ANDHRA PRADESH HIGH COURT

Bhupalli Malliah

Vs.

State (Andhra Pradesh)

Referred Trial No. 40 of 1958 and Criminal Appeals Nos. 613, 614 and 615 of 1958

(Krishna Rao and Sanjeeva Row Nayudu, JJ.)

03.02.1959

JUDGMENT

Krishna Rao, J.

1. I agree with my learned brother's conclusions-'and would like to express the reasons in a few words of my own.

2. On behalf of accused 1, 3 and 12 the learned counsel, Sri Krishna Reddi, placed in the forefront of his arguments the contention that they have been prejudiced in their defense at the trial. He did not press for a determination of the other points raised in the appeals, if we proposed to give effect to the contention and order a retrial. As comments by us on the evidence would have embarrassed a fair retrial, we have examined the facts for the limited purpose of determining whether a retrial is necessary.

3. The first point taken was that the charge did not give the accused proper notice of the offence they had to meet. This problem has to be solved bearing in mind the principles explained by their Lordships of the Supreme Court in *W. Slaney v. State of M.P*[1]. and the provisions of Section 537 Criminal Procedure Code. The relevant portion of Section 537 reads thus :-

> "Subject to the provisions hereinbefore contained, no finding, sentence or order passed by a Court of competent jurisdiction shall be reversed or altered under Chapter XXVII or on appeal or revision on account.....
> * * * * *
> (b) of any error omission or irregularity in the charge including any mjsjoinder of charges, or
> * * * * *

unless such error, omission, irregularity or misdirection has in fact occasioned a failure of justice. Explanation :- In determining whether any error, omission or irregularity in any proceedings under this Code has occasioned a failure of justice, the court shall have regard to the fact whether

the objection could and should have been
[1] AIR 1956 SC 116
raised at an earlier stage in the proceedings." Here neither the prosecution nor the defense objected to the charge in the court below. But as observed in (S) AIR 1956 Supreme Court 116 at Page 128 :

> "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;"

4. In the present case, the charges "read over and explained" to all the 20 accused were more or less in identical terms and have been reproduced in the judgment by my learned brother. They were just the charges framed by the Magistrate at the preliminary inquiry. Although they were ex facie extremely defective, as pointed out by my learned brother, there was no attempt by the trial Judge to amend them and frame proper charges as was his duty under Section 226, Criminal Procedure Code. Obviously, they were adopted by him at the trial without any scrutiny. In the circumstances, I have no doubt that there was no further explanation of them to the accused beyond mechanically translating them.

5. With regard to the offence of murder, every one of the 20 accused was told in the charge concerned that he along with the other accused "with the common object of killing Rami Reddi dragged him and inflicted multiple injuries on his body with axes, sticks and knives as a result he died on the spot" and Section 302 Indian Penal Code was mentioned. There was no indication of vicarious liability either by mentioning that certain of them had caused fatal injuries or by quoting Section 34 or 149, Indian Penal Code. For all that each accused knew, the separate blows he dealt were alleged in the charge to be the fatal ones, because that is implied by Section 221(5), Criminal Procedure Code. But the fact was that although the deceased had 22 items of injuries, only 3 on the head were grievous and the remaining 10 were simple i.e., did not even endanger life. It was meaningless, if not absurd, to line up 20 persons and tell every one of them that he had caused by his blows one or more of the 3 injuries, which alone could be supposed to have been fatal. In the circumstances, each of them might well have thought that Section 302, Indian Penal Code was mentioned merely in terrorum and that he had really to meet a charge of causing one of the numerous simple injuries to the deceased.

6. The learned trial Judge found that accused 1, 3 and 12 were guilty under Section 302, Indian Penal Code on the ground that so far as they were concerned, there was acceptable evidence that they struck the deceased on his head with axes. But the grievous injuries were not traced to their blows. The deceased had four other items of injuries on the head which were simple (some of them composed of more than one wound) and the prosecution case was that there were a number of other assailants armed with axes. In view of what I have stated above as to how each accused might have reasonably understood the charge, the defense might not have concentrated on attempting to show that the blows by accused 1, 3 and 12 would not have caused the grievous injuries. The contention that those accused have been misled in their defense by a rolled up inadequately worded charge, framed against each of the 20 accused is therefore well founded. If

there is any doubt in this respect, they are entitled to the benefit thereof as laid down in AIR 1956 Supreme Court 116.

