

# SUPREME COURT OF INDIA

Bala Seetharamaiah

Vs.

Perike S. Rao

CrI.A.No.1107 of 1997

(K. G. Balakrishnan and B. N. Srikrishna JJ.)

16.03.2004

## ORDER

1. 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 alias 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. P.W. 1 and P.W. 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 P.W. 1 and P.W. 2 went to the police station and gave that report to the Sub-Inspector of Police (P.W.9). After investigation, police filed charge-sheet alleging that accused had formed themselves into an unlawful assembly and caused the death of Buddah Prasad.

2. The Sessions Court framed charges against the accused on three counts. The first charge was under S. 148, I.P.C. 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 S.148, I.P.C. The second charge was under S. 302, I.P.C. simpliciter against each of the accused. The third charge was framed against A-1 and A-2 for the offence punishable under S. 324, I.P.C. for having caused injury to Bala Seetharamaiah.

3. The Sessions Court found A-1 to A-6 guilty of offence punishable under S. 148, I.P.C. and each of them was sentenced to undergo rigorous imprisonment for a period of one year. A-1 to A-6 were also sentenced to imprisonment for life for the offence punishable under S. 302, I.P.C., A-1 and A-2 were also punished under S. 324, I.P.C. and each of them to suffer rigorous imprisonment for one year.

4. 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 S. 302 read with S. 149, I.P.C. and the High Court held that A-2 the second accused was guilty for the offence under S. 304, Part I, I.P.C. and he was sentenced to 7 years' imprisonment and his conviction under S. 302, I.P.C. was set aside. The conviction of accused A-1, A-3 to A-6 under S. 302 was set aside and instead they were sentenced to undergo imprisonment for two years each under S. 326, I.P.C. 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 (P.W. 1).

5. 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.

6. 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 S. 302, I.P.C. 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 S. 302, I.P.C. read with S. 149, I.P.C., 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 Ss. 302/149, I.P.C. in view of over all evidence adduced by the prosecution. It is true that P.W. 1 and P.W. 2 gave a detailed evidence as to the manner in which the incident happened. The Sessions Judge as well as the Division Bench adopted the evidence of P.W. 1 and P.W. 2 who gave evidence to the effect that Buddah Prasad was chased and dragged by these accused persons and caused various injuries to his body, and the counsel contended that all the accused persons should have been convicted under Ss. 302/149, I.P.C. as the common object of the unlawful assembly was clearly spelt out from the prosecution evidence adduced in this case.

7. 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 alias Buddah Prasad by beating him with Paneka Kathulu and thereby committed an offence punishable under S. 302 of I.P.C. and within my cognizance."

8. Unfortunately, the Sessions Judge did not frame charge against the accused persons for offence punishable under S. 302, I.P.C. read with S.149, I.P.C. It is also important to note that the relevant prosecution allegations so as to bring in the ingredients of the offence punishable under S. 302, I.P.C. read with S. 149, I.P.C. 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 S. 302, I.P.C. read with S. 149, I.P.C. Of course the 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. 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 S. 302 simpliciter and there was no charge under S. 302, I.P.C. read with S. 149, I.P.C. Therefore, it is not possible to reverse the conviction of the accused under S. 326, I.P.C. and substitute the conviction for the offence punishable under Ss. 302/149, I.P.C. as there was no charge framed against them for such offence.

9. The counsel for the appellant further submitted that A-1, A-3 to A-6 were found guilty of offence punishable under S. 326, I.P.C. 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.

Order accordingly.