
(1950) 12 AP CK 0003

In the Andhra Pradesh High Court

Case No : Criminal Appeal No. 737 of 1950

Baqar Hussain Qureshi

APPELLANT

Vs

Hyderabad State

RESPONDENT

Date of Decision : 11-12-1950

Acts Referred:

Penal Code, 1860 (IPC) — Section 114

Citation : AIR 1950 AP 39

Hon'ble Judges : Deshpande, J;A.M. Ansari, J

Bench : Division Bench

Advocate : Mohammad Murtuza Khan, for the Appellant; G.R. Murumkar, Govt. Advocate, for the Respondent

Judgement

A.M. Ansari, J.—Baqar Hussain the Ex-First Taluqdar (Collector of Warangal) was challenged together with other officers and men by the C.I.D. Police on charges of rioting, extorting confession by force, dacoity, burglary, and the abetment of these offences under Sections 124, 330 270 383, 66 & 77 of the Asafia Penal Code. The following facts were related as forming the basis of the serious offences listed in the challan. That, some mischievous persons had got hold of one Shaikh Nanhe, a peon of the Government Irrigation Department, cut off his beard and snatched away a levelling instrument from him. When the accused came to know of this on 2-8-1357 Fasli, they started with military, police & a squad of Razakars and vindictively raided the village of Moparam, with the common object of punishing the mischievous persons: and during this raid belaboured Chintalppudi Venkat Reddy, the Police Patel of the village, and. others to extort confession. Besides, with the help of the accused No. 1 and at the instigation of other Officers, the marauders roamed in the village and forcibly took away jewellery worth Rs. 1434/- from the person of 13 women of the village; broke open the houses of 8 persons, some of whom were detained by the accused No. 1 and looted their property worth Rs. 2603/-. When the victims of these outrages, it is alleged, came to complain to the Taluqdar, the accused No. 1 they were driven away with contempt. Of all the accused only Baqar Hussain the

Taluqdar, was tried by a special Judge for these offences and the rest of the accused were shown as absconders. He denied all the charges as well as raiding of the village, but was convicted of all the charges and sentenced as under: For dacoity u/s 330/73 : Life Imprisonment: For rioting under S. 124: Two years Rigorous Imprisonment; For causing injury in the extortion of offences u/s 270 : Three years rigorous imprisonment: For voluntarily causing hurt u/s 263: Six months rigorous imprisonment: For lurking house trespass u/s 383/71 : Five years rigorous imprisonment. Baqar Hussain has appealed to us against this conviction and the sentence.

2. Before we go through the story of the prosecution and the evidence adduced in its support, it is necessary to consider some legal points raised by the learned Counsel for the appellant. He has pointed out several mistakes of law and procedure that have crept into the proceedings and the judgment of the Lower Court. He makes it a point of complaint that his client has not received even a fair trial. Interpretation of law has been faulty and the judgment misconceived. The learned Special Judge has refused to take notice of the fact that the accused was a high Officer of the Government, a man of status and culture, and not a felon or a common bandit; that the charges attributed to him were something out of the ordinary and highly improbable on the face of them. Commonsense demanded caution and a careful scrutiny in weighing the evidence, but the learned Special Judge seems to have taken the evidence as a word of gospel; and the frequent and uncalled for interruptions in the cross-examination and to a certain extent its suppression, deprived the accused of the only test of judging the truth or otherwise of the evidence. This was hardly conducive to inspire confidence in the mind of the accused. We have noted with regret that these complaints are not without foundation.

3. The statements of seven witnesses were recorded on solemn affirmation ignoring the provisions of the Hyderabad Oaths" Act, and no reason is given for not administering the oath to the witnesses. The accused seems to have been denied also the services of an interpreter. The Court, of course, knew the local language, but the accused and his Counsel seem to be quite ignorant of it. The record of evidence does not show that the services of an interpreter were utilised, and even if they were, oath was given to him as required by Sec. (sic) of the Criminal Procedure Code, and his signature obtained. Further, the accused has been charge-sheeted with offences, he was not charged with in the challan, and convicted of offences for which there was no sanction of the Government. Explanation was neither called for, nor obtained from the prosecution, as to who had attributed the numerous false charges of rape and of violating the chastity of women, some of whom were described by names and who have now disappeared. In the Civil Administrator's Report, as many as eight incidents of house-breaking and theft were related but the Investigating Officer now admits that only one house was found to have been opened, and that too, he is not in a position to specify. Who was, after all, responsible for these false and highly exaggerated charges, and what the worth of their evidence is, the Court has

strangely enough omitted to take into account. The maximum sentence of punishment, besides, without suggesting or recording any reason, betrays an attitude of mind scarcely consistent with the lofty position which a Judge holds, in the administration of justice, and goes contrary to the best judicial traditions.

