

**Pedda Venkatapathi and ors. Vs. State**

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**Court :** Andhra Pradesh

**Decided On :** Mar-17-1955

**Reported in :** 1956CriLJ478

**Judge :** Chandra Reddy, J.

**Appellant :** Pedda Venkatapathi and ors.

**Respondent :** State

**Judgement :**

ORDER

**Chandra Reddy, J.**

1. These two cases arise out of Criminal Appeals Nos. 7 and 8 of 1955 on the file of the Sessions Judge, Cuddapah, which were filed against the judgments of the Sub-Divisional Magistrate, Proddatur in C. C. Nos. 255 and 273 of 1954 respectively. There were two accused in C. C. No. 255 of 54, and while accused 1 was charged under Section 326, I.P.C., accused 2 was charged under Section 324, I. P, C.

In the other case, there was only one accused and he was charged for an offence under Section 324 I.P.C. The case against all the three petitioners was that on 11-7-1954 while P. W. 1, one Chalia Venkata Reddi, was going on the road, the three accused emerged from the house of the father of accused 2 in C. C. No. 255 of

1954 and attacked him with spears. Each accused caused one injury, the one by accused 1 in the first case proving to be grievous.

The complaint was filed by P. W. 1 against all the three accused. After investigation, the police charge-sheeted only the two accused to C. C. No. 255 of 1954. Not satisfied with this, P. W. 1 filed a private complaint. The learned Sub-Divisional Magistrate took on file the private complaint as a different case and tried it separately. Some of the witnesses examined to one case were not examined in the other, though three of them were common to both the cases.

The learned Sub-Divisional Magistrate discussed the evidence in each case separately, writing two judgments, and convicted the accused to both the cases. He awarded to accused 1 in C. C 255 of 1954 one year's rigorous imprisonment and a fine of Rs. 100/- under Section 326 I.P.C., and to accused 2 six months' rigorous imprisonment and a fine of Rs. 100/- under Section 324, I.P.C.

In the other case, the accused was convicted under Section 324, I. P. C and sentenced to rigorous imprisonment for six months and to a fine of Rs. 100/-. On appeal, the learned Sessions Judge, who wrote a common judgment, while confirming the convictions, reduced the sentences.

2. In these revision cases, it is urged that the learned Sessions Judge used the evidence recorded by the trial Court in one case against the accused in the other case and 'vice versa' and this had vitiated his judgment. This, complaint seems to be a legitimate one. He has freely imported the evidence in one case into another, and did not deal with the evidence in each case separately. In my opinion, the procedure adopted by him is not warranted by the provisions of the Criminal Procedure Code.

3. Section 353 of the Code provides:

Except as otherwise expressly provided, all evidence taken under Chapters XVIII XX, XXI, XXII and XXIII shall be taken in the presence of the accused, or when his personal attendance is dispensed with, in the presence of his pleader.

4. It is true that this section does not say that the evidence in one case shall not be used against the accused in another case. But, by necessary implication, it means that Such evidence cannot be used against the accused in another case. An order in each case should be based on the evidence adduced in that case. I am' fortified in this view of mine by reported cases.

5. In 'Doat Ali v. Emperor' AIR 1928 Cal 230 (A) there were two separate cases in each of which the accused was convicted by the trial Court. There were two appeals against these judgments. The appellate Court heard the appeals together as one, and allowed one while dismissing the other appeal. The opinion expressed by a Bench of that Court was that the procedure adopted by the appellate Court was bad.

The rule stated by Somasundaram, J., in - 'Public Prosecutor v. Sinnappa' : AIR1950 Mad767 (B) is to the same effect. The learned Judge there held that it was not open to a trial Magistrate to club a number of cases at the stage of the defence.

6. On this discussion, it follows that the Sessions Judge adopted a procedure, which is illegal. Therefore, his judgment has to be reversed. There will be rehearing of the two appeals.

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