SUPREME COURT OF INDIA

Anna Reddy Sambasiva Reddy

Vs.

State of Andhra Pradesh

Crl.A.No.408 of 2007

(D.K.Jain and R.M.Lodha JJ.)

21.04.2009

JUDGEMENT

R.M. LODHA, J.

1. This criminal appeal by special leave unfolds a woeful tale of a village political rivalry leading to double murder; prior thereto also there were attacks by rival factions that led to two murders.

2. Fifteen persons were arraigned before the trial court for the offences under Section 302, 307, 307 read with 149, 148 and 341, IPC. The trial court convicted only eleven among them and acquitted two accused. The other two accused died during the trial. The convicted persons were sentenced under Section 302, IPC, to life imprisonment and varying periods of imprisonment under other offences; fine with default stipulation was also imposed. All the eleven convicted persons filed appeal before the High Court. The High Court affirmed the conviction and sentence passed by the trial court. All these eleven convicted persons preferred special leave petition in which leave has been granted.

During the pendency of the appeal, one more convicted person has died.

3. Chinthalajuturu in Vemula Mandal of Cuddapah District (Andhra Pradesh) is a faction-ridden village. One of these factions is led by Kakarla Gangi Reddy (victim group) that supports Congress Party. The leader of the other faction is Annareddysamba Siva Reddy (accused group) which supports Telugu Desam Party. There were instances of attack between these groups earlier also. One year prior to the present incident, one Yeddula Gangi Reddy of the Congress Party and belonging to victim group was murdered. About a fortnight prior to the incident, one Sirigireddy Prathapa Reddy of accused group was murdered. For the murder of Sirigireddy Prathapa Reddy, the members of victim group figured as accused. It is for this reason that A.M. Annareddy Siva Reddy started residing at Pulivendula.

4. On May 16, 1996 at about 9.00 A.M. Annareddy Siva Reddy (deceased hereinafter referred to as D-1), Yerram Reddy Pulla Reddy (deceased and hereinafter referred to as D-2), Annareddy Bala Gangi Reddy (PW-1) - brother of D-1, Annareddy Jagan Mohan Reddy (PW-3) - nephew of D-1 and one Ramiredy Narayana Reddy left Pulivendula in a jeep driven by Ala Krishnaiah (PW-2). D-1 sat in the front seat by the side of driver (PW-2). PW-1 and D-2 occupied the second row seat

behind D-1 and PW-2.

PW-3 and Ramireddy Narayana Reddy occupied the rear seat of the jeep.

5. When the said jeep reached near Gollalaguduru Harijanawada village, D-1 saw a jeep with the members of accused group seated therein, coming from the opposite direction. Seeing this, D-1 asked PW-2 to reverse the jeep.

PW-2 had hardly reversed the jeep that Annareddi Sambasiva Reddy (A-1), Annareddi Ramakrishna Reddy (A-2), Annareddi Ramasura Reddy (A-3), Yeddula Eswara Reddy (A-4), Yeddula Gangi Reddy (A-5), Annareddi Gangi Reddy (A-6), Palle Venkatarami Reddy (A-7), Annareddi Srinivasul Reddy (A-8), Dasareddigari Chalama Reddy (A-9), Dasareddigari Lakshmi Reddy (A-10), Singam Pedda Pulla Reddy (A-11), Singam Chinna Gangi Reddy (A-12), Kakarla Subbi Reddy (A-13), Annareddi Lakshmi Reddy (A-14) and Annareddi Ramana Reddy (A-15) came out of their vehicle and surrounded the jeep of D-1. A-1, A-2, A-10 and A-13 were armed with axes while the others were armed with Eathapululu (sickle). A-1 to A-9 hacked D-1. A-3, A-6, A-7 and A-10 to A-13 hacked D-2. D-1 and D-2 died on the spot. A-1, A-3, A-6, A-7 and A-10 to A-13 inflicted grievous injuries on PW-1 whereas A-7, A-9, A-10 and A-14 inflicted injuries on Annareddy Jagan Mohan Reddy (PW-3) and Ramireddy Narayana Reddy. A-14 attacked PW-3 and A-15 attacked PW-2.

6. PW-1 was taken to Pulivendula Government Hospital by few residents of Chinthalajuturu village. Dr. T.V.

Raghavendra Reddy (PW-10), Civil Assistant Surgeon attended on him and gave PW-1 the necessary medical aid.

K. Danam (PW-11) - Assistant Sub Inspector of Police, Vemula Police Station while he was at Pulivendula came to know of the incident at about 1.50 P.M. He went to the Pulivendula Government Hospital and found that PW-1 was undergoing treatment. After being satisfied that PW-1 was conscious and able to give his statement, in the presence of the doctor (PW-10), he recorded statement (Ex.P-1) of PW-

1. PW-11 then went to Vemula Police Station and registered the case (Crime No.26/1996) and forwarded a copy of the first information report to the concerned magistrate immediately thereafter.

7. A. Venkateswara Reddy (PW-12) - Inspector of Police, took up investigation and conducted further investigation on May 17, 1996. He conducted inquest of the dead bodies and sent them to Government Hospital, Pulivendula for post-mortem examination. PW-10 conducted autopsy of the dead bodies and issued post-mortem reports Ex.P.18 and Ex.P.19. PW-10 also examined the injured PW- 2 and PW-3 and issued injury certificates Ex.P.13 and Ex.P.16.

