

HONOURABLE SRI JUSTICE M.S.K. JAISWAL

CRIMINAL REVISION CASE No. 331 OF 2008

ORDER:

This Criminal Revision Case is filed against the judgment of learned Sessions Judge, Warangal dated 22.01.2008 passed in Criminal Appeal No. 88 of 2005.

The petitioners herein are A2 and A3 in S.C.No.79 of 2002 on the file of the learned Principal Assistant Sessions Judge, Warangal wherein and whereby they were found guilty of the offences punishable under Sections 341,506 IPC and Sections 3 and 5 of the Explosive Substances Act (for short 'The ES Act), however, they were found not guilty of the offence punishable under Section 307 IPC.

Along with A2 and A.3, A.1 was also charge sheeted having committed offence alleged, however, A1 was killed at the time of incident. Therefore case was filed against A2 and A3. By judgment dated 23.08.2005, the learned Principal Assistant Sessions Judge, Warangal, found A2 and A3 guilty as stated supra and accordingly convicted and sentenced them to undergo Rigorous Imprisonment for one month, two years and three years each respectively under each count of offences alleged against them and imposed fine of Rs.500/- each under each count, in default, they shall suffer Rigorous Imprisonment for one month each under each count.

Aggrieved by the same, the petitioners/accused preferred Criminal Appeal No. 88 of 2005 wherein and whereby the learned Sessions Judge, Warangal while confirming the

conviction of the petitioners, however reduced the sentence of R.I. for three years to two years under each count for the offences punishable under Sections 3 and 4 of the ES Act and dismissed the appeal in all other aspects.

Aggrieved by the same, the present Criminal Revision Case is preferred.

The learned Counsel for the petitioners submits that the prosecution failed to prove its case beyond all reasonable doubts against the petitioners/accused and both the Courts below erred in finding the petitioners guilty of the offences alleged against them. It is submitted that the incident in the case on hand said to have taken place on 13.01.2002 at about 9.30 AM and the evidence that is placed on record by the prosecution has not successfully made out its case in proving the offences alleged against the accused inasmuch as the accused were said to be strangers to the prosecution witnesses and they have not been seen prior to the incident. More particularly it is submitted that no test identification parade was conducted prior to the examination of the witnesses and identification of the petitioners for the first time in the Court by the prosecution witnesses has no value in the eye of law and the same cannot form basis for convicting the petitioners. The learned Counsel further submits that even though it is alleged that one of the accused hurled bombs, the Investigating Agency having seized remnants from the scene of offence failed to send the same to Forensic Laboratory for examination so as to ascertain as to what type of explosives had been used by the accused. He further submits that the injured person in the

incident was allegedly P.W.3 on account of hurling axe by one of the accused, who was A.1, but he was killed by the villagers. He thus submits that evidence on record did not prove the case to bring home the guilt of the accused and hence the petitioners are entitled for acquittal.

The learned Public Prosecutor on the other hand submitted that all the material witnesses have consistently deposed about the participation of A2 and A3 in the crime; and that both the Courts below in proper perspective scrutinized the evidence on record and found A2 and A3 guilty of the offences alleged against them and hence no interference is warranted with the judgments of the Courts below in the present Criminal Revision Case.

The case of the prosecution in brief is that the defacto complainant is one M.Chander Rao, who was examined as P.W.1. He is the resident of Vangarapally and was working as Secretary to MCPI Party. A.1 to A.3 are resident of the same village, The deceased A.1 was Ex-dalam member and worked in PWG and later surrendered before the Police and was residing in Vanjarapally village. A2 and A3 are close associates of deceased A1. It is alleged that A1 to A3 were in the habit of posing themselves as Naxalites and extracting money and arms in the name of extremist groups. P.W.1 was targeted by PWG and therefore he was provided with gunman. Insofar as incident is concerned, it is alleged that on 13.1.2002 the gunman of P.W.1 went to Warangal to celebrate festival. On the same day, at about 9.30 AM, P.W.1 along with P.W.2 and L.W.3 who is

