
(1953) 10 AP CK 0007
In the Andhra Pradesh High Court

Vadla Kistiah and Others

APPELLANT

Vs

State of Hyderabad

RESPONDENT

Date of Decision : 14-10-1953

Acts Referred:

Penal Code, 1860 (IPC) — Section 109, 149, 302, 334, 364

Citation : (1954) CriLJ 641

Hon'ble Judges : Mohd. Ahmed Ansari, J;Jaganmohan Reddy, J

Bench : Division Bench

Judgement

Jaganmohan Reddy, J.—These are four appeals by accused Vadla Kistiah, Kishen Singh, Gurrupu Ramiah and "Aare Kistadu against the conviction and sentence of 10 years rigorous imprisonment awarded by the Special Judge, Nalgonda on 30-9-1950. The prosecution case is that one Nakkala Baliga, who is a member of the Communist Party which was carrying on depredations and unsocial activities, had demanded Rs, 2,000/- and two khandies of grain from deceased Mahaboob Ali who was the agent of a Jagirdar. Previous to this the cattle of the village had been taken away by Nakkala Baliga and his party and the villagers had to pay Rs. 200/- to get them back. When the demand for Rs. 2,000/- and 2 khandies of grain was made Mahaboob Ali promised to send word to the Jagirdar and asked them to wait for his reply. It is alleged that the deceased was threatened with some other kind of treatment if the amount was not paid. Inasmuch as no reply was forthcoming Nakkala Baliga, along with the four aforesaid accused and some others, visited Adivi Masjid on the night of 10-3-1949 at about 9 p. m., entered the house of the deceased Mahaboob Ali, beat him, tied his hands as well as those of his two sons, Shujat Ali and Syed Yousuf Ali, behind their back, took them to a nearby jungle and there shot them. The dead bodies of these three persons were found the next day. An information report was given. A Panchanama was held and the accused were arrested subsequently. The learned Special Judge convicted Nakkala Baliga and the four accused of offences u/s 301, Hyderabad Penal Code, (corresponding to Section 334, I. P. C.) read with Section 125, Hyderabad Penal Code (corresponding to Section 149, I. P. C.) and

sentenced each of them to 10 years rigorous imprisonment. In view of the paucity of evidence relating to the accused being involved in the actual shooting of the deceased, the Special Judge gave the benefit of doubt and discharged them of the offence u/s 243, Hyderabad Penal Code (corresponding to Section 302, I. P. C.).

2. We have gone through the evidence in this case and are in accord with the view of the learned Special Judge that the accused have been proved to have visited Adivi Masjid on the night of 10th March, along with Nakkala Baliga and others, entered the house of Mahaboob Ali, beat him, insulted him, tied his hands as well as the hands of his two sons and took them away to the nearby forest where they were shot. (After reviewing shortly the evidence his Lordship reiterated this conclusion and proceeded:)

3. The learned Advocate for the accused strongly urges, on the authority of - Kalaporla Saidulu v. Hyderabad Government AIR 1953 Hyd 249 (A), that where the case of the prosecution is that the person abducted has been murdered by the abductor, there is no scope for a charge u/s 364, I. P. C. In the aforesaid case, one Venkateswararao a Congress worker was forcibly abducted by the accused and his comrades (five in number) and after that Venkateswararao was not heard of again. The accused were charged under Sections 125, 301, and 243 Hyd. P. C. The accused were acquitted of the charge of murder as there was no evidence, but were convicted u/s 301, Hyd. P. C. On the authority of - Akam Sheikh and Others Vs. Emperor, ; - Ijjatulla Akanda and Another Vs. Emperor, and - Upendra Nath Ghose Vs. Emperor, , Manohar Pershad and Siadat Ali Khan JJ., held that where the case of the prosecution is that the person abducted has been murdered by the abductor there is no scope for a charge u/s 301, Hyd. P. C. In that view they acquitted the accused.

