

**THE HON'BLE SRI JUSTICE M.S.RAMACHANDRA
RAO**

CRIMINAL APPEAL No.386 of 2006

JUDGMENT:

This appeal is filed challenging the judgment dt.22-11-2004 in S.C.No.563 of 2001 of the Addl. Metropolitan Sessions Judge for trial of Jubilee Hills Car Bomb Blast Case-cum-Additional Family Court, Hyderabad, whereunder the said Court had acquitted the respondents/accused of offence under Sections 436, 324, 307, 295 and 296 r/w Section 34 IPC and Sections 3 to 6 of the Explosive Substances Act, 1908.

2. Pending appeal, 2nd respondent/A-2 died and so the appeal against him had abated. Therefore, in this appeal, this Court is concerned only with the correctness of the judgment of the Court below in so far as it acquitted the 1st respondent/A-1.

3. On 08-06-2000 at about 8-30 a.m., a bomb was exploded in Jewett Memorial Baptist Church, Ongole, and in the said incident, P.Ws.1 to 3 received simple injuries.

4. The prosecution contended that accused are active members of Deendar Anjuman Organisation, whose object is Islamisation of whole India by adopting illegal means like Nifaq (hatred), Seria (acquiring money

by adopting illegal means) and Jihad (holy war); that accused entered into criminal conspiracy with the accused in other cases to cause large scale destruction of places of worship and promote enmity between different groups of religion and race; and they had perpetrated acts prejudicial to the maintenance of communal disharmony besides causing disaffection in order to bring hatred or contempt or cause disaffection towards the Government by desecration of places of worship and insulting certain sects knowing that such acts would result in breakdown of public order by acquiring controlled explosive substances i.e. Improvised Explosive Devices (IED).

5. The prosecution alleged that on that day about 30 to 40 devotees offered prayers in the said Church from 7-30 a.m. to 8 a.m.; except a few persons, all devotees left the Church by 8-30 a.m.; P.Ws.1 to 4, 6 and 7 had remained in the Church by 8-30 hours and were offering prayers while P.Ws.8 and 9, who were Watchman and Sexton of the Church were standing in front of Naidu pan shop located opposite to the Church; that at that time both the accused came on a red coloured Suzuki motor cycle and stopped near the post box situated by the side of the Church; A-1 was pillion rider and he went inside the Church along with a plastic bag covered with a red towel in his hands containing IED, kept the same in between the last two rows of the benches in the prayer hall of the

Church; came out of the Church and hurriedly went away on the motor cycle driven by A-2 towards Addanki bus stand with a dishonest intention of causing explosion and consequently, fomenting communal disharmony. It is alleged that 20 minutes after their departure, the bomb exploded causing injuries to P.Ws.1 to 3. PWs. 8 and 9, who were the eye-witnesses narrated the descriptive particulars of the persons who visited the Church on motor cycle and stated that they can identify the persons, if shown to them. P.Ws.1 to 3 were admitted in Government Hospital, Ongole. The statement of P.W1 was recorded by P.W.10 on intimation given by the Duty Doctor P.W.13. The said statement was sent to P.W.11, the Sub-Inspector of Police, Ongole-II Town P.S., who registered Cr.No.80 of 2000 under Sections 324, 307 IPC r/w Sections 3 and 5 of the Explosive Substances Act, 1908 with the report of L.W.5. P.W.17 the Sub-Divisional Police Officer, Ongole took up investigation, visited the scene of offence, got an observation report and remnants of exploded bomb in the presence of P.W.12 and another under the cover of an observation report. P.W.17 prepared a rough sketch of the scene of offence, examined the witnesses and others and forwarded the seized material objects to the Forensic Science Laboratory, Hyderabad with a letter of advice.

6. Since similar offences had taken place elsewhere in the State of Andhra Pradesh, the Additional Director General of Police, CID, Hyderabad ordered the

case to be investigated by the Dy.Superintendent of Police, CID, Ongole by proceedings dt.12-06-2000. Accordingly, P.W.16 took up further investigation and on his transfer, P.W.21 continued further investigation.

