SUPREME COURT OF INDIA

Dumpala Chandra Reddy

Vs.

Nimakayala Balireddy

Criminal Appeal No.309 of 2001

(Dr. Arijit Pasayat, P. Sathasivam and Dr. Mukundakam Sharma)

14/07/2008

JUDGMENT

Dr. ARIJIT PASAYAT, J.

1. Heard learned counsel for the parties.

2 These two appeals, one by the complainant Dumpala Chandra Reddy and other by the State of A.P. question the correctness of judgment of a Division Bench of the Andhra Pradesh High Court, which, while holding that the respondents were responsible for causing the death of one Gangireddigari Kondareddy (hereinafter referred to as the `deceased') convicted them in terms of Section 326 of the Indian Penal Code, 1860 (in short `the IPC') instead of Section 302 IPC as was done by the Trial Court.

3. The respondents, along with one Nimmakayala Lakshmi Reddy (A-8) s/o Obul Reddy faced trial for alleged commission of offences punishable under Sections 148, 302 IPC and in respect of the deceased A-8, Section 114 IPC. The Trial Court found the accused persons guilty of offences punishable under Section 148 IPC and also under Section 302 IPC. For the former offence, they were directed to undergo sentence of two years while for the latter offence, life imprisonment was imposed.

4. Substance of the accusations, which led to the trial, is as follows.

All the accused are residents of Gopalapuram village. The deceased was a resident of Khajipalli village. PWs 1 and 3 are also the residents of Khajipalli village. PWs 1 and 2 are the brother-in-laws of the deceased and PW3 is the brother of the deceased.

Originally, all the accused were residents of Khajipalli village. Due to factions with the deceased's family, the deceased left the village and migrated to Gopalapuram village. About 18 years ago, A-8's brother's son by name Pattabhi Reddy married one Dumpala Munemma, resident of Khajipalli village. Munemma is related to the family of the deceased. A- 2 and A-4 are brothers of Pattabhi Reddy. Pattabhi Reddy deserted his wife Munemma, resident of Khajipalli village. Due to that, there were differences between the accused and the deceased and also there were criminal cases filed against each other.

Accused persons were residents of Khajipalli village. After filing of the criminal cases, the accused left Khajipalli and settled down at Gopalapuram. About 8 years prior to the murder of the deceased, A-2, A-4 and Pattabhi Reddy had stabbed PW3 and the deceased in a lane by the side of Sangham Lodge at Cuddapah. One year thereafter Nimmakayala Gangireddy was murdered in Khajipalli village in the fields. In that regard, a criminal case was filed against the deceased family and that criminal case ended in acquittal. After that incident, the deceased's family alongwith his brothers settled down at Hyderabad and was running a motor rewinding workshop.

On the date of the incident i.e. on 25.12.1995, the deceased went to his village from Hyderabad in the morning hours. After sometime the deceased took PW-1 and went to Patha Cuddapah to fix up the marriage date of his younger brother. The deceased and PW-1 took Lingamappli bus at the village at about 8.30 A.M. and reached Cuddapah at 9.30 A.M. PW-1 and the deceased went to see one Raja Reddy, who happened to be the proprietor of Sangham Medical Stores, and they found that Raja Reddy was not available in the medical shop and then they went to Venkateswara Cloth Stores. By that time, Venkateswara Reddy, a resident of Balisingapalli, was also present in the cloth shop. The deceased telephoned Raja Reddy. After sometime Raja came to the cloth shop and they were talking to each other at the shop. After sometime, the deceased, PW1, Venkata Subba

Reddy and Raja Reddy went to Manasa Hotel situated in Madras road. At about 2.30 P.M. the deceased along with others went to the house of Rama Subba Reddy to fix up the marriage date of the brother of the deceased. The marriage date was fixed as 31.01.1996. Then all of them went to Venkateswara Cloth shop and again from there, they went to the medical shop of Raja Reddy and stayed there for sometime. Thereafter the deceased, PW-1 and Venkata Subba Reddy went to Mithen hotel for drinking tea. At that time, i.e. around 6.00 p.m., Venkata Subba Reddy left the hotel to go to his village. All of them consumed tea. Thereafter, the deceased and PW-1 were going to Machupalle bus stand through Madras road with a view to catch the bus going to their village at about 6.30 p.m. With a view to take the cycle of Chinna Narsimha Reddy who happened to be the proprietor of Ayyappa Electricals, situated on the northern side of Madras road, they went to the said electrical shop. When the deceased and PW- 1 were climbing the steps of the said electrical shop, A-8 who is no more instigated the other accused and all the accused surrounded the deceased and took out daggers from their waists and stabbed the deceased. Finally the deceased fell in front of Lepakshi Emporium, on the road margin. When the deceased fell down, all the accused persons again stabbed the deceased. A-5 raised cries saying that "catch hold of that fellow". PW-1 was frightened and ran to the northern lane of the road. After sometime, PW1 came to the scene of offence and saw the deceased lying dead with bleeding injuries all over the body. Thereafter, PW1 went to Cuddapah I Town Police Station for giving the report.