4. As has been stated, in the beginning, the challan makes mention of three specific charges, namely, (1) the accused himself belaboured Venkat Reddy, Police Patel of the village for extorting confession; (2) the other accused with the help of Baqar Hussain forcibly snatched jewellery from the person of 13 women worth Rs. 1434; and (3) the accused broke open the houses of eight persons and looted property worth Rs. 2603/-, the owners of which were detained by the accused in the camp.

5. The first of these incidents is directly attributed to the appellant and the incidents Nos. 2 and 3 relate to other persons who are said to be absconders. It is alleged that the accused abetted them in the loot and the house breaking, but the challan omits to mention specifically what the help and abatement was. We will first deal with incidents Nos. 2 and 3. In the challan the accused was said to have abetted in the dacoity and house breaking, both under Sections 66 and 71, Hyderabad Penal Code. This could not be, for, one is a substantive crime and the other a mere abetment. But the learned Special Judge dropped Section 66 in the charge-sheet and framed the substantive charge of dacoity and that of house breaking u/s 380 and dacoity u/s 330 read together with Section 71, Hyderabad Penal Code. The challan however, as we have noted, does not mention the nature of the help the accused No. 1 gave to the other accused or the part he himself played in the house breaking and the looting. The charge-sheet, too, is quite vague and not good in law. It lays down that in nine cases specified, the absconders snatched jewellery from the person of women and the houses of two persons - not eight - were broken open and property looted. All these eleven incidents took place in the presence and knowledge of, and after due information to the accused.

6. Now taking the incidents as described in the challan and in the charge-sheet, let us see if the charges of house-breaking and dacoity read with Section 71, Hyderabad Penal Code can at all be maintained, irrespective of what the evidence has to say. Section 71 reads as follows:

(The translation of this Section is just the same as is given in Section 114 of the Indian Penal Code.)

Whenever any person who, if absent, would be liable to be punished as abettor, is present when the act or offence for which he would be punishable in consequence of the abetment, is committed, he shall be deemed to have committed such act or offence.

7. This Section deals with a case in which the accused would be considered punishable as an abettor, if he were not present at the scene of the crime, but on account of his presence is held guilty of the substantive offence. Now let us see

whether we would have held the accused guilty of the abetment of any of these offences, if he had not come to the village of Moparam and not driven through the village in a car, when the looting was going on, on that particular day. It is obvious that no charge of abetment could have been brought against him if he had not done so, and so merely on account of his presence in the village, he could not be held guilty either of the abetment or of the commission itself of any of these acts or crimes. Even if it were proved that he abetted the commission of these offences on the scene by his presence, knowledge, or omission, because he was not charged as an abettor, but substantively as the principal, he could not be convicted of the abetment instead. We are supported in our opinion by the following decisions : "Mahabir Parsad v. Emperor", 49 All 120, " AIR 1928 382 (Lahore) , " (Doni) Hampana Gowd and Another Vs. Emperor, ; "Perumal Naidu, In re", 26 Ind Cas 142 (Mad). Therefore, the accused deserves acquittal in the charges u/s 380 and 330 read with Section 71 Hyderabad Penal Code, and as he was not charged with the abetment of these crimes, he could not be convicted in the alternative.

8. After the charges u/s 330 and 380 read with 71, Hyderabad Penal Code are eliminated, there remain the offences under Sections 263, 270 and 124, Hyderabad Penal Code. Of these the causing of simple hurt under Sections 263 and 270 directly relates to the accused No. 1, which we will deal later. Section 124 is rioting armed with deadly weapons. But before a person could be held guilty of rioting u/s 123 or 124, Hyderabad Penal Code, it is essential that he should have been a member of an unlawful assembly as described in Section 119, Hyderabad Penal Code. Further, it needs be proved that force or intimidation was employed in the prosecution or in furtherance of a common object. The common object according to the charge-sheet was a "conspiracy to take revenge" from the residents of Moparam village. This is something more than, and quite different from the motive mentioned in the challan. The common object of the unlawful assembly, according to it, was,

some mischievous fellows, from the village of Moparam had got hold of, and cut off the beard of Shaikh Nanhe, the peon of the Irrigation Department and snatched from him a telescope which was Government property. Government Officers having come to know of this, raided the village in a vindictive spirit to punish the mischievous persons and in prosecution of the common object did... offences punishable under Sections 283, 270, 330, 380 etc.

