

(1955) 10 SC CK 0005
In the Supreme Court Of India
Case No : Criminal Appeal No.10 of 1955

Mathurala Adi Reddy

APPELLANT

Vs

The State of Hyderabad

RESPONDENT

Date of Decision : 07-10-1955

Acts Referred:

Penal Code, 1860 (IPC) — Section 114, 300, 34

Citation : AIR 1956 SC 177 : (1956) CriLJ 341

Hon'ble Judges : Vivian Bose, J;S. B. Sinha, J;B. Jagannadhadas, J

Bench : Full Bench

Final Decision : Dismissed

Judgement

Jagannadhadas, J.—This is an appeal by special leave against the judgment of the High Court of Hyderabad confirming the conviction u/s 302 of the Indian Penal Code and the death sentence of the appellant for having committed the murder of one Rami Reddy. He was also convicted u/s 307, Indian Penal Code for having attempted to murder P. W. 2, Venkata Reddy, and sentenced to seven years' rigorous imprisonment.

He has been charged and tried for having committed the said offences on the night of the 27th January, 1949, in a village called Alwal, Taluq Miryalguda, Nalgonda District. The case for the prosecution is that the appellant and one Narasimha Reddy along with three or four others alleged to be Communists, all dressed in uniform and armed with guns, came in a body to this village on the night of the 27th January, 1949, at about 10 p. m. and first got hold of one Narayana Reddy, abducted him and kept him in the precincts of the village and thereupon proceeded to the house of the deceased Rami Reddy to get hold of him.

The two leaders of the group, i.e., Narasimha Reddy and the appellant, got admission into the house of the deceased and into the neighbouring house of his brother, P. W. 1, by threatening the inmates and searched for the deceased and

got hold of him from the terrace of the house of P. W. 1 where he was hiding. Meanwhile one Venkata Reddy, P. W. 2, a relation of one of the leaders of the group, Narasimha Reddy, came on the scene having been sent for by the deceased when he found that the appellant and his associates were after him.

The appellant and Narasimha Reddy got hold of this P. W. 2 also and both of them were taken hand-in-hand by them towards the east of the house of the deceased. P. W. 1 as well as his mother, and P. W. 7, a brother of the deceased also accompanied them. While so proceeding they passed in front of the house of one Lachayya, from where the wife and two brothers of the previously abducted Narayana Reddy, viz., Narasamma P. W. 5; Govinda Reddy, P. W. 6; and Pratap Reddy, P. W. 4, were coming out.

Pratap Reddy and Govinda Reddy were interrogated by the appellant and his associate, Narasimha Reddy, and thereupon the appellant ordered Narasimha Reddy to fire. Narasimha Reddy in response thereto fired at the deceased Rami Reddy as well as at P. W. 2, Venkata Reddy. Rami Reddy died on the spot. Venkata Reddy escaped with a gun-shot wound into the house of Lachayya. Thereafter the party left the village.

None in the village stirred out of their houses that night. The dead body of Rami Reddy as well as that of the previously abducted person, Narayana Reddy, were found in the village next morning at about 5 A. M. The police came on the scene immediately and post-mortem examination and inquest were held. This was on the 28th January, 1949. First information report for the murder of these two persons was filed showing as the accused "Narasimha Reddy and Adi Reddy, leaders, along with 150 Communist persons."

Investigation followed and a charge-sheet dated the 17th March, 1949, was submitted by P. W. 3, Inspector of Police. Meanwhile accused Narasimha Reddy died and the present appellant absconded. For some reason which does not appear clearly on the record, the committal proceedings were taken only in the year 1952. The appellant was committed to the Court of Session by order of the Munsif-Magistrate, Miryalguda, dated the 20th October, 1952.

2. There can be no doubt that the deceased Rami Reddy of village Alwal died on the night of the 27th January, 1949, as a result of gun-shot wounds. This is shown by the inquest report and by the evidence of the Medical Officer who conducted the postmortem examination. (His evidence in the Committing Magistrate's Court has been marked as Ex. 3). This indeed is not disputed. Learned counsel for the appellant does not also dispute that there was a raid on this village that night by a party of Communists armed with guns.

His main argument is that what occurred was an armed conflict between a group of Communists and the police party, which admittedly was stationed in the village at the time, and that some of the villagers may have been present thereat and that the deceased Rami Reddy may have received gunshot wounds in the course of that conflict and died. It is urged that the police have foisted this case

on the appellant since he was admittedly a Communist and that the villagers who now figure as eye-witnesses could all be persuaded by the police to speak against the appellant on account of their general hostility to the Communists.

