

A. POGULA KOMURAI AH  
v.  
THE STATE OF A.P. REP. BY THE PUBLIC PROSECUTOR  
(Crl. A. No. 94 of 2008)

B. JANUARY 15, 2008  
[DR. ARIJIT PASAYAT AND P. SATHASIVAM, JJ.]

C. *Penal Code, 1860 – ss. 304 (Part I) r/w s. 149; 147; 148; 448 r/w s. 149 and 324 r/w s. 149 – Prosecution under – Of sixteen accused – Conviction of the appellant-accused by courts below u/s 302 r/w s. 149, and 448 r/w s. 149, 147 and 148 – Conviction of two of the accused u/s 302 altered to one u/s 304 (Part I) by Supreme Court in a separate appeal – Plea of parity with the two accused – Held: In the facts of the case findings regarding the two accused equally applicable to the accused in the present appeal – Conviction u/s 302 r/w s. 149 altered to one u/s 304 (Part I) r/w s. 149 – Conviction for other offence not interfered with.*

D. **Appellant along with 15 other accused was charged for offences u/ss. 147, 148, 448 r/w s. 149, 302 r/w s. 149 and 324 r/w s. 149 IPC. He was convicted for the offences, by the trial court as well as High Court.**

E. **Two of the accused had approached this court in a separate appeal, and their conviction u/s 302 was altered to one u/s 304 (Part I) IPC.**

F. **Appellant contended that his conviction u/s 302 be altered to one u/s 304 (Part I) as he stands on the same footing as the two accused.**

G. **Partly allowing the appeal, the Court**

H. **HELD: In view of evidence of P.W-1 as observed by High Court the findings recorded by this Court in respect of two of the accused are applicable to the present appeal. Accordingly appellant's conviction is altered to one under**

**Section 304 Part I read with Section 149 IPC as was done in the case of the two accused. The finding of guilt in respect of other offence and the sentence imposed do not warrant any interference. [Para 9] [703-H; 704-A-B]**

*Kalegura Padma Rao and Anr. vs. The State of A.P. Rep. by the Public Prosecutor 2007 (2) SCR 781 – relied on.*

CRIMINALAPPELLATE JURISDICTION : Criminal Appeal No. 94 of 2008.

From the final Judgment and Order dated 27.7.2006 of the High Court of Judicature, Andhra Pradesh at Hyderabad in Crl. A. No. 1114/2005

S. Sadasiv Reddy and S. Usha Reddy for the Appellant.

Altaf Fathima and D. Bharathi Reddy for the Respondent.

The Judgment of the Court was delivered by

**DR. ARIJIT PASAYAT, J.** 1. Leave granted.

2. Challenge in this appeal is to the judgment of a Division Bench of Andhra Pradesh High Court, disposing of four Criminal Appeals i.e. Criminal Appeal nos. 1114, 1128, 1130 and 1155 of 2005.

3. 16 accused persons were charged for offence punishable under Sections 147, 148, 448 read with Section 149 and Section 302 read with Section 149, 324 read with Section 149 of the Indian Penal Code, 1860 (in short 'IPC').

4. The High Court by the impugned order disposed of the appeals with the following observations:

"In the result, Crl.A.No. 1114 of 2005 is allowed in part. Crl. A.No.1128 of 2005 is allowed. Crl. A.No.1130 of 2005 is dismissed. Crl. A.No.1155 of 2005 is allowed. The convictions and sentences imposed by the lower Court on A-1, A-3, A-7 to A-9, A-12 and A-13 for the offences under Sections 302 read with Section 149, 148, 448 read

A with 149, 324 read with 149 of I.P.C., are confirmed. The convictions and the sentences imposed on A-2, A-4 to A-6, A-10, A-11 and A-14 to A-16 for all offences are set aside and they shall be set at liberty forthwith, if they are not required in any other crime.”

B 5. It is to be noted that the appellant was accused no.12 (for short A12) before the Trial Court. It is relevant to note that accused nos. 1 and 3 filed SLP (Crl.) no.5591 of 2006 before this Court which was subsequently converted into Criminal Appeal no.222 of 2006. By judgment dated 19<sup>th</sup> February, 2007  
C the appeal was partly allowed with the following findings:

“...If the evidence on record is considered on the touchstone principles set out above the inevitable conclusion is that the proper conviction would be Section 304 Part I IPC instead of Section 302 IPC. The conviction of the appellants is accordingly altered from Section 302 read with Section 149 to Section 304 Part I read with Section 149 IPC. Custodial sentence of 10 years would meet the ends of justice. The findings of the guilt in respect of other offences and the sentences imposed do not warrant interference. The sentence shall run concurrently.

The appeal is allowed to the aforesaid extent.”

F 6. Learned counsel for the appellant submitted that the present appellant stands in the same footing as the appellants in Criminal Appeal no.222 of 2006 and the present appeal may be disposed of on similar terms.

G 7. Learned counsel for the respondent-State submitted that the present appellllant was armed with an iron rod, while the appellants in Criminal Appeal no.222 of 2006 were armed with lathi. Therefore, the similar treatment cannot be given to the present appellant.

H 8. It is to be noted that the High Court with reference to the evidence of PW1 noted as follows:

"19. Sri C.Padmanabha Reddy, the learned Senior Counsel for the appellants submitted that there was a delay of five hours in preferring the complaint and there were no specific overt acts attributed to the accused and omnibus allegations were made. The medical evidence is not corroborating with the oral evidence and the deceased has no premeditation to kill the deceased and no motive was suggested by the prosecution for the commission of the offence and it was only in respect of the hiring of the Auto rickshaw by the deceased. He further submitted that in Ex.P-1 complaint only seven accused were said to be attacked and the witnesses mentioned in the inquest report were not examined. PW-1 attributed overt acts only to A-12 and A-13 and the remaining accused were said to be beaten with sticks which is different from the version given in Ex.P-1. Though PWs. 5 and 6 stated that all the accused attacked, their names were not mentioned in Ex.P-1. the overt acts attributed to the accused during the course of evidence were not mentioned in the earlier statements and the whole version is subsequently developed to strengthen the prosecution. The receipt of injuries by PW-2 was not corroborated with the evidence of the Doctor who examined PW-2. Though the accused were attributed overt acts of beating the deceased, there were no corresponding injuries on the deceased and for the alleged recovery of properties, the recovery panch turned hostile and did not support the prosecution case and as A-13 was implicated in this case, all the accused are entitled for benefit of doubt and they are entitled for acquittal.

24. Since there is specific mention about A-1, A-3, A-7 to A-9, A-12 and A-13 beating the deceased with sticks, we are unable to agree with the argument that the witnesses improved the version by attributing overt acts to the accused in the evidence... "

9. Above being the position, the findings recorded in Criminal Appeal no.222 of 2006 by this Court are applicable to

- A the present appeal. Accordingly appellant's conviction is altered to Section 304 Part I read with Section 149 IPC as was done in the case of the appellants in the aforesaid appeal. Custodial sentence of 10 years would meet the ends of justice. The findings of the guilt in respect of other offence and the sentences imposed
- B do not warrant any interference. The sentences shall run concurrently.

10. The appeal is allowed to the aforesaid extent.

K.K.T.

Appeal partly allowed.