Thus it will be seen that according to the challan the common object of the assembly was bringing to book persons who dared assault and insult an Irrigation Department Peon and snatched Government property from him. This object was not only unobjectionable but perfectly laudable. In fact, it was the duty of the accused No. 1 as the executive head of the District to suppress crime and to bring the law-breakers to book. We fail to understand how the learned Special Judge could deduce from the statements of the witnesses that there was a conspiracy to take revenge from all the residents of the village, for there is not

a shred of evidence to support a conspiracy. The Court has omitted to mention in the charge-sheet and to specify in its judgment how the object of the party of the accused was unlawful; and in what way could the party be called an unlawful assembly u/s 119 Hyderabad Penal Code.

9. Even if it is conceded that the party was an unlawful assembly, the prosecution has failed to prove that the offences of dacoity and house breaking were committed in furtherance of the common object, for the conspiracy was, to avenge the injury to Shaikh Nanhe and the robbery of the Government Telescope. The prosecution evidence does not connect the nine women, from whose person jewellery is alleged to have been taken and the two men whose houses were broken, with the mischievous fellows who had committed robbery and ill-treated a Government servant. So, if there was house-breaking and robbery at all, it was the individual act of each person, who indulged in it and each and every member of that party cannot be held equally responsible with the actual perpetrators of the alleged crimes.

10. As regards the offences u/s 270, it is specified in the challan that the accused belaboured Venkat Reddy and others to extort confession. The challan mentions only the name of Venkat Reddy and does not choose to specify who the other persons were. The charge-sheet, however, confines this offence only to one person, namely, Venkat Reddy. The challan on the other hand, suggested that the accused beat Venkat Reddy to compel him to confess that he was responsible for clipping the beard of Shaikh Nanhe, and robbing the Government telescope. But the evidence produced, contradicts this altogether, and shows that a communist was shot and wounded in the firing at Nagaram, and was suspected to have taken refuge in the village of Moparam, and the Taluqdar asked the Police Patel as to the whereabouts of this wounded Communist. Ignoring the allegation of the challan the learned Special Judge had on evidence charged the accused of beating Venkat Reddy for not showing him where the wounded Communist was.

11. Now taking the evidence, as the Special Judge seems to have done, at its face value, by no stretch of imagination can we bring this act of the accused u/s 270 Hyderabad Penal Code, for, there was no crime attributed to Venkat Reddy which he was to confess. What is alleged in the evidence is merely that the accused asked Venkat Reddy if the wounded Communist had come to Moparam and when he replied in the negative, the accused is said to have hit him with his cane; that is all. So if the fact of the accused beating Venkat Reddy were proved, the offence would fall under S. 263 and not under S. 270 Hyderabad Penal Code. Similarly, the offence of beating Venkatram Narsiah on his complaining the dacoity to accused No. 1, would clearly fall under S. 263; but it must be borne in mind that there was no complaint about it, nor was it so alleged in the challan. The Court therefore, had no power in the circumstances to make a case for anybody and convict the accused. Now what is left after this is only the offence of voluntarily causing hurt to Venkat Reddy under S. 263, Hyderabad Penal Code.

All the offences under Ss. 330, 380 read with S. 71 and S. 270 Hyderabad Penal Code are eliminated.

12. It cannot be denied that the accused went to the village Moparam some time during the month of Thir with his subordinate officers, military, police and some Razakars in his capacity as the executive head of the District. He is alleged to have committed the various offences during the discharge of his duties, that is why sanction of the Government to prosecute the accused was necessary and obtained under S. 201, Criminal P.C. Ex. 13/6 is the sanction of the Government. It says that sanction is given to prosecute the accused under Sections 124, 270, 330, 381, 386, 282, 288 read with Ss. 66 and 71, Hyderabad Penal Code. But it will be noted that no sanction has been accorded as regards the offences under S. 263 Hyderabad Penal Code. We would have ignored the omission of this section from the sanction order, if there were some mention at Least in the facts related regarding the beating of Venkat Reddy or of anybody else. But we find there nothing to that effect. This clearly goes to prove that the question of the accused belabouring Venkat Reddy and others is an afterthought. At any rate, it is sure, the lower Court had no jurisdiction to try the accused for the offence of causing simple hurt to anybody without a complaint and without due sanction.