8. In order to complete the narration of facts, it may be noticed here that during the course of investigation, A-14 and A-15 pleaded alibi. The Investigating Officer took all necessary steps towards investigation and after collecting the necessary evidence and on completion of investigation, he filed chargesheet against A-1 to A-13 before the Court of Judicial Magistrate 1st Class, Pulivendula who committed them to court of sessions for trial. The accused were charged for the following offences:

"(i) A-1 to A-13 for rioting under Section 148 IPC;

(ii) A-1 to A-13 for wrongful restraint under Section 341 IPC;

(iii) A-1 to A-13 for voluntarily causing grievous hurt to PW-1 and PW-3 under Section 326 IPC;

(iv) A-1 to A-5 and A-6 to A-9 under Section 302 IPC for the murder of D-1;

(v) A-3, A-6 to A-8 and A-10 to A-13 under Section 302 IPC for the murder of D-2;

(vi) A-1, A-3, A-6 to A-8, A-10, A-12 and A-13 under Section 307 IPC for attempt to murder PW-1;

(vii) A-7, A-9 and A-10 under Section 307 IPC for attempt to murder Ramireddi Narayana Reddy;

(viii) A-2, A-4, A-5 and A-11 under Section 307 read with Section 149 IPC for attempt to murder PW-1."

9. Since A-14 and A-15 were deleted from the chargesheet by the Investigating Officer, a private complaint came to be filed by PW-1 before the Judicial Magistrate 1st Class, Pulivendula. The concerned magistrate also committed A-14 and A-15 to the court of sessions for trial.

10. The prosecution examined 13 witnesses including three eye-witnesses (PW-1 to PW-3) and marked documents Ex.P-1 to Ex.P-28 and exhibited M.O. 1 to M.O.14.

11. In their statement under Section 313, Cr.P.C., the accused denied their role in the crime.

12. The III Additional Sessions Judge, Cuddapah, on consideration of both oral and documentary evidence vide his judgment dated April 5, 2004, found A-1, A-2, A-4 to A-8 guilty of the offence under section 302 IPC; they were sentenced to undergo imprisonment for life and a fine of Rs.1,000/- with default stipulation. A-6, A-7, A-10 to A-13 were found guilty of the offence under section 302 IPC and sentenced to undergo imprisonment for life and a fine of Rs.1,000/- with default stipulation. A-6, A-7, A-10 to A-13 were found guilty of the offence under section 307 IPC as well and sentenced to undergo imprisonment for five years and a fine of Rs.1,000/- with default stipulation. A-2, A-4 and A-5 were found guilty of the offence under section 307 read with section 149 IPC and sentenced to undergo rigorous imprisonment for five years and a fine f Rs.1,000/- with default stipulation. A-1, A- 2, A-4 to A-8, A-10 to A-13 were found guilty of the offence under section 148 IPC and sentenced to undergo imprisonment for one year and a fine of Rs.500/- with default stipulation.

The sentence passed against each of the accused was ordered to run concurrently. The trial court acquitted A-14 and A-15 of all the charges. A-3 and A-9 died during the trial and, thus, the case abated as against them.

13. Aggrieved against their conviction and sentence, A-1, A-2, A-4 to A-8 and A-10 to A-13 filed appeal before the High Court. The State preferred separate appeal against that very judgment in so far as acquittal of A-14 and A-15 was concerned.

14. These two appeals were heard together by the Division Bench of the High Court and were dismissed on March 9, 2006.

15. The present appeal now subsists on behalf of A-1, A-2, A-4, A-6 to A-8 and A-10 to A-13 since A-5 has died during the pendency of appeal.

16. Dr.T.V. Raghavendra Reddy (PW-10), Civil Surgeon, Government Hospital, Pulivendla conducted post- mortem examination on the body of Annareddy Siva Reddy (D-1) on May 17, 1996. In the post-mortem report (Ex.P-18), he recorded the following external injuries on the body of D-1:

"1. An incised wound in the middle of right upper arm measuring about 7 cm x 3 cm x 4 cm deep. Muscles cut and fracture of bone present.

2. An incised wound 5 cm above wound No.1 measuring about 7 cm x 3 cm x 2 cm deep. Muscles cut.

3. An incised wound from the lateral part of the left eye below the ear to the root of neck measuring about 20 cm x 3 cm x 5 cm deep. Muscles cut and fracture of mandible and spinal process.

4. An incised wound 1= cm above wound No.3 measuring about 15 cm x 1= cm x 4 cm deep.

5. An incised wound 7 cm x 1 cm x bone deep 1 cm above wound No.4.

6. An incised wound 2 cm above wound No.5 measuring about 5 cm x 1= cm x bone deep fracture of occipital bone present.

7. An incised wound in the left occipital area measuring about 8 cm x 5 cm x bone deep. Flap is hanging with bit of skin .

8. An incised wound on the left parietal area measuring about 6 cm x 1= cm x bone deep and fracture of parietal bone present.

9. An incised wound in the centre of the scalp measuring about 6 cm x 1= cm x bone deep. Fracture of the left and right parietal bones seen.

10. An incised wound on the right parietal area measuring about 5 cms x 1 cm x bone deep and fracture of right parietal bone seen.

Head and neck : Brain injured and neck vessels cut."

The aforesaid injuries on the body of D-1 were found ante- mortem in nature. In the opinion of PW-10, D-1 died due to haemorrhage, shock and injury to neck vessels.

17. On the same day (May 17, 1996) at 1.30 P.M., PW-10 conducted post-mortem examination on the body of D-2. In the post-mortem report (Ex.P-19), he recorded the following injuries on the body of D-2:

"1. Incised wound on the left leg at the knee joint measuring about 15 cms x 8 cm x 8 cm deep. Fracture of patella bone seen.

2. Incised wound 6 cms below wound No.1. measuring about 10 cm x 3 cm x 4 cms deep. Fracture of Tibia seen.

3. Incised wound in centre of chest lower part of sternum measuring about 6 cm x 2 cm x fracture of sternum and plura is injured.