7. The second point that Mr. Abdul Lateef, the advocate for the deceased's wife P.W. 9, frustrated the cross-examination by his interruptions and interpretations of witnesses' answers is even more fatal to upholding the trial. On 4-10-1958, the second day of the trial, the accused filed a petition before the trial Judge which said :

> "That Mr. Abdul Aziz is the Public Prosecutor and an experienced hand and there is no allegation against him. On account of undue and unnecessary interference of Mr. Abdul Lateef, Advocate, during the cross-examination, the very purpose of cross-examination is being robbed and that serious prejudice is being caused to the accused persons." The learned trial Judge's order thereon was :
> "I have decided this matter number of times in this court. I have followed *Aziz v. Emperor*[2], A private complainant may under the provisions of Section 493, instruct a counsel to appear fn the case who can watch the case and act under the direction of the Public Prosecutor. Therefore the application is dismissed."

Thus he ignored the gravamen of the complaint, as. to the conduct of Mr. Abdul Lateef, by invoking Section 493, Criminal Procedure Code. The learned Sessions Judge did not say that the allegation was incorrect or unfounded. It appears inherently improbable that such a complaint would have been made to him, if the accused were not really aggrieved. I am therefore inclined to believe the complaint and as it is not disputed that the advocate continued to function, it is clear that the trial was conducted in a manner extremely unfair to the defense.

8. The learned Public Prosecutor submitted that there was nothing illegal in the trial Judge having permitted P.W. 9's Advocate to examine the prosecution witnesses under the directions of the local Public Prosecutor. He explains that the local Public Prosecutor was sitting by the side of the advocate, but he is unable to give or suggest any particular reasons as to why the examination of the witnesses was put in the hands of the advocate. The explanation misses the point of the appellant's complaint that the cross-examination of the prosecution witnesses was interfered with and frustarted, as is quite likely, on account of over-zealousness on the part of a counsel engaged by a complainant.

9. On the general question whether a complainant's counsel may be allowed to conduct the prosecution under the Public Prosecutor's directions, I think that no exception can be taken to it under the provisions of the Criminal Procedure Code. In this connection, two Single Bench decisions have been brought to our notice. In 1930 Mad WN 769, a decision by Reilly, J., the head note, which correctly represents the decision, reads :

> "An advocate engaged by the complainant, when desired by the Public Prosecutor to address the Magistrate for the prosecution, is entitled to do so.

[2]1930 Mad WN 769

That word 'act' in the end of Section 493, Criminal procedure Code does not mean something other than examining or cross-examining witnesses or addressing the Court and is not used in

any technical sense in distinction from the words "appear and plead' in the opening part of the section." In *Badrinarayan v. State*[3], Shinde, J., held :

> "A pleader appearing for a private person can conduct the prosecution but he must act under the direction of the public prosecutor." In *Bisheshar v. Rex*[4], a Division Bench of the Allahabad High Court observed :
> "The rights of a complainant are only subordinate to the rights of the Crown and it is for this reason that when the Crown takes up a case and the Government Advocate or other counsel appears on its behalf a complainant or his counsel has no right of audience unless permitted by the counsel appearing for the Crown (S. 493, Criminal Procedure Code). But where the Crown, is taking no interest in any particular matter the complainant can take action if not prevented by law from doing so."

On this ground they held that the complainant could be heard in support of his revision application to enhance the sentence. Where the Code intended a prohibition on this subject, it has expressly stated so. For instance in Section 495(4), an officer who has taken part in an investigation is barred from conducting the prosecution. The word 'to conduct' means 'to lead, guide, manage' and Section 493 merely requires that the Public Prosecutor should guide the prosecution and direct the private party's advocate. I do not think that any legal principle or purpose of criminal administration is involved in excluding a counsel, merely on the ground that the complainant has briefed him, if he conforms to the normal standards of advocacy. But on practical considerations, obviously, the office of Public Prosecutor is not a sinecure appointment and it is an undesirable practice to allow him, unless it be on grounds of personal inconvenience or other necessity, to get his duties performed by a proxy, whenever a private person engages a pleader for that purpose.