13. Another important and fatal mistake committed by the prosecution and not corrected by the Court was the joining, rather the misjoinder of the several charges specified in the challan. If there was a community of purpose among all the accused, and if they were members of an unlawful assembly as is alleged by the prosecution, only such acts may be joined in the charge-sheet as were committed in the prosecution or the furtherance of a common object and not those individual acts which were separate and independent and had no relation whatsoever with the common object of the party. The beating of Venkat Reddy and Venkatram Narsiah for the matter, cannot be deemed to have taken place in pursuance of the common object of bringing to book all the mischief-mongers and law-breakers or taking the revenge for the clipping of Shaikh Nanhe's beard and the robbery of the Government telescope, whichever is taken into consideration. The prosecution evidence itself reveals that the beating took place after the identification proceedings with regard to Shaikh Nanhe's assailant had terminated. So if the accused did in fact beat Venkat Reddy or Venkatram Narsiah, after that he was himself responsible for it and these offences under S. 270 or 263 cannot be joined with the other offences listed in the challan and the charge-sheet. As has been laid down in "Subrahmania Ayyar v. King Emperor", 25 Mad 61, such mis-joinder is fatal and vitiates the whole proceedings.

14. The date of the incidents forming the basis of the charges against the accused according to the original report to the Government, Ex. 15 is 4-8-1357 Fasli, but the sanction letter has a different date, which has been tampered with as well as the sections of Penal Code. If the sanction relates to offences committed on 4-8-1357 F, the appellant could not be tried for offences committed on the 2nd Thir 1357 F, for which there was no sanction and as such

the Special Judge had no jurisdiction. The Investigating Officer who, by the way, should have come at the very commencement of the evidence came to the witness-box as P.W. 19 to say that the date of the incidents given in the report of inquiry by the Civil Administrator and the First Information Report, which was based upon it, is wrong and should have been 2-8-1357 F, instead of 4-8-1357 F. But the mere statement of the Investigating Officer is not enough to cure this mistake. Either the Civil Administrator, who enquired into the misdeeds of his predecessor and had reported to the Government, or some proper representative of the Government, should have come to the witness-box to correct the date. This discrepancy in the dates of offences gives rise to serious doubts about the genuineness of the original report.

15. The First Information Report makes no mention at all of the house-trespass or housebreaking either during the day or during the night. This thesis was developed later on, and the Civil Administrator or the Police seems to have reported to the Government that such serious offences have been committed by the Taluqdar during night. That is why the Government thought necessary to accord sanction for the prosecution of the offences under S. 386. But against this sanction the Police elected to prosecute the accused No. 1 under S. 383, as much as to say, that the offence was committed in the day time and not in the night as given out to the Government before. But strange enough, the accused was convicted under S. 380, Hyderabad Penal Code and the offences of lurking house trespass and house-breaking by night, fall through; and the judgment of Court goes both against the challan and against the sanction. It is surprising that the Court prefers to say nothing about the propriety of this, and the legality or otherwise of the sentence, in the circumstances detailed above. The Government Advocate argues that the Court has power to convict a person of an offence other than which he was charged with, provided the facts are the same. In support of this contention he cites "25 Deccan LR 88 and 27 Deccan LR 246", to show that Government sanction need not mention the exact Section, It is enough if the facts forming the basis of the crime, attributed to the accused, are mentioned. But he ignores that quite a different set of facts are required for the offences to fall under Ss. 380, 383 and 386. So this argument is based upon a misconception. Here the court has not acted under Sec. 244 Criminal Procedure Code, but has framed a charge under a Section for which no sanction u/s 201 existed. u/s 236 Criminal Procedure Code, a charge under Sec. 380 could not be framed, before due sanction was obtained. As it involves the jurisdiction of the Court, this error is fatal and quite enough to vitiate the whole proceedings.

16. The evidence of witnesses 1 to 8 was recorded merely on solemn affirmation, and no reason has been given, why oath was not given to the witnesses. As such, according to law, these witnesses' statements could not be considered admissible in evidence. Then again, these statements were recorded by different Benches and could not be utilised after there was a change in the constitution of the Bench, for, the presiding Officer of the trial court was conducting the trial in the capacity of a Special Sessions Judge and not that of a Magistrate, who could

take advantage of Section 281 Criminal Procedure Code, and continue the proceedings of the former Bench.