4. An incised wound between left thumb and the index finger measuring about 3= cm x 1= cm x 1= cm deep.

5. An incised wound on the nape of the neck measuring about 5 cm x 1= cm x 1= cm deep.

6. An incised wound on the left parietal area measuring about 5 cm x 1= cm x scalp deep.

7. An incised wound on the posterior part of left parietal area measuring about 5 cm x 1= cm x scalp deep."

The aforesaid injuries were found ante-mortem in nature.

According to PW-10, D-2 died of haemorrhage, shock and injury to vital organs.

18. The evidence of PW-10 and post-mortem reports (Ex.P-18 and Ex.P-19) leave no manner of doubt that the death of D-1 and D-2 was homicidal.

19. PW-1 is the injured witness. The following injuries were inflicted on him:

"1. An incised wound in front of left parietal area and front bone measuring about 7 cm x 1= cm x bone deep.

(Depressed fracture of the frontal bone as per the specialist opinion).

2. An incised wound on the left hand above the wrist measuring about 4 cm x 1 cm x muscles deep. Fracture of Ulna bone (As per the specialist opinion).

3. An incised wound on the posterior part of the left parietal area measuring about 6 cm x 1 cm x bone deep, and cut of the bone.

4. An incised wound by the side of wound No.3, 2 cm apart measuring about 3 cm x = cm x scalp deep.

5. An incised wound on the left hand above wound No.2 measuring about 3 cm x 1 cm x muscle deep.

6. An incised wound on the right wrist measuring about 1= cm x = cm skin deep.

7. An incised wound on the anterior part of Right parietal bone measuring about 2 cm x < cm x skin deep.

8. An incised wound on the anterior part of the left parietal bone measuring about 3= cm x < cm x Skin deep."

20. K. Danam (PW-11), was posted as Assistant Sub Inspector of Police at Vemula Police Station at the relevant time. Having come to know of the incident that two persons belonging to the Congress Party were done to death at Gollalaguduru Harijanwada by the Telugu Desam Party faction, PW-11 immediately rushed to the Government Hospital, Pulivendula. He found that PW-1 was undergoing

treatment in the emergency ward. As PW-1 was in a fit condition to give statement, PW-11 recorded his statement marked Ex.P-1. PW-10 also made an endorsement on Ex.P- 1 that PW-1 was in a fit and proper condition to give a statement. Based on Ex.P-1, first information report came to be registered.

21. Mr. P.P. Rao, learned senior counsel appearing for the appellants vehemently contended that first information report was a concocted document and that makes the entire prosecution case doubtful. He would submit that PW-1 was seriously injured and not in a position to give any statement.

In this regard, he referred to the evidence of Dr. A. Sudhakar Reddy (PW-7), Assistant Professor of Neuro Surgery at S.V.R.R.G.G. Hospital, Tirupati who treated PW-1. The learned senior counsel also submitted that at the time of the recording of statement (Ex.P-1), the group leader Kakarla Gangj Reddy had already arrived and he was in the room where PW-1 was being treated. It is the contention of Mr.

P.P. Rao that Kakarla Gangi Reddy was instrumental in implicating the accused falsely who belonged to rival group.

It was also contended that in the first information report except naming all the accused and making omnibus allegations, no specific overt acts of the accused were mentioned.

22. We are unable to accept the submission of the learned senior counsel that F.I.R. is a concocted document.

It is true that injury no.1 received by PW-1 in front of left parietal area and the depressed fracture of frontal bone was extremely grave and serious but on the face of clear, categorical and unambiguous endorsement made by Dr.T.V.

Raghavendra Reddy (PW-10) that PW-1 was in a fit and proper condition to give a statement at that time and the fact that PW-11 recorded the statement of PW-1 in the presence of PW-10, there cannot be even slightest doubt about the authenticity of Ex.P-1 and we find no justifiable reason to even remotely conclude that Ex.P-1 is not the statement given by PW-1. The contention that PW-11 is a chance witness, is noted to be rejected. Pertinently, the F.I.R. was forwarded to the Magistrate without any delay. As a matter of fact, F.I.R.

reached the Magistrate at 10.45 P.M. on May 16, 1996 itself.

As to whether PW-1 was in a fit and proper condition to give statement or not, could have been assessed by PW-10 under whose treatment PW-1 was at that time and none else. The evidence of PW-7 referred to by the learned senior counsel in no way creates any doubt about the correctness of statement of PW-10 as PW-7 has not stated in definite terms that PW-1 was not in a fit state of condition to give statement at that time. The trial court as well as the High Court did not accept the contention made on behalf of the accused that Ex.P-1 was fabricated. We agree with this view of the trial court and the High Court.

23. PW-1 in his testimony before the court has given account of the incident. He testified that A-1, A-2, A-10 and A-12 were armed with axes and remaining eleven accused were armed with eathapululu (sickle). A-1 to A-9 hacked D-1 with their weapons. A-3, A-6, A-7, A-10 to A-13 hacked D-2 with their respective weapons. A-1, A-3, A-6, A-7 and A-10 to A-13 hacked him with their respective weapons. A-7, A-9, A-10 and A-14 hacked PW-3 and R. Narayanareddy with their

respective weapons. D-1 and D-2 died on the spot. In his cross-examination, he admitted that he did not state in Ex.P-1 that they (PW-1 and D-1) obtained loan of Rs.6,000/- from the bank. He also admitted in Ex.P-1 that he did not state that A-1, A-2, A-10 and A-12 were armed with axes and the remaining accused with eathapululu (sickle). He also admitted that he did not state in Ex.P-1 that A-1 to A-9 hacked D-1; A- 3, A-6, A-10 to A-13 hacked D-2 and that he was attacked by A-1, A-3, A-6, A-7, A-10 to A-13 and that A-7, A-9, A-10 and A-14 attacked PW-3 and R. Narayanareddy. These omissions do not affect the credibility of his evidence since at the time of recording of Ex.P-1, PW-1 was in injured condition.