10. Turning to the appeal of the 18th accused, no doubt S, 535, Criminal Procedure Code, avails cases of omission to frame charges. But here the charges against accused 1, 8 and 13 specifically mentioned P.W. 5 Bondalamma as one of the victims, while the charge against the 18th accused completely omitted to mention her and mentioned only the other two injured women. In these circumstances, the 18th accused would have been justified in presuming that he was not being tried for any offence in respect of P.W. 5. Thus there was no trial at all of the 18th accused for the offence of which he has been convicted.

11. The learned Public Prosecutor submitted that if a retrial is ordered, it may be had in respect of all the offences involved in the composite charges framed against them. Such a course is naturally opposed by the counsel for appellants, as it would be calculated to provide a remedy worse than the disease. In spite of being handicapped in their defense as we have found above, they have secured an implied acquittal for offences other than those of which they have been convicted and the State has not appealed against the acquittal. Moreover, so far as accused 1, 3 and 12 are concerned,

[3] AIR 1951 Mad Bha 84
[4] AIR 1949 All 213 at p. 214

the ends of justice would be sufficiently served by trying them on the capital charge, which would permit of their being convicted also of any minor offence such as under Section 324, Section 325, Indian Penal Code. The retrial would only be complicated by adding the numerous

other charges. I therefore agree that the proper course is to order a retrial of accused 1, 3 and 12 under Sections 34 and 302, Indian Penal Code, for having, along with others, committed the murder of the deceased; of the 3rd accused under also Section 325, Indian Penal Code, for the grievous hurt caused to P.W. 9 and of the 18th accused under Section 324, Indian Penal Code, for the hurt caused to P.W. 5.

Sanjeeva Row Nayudu, J

12. This referred trial and the connected appeals arise out of the judgment of the Sessions Judge of Nalgonda finding the appellants guilty on the charge framed against them under Sections 148, 324, 325 and 302, Indian Penal Code, for causing the murder of K. Rami Reddi in the village of Salbanpur on 28-5-1958 at 10 P.M. and also for causing injuries and hurt, to one Sundaramma (P.W. 9) and Bondamma (P.W. 5).

13. There were in all twenty accused before the Court of Session, and only one common charge was framed against each of the twenty accused and this charge embraced a number of offences, details whereof will be set out hereunder. Of these, sixteen accused were acquitted and accused Nos. 1, 3, 12 and 18 were convicted by the learned Sessions Judge on the said charge. Accused 1, accused 3 and accused 12 were convicted under Section 302, Indian Penal Code and sentenced to death.
Accused 3 alone was convicted under Section 325, Indian Penal Code and sentenced to three years rigorous imprisonment and a fine of Rs. 250/-. Accused is was convicted and sentenced under Section 324, Indian Penal Code, to two years rigorous imprisonment and a fine of Rs. 150/-.

14. Before reference is made to the charge framed in this case and the infirmities thereof are discussed, it is necessary to set out the facts of the prosecution case in brief.

15. On the day of occurrence, namely, 28-5-1958 there were two factions in the village of Salbanpur. One faction was led by Gopal Reddi and Narasimha Reddi, both of whom are said to be absconding ever since, and the accused are members of this faction. The second of the faction was led by the deceased K. Rami Reddi and one Kandula Ramaiah. There were apparently many points of dispute some of which are set out hereunder :

> (1) Competing the right to the patelgiri of the village between the leaders of the two factions;
> (2) Dispute in respect of a piece of land in possession of the deceased, the dispute centering round the Harijans who took sides and supported the two factions;
> (3) A dispute regarding sluices to a tank in the village;
> (4) Personal dispute between Gopal Reddi and the deceased concerning the opening of a door in the compound wall of Gopal Reddi which dispute was settled by mediators;
> (5) The deceased was a man of loose character and it is alleged that the deceased molested the women-folk of accused 3, accused 6, accused 7 and accused 14.

