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NETHALA POTHURAJU AND ORS.

v.

STATE OF ANDHRA PRADESH

SEPTEMBER 11, 1991

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[KULDIP SINGH AND M.M. PUNCHHI, JJ.]

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Indian Penal Code, 1860: Sections 34, 148, 149 and 302. Unlawful assembly—Seven accused—Acquittal of four—Remaining three cannot form unlawful Assembly—Section 149 held inapplicable—Evidence disclosing commission of offence in furtherance of the common intention—Non-applicability of Section 149 held no bar for conviction under section 302 read with Section 34.

D

Appellants (A1 to A3) were tried for the offences under Sections 147, 148, 323 and 309 read with section 149 of the Indian Penal Code. The Trial Court acquitted A-7 of all the charges but convicted A-1 to A-6 under sections 148 and 302 read with section 149 and sentenced them to imprisonment for life. On appeal the High Court acquitted A-4 to A-6 but confirmed the conviction and sentence of the appellants.

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In appeal to this Court it was contended on behalf of the appellants that in view of the acquittal of four accused, the appellant's conviction under section 148 and on applying section 149 cannot be sustained. The appellants being three in number could not have formed unlawful assembly under section 141 IPC.

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Disposing the appeal, this Court,

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HELD: 1. The High Court erred in confirming the conviction and sentence of the appellants under Section 148 and on applying 149 I.P.C. on the ground that they formed an unlawful assembly alongwith some unidentified persons. The prosecution case was that the seven named accused formed the unlawful assembly and not that apart from the seven accused persons there were some other unidentified persons who were involved in the crime. Four accused having been acquitted there was no question of the remaining three appellants forming an unlawful assembly within the meaning of section 141 of the Indian Penal Code. Accordingly the appellants cannot be convicted under section 148 and an applying 149 I.P.C. Their conviction under the said sections is set aside. [6F-G]

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2. Both sections 149 and 34 I.P.C. deal with a combination of persons who become liable to be punished as sharers in the commission of offences. The non-applicability of Section 149 I.P.C. is, therefore, no bar in convicting the accused under Section 302 read with section 34 I.P.C. if the evidence discloses commission of offence in furtherance of the common intention of them all. [6H, 7-A]

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2.1 Keeping in view the manner of attack and the number and nature of injuries, there is no hesitation in holding that the appellants acted in furtherance of their common intention, made the murderous attack on the deceased and caused his instantaneous death. Therefore, they are held guilty under Section 302 read with Section 34 I.P.C. and are sentenced to life imprisonment. [7G-H]

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CRIMINAL APPELLATE JURISDICTION: Criminal Appeal No. 538 of 1983.

From the Judgment and Order dated 6.4.1982 of the Andhra Pradesh High Court in CrI. A. No. 469 of 1981.

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G. Narasimhulu for the Appellants.

T.V.S.N. Chari, Ms. Suruchi Aggarwal and Ms. Manjula Gupta for the Respondent.

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The Judgment of the Court was delivered by

KULDIP SINGH, J. Nethala Pothuraju, Nethala Dhananjaya, Nethala Remudu and four others (hereinafter referred to as 'A-1 to A-7') were tried for the offences under Sections 147, 148, 323, 379 and 302 read with Section 149 I.P.C. on the allegations that they caused the death of Madda Lakshamandas of village Ramaraogudem on November 1, 1980 near the Tobacco garden of A-1. The Trial Court acquitted A-7 of all the charges A-1 to A-6 were, however, found guilty for the offences punishable under Sections 148 and 302 read with section 149 I.P.C. They were sentenced to imprisonment for life. On appeal, the High Court confirmed the conviction and sentence of A-1 to A-3. The conviction and sentence of A-4 to A-6 was set aside by the High Court and they were acquitted on the following reasoning:

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"..... We feel that it would be safe to accept the evidence of P.Ws. 1 and 2 to the extent it is corroborated by the evidence

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- A of P.W.3 in so far as the presence and participation of the accused in the attack on the deceased is concerned. Accepting the evidence of P.W.3 we hold that the identity of A-1 to A-3 in the unlawful assembly consisting of A-1 to A-3 and some other unidentified persons is satisfactorily established. The manner in which the attack was made on the deceased can only lead to one inference namely that the common object of the unlawful assembly was to kill the deceased. We accordingly confirm the conviction and sentence of A-1 to A-3 under Sections 148 and 302 read with 149 I.P.C. We set aside the conviction and sentence of A-4 to A-6 under Sections 148 and 302 read with 149 I.P.C. and acquit them."
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- C This Court granted leave to appeal on the limited question of applicability of Section 149 I.P.C.

