

In Re: Shankerappa and ors.

In Re: Shankerappa and ors.

SooperKanoon Citation : sooperkanoon.com/425113

Court : Andhra Pradesh

Decided On : Oct-31-1957

Reported in : 1958CriLJ733

Judge : K. Subba Rao, C.J. and; Basi Reddy, J.

Appellant : In Re: Shankerappa and ors.

Judgement :

Basi Reddy, J.

1. This Referred Trial and the connected batch of Criminal Appeals arise out of Sessions Case No. 10/8 of 1957 on the file of the Court of Session, Medak Division. The seven accused, who are the appellants herein, were tried on charges under Section 302 read with Section 34 and under. Sections 147, 324 and 326, IPC The learned Sessions Judge acquitted all the accused under Section 147 and convicted all of them under Sections 302, 324, 326 and 307 read with Section 34, IPC

Under Section 302 he sentenced A-1 to A-5 and A-7 to death and to a fine of Rs. 5 each and A-6 to imprisonment for life and a fine of Rs, 5. under Section 326 each of the accused was sentenced to 8 years' R. I. and a fine of Rs. 5; under Section 307 each of them was sentenced to 7 years' R. I. and a fine of Rs. 5; and under Section 324 each of them was sentenced to 2 years' R. I. The sentences of imprisonment were directed to run concurrently.

2. The facts of the prosecution case are as follows:

3. P.W. 7 is the Police Patel of the village of Marayampur. For sometime prior to the occurrence there had been ill-feelings between him and the accused. The accused set fire to his hayrick. On a complaint preferred by him, the Police filed a case of mischief against the accused and the case stood posted to 12-10-1956 in the Massif-Magistrate's Court at Bidar, which is 8 miles from Marayampur. P.Ws. 2, 3 and 4 were cited as witnesses for the prosecution in that case.

4. On the morning of 12-10-1956, P.W. 7 accompanied by P.Ws. 2, 3 and 4, his syce Sidramayya and one Kalia, set out from the village at about 6 A.M. to attend the court at Bidar. At the outskirts of the village there is the temple of Vir Bhadrappa. P.W. 7 went inside the temple and had 'darshan' of the deity. All the six then proceeded towards Bidar. P.W. 7 was on horse-back while the remaining five were following him on foot.

When they had gone about two furlongs from the village, they noticed ten persons sitting in front of a hut in the field known as 'Chambal Adi' which belongs to A-4. The group of ten consisted of the seven accused and three absconding accused by names Sangrara, Shivmurthy and Shiv Raj. On seeing P.W. 7 and his party, the ten persons rushed towards them. A-1 and the three absconding accused rushed at P.W. 7, while the remaining six turned towards P.Ws. 2 and 3. Sidramayya cried out that they had been deceived. Sangram fired with his gun at P.W. 7.

The latter urged his horse and galloped away unhurt. Then A-1 and the three absconding accused joined the other six. In the meantime A-4 struck P.W. 3 on the head with the butt of an axe while A-7 dealt a blow on his shoulder with a stick; P.W. 2 went to P.W. 3's rescue. Thereupon A-2 struck P.W. 2 on the head with an axe. Shivmurthy struck P.W. 2 on the forehead with an axe. A-3 dealt a blow with a stick on the mouth of P.W. 2, knocking out two of his upper teeth. A-6 also gave a blow with a stick on P.W. 2's right forearm causing a fracture of the bone.

5. At that stage Sidramayya went to P.W. 2's rescue, whereupon A-5 clasped his arms tightly round Sidramayya. A-4 aimed a blow with his axe at Sidramayya but the blow fell on A-5's hand. A-1 then dealt a blow with an axe on Sidramayya's

neck and Shivmurthy followed It up by striking a blow with an axe on his leg. When Sidramayya fell down, all the ten assailants are alleged to have belaboured him. Sidramayya died shortly thereafter.

6. P.W. 2 had fallen down unconscious. P.W. 3, who had received only a small injury on the head, and P.W. 4 who was not injured, then ran to the village and informed P.W. 7 of what had happened.

7. P.W. 7 immediately went to the scene of occurrence and saw Sidramayya lying dead and P.W. 2 lying injured. He posted a village servant to watch the corpse and had P.W. 2 removed to his house. Between 9 and 10 a.m. he got a reports of the occurrence written by P.W. 9. P.W. 7 then sent for his brother-in-law, Manik Rao, from Hasnoor, which is 4 or 5 miles from Marayampur; and after the latter arrived, the report was sent through him at about 3 p.m. to the Police Station at Hatnoor which is 8 or 9 miles distant, and the report was received at the Police station at 7 p.m. That report is Ex. P-4. Therein the broad features of the incident are narrated and ten persons viz., the seven accused and the three absconding accused, are mentioned as the assailants and the names of P.Ws. 2, 3, 4 and 7 find a place.