7. On 17-07-2000 the accused were arrested at Nuzvid Town of Krishna District while they were allegedly in possession of IED and explosive material along with some literature of Deendar Anjuman etc. in the presence of L.Ws.17 and 18 by L.W.23. L.W.23 again registered a case Cr.No.78 of 2000 under Sections 3 and 5 of the Indian Explosives Act, 1908 and Sections 120-B and 123-A IPC of Ananthapalli P.S. According to the prosecution, A-1 and A-2 confessed voluntarily about the criminal conspiracy of the members of Deendar Anjuman and also about their planting and exploding time bomb at the Jewett Memorial Baptist Church, Ongole on 08-06-2000 at 8-45 hours by using IED to cause large scale destruction of places of worship to promote enmity and hatred between different groups on the grounds of religion and race and also declaring proxy war against India. A mediators report was drafted for confession and seizure of explosives in the presence of L.Ws.17 and 18. They were then sent to judicial custody in Cr.No.78 of 2000 of Ananthapalli P.S.

8. On 03-10-2000, P.W.18 conducted the Test

Identification Parade of A-1 and A-2, in which P.Ws.8 and 9 attended and P.W.8 identified both A-1 and A-2 and P.W.9 identified A-1. According to the prosecution, earlier both P.Ws.8 and 9 have stated the descriptive particulars of both accused and stated that they can identify them, if they were shown.

9. After the charges were framed under the sections mentioned above, they were read over and explained to accused. They pleaded not guilty and claimed to be tried.

10. The prosecution examined 23 witnesses and marked 25 exhibits and M.Os.1 to 12.

11. The accused were examined under Section 313 Cr.P.C. about the incriminating material in the evidence of prosecution evidence. A-1 stated that he was arrested on 15-06-2000, later shifted to Machilipatnam, Nuzvidu, Tadepalligudem and then produced before the Court; his photograph was taken in CID Cell, Hyderabad; he was shown to two persons and the same persons had identified him in the Test Identification Parade. He stated that he never saw the bombs and had no connection with the case. A-2 also stated that he was arrested on 15-06-2000 and was shifted to Machilipatnam, Nuzvidu and Tadepalligudem. He alleged that police subjected him to torture to confess the crime and they were shown to witnesses, who identified him in the Test Identification

Parade.

12. The Court below framed the following points for consideration:

“1. Whether A-1 and A-2 were in possession of Explosive Substances under suspicious circumstances and caused explosion likely endanger to life or property?

2. Whether the accused destroyed, damaged or defiled a place of worship and scared object with an intention to insult the religion?

3. Whether the accused voluntarily caused hurt by a dangerous weapons or means?

4. Whether the accused attempted to murder?

5. Whether the accused committed mischief by fire or explosive substance with an intention to destroy a house or a church?”

13. By judgment dt.22-11-2004, the Court below acquitted the accused.

14. Challenging the same, this appeal is filed by the State.

15. The learned Public Prosecutor contended that the Court below ought not to have acquitted the accused since the evidence of P.Ws.8 and 9 is consistent and they had witnessed the accused going into the Church with a bag covered by red cloth and then coming out sometime later empty handed; that P.Ws.8 and 9 had also identified the accused in the Test Identification Parade conducted by P.W.18 and identified the accused

in Court; and the Court below on an erroneous appreciation of facts and law, acquitted the accused.

16. The learned counsel for respondents Sri B.Konda Reddy, however, refuted the above contentions and contended that the presence of P.W.8 at the scene of occurrence is highly doubtful; that the evidence of P.W.9 to the effect that he could not see out of the compound wall of the Church, gives rise to a reasonable doubt as to whether it was the accused who planted the IEDs in the Church; and the Court below had correctly appreciated the evidence on record and acquitted the accused.

17. I have noted the submissions of both sides.

18. The prosecution case is that respondents/accused planted IED in Jewett Memorial Baptist Church, Ongole on 08-06-2000 at about 8-45 a.m; P.Ws.1 to 3 received injuries due to explosion of the said device in the Church. P.Ws.1 to 3 spoke about the injuries received by them on account of explosion of the bomb in the Church. They did not speak about any person planting IED in the Church. P.Ws.4 to 7 deposed about the fact that there was an explosion in the Church. The evidence of PWs.1 to 7 reveals that a bomb did explode in the Church at the time mentioned in the charge sheet.

