be.

3. In the instant case, however, the appellants sought to fish in the tank by sheer force of arms. For these reasons we are unable to agree with the counsel for the appellants that the case of dacoity has not been made out or that the case would only be one of simple theft.

4. So far as appellants 1, 2 and 3 are concerned there is consistent evidence of the prosecution witnesses to show that they were armed with deadly weapons and actually brandished them and threatened the complainants not to interfere with their fishing in the tank. The evidence also established that fishes of the value of Rs. 400 were taken away by the appellants. In these circumstances, therefore, there can be no doubt so far as appellants 1, 2 and 3 are concerned that

they were clearly quality of Section 395/397 and the High Court was fully justified in imposing the minimum sentence required under the law viz., 7 years. So far as the appellants 4 to 12 are concerned they have been convicted only under Section 395 and in the peculiar circumstances of this case we feel that the sentence given to them errs on the side of Severity. We, therefore, while maintaining the conviction of the appellants 4 to 12 under Section 395 of the IPC, reduce the sentence to three years' RI. The appellants will of course get the benefit of Section 428 of the CrPC in computing the period of sentence already served. With this modification the appeal is dismissed.

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