16. These disputes culminated in an affray in respect of the land referred to in dispute No. 2

above. A-2 and others complained against the deceased charging him with causing hurt etc., and in this connection, the deceased had been arrested and had been released On bail on the day before the occurrence. The other facts incidental to and leading upto the commission of the crime in question are as follows : The deceased Rami Reddi had a concubine by name Bondamma (P.W. 5). He was keeping her in Bondam Mallayyu's house which was at a short distance away from his own residence. On the day of the occurrence, the deceased had his dinner in the evening and went to P.W. 5's house and bolted the door inside. One Sudigani Sattigadu a farm servant of the deceased, came to the residential house of the deceased and enquired about him saying that one of his debtors Kandula Malladu had come with money to repay his debt to the deceased. The wife of the deceased, (P.W. 9) Sundaramma told him that the deceased was in P.W. 5's house and that he may inform him there. After sometime P.W. 9 went outside her house to close the gate. At that time she saw some persons running with sticks towards the house of P.W. 5. She rushed to the place accompanied by her mother-in-law Manikyamma and her daughter Seshikala (P.W. 12) apprehending some trouble. As she reached the house of P.W. 5, she saw some ten or fifteen persons standing and Gopal Reddi, Narasimha Reddi and Salhmi Narasiah dragging the deceased outside the door of P.W. 5's house and falling him down with axes and beating him with tricks. When the wife P.W. 9 and Mamkyam and the daughter (P.W. 12) tried to intervene, some of the persons present pushed them away and also Bondamma, the concubine of the deceased. As a result of this, both P.W. 9 and Manikyam and Bondamma were beaten and received injuries. The deceased died on the spot. After this the accused dispersed. Accused 3 came back and gave a blow on the neck of the deceased and ran away. The ladies were weeping the whole night and the next morning the police patel came to the village and to him they complained. The police pate sent the report Ex. P-1 which reached the police station at about 9-30 A.M. on 29-5-1958. The Head Constable registered the crime, came over to the village at about 11 A.M. held an inquest and prepared the inquest report Ex. P-2 by which time the Sub-Inspector came to the village and the Circle Inspector had also arrived and all the material witnesses except P.W. 14 were examined and the deceased's body was sent for post-mortem examination along with the injured P.Ws. The Medical Officer issued Ex. P-8, the postmortem report, Ex. P-9 the injury report in respect of P.W. 5 Bondamma, Ex. P-10 in respect of P.W. 9 and Ex. P-1 in respect of Manikyam, the mother of the deceased. On 30-5-1958, on axe was recovered from the house of the 1st accused who produced it under Ex. P. 22. On 10-6-1958 accused 12 produced the axe under Ex. P-33 furnishing information admissible under Section 27 of the Indian Evidence Act.

17. The leaders of the accused's party, as already stated, Gopal Reddi and Narasimha Reddi are absconding and not available to be tried and hence the charge sheet was preferred against the remaining 20 accused. As already stated the Sessions Judge acquitted sixteen and convicted four of them and sentenced as aforesaid.

18. The learned counsel appearing for the accused relied on a number of irregularities committed by the learned Sessions Judge.

19. The first point relied on is that the charge framed against the accused is defective in that it covered a number of offences punishable under various Sections of the Penal Code and it is not clear from the charge whether the accused were being charged for substantial offences referred to therein or vicariously under Section 148 or under Section 149, Indian Penal Code. It is contended that a number of offences were rolled into one charge so much so it is impossible for the accused to have understood the charge and defend themselves in respect thereof. The second ground

relied on by the learned counsel for the appellants, was that although the Criminal Procedure Code enjoined that a prosecution in a Court of Session must be conducted only by the Public Prosecutor, in this case the Public Prosecutor did not conduct the prosecution, although he was present and available to conduct it and that a counsel engaged and briefed by the complainant in the case conducted the prosecution, that in consequence of this, considerable prejudice has been caused to the accused, in that the prosecution was conducted by a private party in a manner which served the best needs and interests of the private complainant, that the eye-witnesses were not examined consecutively, that an important witness (P.W. 5) was examined on 4-10-1958 and her examination was continued on 6th October, 9th October and 10th October without any justifiable grounds, the other witnesses having been brought in, in between. It is also pointed out by the learned counsel for the appellants that the counsel for the complainant was constantly interrupting the cross-examination of the prosecution witnesses by the accused, that he was making the of these interruptions as means of communicating hints to the witnesses in the matter of giving their answers in Cross-examination, that the conduct of the case and the continuous interruptions resulted in completely nullifying the cross-examination, that it was to avoid such prejudicial results that the Code of Criminal Procedure has enjoined that the prosecution in a Sessions Court shall be conducted by a Public Prosecutor, that the accused filed a memo in the Court of Session pointing out the serious prejudice that was being caused to them in consequence of this illegal procedure and that the learned Sessions Judge allowed the illegal procedure to continue notwithstanding the objections, and that consequently immeasurable prejudice has resulted to the accused in their defense in the case. There are other points raised and relied on by the learned counsel for the accused which are not necessary to be noticed here as we are satisfied that on an examination of the two points taken by the learned counsel for the accused grave prejudice must necessarily have resulted to the accused and that consequently the only, just and proper order to make in the case is to order a retrial.

