

**Hulliah and anr. Vs. State**

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**SooperKanoon Citation :** [sooperkanoon.com/426689](http://sooperkanoon.com/426689)

**Court :** Andhra Pradesh

**Decided On :** Aug-05-1953

**Reported in :** 1954CriLJ454

**Judge :** Palnitkar,; Manohar Pershad and ;Deshpande, JJ.

**Appellant :** Hulliah and anr.

**Respondent :** State

**Judgement :**

1. In this case referred to this Full Bench, doubt has been expressed on the , ruling reported in - 'State v. Dopak 'Lachmi-narsia' 29 Deccan LR 105 (A); and the Division Bench thought that it may create misunderstanding regarding the Jaw as laid down therein.

2. The facts of the case in brief are that on the 4th 9f Ardibehisht 1358F. at about 8 or 9 in the night, the accused are alleged to have murdered one Bhima by inflicting injuries with stones and sticks. The F. I. R was issued on the very day and reached the court on 6th Ardibehisht 1358F. The Police Patel reported the incident on the very day. The names of both the accused are mentioned in the F. I. R. The inquest report was drawn up on the 5th.

Before the Sessions Judge, five witnesses were produced on behalf of the prosecution. P. W. 1 Rakma Bai is the mother of the deceased. She has been produced as an heir. P. W. 2 Ramia and P. W. 3 Pandit Rao are the eye-

witnesses. Both of them state that they saw the accused inflicting injuries on the deceased from a very near distance, Ramia P. W. 3 states, that the accused Hullia struck with a stone the deceased and another stone hit by him struck on the face of the deceased on the fore-head. He further states that the other accused Ramla hit him with stick. P. W. 4 is Bhumia. He is the panch with regard to the. discovery of the stick. P. W. 5 is Yeeranna, Cumasta Police Patel, He is also the panch of the inquest report. The statement of the doctor recorded by the Committing Magistrate was made part of the record and admitted in' evidence. The doctor has deposed that death was due to fracture of the occipetal bone.

On this evidence the Sessions Judge came to the conclusion that death did take place due to the injuries inflicted by the two accused. He also held that no intention to kill the deceased was proved by the evidence, and convicted each of them under Section 244, Hyderabad Penal Code, corresponding to Section 304, Indian Penal Code to undergo imprisonment for six years following the ruling in 29 Deccan LR 105 (A) already cited above. The accused were unrepresented here and we requested Shri Govind Rao Deshpande to assist the Court, and we are indebted to the help rendered by him.

3. It is argued first that the evidence produced on behalf of the prosecution is not at all sufficient to convict the accused. His second contention is that the opinion of the Sessions Judge that as no intention to commit murder has been proved, the accused cannot be convicted for committing culpable homicide under Section 244, Hyderabad Penal Code (S. 304, I. P. C.). He argued that at best they could be convicted for having committed grievous hurt. He argued further that the ruling cited in 29 Deccan LR 105 (A) is not good law, inasmuch as it makes no mention of the intention of the accused which is essential for the purpose of Section 244, H. P. C.

4. So far as his first argument is concerned, which relates to the sufficiency of the prosecution evidence, we may point out that the evidence produced on behalf of the prosecution is sufficient, in our opinion, to hold that death resulted by the acts of the accused.

5. After carefully going through the ruling in 29 Deccan LR 105 (A) we are of the opinion that there is no question of misunderstanding inasmuch as the learned Judges in view of the facts of the case referred that there was intention to murder inasmuch as five persons participated in the commission of the offence. Thus the learned Judges presumed that the five persons had committed the offence with the intention to kill. We would here further clarify the position that under Section 299, I. P. C. the intention of causing death is necessary and unless that is proved, the offence under that section and the subsequent sections in this behalf cannot be, said to have been committed. No doubt, oftentimes it may be very difficult to procure direct evidence and the court in proper cases may infer such an intention from the acts of the accused. The question of the application of Section 34, I. P. C. may also come up for consideration in proper cases, as also the question of the application of Section 141, I. P. C. when five or more persons form an unlawful assembly with the common object and intention of committing murder.

6. In - 'State v. Saidu Khan' : AIR1951 All21 the question of the application of Section 34, I. P. C. has been dealt with and we fully approve that view. In that case it has been laid down, that in order that Section 34, I. P. C. may be applicable, there must be a common intention to commit some crime, that is, something punishable under the Penal Code or any other law; if that is so, every one would be liable for the result of their joint act in committing the crime if the result was such as was likely to follow from their joint act in committing the crime intended and was not foreign to their common intention; and it is not necessary in order that Section 34, I. P. C. should apply that the common intention should have been to cause the particular result which came about in committing the crime.

7. In - 'Mahbub Shah v. Emperor' AIR 1945 PC 118 (C) it was held that common intention within the meaning of Section 34 implies a pre-arranged plan. To convict the accused of an offence applying Section 34 it should be proved that the criminal act was done in pursuance of the pre-arranged plan. Their Lordships observed that it was very difficult, if not impossible, to procure direct evidence to prove the intention of an individual: it has to be inferred from his act or conduct or other relevant circumstances of the case: care must be taken not to confuse same or similar intention with common intention. Thus it is clear that when the question of

murder committed by two or more persons has got to be decided, the question of intention becomes important and that intention has to be proved or inferred as any other fact from the evidence of the case.

8. Applying these criteria in this case and keeping in view the opinion of the Sessions Judge, that no intention to commit murder has been proved, we are of the opinion that the only offence under which the accused could be convicted is one under Section 265, Hyderabad Penal Code corresponding to Section 325, Indian Penal Code. The punishment under that section is seven years rigorous imprisonment. The lower Court has awarded six years' R. I. to each of the accused. Taking into consideration the fact that as a result of the injuries caused by the accused the deceased died, we do not see any reason to reduce the sentence awarded by the Sessions Judge. In the result, we hold the accused guilty under Section 265, Hyderabad Penal Code corresponding to Section 325, Indian Penal Code and uphold the sentence awarded by the lower Court. In the result, the appeal is dismissed. This judgment will govern the other connected appeal.

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