PW-6, the S.I. of Police, Cuddapah received an oral statement of the incident from PW1 at about 7.20 p.m. He reduced the oral statement into writing and took the signature of PW1 on the statement. On the strength of the report given by PW1, PW6 registered the case as Cr. No.207 of 1995 against the accused for offences punishable under Sections 147, 148 and 302 read with Section 149 IPC. The copies of first information were sent to all concerned. At about 9.30 p.m. PW-6 visited the scene of offence and recorded the statements of PWs 1 to 3 and others. PW6 collected MO-1 dagger and MO-2 right leg shoe from the scene of offence.

On 26.12.1995 PW7 the CI of Police, Cuddapah, held inquest over the dead body of the deceased in the presence of PW-5 and others. Ex. P-3 is the inquest report.

On 26.12.1995, PW-4, the Civil Assistant Surgeon, District Headquarters Hospital Cuddapah received a requisition from the Station House Officer, I Town Police Station, Cuddapah to conduct autopsy over the dead body of the deceased. He commenced the autopsy on the dead body of the deceased at about 12.40 P.M. and opined that the deceased died because of multiple injuries and the injuries to vital organs. According to the observation, he issued post mortem certificate Ex.P-2.

PW-7, the CI of Police, Cuddapah, arrested the accused at Padagalapalli bus stop on 04.01.1996 at 10.30 a.m. Thus, on completion of investigation, he filed the charge sheet on 12.04.1996.

The defence of the accused was of total denial. It is also suggested by the accused by way of

defence that the incident did not take place in the manner suggested by the prosecution.

In order to substantiate the accusation, the prosecution examined PWs 1 to 7. They produced certain documents and they were marked as Exs. P-1 to P-18, whereas the accused examined DW-1 and 2 and they produced certain documents and they were marked as Ex.D1 and D2.

P.Ws. 1 and 2 are stated to be eye-witnesses to the occurrence. As noted above, the evidence of the eye- witnesses was found to be credible, cogent and reliable and on that basis, conviction was recorded. The respondents filed an appeal before the High Court. By the impugned judgment, the High Court found that the respondents were responsible for the death of the deceased but held that in the absence of charge under Section 302 read with Section 149 IPC, they could not have been convicted under Section 302 IPC, but held that each would be liable for conviction for the offence punishable under Section 326 IPC. Sentence of five years RI and a fine of Rs.1,000/- with default stipulations was imposed.

5. Learned counsel for the appellant in each case submitted that the approach of the High Court is clearly erroneous. It is submitted that if the accused persons could not have been convicted under Section 302 with the aid of Section 149 IPC, they could not have also been convicted for offence punishable under Section 326 IPC simplicitor. It is pointed out that the charges framed clearly related to the offence punishable under Section 149, though there was no specific mention of the provision. It is also submitted that no prejudice has been caused to the accused because of the non mention of the provision. In fact, the essence of Section 149 IPC was clearly spelt out while framing charge.

6. Learned counsel for the accused-respondents supported the impugned judgment of the High Court and additionally submitted that this is a case for acquittal and the evidence of PWs. 1 and 2 should not have been acted upon.

7. This Court, in the oft repeated case of Willie (William) Slaney Vs. State of Madhya Pradesh (1955 (2) SCR 1140) had highlighted the aspect of prejudice. This decision has been referred to in a large number of subsequent cases dealing with the question of prejudice in the background of Section 464 of the Code of Criminal Procedure, 1973 (in short `the Code'). In Ramkishan and Ors. Vs. State of Rajasthan (1997 (7) SCC 518), it was noted as follows:

"In view of the findings recorded by the learned Sessions Judge and the material on record, we are unable to ascribe to the finding that the appellants' intention was to cause death of Bhura deceased. The finding betrays the observation of the trial court as noticed above. The medical evidence also does not support the ultimate finding recorded by the trial court and upheld by the High Court. The

offence in the established facts and circumstances of the case in the case of the appellants would only fall under Section 304 Part II IPC read with Section 149 IPC and not under Section 302 IPC. Indeed no specific charge indicating the applicability of Section 149 IPC was framed, but all the ingredients of Section 149 IPC were clearly indicated in the charge framed against the appellants and as held by the Constitution Bench of this Court in Willie (William) Slaney Vs. State of M.P. the omission to mention Section 149 IPC specifically in the charge is only an irregularity and since no prejudice is shown to have been caused to the appellants by that omission it cannot affect their conviction."

8. Similar view was also taken in B.N. Srikantiah and Ors. Vs. The State of Mysore (1959 SCR 496) in the background of Section 34, viz-a-viz Section 149, IPC. In Dalbir Singh Vs. State of U.P. (2004 (5) SCC 334), it was noted as follows.

"15. In Willie (William) Slaney Vs. State of M.P. a Constitution Bench examined the question of absence of charge in considerable detail. The observations made in paras 6 and 7, which are of general application, are being reproduced below:(AIR P 121 6)

"6. Before we proceed to set out our answer and examine the provisions of the Code, we will pause to observe that the Code is a Code of procedure and, like all procedural laws, is designed to further the ends of justice and not to frustrate them by the introduction of endless technicalities. The object of the Code is to ensure that an accused person gets a full and fair trial along certain well established and well-understood lines that accord with our notions of natural justice.

