

SUPREME COURT OF INDIA

Kaparapu Apparao

Vs.

State of A.P.

Crl.A.No.1439 of 2008

(B.N. Agrawal and Harjit Singh Bedi JJ.)

09.09.2008

ORDER

1. Leave granted.
2. Heard learned counsel for the parties.
3. Four appellants herein, namely, Kaparapu Apparao [A-1], Gantiyada Ramulu [A-2], Peddada Demudu [A-3] and Gantiyada Nookaraju [A-4], along with seven other accused persons were convicted by the Trial Court under Section 302 read with Section 34 of the *Indian Penal Code, 1860* [hereinafter referred to as "I.P.C."] and sentenced to undergo imprisonment for life and to pay fine of Rs.1,000/- each; in default, to undergo further imprisonment for a period of six months each.
4. On appeal being preferred, the High Court recorded a finding that there was no common intention and acquitted Peddada Demudu S/o Somulu [A-5], Kandrakota Sathibabu [A-6], Vulamparthi Raju [A-7], Peddada Nookaraju [A-8], Peddada Demudu @ Yerra Demudu [A-9], Chandada Apparao [A-10] and Paddada Arjuna Rao @ Arjun [A-11] of the charge.
5. So far as the appellants are concerned, it converted their conviction from Section 302 read with Section 34 I.P.C. to one under Section 302 I.P.C. Hence, this appeal by special leave.
6. In this case, limited notice was issued on the question of nature of offence.
7. According to the medical evidence of Dr. S. Narsingaraju [PW-8], who examined the deceased, only one injury, which was on the head, was fatal and the same is said to have been inflicted by A-1, who is Appellant No.1 herein. So far as this accused is concerned, in the opinion of the doctor, injury was sufficient to cause death in the ordinary course of the nature and the witnesses have consistently supported the prosecution case. In our view, the High Court was quite justified in convicting him under Section 302 I.P.C.

8. In relation to other accused persons, namely, Gantiyada Ramulu [A-2], Peddada Demudu [A-3] and Gantiyada Nookaraju [A-4], they are said to have inflicted injuries upon different parts of the body and the doctor [PW-8] has nowhere stated in his evidence that the injuries inflicted by them were even grievous in nature much less fatal one. In view of the finding recorded by the High Court that there was no common intention, these appellants could have been convicted for their individual act and, as the doctor [PW-8] has not stated that the injuries inflicted were grievous one, at the highest, they could have been convicted under Section 324 I.P.C. The High Court was, therefore, not justified in convicting them under Section 302 I.P.C.

9. In the result, the appeal filed by Kaparapu Apparao [A-1] is dismissed whereas the appeal filed by Gantiyada Ramulu [A-2], Peddada Demudu [A-3] and Gantiyada Nookaraju [A-4] is allowed in-part, their conviction and sentence under Section 302 I.P.C. are set aside, they are convicted under Section 324 I.P.C. and sentenced to the period already undergone by them as we are told that these accused persons have remained in jail for a period of more than three years. Appellant Nos.2 to 4, who are in custody, are directed to be released forthwith, if not required in connection with any other case.