It was not expected of him to give a detailed version in that condition, more so when so many accused were involved. But despite that, in Ex.P-1, he has given names of all the accused persons. 24. The testimony of PW-1 is corroborated by medical evidence. The factum of PW-1 and D-1 having gone to the Bank at Pulivendula and that they obtained a loan of Rs.6,000/- from Alavalapadu Grameena Bank is also established by the evidence of R.B.S.K. Satyamurthy (PW-5) and M. Venkata Subbareddy (PW-6). PW-5 and PW-6 were Branch Manager and Clerk-cum-Cashier respectively in the Bank at the relevant time. The evidence of driver of the jeep A. Krishnaiah (PW-2), although declared hostile as he refused to recognize the assailants, corroborates the evidence of PW- 1 to the extent that they had gone to the Bank at Pulivendula and that they were returning from that place on May 16, 1996 at 11.00 A.M.

25. A. Jaganmohan Reddy (PW-3) is yet another eye- witness. He also got injured in the incident. He has given detailed version of the incident. He has testified that A-1 to A-9 hacked D-1 and A-3, A-6, A-7, and A-10 to A-13 hacked D-2 with their weapons. He also testified that A-3, A-6, A-7 and A-10 to A-13 hacked PW-1 causing various injuries to him and A-7 and A-10 hacked him on his left forearm and left thigh. PW-10 examined PW-3 at about 3.45 P.M. on May 16, 1996 and found two incised injuries on the left hand and left thigh. The injury report pertaining to him is Ex.P-16.

26. PW-1 and PW-3 are injured witnesses. As a matter of fact, PW-1 suffered a grave injury on his head. Two of their family members died. Why should he and PW-3 let real culprits go scot-free ? It is most unlikely that they would have spared the actual assailants and falsely implicated these appellants merely because there is political rivalry between them. The omissions and discrepancies pointed out in the evidence of PW-1 and PW-3 are only minor and do not shake their trustworthiness. It is true that neither PW-1 nor PW-3 assigned specific injuries or specific overt acts attributed to the accused individually but looking to the nature of the incident where large number of persons attacked D-1, D-2 PW-1, PW-2 and PW-3, it would not have been possible for PW-1 or PW-3 to attribute specific injury individually to each accused. How could it be possible for any person to recount with meticulous exactitude the various individual acts done by each assailant ? Had they stated so, their testimony would have been criticized as highly improbable and unnatural. The testimony of eye-witnesses carries with it the criticism of being tutored if they give graphic details of the incident and their evidence would be assailed as unspecific, vague and general if they fail to speak with precision. The golden principle is not to weigh such testimony in golden scales but to view it from the cogent standards that lend assurance about its trustfulness. In our view, the testimony of PW-1 and PW-3 is of credence and does not deserve to be discarded on the ground of non-mentioning of specific overt acts. The trial court and the High Court have given cogent and convincing reasons for accepting the evidence of PW-1 and PW-3. We concur. Merely because A-14 and A-15 got acquittal, in our view, credibility of deposition of PW-1 and PW-3 is not affected.

27. Mr. P.P. Rao, learned senior counsel submitted that the conviction and sentence passed against the accused- appellants for the offence under Section 302, IPC, simpliciter is not legally sustainable in the absence of any specific overt acts attributed to each of the accused. The learned senior counsel would submit that the accused who inflicted fatal injury/injuries resulting in the death with the requisite intention or knowledge alone are liable for the offence under Section 302, IPC simpliciter. The learned senior counsel contended that as there is no conviction for the offence under Section 302 read with Section 149, IPC, the question whether such conviction is maintainable or not without such charge does not arise in the present case. Placing reliance upon a decision of this Court in Pandurang,Tukia and Bhillia vs. The State of Hyderabad 1, learned senior counsel would submit that in absence of specific charge under Section 149, the accused persons cannot be convicted under Section 302 read with Section 149 as Section 149 creates a distinct and separate offence. The learned senior counsel also relied upon Suraj Pal vs. The State of Uttar Pradesh2, Nayan Ullah Nanak Chand vs. The State of Punjab5.

28. Learned senior counsel for the appellants also contended that in the instant case there is no charge under Section 149, IPC at all nor any finding of the courts below that the accused had the common object to commit the offence under Section 302, IPC. He submitted that barring one injury 1 (1955) 1 SCR 1083 2 (1955) 1 SCR 1332 3 A.I.R. 1925 Calcutta 903 4 A.I.R. 1958 Allahabad 255 5 (1955) 1 SCR 1201 in the case of D-1 and two injuries in the case of D-2, none of the other injuries was found to be fatal and, therefore, the common object at the most could be only to cause some injury but not to cause the fatal injuries. In support of this contention of his, the learned senior counsel relied upon

29. Mr.D. Rama Krishna Reddy, learned counsel for the State in his reply submitted that in the complaint (Ex.P-1), the names of all the accused persons, weapons wielded by them and their participation have been clearly mentioned. In their deposition, PW-1 and PW-3 have also stated which of the accused attacked D-1, D-2 and injured PW-1, PW-2 and PW-3 and, therefore, non-attributing the injuries specifically to the individual accused does not materially affect the prosecution case. He would urge that the accused- appellants have been convicted for the offences under Sections 148 and 307 read with Section 149 and Section 302 IPC 6 AIR 1960 SC 725 7 (1978) 4 SCC 77 8 (1975) 3 SCC 379 20 simpliciter which would show that the accused formed unlawful assembly. The learned counsel invited our attention to Section 464 of the Code of Criminal Procedure and submitted that in the present case, neither in the grounds of appeal before this Court nor before the courts below the accused have pleaded prejudice or failure of justice due to non-mentioning of Section 149 IPC with Section 302 IPC. He State of Bihar,14 30. In Suraj Pal, this Court held:

"...Whether or not Section 149 IPC creates a distinct offence (as regards which there has been conflict of views in the High Courts), there can be no doubt that it creates a distinct head of criminal liability which has come to be known as "constructive liability"--a convenient phrase not used in the Indian Penal Code. There can, therefore, be no doubt that the direct individual liability of a person can only be fixed upon him with reference to a specific charge in respect of the particular offence. Such a case is not covered by 9 (1955) 2 SCR 1140 10 (1974) 4 SCC 754 11 (2005)10 SCC 629 12 (2008) 8 SCC 339 13 (2002) 5 SCC 724 14 (2000) 6 SCC 89 Sections 236 and 237 of the Criminal Procedure Code. The framing of a specific and distinct charge in respect of every distinct head of criminal liability constituting an offence, is the foundation for a conviction and sentence therefore. The absence, therefore, of specific charges against the appellant under Sections 307 and 302 IPC in respect of which he has been sentenced to transportation for life and to death respectively, is a very serious lacuna in the proceedings insofar as it concerns him. The question then which arises for

consideration is whether or not this lacuna has prejudiced him his trial."

31. In Pandurang, it was observed:

".....Several persons can simultaneously attack a man and each can have the same intention, namely the intention to kill, and each can individually inflict a separate fatal blow and yet none would have the common intention required by the section because there was no prior meeting of minds to form a pre-arranged plan. In a case like that, each would be individually liable for whatever injury he caused but none could be vicariously convicted for the act of any of the others; and if the prosecution cannot prove that his separate blow was a fatal one he cannot be convicted of the murder...."

32. In the case of Nanak Chand, this Court stated:

"...There is a clear distinction between the provisions of sections 34 and 149 of the Indian Penal Code and the two sections are not to be confused . The principal element in section 34 of the Indian Penal Code is the common intention to commit a crime. In furtherance of the common intention several acts may be done by several persons resulting in the commission of that crime. In such a situation section 34 provides that each one of them would be liable for that crime in the same manner as if all the acts resulting in that crime had been done by him alone. There is no question of common intention in section 149 of the Indian Penal Code. An offence may be committed by a member of an unlawful assembly and the other members will be liable for that offence although there was no common intention between that person and other members of the unlawful assembly to commit that offence provided the conditions laid down in the section are fulfilled. Thus if the offence committed by that person is in prosecution of the common object of the unlawful assembly or such as the members of that assembly knew to be likely to be committed in prosecution of the common object, every member of the unlawful assembly would be guilty of that offence, although there may have been no common intention and no participation by the other members in the actual commission of that offence.....

.....

After an examination of the case referred to on behalf of the appellant and the prosecution we are of the opinion that the view taken by the Calcutta High Court is the correct view namely, that a person charged with an offence read with section 149 cannot be convicted of the substantive offence without a specific charge being framed as required by section 233 of the Code of Criminal Procedure."

33. In Umesh Singh while dealing with Section 149 IPC, this Court held:

" Vicarious liability, we may state, as rightly contended for the State by Shri B.B. Singh relying upon the decisions of this Court in Shamshul Kanwar v. State of U.P.,(1995) 4 SCC 430, and Bhajan Singh v. State of U.P., (1974) 4 SCC 568, extends to members of the unlawful assembly only in respect of acts done in pursuance of the common object of the unlawful assembly or such offences as the members of the unlawful assembly are likely to commit in the execution of that common object. An accused whose case falls within the terms of Section 149 IPC as aforesaid cannot put forward the defence that he did not with his own hand commit the offence committed in prosecution of the common object of the unlawful assembly or such as the members of the assembly knew to be likely to be committed in prosecution of that object. Everyone must be taken to have intended the

probable and natural results of the combination of the acts in which he had joined. It is not necessary in all cases that all the persons forming an unlawful assembly must do some overt act. Where the accused had assembled together, armed with guns and lathis, and were parties to the assault on the deceased and others, the prosecution is not obliged to prove which specific overt act was done by which of the accused. Indeed the provisions of Section 149 IPC, if properly analysed will make it clear that it takes an accused out of the region of abetment and makes him responsible as a principal for the acts of each and all merely because he is a member of an unlawful assembly. We may also notice that under this provision, the liability of the other members for the offence committed during the continuance of the occurrence rests upon the fact whether the other members knew beforehand that the offence actually committed was likely to be committed in prosecution of the common object. Such knowledge can reasonably be intended from the nature of the assembly, arms or behaviour, at or before the scene of action. If such knowledge may not reasonably be attributed to the other members of the assembly then their liability for the offence committed during the occurrence does not arise.

Tested on this touchstone, we may safely say that in the present case when the appellants were members of an unlawful assembly which was armed with lathis and guns and a declaration had been made that in the event there is any resistance to the taking away of the paddy which is stated to have been the original object, they were willing to take the life of the deceased and take away the paddy. If that is the position, it is futile to contend for the appellants that their conviction is in any way bad."

34. Section 464 of Code of Criminal Procedure reads:

"464. Effect of omission to frame, or absence of, or error in, charge.--(1) No finding sentence or order by a Court of competent jurisdiction shall be deemed invalid merely on the ground that no charge was framed or on the ground of any error, omission or irregularity in the charge including any misjoinder of charge, unless, in the opinion of the Court of appeal, confirmation or revision, a failure of justice has in fact been occasioned thereby.