If he does, if he is tried by a competent court, if he is told and clearly understands the nature of the offence for which he is being tried, if the case against him is fully and fairly explained to him and he is afforded a full and fair opportunity of defending himself, then, provided there is 'substantial' compliance with the outward forms of the law, mere mistakes in procedure, mere inconsequential errors and omissions in the trial are regarded as venal by the Code and the trial is not vitiated unless the accused can show substantial prejudice. That, broadly speaking, is the basic principle on which the Code is based.

7. Now, here, as in all procedural laws, certain things are regarded as vital. Disregard of a provision of that nature is fatal to the trial and at once invalidates the conviction. Others are not vital and whatever the irregularity they can be cured; and in that event the conviction must stand unless the Court is satisfied that there was prejudice. Some of these matters are dealt with by the Code and wherever that is the case full effect must be given to its provisions.

15.1After analysing the provisions of Sections 225, 232, 535 and 537 of the Code of Criminal

Procedure, 1898 which correspond to Sections 215, 464(2), 464 and 465 of the 1973 Code, the Court held as under in para 44 of the Report: (AIR p.128)

"44.Now, as we have said, Sections 225, 232, 535 and 537(a) between them, cover every conceivable type of error and irregularity referable to a charge that can possibly arise, ranging from cases in which there is a conviction with no charge at all from start to finish down to cases in which there is a charge but with errors, irregularities and omissions in it. The code is emphatic that 'whatever' the irregularity it is not to be regarded as fatal unless there is prejudice. It is the substance that we must seek. Courts have to administer justice and justice includes the punishment of guilt just as much as the protection of innocence. Neither can be done if the shadow is mistaken for the substance and the goal is lost in a labyrinth of unsubstantial technicalities. Broad vision is required, a nice balancing of the rights of the State and the protection of society in general against protection from harassment to the individual and the risks of unjust conviction.

Every reasonable presumption must be made in favour of an accused person; he must be given the benefit of every reasonable doubt.

The same broad principles of justice and fair play must be brought to bear when determining a matter of prejudice as in adjudging guilt. But when all is said and done what we are concerned to see is whether the accused had a fair trial, whether he knew what he was being tried for, whether the main facts sought to be established against him were explained to him fairly and clearly and whether he was given a full and fair chance to defend himself.

If all these elements are there and no prejudice is shown the conviction must stand whatever the irregularities whether traceable to the charge or to a want of one."

16. This question was again examined by a three Judge Bench in Gurbachan Singh Vs. State of Punjab in which it was held as under: (AIR p.626, para 7)

"In judging a question of prejudice, as of guilt, courts must act with a broad vision and look to the substance and not to technicalities, and their main concern should be to see whether the accused had a fair trial, whether he knew what he was being tried for, whether the main facts sought to be established against him were explained to him fairly and clearly and whether he was given a full and fair chance to defend himself."

17. There are catenas of decisions of this Court on the same lines and it is not necessary to burden

this judgment by making reference to each one of them. Therefore, in view of Section 464 Cr.P.C., it is possible for the appellate or revisional court to convict an accused for an offence for which no charge was framed unless the Court is of the opinion that a failure of justice would in fact occasion. In order to judge whether a failure of justice has been occasioned, it will be relevant to examine whether the accused was aware of the basic ingredients of the offence for which he is being convicted and whether main facts sought to be established against him were explained to him clearly and whether he got a fair chance to defend himself."

9. The High Court, as has been rightly pointed out by learned counsel for the appellant, lost sight of the fact that if its view is accepted in the absence of charge under Section 149, conviction in terms of Section 326 could not have been done.

10. The High Court appears to have misconstrued the decision of this Court in Rewa Ram Vs. Teja and Ors. (AIR1998 SC 2883). In that case, the High Court held that the accused persons could be held guilty only under Section 326 IPC, particularly, when it was stated in the charge that their common object was to assault the deceased and commit rioting with deadly weapons. The position is entirely different here. In fact, while framing charge and combined reading of charge No.1 and charge No.3 makes it clear, that the Court specified that the accused persons were members of unlawful assembly and in prosecution of the common object of such , i.e, in order to commit murder of the deceased, committed the offence and at that time they were armed with daggers etc. to bring in the application of Section 148 IPC. In Charge No.3, there is a specific reference to the transactions, as mentioned in the first charge, and the object to commit murder by hacking on the body of the deceased with daggers and causing his intentional death and thereby committing offence punishable under Section 302 IPC. Therefore, the charge in relation to offence punishable under Section 149 IPC is not only implicit but also patent in the charges.

11. Apart from the question of prejudice, this aspect has also been lost sight of by the High Court.

12. The inevitable result is that the appeals deserve to be allowed, and we direct so. The judgment of the Trial Court stands restored and that of the High Court stands set aside. The respondents shall surrender to custody forthwith to suffer remainder of sentence, if any.