Learned counsel drew our attention to various features of the case as justifying the view put forward by him and leading to a serious doubt -- so it was contended-- as to the commission of the alleged offence by the appellant. Evidence of the eye-witnesses has been relied on as indicating the existence of an armed conflict between the police and the Communists that night at about the time when the murder is said to have taken place.

It is pointed out that the earliest version relating to this case as contained in the inquest report, while showing that some of the present eye-witnesses deposed about the incident before the Panches, does not specifically mention the name of this appellant as being in the party who abducted the deceased and murdered him. It is also said that even in the first information report which followed thereupon, the appellant was given only a subordinate position while in the present evidence he is given the leading position.

It is also urged that the first informant has not been traced or examined, that no formal post-mortem report has been exhibited or is available, that the material objects said to have been seized in the course of investigation have not been produced, that the night on which the occurrence took place was a dark one, that the appellant was not a resident of this village who could have been easily identified by the villagers, and that there was no previous identification parade.

While some of these arguments may not be without force, they are all such as might well have been addressed to and considered by the two courts of fact which have dealt with the evidence. Some of these have in fact been dealt with and answered by the High Court. The details of the prosecution case and the part ascribed to this appellant have been clearly and categorically spoken to by six eye-witnesses, P. Ws. 1, 2, 4, 5, 6 and 7. They have been thoroughly cross-examined with reference to the various points suggested above.

Their evidence has been accepted by both the courts below. Though we have heard learned counsel for the appellant with reference to the above contentions and have been taken through, the evidence, we are of the opinion that this is not a case in which there is any substantial reason for departure from the normal practice of this Court not to disturb the concurrent findings of fact arrived at by the courts below.

We cannot, therefore, entertain the contention of the learned counsel for the appellant that the case against the appellant has been concocted or that there is any serious doubt about the part ascribed to him by the prosecution evidence.

3. Learned counsel for the appellant, however, urged some further points which call for consideration. It is urged that the High Court misread the evidence when it stated in its judgment "when people began to collect, the accused directed

another accused (who is now no more and said to have committed suicide) to shoot at deceased". Admittedly, on the evidence it was the hand of Narasimha Reddy that shot the deceased.

Now, it is true that none of the witnesses has stated that the direction of the appellant to Narasimha Reddy to fire was so specific as the learned Judges have assumed. The evidence of each and every one of the eye-witness is somewhat general. P. W. 1 said "Then Adi Reddy ordered to open fire as people are collecting." P. W. 2 said "Then Adi Reddy directed that people are now collecting 'Fire without further hesitation'. P. W. 4 said "Adi Reddy then said that people are collecting. Let us fire."

P. W. 5 said "Thereupon Adi Reddy warned his comrades that people are collecting there. Let us fire". P. W. 6 said "Adi Reddy warned his men that people are collecting. Let us open fire". P. W. 7 said "Adi Reddy ordered to open fire". In view of this evidence an argument has been advanced that what all Adi Reddy could have meant was, that some group of persons who were collecting were to be fired at and not either of the two persons, Rami Reddy or Venkata Reddy, who were being abducted.

It is urged that his comrade, Narasimha Reddy, may have misunderstood the directions of the appellant and that in such a situation the appellant cannot be held responsible if some person not intended by him was shot at and as a result died. Now apart from the question whether such a view is legally tenable or not, there is absolutely nothing to show that the appellant was in fact misunderstood by his comrade.

The argument has been presented as though there was a distinct group of people who were collecting at some distance and that it was they who were meant to be shot at. There is no such indication at all in the evidence. On the other hand the situation at the time when the direction was given as appears from the evidence is as follows. P. W. 2 Venkata Reddy stated thus:

"Then they dragged Rami Reddy and I out hand-in-hand. They abducted us through the street. Timma Reddy, Buchamma and Narain Reddy followed us. The procession went up to Lachia's house. There Partab Reddy, Govind Reddy and Narasamma came out of Lachia's house. Lachia is the father of Partab Reddy and Govind Reddy. Then Adi Reddy directed that people are now collecting 'Fire without further hesitation'.

Narasimha Reddy stepped back and fired one shot at Rami Reddy behind the back. I cried out. He aimed another shot at me; but the bullet missed under my right armpit. I ran inside Lachia's house. Rami Reddy also attempted to escape. The dead accused throwing torch light broke three shots on him in all. The deceased collapsed on the spot. I ran out by Lachia's back door. Approximately five or six guns were carried by the party. Every one was holding a gun".

All the other eye-witnesses substantially give the same story. The picture,

therefore, as it emerges from this evidence is that from the house of the deceased the two persons, viz., the deceased and Venkata Reddy were being taken hand-in-hand by the appellant and his group towards Lachia's house. They were being followed by three persons, P. W. 1, his mother, and P. W. 7. At Lachayya's house, P. Ws. 4, 5 and 6 also came on the scene.