(2) If the Court of appeal, confirmation or revision is of opinion that a failure of justice has in fact been occasioned, it may - (a) in the case of an omission to frame a charge, order that a charge be framed and that the trial be recommended from the point immediately after the framing of the charge.

(b) in the case of an error, omission or irregularity in the charge, direct a new trial to be had upon a charge framed in whatever manner it thinks fit.

Provided that if the Court is of opinion that the facts of the case are such that no valid charge could be preferred against the accused in respect of the facts proved, it shall quash the conviction."

35. We deem it appropriate at this stage to refer to the charges framed against the accused by the trial court:

"Charge No.1. That you A-1 to A-13 on or about 16-5-1996 in the morning near Gollalaguduru Harijanawada were members of an unlawful assembly and did, in prosecution of the common object of such assembly viz., in murdering the deceased, 1 and 2 commit the offence of rioting with a deadly weapon to wit axes and Eethapululu and that that you thereby committed an offence punishable under Section 148 I.P.C. and within my cognizance.

Charge No.2. That you A-1 to A-13 on or about the same day, time, place and during the course of the same transaction as mentioned in charge No.1 above, wrongfully restraint LWs-1 to 4 Annareddi Bala Gangireddi, Annareddi Jagan Mohanreddi, Ramireddi Narayanareddi and Ala Krishnaiah and later the deceased 1 and 2 thereby committed an offence punishable under Section 341 I.P.C.

and within my cognizance.

Charge No.3. That you A-1 to A-13 on or about the same day, time, place and during the course of the same transaction as mentioned in charge No.1 above, voluntarily caused grievous hurt to LWs-1 to 4 Annareddi Bala Gangireddi, Annareddi Jagan Mohanreddi, Ramireddi Narayanareddi and Ali Krishnaiah by means of axes and Eethapululu and that you thereby committed an offence punishable under Section 326 I.P.C. and within my cognizance. Charge No.4. That you A-1 to A-5 and A-6 to A-9, on or about the same day, time, place and during the course of the same transaction as mentioned in charge No.1 above, did commit murder by intentionally causing the death of Annareddi Sivaraeddi (deceased No.1) and that you thereby committed an offence punishable under Section 302 I.P.C. and within my cognizance.

Charge No.5. That you A-3, A-6 to A-8, A-10 to A-13 on or about the same day, time, place and during the course of the same transaction as mentioned in the charge No.1 above, did commit murder by intentionally causing the death of Yerramireddi Pullareddi (deceased No.2) and that you thereby committed an offence punishable under Section 302 I.P.C. and within my cognizance.

Charge No.6. That you A-1, A-3, A-6 to A-8, A-10, A-12 and A-13 on or about the same day, time, place and during the course of the same transaction as mentioned in charge No.1 above, did an act to wit to murder with such intention and under such circumstances, that if by that act you had caused the death of Annareddi Bala Gangi Reddi (LW-1) you would have been guilty of murder and that you caused hurt to the said Annareddi Bala Gangireddi (LW-1) by the said act and that you thereby committed an offence punishable under Section 307 I.P.C. and within my cognizance.

Charge No.7. That you A-7, A-9 and A-10 on or about the same day time and place during the course of the same transaction as mentioned in charge No.1 above, did an act to wit attempt to murder with such intention and under such circumstances, that if by that act you had caused the death of Ramireddi Narayana Reddi, you would have been guilt of murder and that you caused hurt to the said Ramireddi Narayanareddi LW-3 by the said act, and that you thereby committed an offence punishable under Section 307 I.P.C.

and within my cognizance.

Charge No.8. That you A-2, A-4, A-5 and A-11 on or about the same day, time, place and during the course of the same transaction as mentioned in charge No.1 above, were members of an unlawful assembly and in prosecution of the common object of which viz., in attacking the prosecution witnesses some of the members i.e., A-1, A-3, A-6 to A-10 and A-12 and A-13 caused the death of the deceased attempt to murder the witnesses and that you are thereby under section 149 I.P.C. guilty of causing the said offence, an offence punishable under Section 307 I.P.C. and within my cognizance."

36. Section 149, IPC creates constructive liability i.e. a person who is a member of an unlawful assembly is made guilty of the offence committed by another member of the same assembly in the circumstances mentioned in the Section, although he may have had no intention to commit that

offence and had done no overt act except his presence in the assembly and sharing the common object of that assembly.

37. Some divergence between two decisions of this Court in Nanak Chand and Suraj Pal seems to have been noticed and matter was referred to the Constitution Bench in Willie (William) Slaney. Although Willie (William) Slaney was not a case under Section 149 of the Indian Penal Code and the charge against the accused therein was under Section 302 read with Section 34 IPC but the Constitution Bench considered the question whether the omission to frame an alternative charge under Section 302 IPC is an illegality that cuts at the root of conviction. Vivian Bose, J. considered Sections 221 to 223, 225, 226, 227, 228, 232, 233, 234, 235, 236, 237, 238, 535 and 537 of the Code of Criminal Procedure, 1898 and observed:

"29. We do not agree with either view. In our opinion, the cases contemplated by Section 237 are just as much a departure from Section 233 as are those envisaged in Sections 225, 226, 227, 228, 535 and 537. Sections 236, 237 and 238 deal with joinder of charges and so does Section 233. The first condition is that there shall be a separate charge for each offence and the second is that each charge must be tried separately except in the cases mentioned in Sections 234, 235 and 236. It is to be observed that the exceptions are confined to the rule about joinder of charges and that no exception is made to that part of the rule that requires separate charges for each offence.

