

KARNAM RAM NARSAIAH AND ORS.

A

v.

STATE OF ANDHRA PRADESH

AUGUST 5, 2004

[K.G. BALAKRISHNAN AND DR. AR. LAKSHMANAN, JJ.]

B

*Penal Code, 1860 :*

*S. 302 r/w s. 34—Out of 17 persons prosecuted, 5 convicted by trial court—High Court convicting only three of them—Conviction challenged on the ground that there was no charge against them for offence u/s 302 r/w s.34—Held, there is no error or illegality in conviction of appellants under s.302 r/w s.34—It is proved that appellants attacked the deceased with a common intention.*

C

*Malhu Yadav & Ors. v. State of Bihar, [2002] 5 SCC 724, relied on.*

D

*Ninaji Raoji Boudha & Anr. v. State of Maharashtra, [1976] 2 SCC 117 and Ram Lal v. Delhi Administration, [1973] 3 SCC 466, held inapplicable.*

E

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 1467 of 2003.

From the Judgment and Order dated 28.1.2003 of the Andhra Pradesh High Court in Crl. A. No. 1080 of 2001.

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Mrs. D. Bharathi Reddy for the Appellants.

Mohanprasad Meharia for the Respondent.

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The following Order of the Court was delivered :

Seventeen accused persons were tried by the Second Addl. Sessions Judge, Nalgonda in the State of Andhra Pradesh for various offences under Sections 148 and 302 read with Sections 34, 307 and 324 read with Section

H

A 149 I.P.C. of the Indian Penal Code (for short 'the IPC') and Sections 3 and 5 of the Explosive Substances Act. The Sessions Judge convicted five of the accused persons, namely A1 to A4 and A9. These convicted persons preferred an appeal before the High Court and the High Court was pleased to acquit A2 and A9 and the 1st, 3rd and 4th accused were convicted for the offence of murder punishable under Section 302 read with Section 34 of the IPC. Their convictions and sentences are challenged before us.

The incident happened on 21.11.1995 at about 6.30 p.m. The deceased Sunkari Lingaiah and the accused persons were residents of Bakkaiahgudem village. All the accused persons belonged to one political party and the deceased belonged to another political party. It seems that there was some election to the post of office bearers of a local co-operative society and the disputes arose on account of this. The deceased, along with PWs 1, 2 and 3 were proceeding to their agricultural field for irrigating the crop. The accused were waiting near a temple and when PWs 1 and 2 reached near the accused the first accused hurled a bomb and it exploded. Thereafter A1 to A4, who were armed with sticks started beating the deceased. It was alleged that A2 beat the deceased on his left eye, A3 beat on the back and left side of the chest and A4 beat with a stone on the head and A4 also beat the deceased. PWs 3 to 5 tried to rescue PWs 1 and 3 and the deceased but they were also beaten. Hearing the noises, the mother of the deceased, wife and sister and some others came to the scene of occurrence and then all the accused left the scene. PW 1 at about 9.45 a.m. went to the Nereducherla Police Station and gave statement before PW 15, the head constable. The injured while being taken to the hospital died on the way.

PW 16, Circle Inspector of Police Huzurnagar conducted the investigation and he filed a report against A1 to A2. PWs 1 to 16 were examined by the prosecution and Exs. P1 to P 32 and Nos. 1 to 15 were got marked. However, Ex. PW1 was not found guilty.

The Sessions Judge partly accepted the prosecution case and held that A1 to A4 and A9 were guilty. The High Court in the appeal held that A1 to A3 and A4 were responsible for the death of the deceased Sunkari Lingaiah. They were convicted for the offences under Section 302 read with Section 34 of the IPC.

The learned counsel for the appellant contended before us that the High Court seriously flawed in convicting these appellants for the offences under Section 302 read with Section 34 as there was no charge filed against the accused appellants for the offences under Section 302 read with Section 34. The counsel for the appellant further contended that the charges against the appellants were only for the offences under Section 302 simpliciter and counsel further submits that the High Court should not have convicted the appellants under the above sections. It was argued that it is not specific as to who caused the fatal injuries to the deceased and, therefore, the conviction should have been for a lesser offence.

Our attention was drawn to the medical evidence placed on the record. The appellant's counsel points out that the deceased had as many as 10 injuries and the doctor who conducted the post-mortem had opined that the injury No. 1 alone was fatal injury and the injury No. 10 was the corresponding internal injury. Injury No. 1 was a laceration of 5" x 2" x 1 ½" over occipital region and its consequential internal injury shows that there was a fracture to occipital temporal and frontal bones and brain tissues were seen at occipital region. Extra and Intra dural haematoma were present. It is also pertinent to note that injury No. 2 was a contusion of 3" x 1 ½" over the left eye and the third injury was swelling of 3" x 2" over left frontal region and the fourth injury was also of a contusion of 2" x 2" over left temporal region. Altogether there were four injuries on the head of the deceased. The counsel for the appellant submitted that there is no evidence to show as to who caused the fatal injury or how the High Court has convicted the appellants for the offence under Section 302 read with Section 34 and this, according to the counsel for the appellant was incorrect as there was no charge against the appellant under Section 302 read with Section 34. We are unable to accept the plea raised by the appellants' counsel.

The evidence on record shows that all the appellants were waiting for the deceased to come to the plea of occurrence and all the eye-witnesses depose that A1 to A2 and A4 ceased. The counsel for the appellant sought to place reliance on [1976] 2 SCC p.117, *Ninaji Raoji Boudha & Anr. v. State of Maharashtra*. That is a case where there was only one injury on the body of the deceased and there was no evidence as to who caused the injury, the Court held that the evidence on record did not show that the

A appellant therein had the common intention of beating the deceased. The prosecution allegation was that two persons had caused the injury to the deceased and one was acquitted by the trial court and there was no concrete evidence as to which of them caused the fatal injury. It was under those circumstances the conviction of the appellants was altered from Section 302 read with Section 34 to Section 325 read with Section 34 IPC. This decision does not render any assistance to the appellants. Another decision relied by the learned counsel for the appellants is reported in [1973] 3 SCC p. 466 *Ram Lal v. Delhi Administration*. In this case there was only one appellant who was convicted by the High Court for the offence under Section 302. The evidence disclosed that the deceased was given two lathi blows and there was no evidence to show as to which of these two was given by the appellant. This Court was of the view that the appellant might have given the fatal blow or the other assailant might have given the blow. Under those circumstances, the conviction of the appellant was altered from Section 302 to Section 325 of the IPC.

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In the present case it is proved that A1, A2 and A4 caused the injuries to the deceased on the head. The appellants were waiting for the assailants to come and they conjointly attacked the deceased with a common intention and it is spelt out from the facts and circumstances of the case. This Court in [2002] 5 SCC p. 724 in *Malhu Yadav & Ors. v. State of Bihar*, has held that in the absence of a charge under Section 34 the accused persons could be convicted for the offence under Section 302 read with Section 34 provided the facts and circumstances show that there existed common intention and the accused committed the act with such intention.

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In the result, we do not find any error or illegality in the conviction of the appellants under Section 302 read with Section 34. Even otherwise also there was no specific charge against them for the offence under Section 302 read with Section 34. The appeal is accordingly dismissed.

R.P.

Appeal dismissed.