

Hanumantappa Krishnappa Mantur and others

Vs

State of Karnataka

Criminal Appeal No.722 of 1979

(Smt. M. S. Fathima Beevi, S. R. Pandian JJ)

11.10.1991

### JUDGMENT

1. This appeal is directed by the above four appellants, namely, Hanumantappa Krishnappa Mantur, Basalingappa Hanumantappa Mantur, Yamanappa Hanumantappa Mantur, Mahadevappa Hanumantappa Mantur against the judgment and order dated 21-3-79 rendered in Criminal Appeal No. 292 of 1978 by the Karnataka High Court allowing the State appeal preferred against the order of acquittal passed by the Trial Court acquitting all the four appellants of the offence punishable under S. 302 read with S. 34 IPC. All these four appellants took their trial on the allegations that on 10-1-77 at about 5.30 P. M. in the land bearing R. S. No. 377 of Talewad Village in Basavan Begewadi Taluka in furtherance of their common intention caused the death of the deceased by A1 and A3 cutting the deceased with sickles and A2 and A4 attacking by axes. The deceased, it is stated by the prosecution, on receipt of the injury died on the spot it sell

2. The relevant facts briefly stated are as follows:

The first appellant is the father of the appellants 2 to 4. The second appellant was married to PW 11 Lakkavve who inherited the same portion of the Land from her father. PWs 4 and 7 are related to the deceased.

3. PW 11 along with her husband had been in the actual and physical possession of the property and enjoying the same. PW 11 fell ill. Her husband PW 2 refused to meet the medical expenses of PW 11. Therefore, PW 11 was compelled and necessitated to alienate her property. Accordingly PW 11 sold a portion of the property inherited by her from her father on 14-6-77 to the deceased. However, the physical possession of the property continued to be with the appellants 1 to 4 as well as PW 11.

4. On 29-10-77, proceedings under S. 144 of the Criminal Procedure Code were initiated at the instance of the deceased. On 30-10-77 an interim order under S. 145 sub-section (1) was passed which order was subsequently cancelled since the Civil Court before which the deceased instituted a suit, refused to grant an injunction.

5. On 10-11-77 at about 11 A.M. which was the fateful day, PW 7 went to the disputed land and objected the appellants 1 to 4 to the cutting the Bajra crops. It may be noted that PW 7 was owning the adjacent land to the disputed land. At the request of the appellant PW 15, Head-Constable came to the scene spot and showed the order of cancellation passed by the Taluka Executive Magistrate under S. 145 (1) of the Criminal Procedure Code and asked them not to create any disturbance. The appellants then started cutting the crops with the help of the coolies inclusive of PWs 8 to 10.

6. In this connection, it may be stated that in the morning of the day, the deceased and PW 1 had been to the tehsils office and requested the Tehsildar to settle the dispute to which the Tehsildar replied that he would do so within four days.

7. That at about 3 or 4 P.M. when the deceased and PW 4 were coming together, PW 7 informed the deceased that the appellants were cutting the crops in the land in dispute and also asked him to take appropriate action as he liked.

8. At about 4-5 P.M., the deceased and PWs 4 & 7 reached the scene-field. By then the crops had already been cut. The coolies were loading the crops already cut. The deceased objected the removal of the crops. According to the prosecution, during the course of this altercation, appellants 2 and 4 who were each armed with an axe hit the deceased and appellants 1 and 3 who were each armed with a sickle cut the deceased. All of them thus caused the injuries to which the deceased had succumbed. PW 4 reached the post office with PW 6 and telegraphically informed PW 15, the Head constable about the incident at about 8. P.M. PW 15 in turn conveyed this information to PW 16 who was in charge of the Station. Thereafter, the police party reached the scene by about 10.00 P.M. PW 18, the Circle Inspector reached the scene and took up the investigation. PW 18 after holding the inquest over the dead body and completing all other formalities and ultimately the investigation, laid the charge-sheet against all the four appellants. The defence version of the appellants is that during the course of the altercation in the field the deceased bit the middle finger of the first appellant who on becoming unbearable of the pain, lifted the deceased and threw him over a stone which resulted in the causation of the injury to the deceased. The Trial Court after discussing about the veracity of the evidence of the witnesses PWs 4 and 7 to 10, concluded that the appellants were well within the right of their private defence of body and property and consequently acquitted all the appellants.