It will be seen that though Sections 234, 235 and 236 are expressly mentioned, Section 237 is not referred to, nor is Section 238. Therefore, so far as Section 233 is concerned, there can be no doubt that it requires a separate charge for each offence and does not envisage a situation in which there is either no charge at all or where, there being a charge for some other offence of which the accused is acquitted, he can be convicted instead of something else for which he was not charged. We are unable to hold that the Code regards Sections 237 and 238 as part of the normal procedure."

38. Vivian Bose, J. went on to observe :

"44. In adjudging the question of prejudice the fact that the absence of a charge, or a substantial mistake in it, is a serious lacuna will naturally operate to the benefit of the accused and if there is any reasonable and substantial doubt about whether he was, or was reasonably likely to have been, misled in the circumstances of any particular case, he is as much entitled to the benefit of it here as elsewhere; but if, on a careful consideration of all the facts, prejudice, or a reasonable and substantial likelihood of it, is not disclosed the conviction must stand; also it will always be material to consider whether objection to the nature of the charge, or a total want of one, was taken at an early stage. If it was not, and particularly where the accused is defended by counsel (Atta Mohammad v. King- Emperor) {(1929) LR 57 IA 71,74} it may in a given case be proper to conclude that the accused was satisfied and knew just what he was being tried for and knew what was being alleged against him and wanted no further particulars, provided it is always borne in mind that "no serious defect in the mode of conducting a criminal trial can be justified or cured by the consent of the advocate of the accused" (Abdul Rahman v. King-Emperor) {(1926) LR 54 IA 96,104,110}. But these are matters of fact which will be special to each different case and no conclusion on these questions of fact in any one case can ever be regarded as a precedent or a guide for a conclusion of fact in another, because the facts can never be alike in any two cases "however" alike they may seem. There is no such thing as a judicial precedent on facts though counsel, and even Judges, are sometimes prone to argue and to act as if there were."

39. In his concurring judgment, Chandrasekhara Aiyar, J. also surveyed the relevant provisions of

the Code of Criminal Procedure, 1898 and held:

"76. A case of complete absence of a charge is covered by Section 535, whereas an error or omission in a charge is dealt with by Section 537. The consequences seem to be slightly different. Where there is no charge, it is for the court to determine whether there is any failure of justice.

But in the latter, where there is mere error or omission in the charge, the court is also bound to have regard to the fact whether the objection could and should have been raised at an earlier stage in the proceedings.

77. The sections referred to indicate that in the generality of cases the omission to frame a charge is not per se fatal.

We are unable, therefore, to accept as sound the very broad proposition advanced for the appellants by Mr Umrigar that where there is no charge, the conviction would be illegal, prejudice or no prejudice. On the other hand, it is suggested that the wording of Section 535 of the Code of Criminal Procedure is sufficiently wide to cover every case of no charge. It is said that it applies also to the case of a trial in which there has been no charge of any kind even from the very outset. We are unable to agree that Section 535 of the Code of Criminal Procedure is to be construed in such an unlimited sense. It may be noticed that this group of sections relating to absence of a charge, namely, Sections 225, 226 and 232 and the powers exercisable thereunder, are with reference to a trial which has already commenced or taken place. They would, therefore, normally relate to errors of omissions which occur in a trial that has validly commenced. There is no reason to think that Section 535 of the Code of Criminal Procedure is not also to be understood with reference to the same context. There may be cases where, a trial which proceeds without any kind of charge at the outset can be said to be a trial wholly contrary to what is prescribed by the Code. In such cases, the trial would be illegal without the necessity of a positive finding of prejudice. By way of illustration the following classes of cases may be mentioned: (a) Where there is no charge at all as required by the Code from start to finish -- from the Committing Magistrate's court to the end of the Sessions trial; the Code contemplates in Section 226 the possibility of a committal without any charge and it is not impossible to conceive of an extreme case where the Sessions trial also proceeds without any formal charge which has to be in writing and read out and explained to the accused (Section 210(2) and Section 251(A)(4) and Section 227). The Code requires that there should be a charge and it should be in writing. A deliberate breach of this basic requirement cannot be cured by the assertion that everything was orally explained to the accused and the assessors or jurors, and there was no possible or probable prejudice, (b) Where the conviction is for a totally different offence from the one charged and not covered by Sections 236 and 237 of the Code. On a charge for a minor offence, there can be no conviction for a major offence, e.g., grievous hurt or rioting and murder. The omission to frame a separate and specific charge in such cases will be an incurable irregularity amounting to an illegality.

78. Sections 34, 114 and 149 of the Indian Penal Code provide for criminal liability viewed from different angles as regards actual participants, accessories and men actuated by a common object or a common intention; and the charge is a rolled-up one involving the direct liability and the constructive liability without specifying who are directly liable and who are sought to be made constructively liable.

In such a situation, the absence of a charge under one or other of the various heads of criminal liability for the offence cannot be said to be fatal by itself, and before a conviction for the

substantive offence, without a charge can be set aside, prejudice will have to be made out. In most of the cases of this kind, evidence is normally given from the outset as to who was primarily responsible for the act which brought about the offence and such evidence is of course relevant.

79. After all, in our considering whether the defect is illegal or merely irregular, we shall have to take into account several factors, such as the form and the language of the mandatory provisions, the scheme and the object to be achieved, the nature of the violation, etc. Dealing with the question whether a provision in a statute is mandatory or directory, Lord Penzance observed in Howard v.