- D The learned counsel for the appellants has contended that after the acquittal of four accused persons by the courts below the conviction of the appellants under Section 148 and on applying 149 I.P.C. cannot be sustained. It is argued that the appellants, being three in number, could not have formed an unlawful assembly within the definition of Section 141 I.P.C.

- E In our view, there is force in the contention of the learned counsel for the appellants. The appellants being only three in number, there was no question of their forming an unlawful assembly within the meaning of Section 141 I.P.C. It is not the prosecution case that apart from the seven accused persons there were some other unidentified persons who were involved in the crime. The High Court clearly fell into error in confirming the conviction and sentence of the appellants under Sections 148 and on applying 149 I.P.C. on the ground that they formed an unlawful assembly along with some unidentified persons. The prosecution case from the very beginning was that A1 to A7, the named persons, formed the unlawful assembly. A-4 to A-7 having been acquitted, the remaining three appellants cannot be convicted under Sections 148 and on applying 149 I.P.C. We, therefore, set aside the conviction of the appellants under the said sections.
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- H The question still remains as to whether the appellants can be convicted under Section 302 read with Section 34 I.P.C. Both Sections 149 and 34 I.P.C. deal with a combination of persons who become liable to be punished as sharers in the commission of offences. The non applicability of Section 149 I.P.C. is, therefore, no bar in convicting the appellants under

Section 302 read with section 34 I.P.C. if the evidence discloses commission of an offence in furtherance of the common intention of them all.

PW-1, the wife of the deceased, PW-2, the daughter of the deceased and PW-3, an adjoining land-owner, are the three eye-witnesses to the occurrence. It is in evidence that the complainant and the accused belonged to opposite factions and there was long standing enmity between the parties. During the last 30 years, there had been murders and rioting between the two factions. The deceased Madda Lakshmandas was undergoing life imprisonment for the murder of one of the persons belonging to the group of the accused. He had come on parole. On the day of occurrence at about 7.00 A.M. when he was passing near the field of A-1 he was attacked by the accused party. According to the eye-witnesses, A-1 and A-3 were armed with spears, A-2, A-4, A-5 and A-6 with knives and A-7 was armed with a stick. All of them way-laid the deceased and dragged him into the Tobacco garden of A-1. It is in evidence that all the accused indiscriminately inflicted injuries on the deceased with their respective weapons. When the deceased fell down the accused kept on giving him spear, knife and stick blows. The deceased was crying for water and when his daughter brought water A-2 caught hold of her and pushed her aside. She was also given beating by fists. Thereafter, A-1 left the spear and took a stick and gave beating to the deceased on his heels and chest and A-3 chopped off the fingers of left hand of the deceased with the knife. A-2 further gave blows to the deceased on his head. The deceased died instantaneously on the spot. Thereafter, at the asking of A-1, A-2 and A-3 dragged the dead body from the field of A-1 and placed the same on the road. There were as many as 18 injuries on the person of the deceased. Seven of those were deep penetrating wounds, 8 lacerated wounds and remaining were abrasions. The injuries caused fracture on the right parietal bone resulting in the opening of the skull. The fourth rib was broken and there was an injury to the lung. There were injuries all over the body.

Keeping in view the manner of attack as disclosed by the eye-witnesses and the number and nature of injuries, we have no hesitation in holding that the appellants made the murderous attack on the deceased and caused his instantaneous death. We are satisfied that the appellants acted in furtherance of their common intention of murdering the deceased. We, therefore, hold the appellants guilty under Section 302 read with Section 34 I.P.C.

A Accordingly, we convert the conviction of the appellants to one under Section 302 read with section 34 I.P.C. and keep them sentenced to life imprisonment. Appellants A-1 and A-3 are on bail under orders of this Court. We cancel the bail order. These appellants shall surrender to their bail-bonds to undergo the sentence of imprisonment.

T.N.A

Appeal disposed of.