9. On being aggrieved by the judgment of the trial Court, the State preferred an appeal before the High Court which for the reasons given in its judgment, disagreed with the finding of the trial court and found that the appellants have exceeded the right of their private defence and thus they were liable to be punished under S. 304 Part 1 IPC. Consequently, convicted all of them under S. 304 Part I, IPC and sentenced each of them to undergo rigorous imprisonment for five years. Hence this appeal.

10. Learned counsel appearing for the appellants took us very meticulously through the judgments of both the courts below and strenuously contended that the High Court was not justified in interfering with the well-reasoned judgment of the Trial Court and that the facts and circumstances of the case clearly make out a case that the appellants had exercised only their right of private defence of the person as well as of the property. We have carefully gone through the records placed before us and also examined the contentions made by the learned counsel. In our opinion, the conclusion arrived at by the trial Court holding that the appellants were entitled for a complete acquittal on the plea of self-defence of person and property cannot be accepted in the face of the facts and circumstances of the case.

11. Then the question that arises for our consideration is whether all the appellants herein or some of them participated in the occurrence and if so, what is the nature of the offence such appellants have committed.

12. According to the evidence of PWs 4 and 7 to 10, the deceased was attacked with the sickles by A 1 and A 3 and with axes by A2 and A4. As we have already pointed out, the appellants 2 to 4 are

brothers being the sons of the first appellant. In other words, the entire family members are roped in, as rightly pointed out by the learned counsel for the appellants. The medical evidence in the present case clearly indicates that the deceased could not have been assaulted by any sharp edged weapon, such as sickles. There were 13 injuries on the body of the deceased of which four injuries were abrasions and injuries Nos. 5, 8, 10, 12 and 13 were contusions. Injury No. 11 was dislocation. However, injuries Nos. 1 to 3 are described as incised wounds. Even among these injuries Nos. 1 to 3, the second injury is described as a lacerated incised wound which, in all probability could have been caused by the back portion of an axe rather than by a cutting instrument like a sickle. The first injury is described as an incised wound measuring ½" x ½" x 1" above the right ear. The nature of this injury also indicates that it might have been caused by an axe rather than by a sickle. The third incised wound is a superficial injury situated by the side of injury No. 2 . The present view of ours is supported by the opinion of PW 1 (Medical Officer) who has opined that injuries 1 to 3 could have been caused by means of any hard and sharp substance like an axe.

13. A careful examination of the nature of the injuries and other circumstances spell out that these injuries could have been caused by the back portion of an axe rather than by any cutting instrument like sickles. This creates a doubt in our mind as to the participation of the appellants 1 and 3 in the occurrence, though we are of the firm view that A2 and A4 had participated in the occurrence and attacked the deceased each with an axe.

14. The first appellant had sustained a minor injury which was an abrasion of ½" x ¼" over the left side middle finger on the first phalanx over the palmar aspect. The High Court in view of the admission, made by PW 4 has held that the deceased had bitten the left hand middle finger of the first appellant. Therefore, it is but natural and probable that A2 and A4 who are in their prime of youth, had taken grudge against the deceased and attacked him with axes. Hence, we are in full agreement' with the conclusion of the High Court that the appellants A2 and A4 had exceeded the right of private defence of the body of their father (Ist appellant) and property but the evidence, led in by the prosecution as against 1 and 3 is very feeble and insufficient to hold them guilty, beyond all reasonable doubt.

15. For all the reasons stated above, we hold that the prosecution has not satisfactorily established the guilt of the appellants 1 and 3 beyond all reasonable doubt and consequently these two appellants, namely, Hanumantappa Krishnappa Mantur and Yamanappa Hanumantappa Mantur are acquitted and their conviction under S. 304 Part 1 and sentence of five years imprisonment are set aside.

16. The conviction of A2 and A4 under S. 304 Part I, IPC, and the sentence of rigorous imprisonment for five years imposed by the High Court, are retained.

17. This appeal is partly allowed and partly dismissed.

Order accordingly.

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