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BALA SEETHARAMAIAH

v.

PERIKE S. RAO AND ORS.

MARCH 16, 2004

B

[K.G. BALAKRISHNAN AND B.N. SRIKRISHNA, JJ.]

*Penal Code, 1862:*

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*ss.148, 302, 324 and ss.302 read with 149—Six accused—Prosecuted for murder—Charges framed u/s.148,302 and 324—Trial court held all the accused guilty of offences u/s.148, and 302—Besides, two of them were also held guilty u/s.324—High Court noticed that there was no charge framed under s.302 read with s.149—It found one accused guilty under s.304 Part-I and remaining five under s.326—Conviction under s.302 set aside—Held, Sessions Judge did not frame charge against accused persons for offence punishable under s. 302 read with s. 149—Relevant prosecution allegations so as to bring in the ingredients of the offence punishable under s. 302 read with s. 149 also were not incorporated in the charge framed by the Sessions Judge—Accused were not told that they had to face charge of being member of unlawful assembly and common object of such assembly was to commit murder of deceased and in furtherance of that common object murder was committed and thereby they had the constructive liability and thus they committed offence punishable under s. 302 read with s. 149—Of course, mere omission to mention s. 149 may be considered as an irregularity, but failure to mention the nature of the offence committed by them cannot be said to be a mere irregularity—Therefore, it is not possible to reverse conviction of accused under s. 326 and substitute conviction for offence punishable under s.302/149 as there was no charge framed against them for such offence—As regards the sentence for offence u/s 326, the incident happened in 1990, accused must have undergone the period of sentence imposed on them and at this distance of time, it would not be just and proper to enhance the sentence imposed by High Court.*

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 1107 of 1997.

From the Judgment and Order dated 4.10.96. of the Andhra Pradesh

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High Court in Crl. A. No. 107 of 1996.

WITH

Crl. A. No. 1108 of 1997.

Mrs. K. Amareshwari, B. Ramana Reavthy, Shiv Kumar Suri, Ms. T. Anamika and Guntur Prabhakar for the Appellants.

Y. Raja Gopala Rao and Ms. Sasmita Tripathy for the Respondents.

The following Order of the Court was delivered :

The Sessions Court of Krishna Division at Machilipatnam at Andhra Pradesh tried six accused persons alleging that they caused the death of Vemulapalli Buddah Vara Prasad @ Buddah Prasad. The deceased Buddah Prasad was the owner of banana garden. The prosecution allegation was that these accused trespassed into his property and took away some bamboo poles used for supporting the plants. Some criminal cases were also filed against these accused alleging that they have committed theft of bamboo poles. According to prosecution the accused nurtured grudge against the deceased and on 3.11.1990, they attacked deceased Buddah Prasad and caused his death. PW-1 and PW-2 had seen the accused committing the offence. They went and informed the matter to the Ex. Sarpanch (P.W.3.) who prepared report, then PW-1 and PW-2 went to the police station and gave that report to the Sub inspector of police (PW-9). After investigation, police filed charge sheet alleging that accused had formed themselves into an unlawful assembly and caused the death of Buddah Prasad.

The Sessions Court framed charges against the accused on three counts. The first charge was under Section 148 IPC alleging that they formed themselves into an unlawful assembly with a common object, they caused death of Buddha Prasad and thereby committed the offence punishable under Section 148 IPC. The second charge was under Section 302 IPC simpliciter against each of the accused. The third charge was framed against A-1 and A-2 for the offence punishable under Section 324 IPC for having caused injury to Bala Seetharamaiah.

The Sessions Court found A-1 to A-6 guilty of offence punishable under Section 148 IPC and each of them was sentenced to undergo rigorous imprisonment for a period of one year. A1 to A-6 were also sentenced to imprisonment for life for the offence punishable under Section 302 IPC, A-

A 1 and A-2 were also punished under Section 324 IPC and each of them to suffer rigorous imprisonment for one year.