17. The report of the Civil Administrator mentioned that the accused allowed his party to molest women in general, and to commit the heinous offence of rape against Sayamma, Venkatnarsamma, Veeramma, etc., which means that there were several cases of rape, besides the three specifically mentioned in Ex, 15. The report also carries the same information; but we fail to understand how these most serious offences melted away, and have been omitted from the challan. They dissolved and disappeared, it seems, on the way to the Court. Similarly, none of these women who were molested and assaulted criminally, nor any of the several women who were alleged to have been raped by the accused, have been produced in evidence. It must be observed in this connection that the accused continued to be the executive head of the same District long after the incident, and there was no complaint or report either to the Police or to superior authorities of these serious crimes till 16 months after, when the Civil Administrator, who naturally had an interest in having the accused removed from the District, sent the report dated 18th Sherewar 1358 Fasli. It looks like a fabrication from the start to the finish but all the same has formed the basis of the First Information Report.

18. Now what is the explanation for the delay in the reporting of the crime to the Police or to the Government? It is suggested that high Government officers were involved and there was no hope of redress during the Razakar regime. Thus, it is said, there was no use in reporting the crimes or making a complaint of the offences. Where so many things of commission and omission are laid at the door of the Razakar regime, let us see if there is any explanation of the delay after the Police Action. We regret to note that there is none forthcoming.

19. The challan and the charge-sheet have not mentioned as they ought to have done, how the accused could be considered an abettor. There is no evidence on the record to show that the accused did any of the things mentioned in Sec. 263 Hyderabad Penal Code. The Government Advocate has argued at some length to show that the accused, as the executive head of the District was also the head of the Police administration and responsible for the maintenance of law and order. He failed to control then Razakars, the Police and the Military squad which indulged in the wholesale looting of the village. Besides, he facilitated the commission of the crimes by detaining the men folk of the village at his camp. P.W. 2's statement is relied upon for proving that the accused had called and detained some men of the village and after that the Razakars looted their houses. But the name of this witness or that of her husband does not appear in the First Information Report or in the list of those who were the victims of the loot. How is it then she deposes as an eye-witness of the dacoity? Evidently she is a tutored witness and cannot be believed.

20. Witnesses Nos. 1 to 8 did not give statement on oath; nor were they recalled for evidence after the Bench was changed. So their statements are inadmissible.

Even if they were admitted, these statements have no bearing on the case against the appellant, for, they simply show that loot and robbery took place in their village but they did not see the accused, nor do they identify him. The complaint of the Civil Administrator Ex. 15 and the First Information Report mention vaguely in general terms, that jewellery was looted from the person of several women whose names are not given and state, that property was stolen from the houses of those persons whose names are given in the challan. It, however, makes some improvement upon the same, when it states that robbery was committed upon 13 women and the houses of eight persons were looted; but conveniently omits the names of these victims. This freedom to add, subtract or substitute names, has been fully utilised while producing evidence. Ramakrishna, Malliah, Venkatramulu, Veera, Cholia and Chandriah are the names given in Ex. 15 and the First Information Report, of persons whose houses were broken open and looted. The following are the women whose jewellery was snatched away: Lachamma, Venkatamma, Chinnamma, Lachi, Kaderi Venkatamma, Lachamma and Seethamma. Now, of the eight persons, whose houses were alleged to have broken open, not one has been produced. So the charge of house-breaking by day or night whether it be u/s 386 or 383 or 380 Hyderabad Penal Code is not substantiated at all. P.Ws. 1 to 7 are the women from whose person jewellery was looted. They give evidence that they were robbed by the Razakars and Policemen. But each of robbery cannot be called dacoity, for neither were there five or more persons involved in each case nor was there a common object or community of purpose. As has been laid down in "Venkatadri v. Emperor", 20 Mad L Jour 220 and " AIR 1934 325 (Oudh) , the mere existence of a general purpose or a design is not sufficient. Purpose must not be vague, but should be particular and clear. Even if the robberies were committed by the same persons in all the cases, it would not constitute one transaction. Besides, seven or eight cases of robbery committed by different persons in different places is a misjoinder and fatal to the prosecution.

