

IN THE HIGH COURT OF KARNATAKA AT BANGALORE

DATED THIS THE 5TH DAY OF JUNE 2006

PRESENT

THE HON' BLE MR. JUSTICE N. S. VEERABHADRAIAH

AND

THE HON' BLE MR. JUSTICE SUBHASH B. ADI

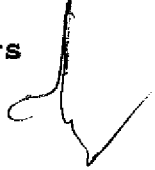
CRIMINAL APPEAL NO. 325 OF 2000

BETWEEN:

State of Karnataka
By Pattanayakanahalli Police Station ..Appellant

(By Sri. P. M. Nawaz, HCGP)

AND:

1. Siddeshwarappa
S/o Kadappa, 60 years
 2. K. Seetharamaiah
S/o Kadajja, 40 years
 3. Kadappa
S/o Kadappa, 35 years
 4. Jogappa
S/o Kadappa, 50 years
 5. Mahalingappa
S/o Siddeshwarappa, 23 years
 6. Devaraju
S/o Jogappa, 23 years
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7. Lunkanna
S/o Jogappa, 23 years

8. Sannamma
W/o Siddeshwarappa, 45 years

9. Lakkamma
W/o Kadappa, 30 years

10. Nagamma
W/o K. Seetharamaiah, 33 years

All r/o Siddanahalli, Sira Tq.
Tumkur District ... Respondents

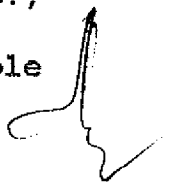
(By Sri. A. Kumaravel, Adv)

This Criminal Appeal filed u/s 378(1) and (3) Cr.P.C by the State P.P for the state praying that this Hon'ble Court may be pleased to grant leave to file an appeal against the judgment dated 6.10.99 passed by the JMFC, Sira in CC No.241/95 acquitting the respondents for the offences u/s 143,146,323,326 r/w 149 of IPC.

This appeal coming on for final hearing this day, N.S.Veerabhadraiah.J delivered the following:

J U D G M E N T

This appeal is by the State being aggrieved by the Judgment of acquittal of the accused in C.C.No.241/1995 passed by the learned J.M.F.C., Sira dated 6.10.1999 for the offences punishable




under Sections 143, 148, 323, 326 r/w. 149 of IPC.

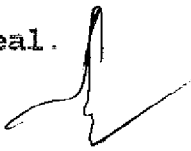
2. The brief facts are as follows:

The complainant Smt. Kenchamma as well as the accused were close relatives. There was a dispute in respect of the land bearing Sy.No.95/6 of Siddanahally Village and also Civil suits were pending in respect of the said land dispute. That on 31.7.1994 at about 9.00 a.m., PW-1, Kenchamma, PW-2 Eshwarappa, PW-3 Somakumar, PW-5 Lakshmakka and PW-6 Girijamma were sowing seeds in the land bearing Sy.No.95/6; that all the accused having formed themselves into members of an unlawful assembly armed with deadly weapons picked up quarrel and trespassed to their land and assaulted them and caused grievous injuries. PW-7 Kamalingappa came and separated the quarrel. The complainant Smt. Kenchamma proceeded to Pattanayakanahally Police Station and lodged a complaint as per Ex.P1. On the said complaint, the police registered a case in Crime No.63/87

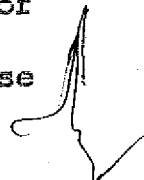
for the offences u/s.447, 324 r/w. 34 IPC. Injured persons were subjected to medical examination at the Government Hospital. P.W.4 Dr.Chidanandappa examined PW-2 Eshwarappa and PW-3 Somakumar and issued a Wound Certificate as per Exs.P2 and P3. PW-8 Ramaiah, the then Sub Inspector of Police, arrested the accused on 3.8.1994 and let them on bail and handed over the case for further investigation to PW-12, Afiz Bag, Sub Inspector who completed the investigation and filed a charge sheet for the offences u/s.143, 148, 323, 324 r/w. 149 IPC. The accused pleaded not guilty and claimed to be tried. The prosecution in all examined PWs-1 to 9, marked Exs.P1 to P5 and produced M.O-1. Learned J.M.F.C. for the reasons recorded in his Judgment acquitted all the accused for the offences charged, for which they were tried. It is this Judgment of acquittal which is questioned in the present appeal.



3. Learned Government Pleader Sri.P.M.Nawaz submitted that the evidence of PW-1, Kenchamma, PW-2 Eshwarappa, PW-3 Somakumar, PW-5 Lakshmakka and PW-6 Girijamma, clearly prove that it is these accused persons who assaulted them with clubs and caused injuries. It is further submitted that there was no reason for acquitting the accused for the charges framed. The evidence of PW-4 Dr.Chidanandappa also establishes the fact that PW-2 Eshwarappa and PW-3 Somakumar who were examined by him noticed injuries on both of them, which were grievous in nature and he issued the wound certificates as per Exs.P3 and P4. It is further submitted that there is clinching evidence to connect the accused, in respect of the act of assault made on PWs-1, 2, 3, 5 and 6. The acquittal of the accused is not justifiable. Therefore prayed to set aside the Judgment of acquittal and to convict the accused by allowing the appeal.



