

Nethala Pothuraju and Others

Vs

State of Andhra Pradesh

Criminal Appeal No. 538 of 1983

(Kuldip Singh, M. M. Punchhi JJ)

11.09.1991

JUDGMENT

KULDIP SINGH, J. –

1. Nethala Pothuraju, Nethala Dhananjaya, Nethala Remudu and four others (hereinafter referred to as 'A-1 to A-7') were tried for the offences under Sections 147, 148, 323, 379 and 302 read with Section 149 IPC on the allegations that they caused the death of Madda Lakshmandas of village Ramaraogudem on November 1, 1980 near the tobacco garden of A-1. The trial court acquitted A-7 of all the charges, A-1 to A-6 were, however, found guilty for the offences punishable under Sections 148 and 302 read with Section 149 IPC. They were sentenced to imprisonment for life. On appeal, the High Court confirmed the conviction and sentence of A-1 to A-3. The conviction and sentence of A-4 to A-6 was set aside by the High Court and they were acquitted on the following reasoning :

"... We feel that it would be safe to accept the evidence of PWs 1 and 2 to the extent it is corroborated by the evidence of PW 3 insofar as the presence and participation of the accused in the attack on the deceased is concerned. Accepting the evidence of PW 3 we hold that the identity of A-1 to A-3 in the unlawful assembly consisting of A-1 to A-3 and some other unidentified persons is satisfactorily established. The manner in which the attack was made on the deceased can only lead to one inference namely that the common object of the unlawful assembly was to kill the deceased. We accordingly confirm the conviction and sentence of A-1 to A-3 under Sections 148 and 302 read with 149 IPC and acquit them."

2. This Court granted leave to appeal on the limited question of applicability of Section 149 IPC.
3. The learned counsel for the appellants has contended that after the acquittal of four accused persons by the courts below the conviction of the appellants under Sections 148 and on applying Section 149 IPC cannot be sustained. It is argued that the appellants being three in number, could not have formed an unlawful assembly within the definition of Section 141 IPC.
4. In our view, there is force in the contention of the learned counsel for the appellants. The appellants being only three in number, there was no question of their forming an unlawful assembly within the meaning of Section 141 IPC. It is not the prosecution case that apart from the seven accused persons there were some other unidentified persons who were involved in the crime. The High Court clearly fell into error in confirming the conviction and sentence of the appellants under Sections 148 and in applying Section 149 IPC on the ground that they formed an unlawful assembly

along with some unidentified persons. The prosecution case from the very beginning was that A-1 to A-7, the named persons, formed the unlawful assembly. A-4 to A-7 having been acquitted, the remaining three appellants cannot be convicted under Sections 148 and on applying Section 149 IPC. We, therefore, set aside the conviction of the appellants under the said sections.

5. The question still remains as to whether the appellants can be convicted under Section 302 read with Section 34 IPC. Both Sections 149 and 34 IPC deal with a combination of persons who become liable to be punished as shares in the commission of offences. The non-applicability of Section 149 IPC is, therefore, no bar in convicting the appellants under Section 302 read with Section 34 IPC if the evidence discloses commission of an offence in furtherance of the common intention of them all.

6. PW 1, the wife of the deceased, PW 2, the daughter of the deceased and PW 3, an adjoining land owner, are the three eye-witnesses to the occurrence. It is in evidence that the complainant and the accused belonged to opposite factions and there was long standing enmity between the parties. During the last 30 years, there had been murders and rioting between the two factions. The deceased Madda Lakshmandas was undergoing life imprisonment for the murder of one of the persons belonging to the group of the accused. He had come on parole. On the day of occurrence at about 7 a.m. when he was passing near the field of A-1 he was attacked by the accused party. According to the eye-witnesses, A-1 and A-3 were armed with spears, A-2, A-4, A-5 and A-6 with knives and A-7 was armed with a stick. All of them waylaid the deceased and dragged him into the tobacco garden of A-1. It is in evidence that all the accused indiscriminately inflicted injuries on the deceased with their respective weapons. When the deceased fell down the accused kept on giving him spear, knife and stick blows. The deceased was crying for water and when his daughter brought water A-2 caught hold of her and pushed her aside. She was also given beating by fists. Thereafter, A-1 left the spear and took a stick and gave beating to the deceased on his heels and chest and A-3 chopped off the fingers of left hand of the deceased with the knife. A-2 further gave blows to the deceased on his head. The deceased died instantaneously on the spot. Thereafter, at the asking of A-1, A-2 and A-3 dragged the dead body from the field of A-1 and placed the same on the road. There were as many as 18 injuries on the person of the deceased. Seven of those were deep penetrating wounds, 8 lacerated wounds and remaining were abrasions. The injuries caused fracture on the right parietal bone resulting in the opening of the skull. The fourth rib was broken and there was an injury to the lung. There were injuries all over the body.

7. Keeping in view the manner of attack as disclosed by the eye-witnesses and the number and nature of injuries, we have no hesitation in holding that the appellants made the murderous attack on the deceased and caused his instantaneous death. We are satisfied that the appellants acted in furtherance of their common intention of murdering the deceased. We, therefore, hold the appellants guilty under Section 302 read with Section 34 IPC.

8. Accordingly, we convert the conviction of the appellants to one under Section 302 read with Section 34 IPC and keep them sentenced to life imprisonment. Appellants A-1 and A-3 are on bail under orders of this Court. We cancel the bail order. These appellants shall surrender to their bail bonds to undergo the sentence of imprisonment.

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