20. On the first point, we find that the single charge which has been framed by the Munsif Magistrate, Bongir, was read over to the accused, one by one and their pleas recorded in the Sessions Court without any attempt having been made to scrutinise the charge to see if it required any amendment or alternation. This single charge runs as follows :

> "That you the said Bhupalli Mallaiah along with other accused on or about the 28th day of May 1958 at about 10 P.M., formed into unlawful assembly and armed with sticks and axes and knives raided the house of Bandamma, the concubine of Koreddy Ram Reddy situated in Shalbanpur, with the common object of killing Ram Reddy, dragged him out and inflicted multiple injuries on his body with axes and sticks and knives as a result he died on the spot and this you have done as you bore animosity with the deceased regarding land disputes, etc. Further when Sundaramma the wife, Manikyamma the mother (and Bandamma the concubine of the deceased) intervened you voluntarily caused grievous and simple injuries respectively with axes and sticks and that you have thereby committed an offence punishable under Sections 148, 324, 325 and 302, Indian Penal Code and within the cognisance of the Court of Session.

And I hereby direct that you be tried by this Court on the said charge." The charge extracted above is the one framed against the first, eighth and thirteenth accused. This is exactly the same

as the charge framed against the remaining accused except for the words underlined above and in brackets which find a place only in the charge framed against the first, eighth and thirteenth accused and not in the charges read to the other accused. Whether this omission was deliberate or by mistake or over sight is not clear.

21. If the facts bundled together in the charge are the criterion, a proper dissection thereof would disclose the following offences :

.1. Rioting armed with deadly weapons.
.2. House trespass with intent to commit murder under Section 449, Indian Penal Code.
.3. Murder under Section 302, Indian Penal Code, substantively.
.4. Murder under Section 302, Indian Penal Code, read with Section 149; Indian Penal Code (vicarious liability).
.5. Grievous hurt to Sundararmna under Section 325, Indian Penal Code, substantively.
.6. Grievous hurt to Sundaramma under Section 325, Indian Penal Code, read with Section 149, Indian Penal Code, (vicarious liability).
.7. Simple hurt to Manikyamma with a dangerous weapon under Section 324, Indian Penal Code, substantively.
.8. Simple hurt to Manikyamma under Section 324, Indian Penal Code, read with Section 149, Indian Penal Code, (vicarious liability).
.9. Simple hurt with dangerous weapon to Bondamma, under Section 324, Indian Penal Code

22. But the charge does not say which of the accused have committed the substantive offences and which of the accused are being made liable vicariously by the application of Section 149, Indian Penal Code, in respect of the offences of murder, grievous hurt and simple hurt. This charge, in our opinion, is illegal and totally wrong for the following reasons :

.1. Duplicity of charges.
.2. Multiplicity of charges and accused persons.
.3. Vagueness.

23. The following analysis of the ingredients of the offences involved in the charge would make the position clear :

.(This figures only the charge framed against A-1, A-8 and A-13).
.Practically all the major defects known to law which can inhibit a charge in a criminal case can he said to be in the charge framed in this case and this charge was not framed jointly against all the accused, as contemplated by Section 239, Criminal Procedure Code, but it was framed individually against each accused and he was asked to plead to it. In pleading to this charge each of the accused against whom the charge was framed has, in our opinion, to make up his mind as to the following matters;
.1. Whether he was a member of an unlawful assembly ?