4. In - Upendra Nath Ghose Vs. Emperor, the accused was charged with, murdering a girl and also u/s 364 for abducting her. There was no evidence to show that the accused murdered the deceased or that the accused abducted her with an intention to murder. The only evidence given to prove that she was murdered was the evidence that the skeleton was that of the girl. In these circumstances one of the essential ingredients of an offence u/s 384 was not proved and no charge of abduction could therefore stand. "AIR 1945 Calcutta 42 (C)", is again a case where the woman was abducted by the resented relations of her husband and in doing so one of them placed his hand on the woman's mouth and the other squeezed her throat. They carried her away some distance to the river bank and they returned home and thereafter the woman was never seen again. On these facts it was held that since the evidence of murder was disbelieved there was no evidence upon which it can be said that the abduction of the woman took place with the object that she may be murdered or placed in danger of being murdered. Akam Sheikh and Others Vs. Emperor, is a case where a man was abducted and taken away and later was found dead. The question arose whether the Assistant Sessions Judge who could not try offences

punishable u/s 302 read with Section 109 could clutch at the jurisdiction by treating the case as one u/s 364, I. P. C. The case has been dealt with from the aspect of jurisdiction and their Lordships of the Calcutta High Court held that the accused ought to have been charged u/s 302 or Section 302 read with Section 109, but the case cannot be dealt with only u/s 364 which is a special case of enhanced punishment for a particular type of abetment of murder.

5. In our view the authorities do not support submission of the learned Advocate for the appellants that where an accused is charged under Sections 302 and 384, I. P. C. (or under the corresponding provisions of the Hyderabad Penal Code) and has been acquitted on a charge of murder, he cannot be convicted u/s 364, notwithstanding the fact that it is proved that the accused kidnapped or abducted the deceased in order that the said person may be murdered or so disposed of as to put him in danger of being murdered. An examination of the above cases would clearly show that this was not what was decided therein.

6. In - AIR 1953 Hyd 249", the fact that Venkateshwar Rao was at all murdered was not proved. There being no other evidence to substantiate the fact that the accused abducted Venkateshwar Rao with the intention to murder or so dispose of him as to put him in danger of being murdered, the offence u/s 301, Hyd PC could not be sustained. It is, in our view, clear that the judgment cited above does not lay down a general proposition that whenever a person is charged with murder and abduction under Sections 302 and 364, I. P. C. he cannot, where he is acquitted of an offence of murder u/s 302, be convicted under any circumstances of an offence u/s 364, I. P. C. In our view the intention to murder or so dispose of the person abducted as to put him in danger of being murdered at the time of abduction is an important ingredient for conviction under the said section. In the case of - Ahmed v. Emperor AIR 1933 Lah 1035, (E), the accused were charged both u/s 302 and Section 364. They were acquitted u/s 302 and were convicted u/s 364, I. P. C. and were sentenced for transportation for life. Abdul Qadir J., at page 1037 observed as follows:

...I am of opinion, however, without going into any elaborate discussion of these arguments, that, taking into consideration the previous history of the quarrels between the parties and disappearance of Mulkhu, as well as the possession of such arms as chhavis by some of the accused persons, when they entered the house of Taja, the least that may be presumed against them is that they wanted to dispose of Benin in such a way as to put him in danger of being murdered. I hold therefore that an offence u/s 364, I. P. C., is brought home to the appellants.

7. In the instant case it should not be forgotten that the motive, the previous relations of the parties and the circumstances in which the deceased were abducted together with the fact that immediately after they were taken away gun shots were heard and the deceased were found shot dead, are important matters determining the object with which they were abducted. There can be no doubt on the evidence that the deceased were abducted with the object of being murdered or of being so disposed of as would put them in danger of being murdered. The

manner in which the accused entered the house of the deceased armed with guns and lathies and their subsequent conduct in tying the hands of the deceased behind their back, pulling the deceased Mahaboob Ali's beard and beating him, had given rise to apprehension in the minds of the womenfolk of the household and cannot but lead to the conclusion that they were taken away for being murdered. This conduct had also created a fear in the mind of P. W. 9 Akbar Ali, which made him escape to the roof of the house and hide. All this would indicate the conduct of the accused which would show beyond a shadow of doubt that they intended to abduct the deceased with the object of murdering them or so dispose of them as to put them in danger of being murdered, as such they are guilty of an offence u/s 301, Hyd. P. C.

8. In these circumstances the conviction and sentences awarded to the accused are confirmed and their appeals are dismissed. This judgment will govern the other three connected appeals, in each of which a copy be affixed.