4. Learned Counsel Sri.A.Kumaravel, submitted that according to the evidence of PWs-1, 2, 3, 5 and 6, the accused persons were armed with deadly weapons like club, iron rod and other weapons. If really all the accused persons were to have assaulted, they would have suffered with fractures. What is seized in this case is only the club. It is not made clear as to what had happened to other clubs armed by the remaining 3 persons. It is also submitted that none of the prosecution witnesses has specifically stated about the overt acts. Therefore, it is not made clear by the prosecution as to who assaulted PW-2 Eshwarappa and PW-3 Somakumar. It is also submitted that if really the accused had assaulted PW-1, Kenchamma, PW-5 Lakshmakka and PW-6 Girijamma with clubs they would have definitely suffered with injuries. But none of them have suffered any injuries. Lastly submitted that due to enmity and on account of civil cases between the parties, a false




complaint has been filed and therefore prayed to dismiss the appeal by confirming the Judgment of acquittal.

5. In the light of the submissions, the point for consideration that arises; "whether the learned JMFC, Sira is justified in acquitting the accused for the offences charged?"

6. It is not in dispute that the accused are related to PW-1 Kenchamma and 3 civil suits are pending between them and the case filed by the accused against her ended in acquittal.

7. On a careful consideration of the testimony of PW-1 Kenchamma, it shows that PW-2 Eshwarappa, PW-3 Somakumar are her sons whereas PW-5 Lakshmakka and PW-6 Girijamma are daughter-in-laws. It is in her evidence that on 31.7.1994 at about 9.00 a.m. while herself and others were sowing seeds in their lands all the accused persons came armed with sticks and assaulted PW-2 Eshwarappa, PW-3 Somakumar whereas accused 8 to

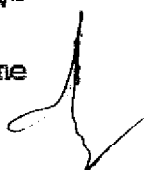


10 dragged PW-5 Lakshmakka and PW-6 Girijamma from that place and assaulted.

8. Coming to the evidence of PW-2 Eshwarappa while himself and others were sowing seeds in the land, the accused persons came and stopped them from sowing and further assaulted them with clubs and hands and that they also assaulted PW-3 Somakumar, whereas accused 8 to 10 pulled and dragged PW-1, Kenchamma, PW-5 Lakshmakka and PW-6 Girijamma and abused in a vulgar language.

9. The evidence of PW-3 Somakumar shows that PW-1 is his mother and that while they were sowing seeds all the accused persons came and assaulted on his head with a club and also assaulted PW-2 Eshwarappa whereas accused 8 to 10 pulled and dragged PW-1, Kenchamma, PW-5 Lakshmakka and PW-6 Girijamma by catching hold of their plaits.

10. The evidence of PW-5 Lakshmakka and PW-6 Girijamma shows that the accused persons came




armed with clubs and assaulted PW-2 Eshwarappa and PW-3 Somakumar. According to PW-5 Lakshmakka, accused Nos.1,3,5,6 and 7 assaulted PW-2 with club whereas accused 1 and 5 assaulted PW-1 Kenchamma. So also is the evidence of PW6 Girijamma.

11. It is in the evidence of PW-7, Ramalingappa, that he came and separated the accused and the injured persons.

12. That it is the definite case of the prosecution that PW-2 Eshwarappa and PW-3 Somakumar sustained injuries. On a careful consideration of the testimony of PW-1 Kenchamma and also the injured PW-2 and PW-3 and PW-5 and PW6, none of the witnesses have deposed the clear overtact as to which of the accused assaulted whom. If really the accused persons were to have assaulted, PW-1 Kenchamma would have definitely suffered with some injuries or some scratches on her body which is not found. When the

prosecution witnesses say that all the accused persons were assaulted, the injured persons would have suffered with number of injuries. If 10 persons were to assault with clubs, minimum they would have suffered with ten injuries. But that is not the medical evidence. It is no doubt true that PW-2 Eshwarappa and PW-3 Somakumar have suffered grievous injuries but from their evidence it shows that all the accused persons have assaulted. But they have not specifically stated as to which of the accused assaulted with what weapon.

13. In the present case, the person who registered the case, the person who prepared the panchanama as well as the investigating officer are not examined. When the testimony of the prosecution witnesses PW1, 2, 3, 5 and 6 are not corroborating with one another, the question of interfering with the findings of the Trial Court does not arise. On a careful scrutiny of the testimony of the prosecution witnesses a doubt



arises as to the manner in which the incident of assault took place, when the Trial Court having extended the benefit of doubt to the accused persons, it is not proper for this Court to interfere when two views are possible for the foregoing reasons. Appeal is dismissed.

Sd/-
Judge

nas.

Sd/-
Judge