Thus the group hostile to the Communists (who at the time, according to the evidence, consisted of the two leaders, the appellant and Narasimha Reddy, with three or four others), swelled to a group of eight persons including the deceased and Venkata Reddy, who were being abducted. In the situation "the people" who were referred to as collecting would have been no other than this group. There is no indication in the evidence that any other persons in the village were collecting at the time or if so collecting were seen by the appellant in that dark night from a distance.

There can be, therefore, no reasonable doubt on the evidence that the appellant's direction to open fire must have been meant either as against the members of this group indiscriminately or as against the two persons who were being abducted. The fact that in that situation the appellant's comrade Narasimha Reddy spontaneously reacted to the direction by shooting at the two persons, viz., the deceased and P. W. 2 is some indication as to whom the appellant meant to be fired at.

But even otherwise, if his direction was a direction to fire indiscriminately as against the members of the hostile group consisting of the eight persons as above stated, the appellant would clearly be guilty if his direction brought about a shooting land death of any one or more out of these eight persons. There is, therefore, no substance in this contention ingeniously put forward by learned counsel for the appellant.

4. The next point that has been urged is that the charge against the appellant is one of having directly committed the murder but that in fact what has been proved is no more than that he brought about the murder by instigating his comrade Narasimha Reddy to shoot. In this connection our attention is drawn to the fact that the Committing Magistrate in his order directing committal has specifically held that the offence of conspiracy u/s 120B, Indian Penal Code and that of unlawful assembly under Sections 145 and 148, Indian Penal Code were not made out.

Now the actual charge on which this appellant has been committed to the Court of Session and on which without any amendment he was tried in the Sessions Court, is as follows:

"On or about the 27th January, 1949, you 'along with' Narasimha Reddy (since dead) abducted Rami Reddy, and murdered him by fire of gun shots and also fired on Venkat Reddy, who escaped. And you thereby committed the offence punishable under Sections 302 and 307, Indian Penal Code.) Learned counsel for the appellant says that this is really a charge of direct murder (1) against the

'appellant, and (2) against the deceased Narasimha Reddy. He urges that the evidence does not disclose any such direct commission of murder by the appellant. The wording of this charge, however, indicates that the abduction and murder are alleged to be the joint act of both. This is also confirmed by what the Committing Magistrate, who framed the charge, said in his order of committal as follows:

"Narasimha Reddy and Adi Reddy 'with common intention' have fired on Rami Reddy and murdered him." Though the Magistrate has not in terms referred to Section 34, Indian Penal Code in the charge, it appears reasonably clear that the charge was substantially one u/s 34, Indian Penal Code. Now, a mere direction from one person to another and the carrying out of that direction by the other may be only instigation of the latter's act and may not be a case of a joint act falling u/s 34, Indian Penal Code.

But where, as in this case, the two persons Adi Reddy and Narasimha Reddy, with their followers, all of them armed move about together for a set purpose and one gives instructions to the other and keeps himself on the spot in readiness to see it carried out and the other carries it out, it is hardly possible to say that the act is not one which was done in the furtherance of the common intention of both. (See -- Barendra Kumar v. Emperor (A)).

It is much more than a mere instigation to do the act. In this context it is also necessary to notice that out of the six eyewitnesses, three deposed to the fact that what the appellant said is "people are collecting, let us fire". This brings out the common intention clearly. But if the evidence makes out no more than mere instigation, it is, even so, instigation by a person who is present at the scene of offence when the act is committed. In such a case the instigator is "deemed" to commit the murder by virtue of Section 114, Indian Penal Code.

As pointed out by Lord Sumner in Barendra Kumar v. Emperor (A)', "actual presence plus prior abetment can mean nothing else but participation." That is the irrebuttable presumption raised by Section 114, Indian Penal Code and brings the case u/s 34, Indian Penal Code. Thus in either view, we have no doubt that on the facts and evidence of this case the appellant is guilty of the offence of the murder of Rami Reddy and has been rightly convicted u/s 302, Indian Penal Code.

It follows that he has also been rightly convicted u/s 307, Indian Penal Code for attempting to murder P. W. 2, Venkata Reddy.

5. The appeal is accordingly dismissed.

6. The High Court while confirming the sentence of death has recommended that the Government might commute the sentence to one of transportation for life. We have not been informed whether that has been carried out or not and no argument has been advanced to us on the question of sentence. Nothing that we have said in our judgment is intended or meant to weaken the recommendation of the High Court in this behalf.