

***IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION***

CRIMINAL REFERENCE NO. 3 OF 2015

Principal District and Sessions Judge, Nashik. ... Petitioner

V/s.

The State of Maharashtra ... Respondent

Mr. A.H. Ponda, amicus curiae for the petitioner.

Mr. J.P. Yagnik, APP for the State.

**CORAM : NARESH H. PATIL AND
PRAKASH D. NAIK, JJ.**

**RESERVED ON: 29th September, 2016.
PRONOUNCED ON: 06th October, 2016.**

ORDER (PER NARESH H. PATIL, J)

This is a Reference made under Section 395(2) of Criminal Procedure Code by Shri Anand D. Karanjkar, Principal District and Sessions Judge, Nashik.

2. Following two questions of law are framed by the Principal District Judge which are as under:

1) Whether after acquittal of a person under Section 143, 147, 148 of the IPC, can he be convicted by virtue of Section 149 of the IPC?

2) Whether after acquittal of a person under Section 324, 326 of IPC, how it can be inferred that he is guilty under Section 307 of the IPC?

3. These questions were framed by the Principal District Judge who was hearing an appeal arising out of judgment and order passed by the Assistant Sessions Judge in Sessions Case No.160/2007 (State of Maharashtra through Dindori Police Station, Dist. Nashik v/s. Baburao Pandurang Hire & others). The Criminal Appeal was numbered as Criminal Appeal No. 245/2008.

4. The facts in brief relating to the prosecution case are that 12 accused stood charged for commission of offences punishable under Sections 307, 324, 326, 504 and 506 of Indian Penal Code (hereinafter referred to as IPC for short) read with Section 149 of IPC and under Sections 143, 147, 148 of the IPC and under Section 135 of the Bombay

Police Act.

5. By judgment and order dated 10th December, 2008 the Assistant Sessions Judge passed following order:

“ The accused Nos. 7 to 12 stand acquitted of all the charges levelled against them.

The accused Nos. 1 to 6 stand acquitted of the offences punishable under Section 326,324,504 and 506 of the Indian Penal Code read with Section 149 of the Indian Penal Code and under Section 143,147 and 148 of the Indian Penal Code and under Section 135 of the Bombay Police Act.

Accused No.1 Baburao Pandurang Hire, accused No.2 Dagu Pandurang Hire, accused No.3 Hari Baburao Hire, accused No.4 Balu Dagu Hire, accused No.5 Yogesh Dagu Hire and accused No.6 Gotiram Hari Hire stand convicted for the offence punishable under Section 307 of the Indian Penal Code read with Section 149 of the Indian Penal Code and sentenced to suffer rigorous imprisonment for five years. The accused no.1 to 6 each shall pay a fine of Rs.2,000/- (Rs. Two Thousand) and in default of payment of fine, they shall undergo simple imprisonment for two months.

Their bail-bonds stand cancelled.

The muddemal property be destroyed after appeal period is over.

The accused Nos. 1 to 6 are entitled for the set off for the period already undergone by them during inquiry, investigation or trial.”

6. Learned Amicus Curiae Shri Ponda submitted that as the learned Assistant Judge had acquitted the accused persons for lesser offences i.e. 326, 324, 504 and 506 of IPC read with Section 143,147,148 and 149 IPC, the order of conviction and sentence under Section 307 read with Section 149 was legally valid. There is no difficulty to entertain the appeal arising out of the said judgment and order. Learned Counsel submitted that in view of the order of acquittal recorded under Section 143,147,148 of IPC, there was no legal impediment for considering application under provisions of Section 149 of IPC in the facts of the present case.

7. Learned APP submits that in the facts of the case the issues framed by the referral Judge be considered.

8. We have gone through the record placed before us. The learned Assistant Judge had recorded order of acquittal for offences punishable under Sections 143,147,148 of IPC. The trial Court had acquitted the accused for offences punishable under Sections 326,324,504, 506 of the IPC but decided to convict the accused for more serious charge punishable under Section 307 of IPC. In this view of the matter, the trial Court was legally entitled for applying the provisions of Section 149 of IPC while convicting the accused persons under Section 307 of IPC.

9. In respect of the second issue referred, we observe that in the facts of the case as the trial Court acquitted the accused for lesser offences punishable under Section 324, 326 of IPC, there was no legal hurdle to convict the accused for more serious offences as prescribed under Section 307 of IPC.

10. We hereby answer both these issues under reference accordingly. We record our appreciation for assistance rendered to us by the learned Amicus Curiae Mr. A.H. Ponda.

11. We direct the concerned District and Sessions Judge/Additional District and Sessions Judge to dispose of the Criminal Appeal No.

245/2008 arising out of Sessions Case No.160/2007 as expeditiously as possible preferably within three months from the date of receipt of order of this Court. The Registry to transmit the writ forthwith by fastest mode of communication.

(PRAKASH D. NAIK, J.)

(NARESH H. PATIL, J.)

L.S. Panjwani, P.S.