19. According to the prosecution, P.Ws.8 and 9,

who are Watchman and Sexton of the Church witnessed the accused coming to Church in a Suzuki motor cycle, A-1 who was pillion rider, going into the Church with one bag covered with red coloured cloth, then coming out after 10 minutes without it and then both the accused leaving on the motor cycle.

20. P.W.8 stated that he attended for his duty as Watchman at 7-30 a.m., on 08-06-2000; however, he left the Church at 8-10 a.m., to have his breakfast and taken tiffin at Sattar hotel at a distance of 200 yards from the Church and after taking tiffin, he came to Naidu bunk and was reading news paper there and it was then he witnessed the above events. In his cross examination, he however admitted that he applied for leave from 06-06-2000 to 10-06-2000 and that he was on leave upto 10-06-2000. If this was true, it is improbable that he would have been present during his leave period near the Church at the early hour of 8-30 or 8-45 a.m on the date of the incident. Also, the police examined him 10 days after the incident. P.W.8 admitted that the police station is at a distance of ½ K.M. from the Church. He ought to have immediately informed the police that he witnessed the explosion and that he suspected that accused are responsible for it since they had come to the Church 15 minutes prior to the explosion. According to him, he did not inform the police about his presence on 08-06-2000 but he talked about the incident with his wife and that

Police examined him 10 days after the blast to find out that he was present when the incident took place. The silence of P.W.8 for a period of 10 days in informing the police that he had witnessed the accused going into the Church just prior to the blast is unnatural. The natural conduct of a person, who witnessed any suspicious circumstance leading to an incident of this nature, would be to immediately contact the police and disclose what he has witnessed. The evidence of this witness therefore is not trustworthy.

21. P.W.9 is said to be employed as Sexton in the Church. In the Test Identification Parade, he identified only A-1 but not A-2. He admitted that there was a compound wall in the church and there are two compound wall gates. It was suggested to him that from the point where he was standing, except the main gate of the Church, he could not see anything inside the compound wall of the Church, with which he agreed. In view of this, PW9 could not have seen anything inside the compound wall of the Church. So it cannot be accepted that it was the accused to planted the bomb in the Church and it was witnessed by PW9.

22. Neither P.W.8 nor P.W.9 could state about the registration number of the vehicle on which they allegedly saw the accused coming to Church.

23. Moreover, there is a serious doubt about the existence of a compound wall to the Church itself because Ex.P-21 does not show any compound wall for the Church at all. P.W.17, who prepared Ex.P-21 sketch, stated in his cross-examination that the entrance of the Church is abutting the main road and there is no compound wall on the entrance of the Church.

24. Even according to the prosecution, there were several devotees in the Church at the time when the incident happened. P.Ws.8 and 9 could state how many vehicles were there near the Church at the time of the incident. The evidence of P.Ws.8 and 9 therefore does not inspire the confidence.

25. Both the witnesses are said to have sat near the bunk of one Naidu in front of the Church. But Ex.P-21 the scene of offence rough sketch does not show the location of the said bunk and the distance of the said bunk from the entrance of the Church and the possibility of a person standing near the bunk witnessing clearly the features of the persons entering the Church.

26. In case of this nature which is based on circumstantial evidence, it is necessary for the prosecution to prove that the chain of events, to sustain the accusation against accused, is complete and admits of no reasonable conclusion consistent with the innocence of accused i.e. it must exclude the possibility of

accused being innocent and the evidence on record must be consistent only with regard to guilt of accused. This is settled law.

27. In **Trimukh Maroti Kirkan Vs. State of Maharashtra**^[1], the Supreme Court held

“12. In the case in hand there is no eyewitness of the occurrence and the case of the prosecution rests on circumstantial evidence. The normal principle in a case based on circumstantial evidence is that the circumstances from which an inference of guilt is sought to be drawn must be cogently and firmly established; that those circumstances should be of a definite tendency unerringly pointing towards the guilt of the accused; that the circumstances taken cumulatively should form a chain so complete that there is no escape from the conclusion that within all human probability the crime was committed by the accused and they should be incapable of explanation on any hypothesis other than that of the guilt of the accused and inconsistent with their innocence”.

