

**IN THE HIGH COURT OF JUDICATURE OF ANDHRAPRADESH
AT HYDERABAD**

HONOURABLE SRI JUSTICE SAMUDRALA GOVINDARAJULU

CRIMINAL APPEAL No.537 of 2010

DATE: 15.06.2010

Between:

The State of A.P rep. By the Public Prosecutor.

..... Appellant/Petitioner

And

Shaik Mahaboob Ali and others

.....Accused/Respondents

**HONOURABLE SRI JUSTICE SAMUDRALA
GOVINDARAJULU
CRIMINAL APPEAL No.537 of 2010**

JUDGMENT :

This appeal is against order of acquittal recorded by the VII Additional Metropolitan Sessions Judge for trial of communal cases in S.C. No.51 of 2002 in favour of 28 accused persons who faced trial. There is no dispute about the offence which took place on 06.12.1996 which is observed as 'Black Day' by the community of the accused. After prayers in Macca Masjid, Hyderabad the persons took out procession despite prohibitory orders passed by the police and despite caution given by the police to disperse. There was pelting of stones causing injuries to several police personnel and other public and damage to property. In the lower Court, during trial P.Ws 1 to 37 were examined and Exs.P-1 to 32 were marked. Some of the witnesses identified few of the accused as the persons who were in the crowd. But none of the injured spoke as to who really inflicted injuries on him. It is contended by the Public Prosecutor that it is a case of rioting and

the prosecution invoked constructive liability under Section 149 I.P.C also. Simply because Section 149 I.P.C is invoked in this crime, one cannot jump to the conclusion that all the persons who participated in the procession had the common object, particularly when the crowd included the persons who were going to their respective houses after prayers in Macca Masjid on that day. The lower Court also observed that no test identification parade of the accused was conducted in this case. Since the accused are known persons and some of them were named in F.I.R as well as in statements of witnesses recorded by the investigating officer under Section 161(3) Cr.P.C., this Court does not find any necessity of the police conducting test identification parade for the accused. At any rate the lower Court after considering contents of F.I.R, statements of witnesses recorded under Section 161(3) Cr.P.C and evidence of the respective witnesses before the lower Court, came to the conclusion that there are omissions in the previous statements and developments during trial with regard to identity of the accused and their overt acts. The lower Court did elaborate exercise scanning through the evidence let in by the prosecution with reference to the previous statements and other available material and also with reference to probabilities of the case and rightly came to the conclusion that the prosecution could not make out the offences alleged against the accused beyond shadow of doubt. This Court agrees with reasoning and conclusion of the lower Court.

2) Hence, the appeal is dismissed.

SAMUDRALA GOVINDARAJULU, J

June 15, 2010

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