

Emperor Vs. Gurlingappa Shidramappa

Emperor Vs. Gurlingappa Shidramappa

SooperKanoon Citation : sooperkanoon.com/331894

Court : Mumbai

Decided On : Jun-05-1921

Reported in : (1921)23BOMLR817

Judge : Pratt and ;Fawcett, JJ.

Appeal No. : Criminal Appeal No. 133 of 1921

Appellant : Emperor

Respondent : Gurlingappa Shidramappa

Judgement :

Curiam, J.

1. The appellant in this case has been convicted by the Sessions Judge of Bijapur of the offence of culpable homicide not amounting to murder under Section 304, Indian Penal Code, and sentenced to two years' rigorous imprisonment.

2. The facts of the case are not disputed. There were two factions in the village of Shidnath: on the one hand the faction of Ganigers and on the other the faction of Gowdas. About the time of this offence incidents occurred which exacerbated the ill-feeling between the two factions. On the 19th October there was a dispute about a field which Jummangowda had bought and he was obstructed by the opposite faction from ploughing it and on the 21st October 1919 there was a dispute about

a right of way in which Jummangauda was assaulted by the members of the opposite faction including the two accused.

3. Jummangauda, in order to take revenge, got together an armed gang which went about the village looking for the accused shouting 'din, din' and announcing their intention to kill them. In the course of their search they looted the houses of several Ganigers and burnt the contents. The accused took refuge in the house of one Shamnaji Marwadi and hid themselves in a dark kitchen at the back of the house. The mob broke into that house. Two of the rioters, Ganya Lamani and Shankarappa, made their way with torches to the kitchen and attacked the accused. Ganya hit accused No. 1 with an axe and wounded him on the back and accused Nos. 1 and 2 engaged Ganya and Shankarappa and after a fight in pitch darkness Shankarappa escaped outside. After Shankarappa escaped accused Nos. 1 and 2 hacked Ganya to death.

4. It is conceded that the right of private defence which the accused were exercising extended under Section 100, Indian Penal Code, to causing the death of their assailant. In fact it was the only prudent thing for accused Nos. 1 and 2 to do. For they could not allow an enemy to remain in the room in which they were, while they were anticipating a frontal attack from the murderous mob that had broken into the house. This is conceded by the Sessions Judge in his judgment. He says:

It is clear that the accused inflicted so many wounds on the deceased in a frenzy of fear and rage. I accept the fact that they knew that their houses Emperor had been looted and that the mob were looking for them. When the mob broke into Shamnaji Marwadi's house they retreated into the furthest corner to get away from the mob and only struck Ganya and Shankrya because they believed they were coming to attack them and that accused feared that they were only the forerunners of the mob and that they were partly actuated by fear let even a disabled man might, in the small dark room in which they had taken refuge, hamper them badly if the rest of the mob attacked, and Uanya, though disabled had seized the legs of one of them. I also accept the fact that accused probably could not see in the darkness what won its they had inflicted on the deceased.

5. In spite of this conclusion the Sessions Judge is of opinion that the accused were guilty because they continued striking the deceased for some time after there was any need to. This conclusion is inconsistent with his own finding that in the darkness the accused could not see what wounds they were inflicting. It was too dark for the accused to judge the effect of the blows which they dealt on Ganya and considering the fact that they were fighting for life like rats in a trap with the murderous mob in front of them and an enemy who made his way in the room where they had taken refuge, it is not surprising that they did their best to make sure that that enemy was dead. Mayne, in his commentary on the right of private defence, says : 'Where the assault has once assumed a dangerous form, every allowance should be made for one, who, with the instinct of self preservation strong upon him, pursues his defence a little further than to a perfectly cool bystander would seem absolutely necessary.' We agree with this statement of the law which is most apposite to the facts of the present case.

6. We accordingly allow the appeal, reverse the conviction and sentence of the appellant Gurlingappa and direct that he be acquitted and set at liberty.

7. We also direct rule to issue for revision of the conviction and sentence of the other accused Yellappa Gadigeppa who has not appealed.