.2. Whether that assembly was armed with deadly weapons ?
.3. Whether he himself was armed with one such ?
.4. Whether the common object of the assembly was to cause the death of Rami Reddy ?
.5. Whether he shared this common object with the other members of the assembly ?
.6. Whether he himself has caused the death of Rami Reddy ?
.7. If not, whether some other members of the assembly committed the murder, and he is liable vicariously under Section 149, Indian Penal Code ?
.8. Whether he himself had caused the grievous injury to Sundaramma ? or
.9. Whether he himself had not caused the grievous hurt but some other members of the assembly had caused the grievous hurt and he is made liable because it was committed in furtherance of the common object of that assembly under Section 149, Indian Penal Code, to commit such grievous hurt ?
.10. Whether he caused hurt with a dangerous weapon to Manikyamma ? or
.11. Whether one or the other members of the Assembly committed hurt in furtherance of the common object of the assembly to commit such hurt and therefore he is liable vicariously under Section 149, Indian Penal Code ?
.12. Whether he committed house trespass punishable under Section 149, Indian Penal Code ? This being the case, it is impossible for any accused person to give a clear cut reply to this charges unless it be by a sweeping denial. He would have to make about a dozen answers provided he has the legal intelligence and acumen to dissect the charge as we did above, as it comprised of so many offences and involved twenty persons, and to plead to every one of them.

A situation of this description is never contemplated by law. It is to avoid this ridiculous situation that the Code of Criminal Procedure has provided various injunctions and safeguards. To start with we have Section 233 which is as follows :

"For every distinct offence of which any person is accused there shall be a separate charge, and ever such charge shall be tried separately, except in the cases mentioned in Sections 234, 235 236 and 239."
.Section 233, Criminal Procedure Code, provides that every distinct offence must be the subject of a separate charge. Sections 234, 235 and 236 provided where such separate charges are framed for the circumstances in which those charges could be tried together and not separately, as required under section 233. Section 239 provides for charging together a number of persons in one charge and also the circumstances in which two or more person's could be tried together when charged separately of certain different offences or offences of the same or similar kind.
.But every one of these Sections assumes that the provisions of Section 233 are complied with as regards the requirement that there shall be a separate charge for every distinct offence. To analyse these Sections :
.1. in respect of each accused and in respect of each offence normally there should be one charge;

.2. If a number of persons are accused of committing the same offence in the course of the same transaction, a single joint charge can be framed against all of them in respect of that offence and the charge in such a case should indicate that it is framed against all the accused, all their names having been set out therein and the pleas of these-various accused are separately recorded on this charge;

.3. persons accused of an offence and persona accused of abetment of that offence and persons accused of an attempt to commit the offence may be separately charged in respect of the offence alleged against each; but may be jointly tried at one trial;

.4. persons accused of more than one offence of the same kind within the meaning of Section 234, Criminal Procedure Code, committed by them jointly within twelve months, there should be a separate joint charge in respect of each such offence; but the charges could be tried together;

.5. in the case of persons accused of different offences committed in the course of the same transaction, there should he a separate charge against the accused for the offence alleged to have been committed by him and all these charges separately framed could be tried together at one trial;

.6. persons accused of the offences set out in Section 239(e) of the Code of the Criminal Procedure could be tried together but separate charges must be framed against them in respect of the offence alleged against each of them. This applies with equal force to charges framed under Section 239(f) or under Section 239(g) of the Code of Criminal Procedure.

24. Applying these rules to the present case, the proper charges that should have been framed against the accused in this case, are as follows :

.1. A joint charge against all the accused under Section 148, Indian Penal Code.

.2. A joint charge against the accused concerned, substantively under Section 302, Indian Penal Code.

.3. A joint charge against all the other accused in respect of the offence under Section 302, Indian Penal Code, read with Section 149, Indian Penal Code.

.4. A joint charge against the accused concerned under Section 325, Indian Penal Code substantively.

.5. A joint charge against all the other accused under Section 325, Indian Penal Code, read with Section 149, Indian Penal Code

.6. A joint charge against the accused concerned under Section 334, Indian Penal Code, substantively -

.7. A joint charge against all the other accused under Section 324, read with Section 149, Indian Penal Code

.8. A joint charge against all the accused under Section 449, Indian Penal Code

.9. A joint charge against the accused concerned in respect of hurt to Bondamma under Section 324 Indian Penal Code

25. Instead of framing the above charges the learned Sessions Judge framed the charge quoted earlier in this judgment which is manifestly untenable and which cannot be regarded as a charge in the eye of law. Since in the framing of this charge practically every provision of the Code of Criminal Procedure bearing on the framing of charges, which is intended to safeguard the administration of justice and the interests of the accused have been flouted and disregarded such a charge cannot be regarded as a charge, in the eye of law and as it is incapable of being properly pleaded to or a judicial finding being made thereunder, any proceedings taken on the basis of such a charge and any finding reached thereon must be regarded as illegal and must be set aside.