the wife of P.W.2 were proceeding on motorcycle to Machanur and when they reached the outskirts of the village, they found one bullock cart parked on the road and three unknown persons were on the cart. Suddenly, the said three persons came on the road and surrounded them and the deceased A1 pointed his pistol on the head of the complainant and A2 and A3 took out axes. It is further alleged that A2 and A3 then informed the complainant/P.W.1 that they are PWG naxalites and asked him to accompany them to his own house. Upon the request of the complainant, A1 to A3 permitted P.W.2 and L.W.3 (wife of P.W.2) to leave the place with dire consequences not to inform anybody about the incident. Thereafter A1 to A3 took the complainant to his house and on their instructions, P.W.1 instructed his gunman through telephone to come to his house. When P.W.1 offered tiffin, the accused refused the same and however, they permitted P.W.1 to take his tiffin. Taking advantage of the same, P.W.1 went into other room, closed the doors and bolted inside. Then the family members of PW1 raised cries and on hearing the same, the neighbours including P.Ws. 3,4 and 8 and others came there. On seeing them, A1 to A3 informed them that they have planted bombs in the house of P.W.1 and so saying, they started running away from the house of PW.1. P.Ws. 3,4, and 8 and others chased them and in that process, they tried to caught hold of A.1 and A.1 attempted on the lives of the villagers by throwing bombs and beat PW.3 with axe causing head injury. The villagers attacked A1 and killed him. A2 and A3 flee away from the place of occurrence.

With the above said allegations, P.W.1 lodged a complaint Ex.P1 with the police and a case in Crime No. 6 of

2002 was registered on the file of the Sangam Police Station, who investigated into. During the course of investigation, scene of panchanama was conducted in the presence of P.W.10 and another and remnants of explosives were seized. Another panchanama in the presence of P.W.11 and another was conducted where dead body of A.1 was lying and photographs of scene of offence were taken by the photographer P.W.6. A dummy pistol, one steel knife, a cart peg, one axe, blood stained earth and controlled earth were seized under the cover of panchanama in the presence of mediators. Inquest over the dead body of deceased A1 was conducted in the presence of P.W.11 and another. At the time of inquest, a letter Ex.P2 was found from the pocket of the deceased A1 and the same was seized. The injured P.W.3 was sent to hospital for treatment.

On 8.3.2002 at about 1.00 PM the police apprehended A2 and A3 and they confessed in the presence of P.Ws. 13 and 14 that they committed the crime and the police recovered one axe and the same was seized under the panchanama. After obtaining sanction from the District Collector, the petitioners/accused were prosecuted for the offences punishable under Sections 3 and 5 of the ES Act and thereafter charge sheet was filed.

On appearance of the accused, charges referable to Sections 307, 341, 506 of IPC and Sections 3 and 5 of the ES Act were framed against the accused, read over and explained to them, to which, the accused pleaded not guilty and claimed to be tried. During the course of trial, prosecution examined P.Ws.1 to 16 and got marked Exs.P1 to 27 to prove the guilt of

the accused. MOs 1 to 7 were also marked as material objects. None were examined on behalf of the accused and no evidence was produced on their behalf. After completion of the evidence, the accused were examined under Section 313 Cr.P.C., where they denied the incriminating evidence appearing against him.

On appreciation of the evidence on record, both the Courts below held the accused guilty of the offences punishable under Sections 341, 506 IPC and Sections 3 & 5 of ES Act as stated supra.

In the present appeal, what is required to be decided is whether the evidence on record established the guilt of the accused beyond all reasonable doubts and whether the accused committed the alleged crime.

The admitted fact is that on the date of alleged incident said to have taken place on 13.01.2002, the non petitioner A.1 was lynched to death by the villagers. It was alleged that before the incident of his death, A1 along with A2 and A3 have abducted P.W.1 and wrongfully restrained him on the main road and thereafter confined him in his own house. When the villagers attempted, the accused informed them that the house of P.W.1 has been planted with bombs for the purpose of killing P.W.1. The material evidence in the case shows that P.W.2 and his wife L.W.3 who were pillion riders were relieved by the accused.