21. P.Ws. 9 and 15 support the fact of accused No. 1 beating Venkat Reddy, Patel and his brother Narsimha Reddy. But P.W. 10 describing the same incident makes no mention of the accused beating Narsimha Reddy, and witness No. 13 who was described as the victim of the Taluqdar's fury, at his complaining of the loot and P.W. 16 whose presence in the camp is supported by all the witnesses, do not see the Patel or his brother being belaboured by the accused No. 1. Both of them however, relate an entirely different story, that the Taluqdar had belaboured Muthareddy P.W. 16 and an English teacher who were bleeding from the head, while P.W. 16 himself says that a Razakar on the instigation of the appellant pushed him with the butt-end of a rifle causing an injury in the head. But he says Venkat Reddy, Police Patel and his brother Narsimha Reddy and the English teacher were not there. P.Ws. 11, 14 and 18 give out a story of the Taluqdar beating P.W. 13 because he dared make a complaint of the loot to him. This is against and something in addition to the challan which only mentions the accused having driven out this complainant contemptuously. As to what the

Taluqdar said on the spot or what he did there, of all the original report of the Civil Administrator, the First Information Report, the challan, the statements of witnesses and the charge-sheet, no two versions agree. It is possible that before the Taluqdar arrived in the village, the Razakars or some other free-booters had robbed some persons of this village; and when the accused No. 1 came to the camp at the banyan trees after a tour of the village and sat there, Venkatram Narsiah or some others made complaint, on which the accused took no notice then and there. This indifference probably gave rise in the minds of the people that the Taluqdar was involved in the loot. If the accused had seen the village loot actually, there was no occasion for the people to make a complaint to him. The very fact that they brought a complaint to him, shows that he did not see the raid of the free-booters. There was actually no partaking of the loot on the part of the Taluqdar, nor was there any abetment according to the evidence. The learned Government Advocate has argued that the failure on the part of the appellant, to stop and take action against the looters, as decided in 2 Weir 252, constitutes abetment. But, by the evidence, it has not been established that the loot took place in the presence, or knowledge of the accused. So he cannot be called an abettor. Even if it were so, in the extreme, as the accused was not charged with abetment he cannot be convicted as we have explained above. Thus, even if really there was looting and robbery in the village, the accused is not responsible for it. The charges against the appellant in our opinion are false and malicious and the conviction for the offences alleged, besides being bad in law, is not based on proved facts. We, therefore, allow his appeal and acquit him and order that he be released forthwith.

22. Deshpande, J.: I have had the advantage to read the judgment of my learned brother and I agree with him in the result.

23. So far as mis-joinder of the charges is concerned, the lower Court has erred in trying all the charges jointly. The accused was charge sheeted under Sections 124, 270, 263 330/71 and 380/71 of the Hyderabad Penal Code. Offences charged did not constitute one series of acts so connected together as to form the same transaction therefore, they cannot be tried jointly.

The mere fact that the offences were committed at the same time or place is neither necessary nor decisive as an indication of their being so connected as to form the same transaction, nor are offences so regarded merely because they may be inspired by one and the same general object. The charges in view must not be too general and vague, but must be something particular and definite. In this particular case, on behalf of the prosecution it is clearly stated that the party set out to punish the offender who had clipped the beard of one Nanhe Saheb and went there and made enquiry, and when they could not find the real offender, the enquiry was finished. The common object with which they went there finished with this enquiry. Therefore, the offences with which the accused has been charged cannot be said to form part of the same transaction. The offences about the looting or beating and lurking trespass and others were

offences complete by themselves and were such as could not be tried jointly. Therefore the trial is vitiated & as held in "Krishnaswami Pellai v. Emperor", 26 Mad 126 " Abdur Rahim Vs. Emperor, and AIR 1934 Oudh 325, this cannot be treated as an irregularity which can be cured but is fatal to the trial and therefore on this ground the judgment of the lower court must be set aside.

24. So far as the merits of the case is concerned, I fully agree with my learned brother's judgment that the charges that have been laid against the accused have not been proved by the evidence that has been led by the prosecution, but from the evidence it is found that the accused was present when the offence of looting by the Razakars was going on. These Razakars came along with the accused and when they had finished their offence, they were told by the accused to sit in the motor car and go away. Some of the witnesses say that the accused, in his motor car, went through the village and saw the Razakars committing the atrocities. It can very well be said that the accused can be held guilty u/s 66 of the Hyderabad Penal Code and I am supported in this by ruling reported in 2 Weir 52. But unfortunately, the lower Court has not framed charge under this section. It has been held in 49 All 120, 26 Ind Cas 142 (Mad) AIR 1928 382 (Lahore) 26 Bom LR 323 and AIR 1936 Mad 280 that the appellate Court cannot convict the accused under this section if the charge under this section has not been framed against the accused by the lower Court, and the accused must be acquitted of the charge laid against him. On the basis of these rulings I hold that the accused must be acquitted of the charge and the appeal is allowed.