B Aggrieved by these convictions and sentences, the accused preferred an appeal before the High Court of Andhra Pradesh at Hyderabad. The Division Bench of the High Court noticed that as regards accused A-1 to A-6, there was no charge framed under Section 302 read with Section 169 IPC and the High Court held that A-2 the second accused was guilty for the offence under Section 304 Part-1 IPC and he was sentenced to 7 years imprisonment and his conviction under Section 302 IPC was set aside. The conviction of accused C A-1, A-3 to A-6 under Section 302 was set aside and instead they were sentenced to undergo imprisonment for two years each under Section 326 IPC. Aggrieved by the judgment of the High Court these two criminal appeals are filed one by the State and other by the *de facto* complainant (PW-1).

D Heard Mrs. K. Amreshwari, learned senior counsel for the appellant, Ms. T. Anamika, learned counsel for the State and Mr. Y. Rajagopala Rao, learned counsel for the respondents.

E Learned senior counsel for the appellant appearing in Criminal Appeal No. 1107/1997 submitted that in the face of clear evidence given by eye witnesses the acquittal of the accused of the offence punishable under Section 302 IPC was unsustainable, and the High Court seriously erred in not convicting them for the offence of murder. The counsel submitted that even though specific charge was not framed against these accused persons under Sections 302 IPC read with Section 149 IPC it is only an irregularity and the accused were not prejudiced by such non filing of the charge and the High Court should have convicted these accused persons under Section 302/149 IPC in F view of over all evidence adduced by the prosecution. It is true that PW-1 and PW-2 gave a detailed evidence as to the manner in which the incident happened. The Sessions Judge as well as the Division Bench accepted the evidence of PW-1 and PW-2 who gave evidence to the effect that Buddah Prasad was chased and dragged by these accused persons and caused various G injuries to his body, and the counsel contended that all the accused persons should have been convicted under Section 302/149 IPC as the common object of the unlawful assembly was clearly spelt out from the prosecution evidence adduced in this case.

H We have carefully considered the evidence and relevant record in this case. The second charge framed against the accused persons was to the following effect;

“That you on the same day and at the same time and place did commit murder by intentionally causing the death of Vemulapalli Buddah Veraprasad @ Buddah Prasad by beating him with Paneka Kathulu and thereby committed an offence punishable under Section 302 of I.P.C. and within my cognizance.”

Unfortunately, the Sessions Judge did not frame charge against the accused persons for offence punishable under Section 302 IPC read with Section 149 IPC. It is also important to note that the relevant prosecution allegations so as to bring in the ingredients of the offence punishable under Section 302 IPC read with Section 149 IPC also were not incorporated in the charge framed by the Sessions Judge. The accused were not told that they had to face charge of being member of the unlawful assembly and the common object of such assembly was to commit murder of the deceased and in furtherance of that common object murder was committed and thereby they had the constructive liability and thus they committed the offence punishable under Section 302 IPC read with Section 149 IPC. Of course the mere omission to mention Section 149 may be considered as an irregularity, but failure to mention the nature of the offence committed by them cannot be said to be a mere irregularity. Had this mistake been noticed at the trial stage, the Sessions Judge could have corrected the charge at any time before the delivery of the Judgment. In the instant case, the accused were told to face a charge punishable under Section 302 simplicitor and there was no charge under Section 302 IPC read with Section 149 IPC. Therefore, it is not possible to reverse the conviction of the accused under Section 326 IPC and substitute the conviction for the offence punishable under Section 302/149 IPC as there was no charge framed against them for such offence.

The counsel for the appellants further submitted that A-1, A-3 to A-6 were found guilty of offence punishable under Section 326 IPC in view of the various overt acts committed by them and the sentence was only for a period of two years, they should have been sentenced to imprisonment for longer period. The incident happened in 1990 and the appeal by the High Court was disposed of in 1996 and these accused must have undergone the period of sentence already imposed on them. First accused is said to have died recently. At this distance of time, we do not think just and proper to enhance the sentence imposed by the High Court. The appeals are therefore, disposed of accordingly.

R.P.

Appeals disposed of.