Bodington. {(1877) 2 PD 203} "There may be many provisions in Acts of Parliament which, although they are not strictly obeyed, yet do not appear to the court to be of that material importance to the subject-matter to which they refer, as that the legislature could have intended that the non-observance of them should be followed by a total failure of the whole proceedings. On the other hand, there are some provisions in respect of which the court would take an opposite view, and would feel that they are matters which must be strictly obeyed, otherwise the whole proceedings that subsequently follow must come to an end." These words can be applied mutatis mutandis to cases where there is no charge at all. The gravity of the defect will have to be considered to determine if it falls within one class or the other. Is it a mere unimportant mistake in procedure or is it substantial and vital? The answer will depend largely on the facts and circumstances of each case. If it is so grave that prejudice will necessarily be implied or imported, it may be described as an illegality.

If the seriousness of the omission is of a lesser degree, it will be an irregularity and prejudice by way of failure of justice will have to be established."

40. Chandrasekhara Aiyar, J. however, put a note of caution to subordinate Courts:

"80. This judgment should not be understood by the subordinate courts as sanctioning a deliberate disobedience to the mandatory requirements of the Code, or as giving any licence to proceed with trials without an appropriate charge. The omission to frame a charge is a grave defect and should be vigilantly guarded against. In some cases, it may be so serious that by itself it would vitiate a trial and render it illegal, prejudice to the accused being taken for granted. In the main, the provisions of Section 535 would apply to cases of inadvertence to frame a charge induced by the belief that the matter on record is sufficient to warrant the conviction for a particular offence without express specification, and where the facts proved by the prosecution constitute separate and distinct offence but closely relevant to and springing out of the same set of facts connected with the one charged."

41. Willie (William) Slaney thus holds: that where the charge is rolled-up one involving the direct liability and the constructive liability without specifying who are directly liable and who are sought to be made constructively liable, in such a situation, the absence of a charge under one or other or the various heads of criminal liability for the offence cannot be said to be fatal by itself, and before a conviction for the substantive offence, without a charge can be set aside, prejudice will have to be made out.

42. The aforesaid legal position holds good after enactment of the Code of Criminal Procedure, 1973 as well in the light of Sections 215, 216, 218, 221 and 464 contained therein. In unmistakable terms, Section 464 specifies that a finding or sentence of a court shall not be set aside merely on the ground that a charge was not framed or that charge was defective unless it has occasioned in prejudice.

Because of a mere defect in language or in the narration or in form of the charge, the conviction would not be rendered bad if accused has not been adversely affected thereby. If the ingredients of the section are obvious or implicit, conviction in regard thereto can be sustained irrespective of the fact that the said section has not been mentioned. A fair trial to the accused is a sine quo non in our criminal justice system but at the same time procedural law contained in the Code of Criminal Procedure is designed to further the ends of justice and not to frustrate them by introduction of hyper-technicalities. Every case must depend on its own merits and no straightjacket formula can be applied; the essential and important aspect to be kept in mind is: has omission to frame a specific charge resulted in prejudice to the accused.

43. Coming now to the facts of the present case; all the accused were put to notice under charge no. 1 that on May 16, 1996 in the morning near Gollalaguduru Harijanawada, they were members of an unlawful assembly armed with deadly weapons and in prosecution of common object of such assembly, namely, in murdering deceased 1 and 2, they committed offence of rioting, punishable under section 148 IPC. A-1 to A-5 and A-6 to A-9 were noticed of the particulars under charge no.4 that during the course of same transaction as mentioned in charge no. 1, they committed murder by intentional causing death of D-1 and thereby committed an offence punishable under Section 302 IPC. A-3, A-6 to A-8, A-10 to A-13 were put to notice under charge no.5 that during the course of the same transaction as mentioned in charge no. 1 they committed murder by intentional causing death of D-2 and thereby committed an offence punishable under Section 302 IPC.

44. A careful reading of charge no. 4 and charge no.

5 leaves no manner of doubt, since the transaction mentioned in charge no.1 has been made integral part thereof, that all the necessary ingredients of Section 149 IPC are implicit therein except mentioning of Section 149 IPC specifically. The particulars stated in charge no. 4 and 5 are reasonably sufficient to give the appellants adequate notice of Section 149 IPC although not specifically mentioned. Is non- mentioning of Section 149 in charge no. 4 and charge no. 5 a fundamental defect of an incurable illegality that may warrant setting aside the conviction and sentence of the appellants ? We do not think so. Non-framing of a charge under section 149 IPC, on the face of the charges framed against the appellants would not vitiate their conviction; more so when the accused have failed to show any prejudice in this regard. The present case is a case where there is mere omission to mention Section 149 in charge no. 4 and 5 which at the highest may be considered as an irregularity and since the appellants have failed to show any prejudice, their conviction and sentence is not at all affected. Tenor of cross-examination of PW-1 and PW-3 by the defence also rules out any prejudice to them. The offence, in the established facts and circumstances of the case, under Section 302 read with section 149 IPC is implicit and applying the dictum laid down by the Constitution Bench of this Court in Willie (William) Slaney, the omission to mention Section 149 IPC specifically in the charge no. 4 and 5 cannot affect their conviction. In no way their conviction is rendered bad as the appellants had assembled together armed with axes and eathapululu(sickle) and were parties to the assault on D-1 and D-2 and others. In a situation such as this it was not obligatory upon the prosecution to prove which specific overt act was done by which of the accused.

45. The submission of the learned senior counsel for the appellants that since D-1 and D-2 received only one and two fatal injuries respectively, the common object at the most could be to cause injuries and not fatal injuries hardly merits acceptance. The deadly weapons with which appellants were armed, the number of injuries inflicted on D-1 and D-2, and the murderous assault lead to a certain inference that the appellants shared common object of committing murder with other

accused. That they were more than five and formed unlawful assembly is beyond doubt. D-1 and D-2 died on the spot. PW-1 fortunately survived after surgery and hospitalization for more than month.

46. For the above reasons, the appeal must fail and is dismissed.