26. The learned Public Prosecutor relies on a decision of the Supreme Court reported in AIR 1956 Supreme Court 116 at p. 122,

> "In our opinion, the key to the problem lies in the words underlined (herein " "). Except where there is something so vital as to cut at the root of jurisdiction or so abhorrent to what one might term natural justice, the matter resolves itself to a question of prejudice. Some violations of the Code will be so obvious that they will speak for themselves as, for example, a refusal to give the accused a hearing, a refusal to allow him to defend himself, a refusal to explain the nature of the charge to him and so forth.

These go to the foundations of natural justice and would be struck down as illegal forthwith. It hardly matters whether this is because prejudice is then patent or because it is so abhorrent to well-established notions of natural justice that a trial of that kind is only a mockery of a trial and not of the kind envisaged by the laws of our land, because either way they would be struck down at once. Other violations will not be so obvious and it may be possible to show that having regard to all that occurred no prejudice was occasioned or that there was no reasonable probability of prejudice. In still another class of case, the matter may be so near the border line that very slight evidence of a reasonable possibility of prejudice would swing the balance in favour of the accused." in support of the proposition that unless the departure from the provisions of the Code are so vital as to cut at the root of the jurisdiction, or so abhorrent as one may term, to natural justice, the matter resolves itself to a question of prejudice. As their Lordships made it clear there would be violations of the Code so obvious that they would appeal for themselves, as they cut at the foundations of natural justice and they should be struck down as illegal forthwith. In such a case it hardly matters whether this is because of prejudice, which is patent, or because it is so abhorrent to the well established notions of natural justice and a trial of that kind is only a mockery and not what is envisaged by the laws of the land. In this case we are fully convinced that to try an accused person on a charge which, on the permutations and combinations thereof, would involve a large number of offences and convoy no information to the accused as to what he is being charged with, we regard the framing of such a charge and the recording of a plea thereunder and trying the accused thereon, as a mockery and any trial held on such a charge and any finding reached thereon could not be regarded by any stretch of law or language as a trial or judgment in accordance with the principles of natural justice. For, in our considered opinion it is impossible to record a plea that is contemplated by the Code under such a charge and it is equally impossible to find the accused guilty or not guilty on such a charge. It is contended by the learned Public Prosecutor that the Supreme Court is of the view in the above case that even in cases where there is no charge, a conviction could be upheld. But their Lordships while referring to Sections 535 and 537, Criminal Procedure Code, made it quite clear that it is imperative that a

man must know for what offence he is being tried and that he must be told in clear and unambiguous terms and that it must all be explained to him so that he really understands such explanations and information of the substance of the matter and it is only if these conditions are fulfilled and the questions, was he told ?, was it explained to him ?, did he understand ?, was it done in a fair way ?' are satisfactorily answered that the absence of a charge may be regarded as immaterial having regard to the well known principle that a charge in a criminal trial is framed with a view to enable the accused person to understand what the prosecution alleges against him and what they are seeking to prove and what it is that he has got to meet in order that he may be acquitted. Their Lordships assumed, and we do not see any difficulty in drawing the inference of such an assumption from the above ruling of the Supreme Court - that the failure to convey to the accused and inform him what he is being charged with, what he has to meet and against what he has to defend himself, whether by framing an unintelligible charge or not framing a charge, prejudice is assumed and the conviction is to be set aside.

27. We have therefore no difficulty in holding that there has been no proper trial at all in this case and that the accused, in our opinion must have been thoroughly misled in the matter of their defense as rightly contended by the learned counsel for the appellants and we have no alternative but to direct that a retrial should be held by the Sessions Judge after framing the charges properly arising in the case as indicated by us below.