8. The prosecution examined five eyewitnesses to substantiate its case, and they are P.Ws, 2 to 5 and 7. Of these, P.Ws. 2 and 3 were themselves injured in the course of the incident, while P.W. 4 was also going to Bidar to attend Court. P.W. 5 claims to have witnessed the occurrence from a field close to the scene of offence. P.W. 7, claims to have seen six of the accused surrounding P.Ws. 2 and 3 and all the ten assailants surrounding the deceased, as he was riding away on his horse at full speed.

9. The plea of all the accused was one of denial, and some of them pleaded 'alibi' and seven defence witnesses, one of whom is the brother of the deceased, were examined to show that the deceased met with his death at a different place, at a different time and in different circumstances. He is stated to have been killed at midday on 12-10-56 when he, along with some others, had gone to loot the 'javar' field belonging to A-I.

10. The learned Sessions Judge, on a careful consideration of the entire evidence, unhesitatingly accepted the direct testimony of P.Ws. 2, 3 and 4, though he was not prepared to rely on the evidence of P.W. 5, as his name did not find a place in Ex. P. 4. He also found that the defence evidence was totally unworthy of belief.

11. The main contention of the learned Advocate for the accused was that there was inordinate delay in the Patel's report reaching the Police and the Magistrate, and the interval must have been availed of by P.W. 7 to cook up a case against the accused, who were on inimical terms with him.

12. P.W. 7 has given a satisfactory explanation for the delay. He had only one village servant whom he had deputed to keep watch over the dead body till the arrival of the Police. He got the report written by P.W. 9 between 9 and 10 a.m. He sent for his brother-in-law who lives in another village and it was through him that the report was sent to the Police Station at 3 p.m. and it was handed over to the Police at Hatnoor at 7 p.m. The evidence of P.W. 10, the Head Constable, shows that Hatnoor is about 8 or 9 miles from Marayampur. Even if there was some delay, it is impossible to believe that P.Ws. 2, 3 and 4 who bore no ill-will to the accused, would have allowed themselves to be used by P.W. 7 as pawns in a game of false implication of innocent persons.

13. With regard to the delay in the first information report reaching the Court, as noticed by the learned Sessions Judge, the evidence of the Head Constable (P.W. 10) and the Sub Inspector of Police (P.W. 11) shows that the First Information Report was sent by post on the 13th, that the post leaves Hatnoor only once at about 5 in the evening, that October 14th and 15th were public holidays for Dasara, and it is therefore, quite likely that the mail was not delivered at Bidar on those days.

14. Learned Advocate for the accused: further contended that the defence version of the incident is more probable than the prosecution version, and the deceased might have been, killed when he went on a foraging expedition at the bidding of P.W. 7. The defence evidence which adumbrates this theory has only to be read to be disbelieved, and the learned Sessions Judge has given convincing reasons for discrediting the defence witnesses.

If really the deceased had met with his death when he went to loot the field of A-I on 12-10-1956, it is surprising that no one gave a complaint about it to the Police, although a complaint of a subsequent theft of crop on 30-10-56 was given to the Police by the mother of A-I on 31-10-56. In this complaint (Ex. P-14) there is a vague reference to an earlier theft in these words: 'Prior to this, Veersetty Patel and others forcibly cut and took away some of the harvest'. There is, however, not a hint regarding the death of the deceased.

15. Another argument advanced by the learned Advocate was that as the 12th October had been declared a local holiday at Bidar, there was no occasion for P.W. 7 (and his associates) to have undertaken a journey to Bidar on the morning of that fateful day. There is no substance in this contention because some of the accused themselves stated when they were examined under Section 342 Cr.PC that they had gone early on the morning of the 12th to attend the Court at Bidar.

It is quite possible, since that day had been declared a local holiday at Bidar, persons; living in a far-off village in an area which is ill-served by communications, might not have known about it. It is clear from the evidence of the Sub Inspector of Police, P.W. 11, that the case stood posted to that day and the accused did not appear.

16. It was further argued that as there are several ways which lead from the village to Bidar, the accused could not have known that P.W. 7 and others would take that particular route. There is no force in this contention either, as it appears from the evidence of P.W. 7 as also from that of P.W. 11 that the route taken by the party from the temple was the nearest to Bidar. It is also quite likely that the assailants might have observed from a distance what route P.W. 7 and his companions were taking. It must be remembered that P.W. 7 was seated on horse-back.

17. This case has been greatly complicated by the finding of acquittal- recorded by the Sessions Judge on the charge of rioting. although all the ingredients of that offence had been made out, and the total absence of a charge under Section 149, IPC We are, therefore, constrained to consider the applicability of Section 34 with regard to the attack on the deceased, the attack on P.W. 2 and the assault on P, W. 3.

18. While it is somewhat difficult to accept implicitly the meticulous details of the attack as spoken to by P.Ws. 2, 3 and 4, we have no hesitation in holding that their evidence is substantially true, and all the accused are proved to have participated in the attack on P.Ws. 2, 3 and the deceased. The testimony of these three witnesses has not been shaken in cross-examination; indeed, there was no cross-examination worth the name.