28. In **Madhu Vs. State of Kerala**^[2], the Supreme Court held:

“5. The care and caution with which circumstantial evidence has to be evaluated stands recognised by judicial precedent. Only circumstantial evidence of a very high order can satisfy the test of proof in a criminal prosecution. In a case resting on circumstantial evidence, the prosecution must establish a complete unbroken chain of events leading to the determination that the inference being drawn from the evidence is the only inescapable conclusion. In the absence of convincing circumstantial evidence, an accused would be entitled to the benefit of doubt.”

29. In the discussion supra, I have held that the very presence of P.W.8 on the day when he was allegedly on leave in the vicinity of the Church, where he was employed, is doubtful and that P.W.9 categorically admitted that there is compound wall in the Church and he could not see anything inside the compound wall from where he is standing. Thus I hold that the prosecution has failed to establish that the chain of circumstances pointing to the guilt of the accused is complete and that the evidence is inconsistent with the innocence of the accused.

30. It is not in dispute that a Test Identification Parade was conducted by P.W.18 on 03-10-2000, three and half months after the incident. The evidence on record indicates that the photographs of accused were taken and they were shown to witnesses PW8 and 9 prior to the Test Identification Parade and that the photographs of accused were also published in news papers prior to the Test Identification Parade. Therefore, much credence cannot be given to the identification by P.Ws.8 and 9 of accused in the Test Identification Parade as well as in the Court.

31. According to P.W.23, an Explosive Expert belonging to the Forensic Science Laboratory, Hyderabad, the explosion was caused in the Church on

account of IED with clock delay mechanism containing Nitro compound high explosive and chain of detonation consists of one Quartz clock, 1.5 volts dry cells, electric detonator, metallic shoe nails, plastic tin etc. If such a clock delay mechanism was admittedly used in the IED, it could have been done by anyone who had attended the Church during the time when prayers were held between 7.30 to 8 a.m. also. Since the above evidence gives a reasonable ground for a conclusion inconsistent with the guilt of accused, the accused is entitled to benefit of doubt.

32. The scope of interference in appeal under Section 378 of the Code is laid down succinctly in **Chandrappa and others Vs. State of Karnataka**^[3], as under :

“(1) An appellate court has full power to review, reappreciate and reconsider the evidence upon which the order of acquittal is founded.

(2) The Code of Criminal Procedure, 1973 puts no limitation, restriction or condition on exercise of such power and an appellate court on the evidence before it may reach its own conclusion, both on questions of fact and of law.

(3) Various expressions, such as, ‘substantial and compelling reasons’, ‘good and sufficient grounds’, ‘very strong circumstances’, ‘distorted conclusions’, ‘glaring mistakes’, etc. are not intended to curtail extensive powers of an appellate court in an appeal against acquittal. Such phraseologies are more in the nature of ‘flourishes of language’ to emphasise the reluctance of an appellate court to interfere with acquittal than to curtail the power of the court to review the evidence and to come to its own conclusion.

(4) An appellate court, however, must bear in mind that in case of acquittal, there is double presumption in favour of the accused. Firstly, the presumption of innocence is available to him under the fundamental principle of criminal jurisprudence that every person shall be presumed to be innocent unless he is proved guilty by a competent court of law. Secondly, the accused having secured his acquittal, the presumption of his innocence is further reinforced, reaffirmed and strengthened by the trial court.

(5) If two reasonable conclusions are possible on the basis of the evidence on record, the appellate court should not disturb the finding of acquittal recorded by the trial court.”

33. The above principle was reiterated in **State of Rajasthan v. Mohan Lal**^[4] and recently in **Satvir Singh v. State of Delhi**^[5].

34. Having regard to the above principle, since the conclusion of the Court below appears to be a possible conclusion and reasonable one, I am not inclined to interfere with the impugned judgment.

35. Therefore I do not find any merit in the appeal and the same is accordingly dismissed.

36. As a sequel, the miscellaneous petitions pending, if any, shall stand closed.

JUSTICE M.S.RAMACHANDRA RAO

Date: 17-03-2015

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[\[1\]](#) (2006) 10 SCC 681

[\[2\]](#) (2012) 2 SCC 399

[\[3\]](#) (2007) 4 SCC 415

[\[4\]](#) (2009) 12 SCC 515

[\[5\]](#) (2014) 13 SCC 143