28. As regards the second point taken, we have no doubt in our minds that the procedure followed by the learned Sessions Judge in allowing the prosecution to be conducted by a counsel engaged and briefed by the complainant in the case and not by the Public Prosecutor is in violation of the express and mandatory provisions of the Code contained in Section 270 which runs as follows :

> "In every trial before a Court of Session the prosecution shall be conducted by a Public Prosecutor."

A Public Prosecutor is appointed by the State Government under Section 492(1) of the Code of Criminal Procedure. Even such officer is appointed and is available and present, it is his plain duty to conduct the prosecution himself. It is only in cases where he is not available or he is sick or otherwise disabled that under Section 492(2) the District Magistrate appoints any other person to be Public Prosecutor for the purpose of any case. Section 493, Criminal Procedure Code, makes the position clear where a private person engages a pleader to instruct a Public Prosecutor. Section 493, Criminal Procedure Code, is as follows :

> "The Public Prosecutor may appear and plead without any written authority before any court in which any case of which he- has charge is under inquiry., trial or appeal; and, if any private person instructs a pleader to prosecute in any Court any person in any such case. 'The public prosecutor shall conduct the prosecution', and the pleader so instructed shall 'Act therein' under his directions." In such cases the Public Prosecutor shall conduct the prosecution and the pleader instructed by the private person shall only act therein under his directions. It is clear from these Sections that the pleader engaged by the private persons cannot plead although he can act under the directions of the Public Prosecutor. Strangely enough, it is contended by the learned Additional Public Prosecutor that the

term "Public Prosecutor" included any person acting under the directions of the Public Prosecutor, relying on Section 4, Sub-Section (1), Clause (t) of the Code of Criminal Procedure, which is as follows :

"(t) "Public Prosecutor" means any person appointed under Section 492, and includes any person acting under the directions of a Public Prosecutor and any person conducting a prosecution on behalf of the Government in any High Court in the exercise of its Original Criminal Jurisdiction."

This sub-clause has got to be read with Section 493, Criminal Procedure Code, which leads us to the inevitable conclusion that any person engaged and briefed by a private person in the case, to instruct the Public Prosecutor can only so instruct, and act under the directions of the Public Prosecutor and in such a case the prosecution shall be conducted by the Public Prosecutor himself.

29. There is, therefore, no substance in the contention that Section 4(1)(t) enables the Public Prosecutor to abdicate his functions and allow a person briefed by a private party interested in the result of the case, to take over charge of the case and conduct the prosecution. If such a contention were to be accepted we can even say that a Public Prosecutor can charge even an incompetent and unqualified person to conduct the cases by merely giving him directions. A situation so absurd as this calls for no comment, We wish to impress on all Courts of Session that it is the duty of the Public Prosecutors of the District appointed under Section 492, Criminal Procedure Code, to conduct the Prosecution in the Courts of Session. If such a Public Prosecutor is disabled or sick and is unable to carry on his functions, it would be his plain duty to obtain the necessary orders of the District Magistrate under Section 492(2), Criminal Procedure Code, to appoint a suitable person to act as Public Prosecutor for the purpose of the case in question. We would like to make it very clear that it is extremely undesirable and quite improper that a Public Prosecutor should be allowed to sit back, handing over the conduct of the case to a counsel, however eminent he may be, briefed by the complainant in the case.

30. On the facts of this case and on the allegations made before us we are satisfied that apart from the illegality involved in the procedure followed, namely of allowing a private prosecutor to be in charge of the case and conduct the prosecution, the accused had been gravely prejudiced by reason of the behavior of the advocate in attempting to constantly interrupt the cross-examination, which was obviously calculated, as complained by the accused, to draw out the wind from the sails of the cross-examining counsel and neutralise and nullify the effect of the cross-examination. We cannot too vehemently deprecite this illegal practice which must he put an end to at once in all the Courts of Session in the State.

31. In the result the appeals are allowed to the extent of ordering a retrial. The convictions and the sentences against the appellants are set aside and the case is sent back to the Court of Session, Nalgonda for a retrial of the appellants, A-1, A-3, A-12 on charges under Sections 34 and 302, Indian Penal Code, for having along with others murdered Rami Reddi; A-3 on an additional charge for hiving caused grievous hurt to Sundaramma and A-18 on a charge under Section 324, Indian Penal Code, for hiving caused hurt to Bondamma in the same transaction.

Retrial ordered.