19. We are, however, not prepared to attach any importance to the evidence of P.W. 5. He was not mentioned as an eye-witness in Ex. P-4 nor do P.Ws. 2, 3 and 4 speak to his presence at or near the scene of occurrence. Similarly the evidence of P.W. 7 with regard to the later stages of the incident is open to doubt, for it is highly improbable that while he was riding away for his life, he would have tarried and looked behind to note who was surrounding whom.

20. On the facts proved by the prosecution viz., that ten persons including the seven accused, had been lying in wait to attack P.W. 7's party; that out of them five persons were armed with axes, one with a gun and the rest with sticks; and that, as a result of the attack, Sidramayya sustained fatal injuries, P.W. 2 suffered grievous injuries and P.W. 3 a simple injury, it may be reasonably inferred that the common intention of the members of the attacking party was to cause grievous hurt to P.W. 7 and his companions.

21. As- regards the attack on the deceased, however, it is difficult to hold that the accused had the common intention of causing his death. In this connection it may be noted that the target of attack was P.W. 7 and, when he escaped unscathed, the wrath of the assailants fell on P.Ws. 2 and 3 in the first instance and then on the deceased. The deceased was only a groom working under P.W. 7. He was not even a witness in the criminal case which was then pending against the accused. The accused had no cause for enmity against him.

It was only because he intervened when P.W. 2 was being attacked, that the assailants turned their attention to him. As laid down by the Judicial Committee of the Privy Council in *Mahbub Shah v. Emperor* A.I.R. 1945 PC 118 (A).

In their Lordships' view, the inference of common intention within the meaning of the term in Section 34 should never be reached unless it is a necessary inference deducible from the circumstances of the case.

22. In the result, we confirm the convictions of all the accused under Sections 324 and 326 read with Section 34, IPC. The sentences of two years' rigorous imprisonment under Section 324 are confirmed. The sentence of 8 years' rigorous imprisonment imposed on each of the accused under Section 326, IPC is reduced to one of 7 years' rigorous imprisonment.

23. The convictions of the accused under Section 302 read with Section 34, IPC and the sentences of death passed on A-1 to A-5 and A-7 and the sentence of life imprisonment passed on A-6 are set aside. Instead, all the accused are convicted under Section 326 read with Section 34, IPC and each of them is sentenced to 7 years' rigorous imprisonment.

24. All the sentences of imprisonment will run concurrently.

25. The convictions under Section 307, IPC are quashed since the accused were not charged with that offence.

26. The learned Sessions Judge has tacked on three fines of Rs. 5/- each on each of the accused in addition to the sentences of death and imprisonment. In our opinion, it is quite unnecessary to impose fines on persons who have been sentenced to death or to substantial terms of imprisonment. All the sentences of fine are set aside.

27. The appeals are allowed to the extent indicated above.

28. Before leaving this case, we should like to point out the haphazard manner in which charges have been framed in this case. The learned Sessions Judge adopted 'in toto' the charges framed by the Committing Magistrate and did not choose to add to or alter the charges.

29. Only one charge was framed against each of the seven accused in the following terms:

That you on 12th day of October, 1956 at 6 a.m., in the Chambal Adi field situated on the seevar of the village Marayampur, were a member of an unlawful assembly, committed the offence of rioting, did commit murder by intentionally causing the death of Sidramayya with the blows of lathies and axes, voluntarily caused hurt with lathi and axe to Iraiah Jangam and voluntarily caused grievous hurt with lathies and axes to Pashumian and that you have thereby committed an offence punishable under Sections 302/34, 147, 324 and 326 of the Indian Penal Code and within the cognizance of this Court.

30. Thus the charge was a rolled-up one in respect of four distinct offences viz., the murder of Sidramayya, rioting, causing simple hurt to P.W. 3 and causing grievous under to P.W. 2 and there was no charge under Section 149, IPC

31. In a Sessions case, before the commencement of a trial, a Sessions Judge should scrutinize the Preliminary Register and the charge framed by the Committing Magistrate and sassy himself whether additions or alterations should be made to the charge, as contemplated by Section 226, Cr.PC and then call upon the accused to plead to the charge under Section 271 of the Code. In the present case, the Sessions Judge should have framed a charge with seven heads:

1. under Section 147 or 148 as the case may be setting out the common object;
2. under Section 302;
3. under Section 326;
4. under Section 324;
5. under Section 302 read with Section 149;
6. under Section 326 read with Section 149; and
7. under Section 324 read with Section 149.

32. If the facts and circumstances of this case warranted the framing of a charge under Section 34, 'a fortiori' a charge under Section 149 could have been framed, inasmuch as Section 149 is wider in its sweep and longer in its reach than Section

34.

33. The framing of a charge is not a mere formality, and a defective charge may have serious repercussions on the ultimate result of a case. As observed by their Lordships of the Supreme Court in *W. Slaney v. State of Madhya Pradesh*, (S) : 1956 CriLJ291 .

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.

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com