
(1952) 12 AP CK 0002
In the Andhra Pradesh High Court

Kalaparla Saidulu

APPELLANT

Vs

Hyderabad Government

RESPONDENT

Date of Decision : 11-12-1952

Acts Referred:

Penal Code, 1860 (IPC) — Section 145, 149, 302, 364

Citation : AIR 1953 AP 249 : (1953) CriLJ 1517

Hon'ble Judges : Siadat Ali Khan, J; Manohar Pershad, J

Bench : Division Bench

Judgement

1. This is an appeal in a criminal case. The District and Sessions Court, Medak, by judgment dated 18.10.1950, has convicted and sentenced the accused Kalapopla Saidulu s/o Yelladu, to five years" rigorous imprisonment u/s 301 of the Hyderabad Penal Code corresponding to Section 364, Penal Code. We have heard the arguments of the learned Counsel for the accused Shri Gopal Kristihia and the learned Senior Government advocate, Shri Mohd. Mirza.

2. The facts alleged by the prosecution are that on 21.1.1949, in the village of Karvapalli, Miryalguda Taluqa, Nalgonda District, one Venkateswar Rao, a Congress worker was forcibly abducted by the accused and his comrades five in number and that the said Venkateswar Rao was never heard of again, On these facts, the prosecution charge-sheeted the accused under Sections 125, 301 and 243, Hyderabad Penal Code, corresponding to Sections 149, 364 and 302 of the Indian Penal Code. Six witnesses were adduced by the prosecution. P.W. 1 is the Investigating Officer, P.W. 2 is the informant and P.W. 3 Is the Patwari of the village, who has deposed that Venkateswar Rao was not heard of since he was forcibly abducted. P.Ws. 4, 5 and 6 Kotiaj Kankamma and Yellia have been adduced as eye-witnesses to the fact of physical abduction. We have carefully considered the whole record. The learned District and Sessions Judge has held that there is no evidence of the murder but that the abduction of Venkateswar Rao has been proved and he has, therefore, convicted and sentenced the accused u/s 301 of the Hyderabad Penal Code.

3. The learned Counsel for the accused has argued that this conviction and sentence is wrong in law. He has cited the marginally noted cases, namely, Akam Sheikh and Others Vs. Emperor, ; - Ijjatulla Akanda and Another Vs. Emperor, ; - Upendra Nath Ghose Vs. Emperor, , wherein it has been held that when the case of the prosecution is that the person abducted has been murdered by the abductor, there is no scope for the charge u/s 364 of the Indian Penal Code.

4. We respectfully agree with the above proposition of law, and in the result, the conviction and sentence of the accused is set aside u/s 301, Hyderabad Penal Code. But the facts of the case reveal that the accused took part in unlawful assembly. Hence we convict him u/s 122, Hyderabad Penal Code, corresponding to Section 145, Indian Penal Code, and as the accused has already served two years" imprisonment, he may be, released forthwith unless required under some other offence.