In the complaint Ex.P.1, based on which Ex.P.24 FIR

was issued, it was alleged that offence was committed by three unknown persons. Admittedly test identification parade was not conducted. There is no witness identifying the Accused to establish that they committed the crime. There is no dispute that test of identification parade before filing charge sheet is not mandatory. But however it is a safe rule that such proceedings are used for corroboration purposes. The learned Counsel for the petitioners relied on the decision of the Apex Court in *Rajesh Govind Jagesha Vs. State of Maharashtra* {(1999)8 SCC 428}. When the crime of this magnitude was committed by the persons who are not previously known to the witnesses, it is obligatory on the part of the Investigating Agency to hold identification parade for the purpose of enabling the witnesses to identify the persons who alleged to have committed the offence. The petitioners/accused were arrested on 8.3.2002 and the incident alleged took place on 13.01.2002. The trial in the case commenced in the month of July, 2004. P.W.1 was examined in the month of July 2004. Therefore, when the alleged crime took place in the month of January, 2002 and material witnesses have not seen the assailants thereafter, identification parade of the assailants was not conducted till July, 2004. Even in the complaint Ex.P.1 or during the course of statements recorded by the police, no specific remarks whatsoever of the petitioners/accused were recorded. Further P.Ws. 1 to 4 and 7 deposed that they have no acquaintance with A2 and A3 prior to the incident. No acceptable reasons have been stated as to why Investigating Agency has not taken aid of provisions of law which provide for identification of the accused by the victims in the identification parade. In view thereof, it cannot be said that A2 and A3 have participated in the crime

inasmuch as the identification of A2 and A3 by them for the first time in the court has no value in the absence of any identification parade got conducted by the prosecution before filing the charge sheet.

P.W.1 deposed in his evidence in similar terms as to what was stated in Ex.P.1 and the said allegations are also noticed in the charge sheet. It was deposed that PW.1 was taken by the accused to his own house where he was staying with his family members. He deposed that when the villagers came there on hearing the cries and hues of his family members, the petitioners/accused started to leave from the house of PW.1 by informing the villagers that they have planted bombs. When the villagers were chasing them, the accused hurled bombs on the villagers and A.1 hacked axe on PW.3 and then the villagers caught hold of A1 on the spot. P.W. 3 was injured and P.Ws. 3,5 and 8 are the residents of same village, who are also the persons said to have came to the house of PW.1. They also corroborated the evidence P.W.1 to the effect that they have seen the accused ran away from the house of P.W.1 informing the villagers about the bombs being planted in the house of P.W.1. They also identified A2 and A3 for the first time after two years of the incident. However, they have not seen any one of assailants till the date of their identification the Court.

The evidence of P.W.3 is to the effect that when he attempted to caught hold A1, he hacked on his face with axe which resulted in a bleeding injury and that A1 has not faced trial.

The prosecution witnesses claimed that about 50 villagers chased the accused even though the accused informed that they planted the bombs in the house of PW.1 and though the accused alleged to have hurled the bombs and ultimately caught hold of A.1., it is to be seen that except P.W.3, none of the villagers were injured whatsoever though the accused alleged to have hurled bombs. P.W.3 suffered only a bleeding injury simple in nature. P.W.9 the Doctor who treated P.W.3 gave Ex.P.11 medical certificate stating that the injury suffered by P.W.3 was simple in nature and it was only a minor bleeding injury.

-

The other prosecution witnesses though deposed that the accused while leaving the village hurled bombs, but no satisfactory evidence whatsoever was produced to show that what type of explosive substances were used by the accused and though remnants of explosives were seized, however, the Investigating Agency has not sent the same to Forensic Laboratory for analysis. Although the prosecution seeks to rely on the evidence of discovery of remnants of explosive substances, yet it appears that the same articles collected in the course of investigation were not sent to the Forensic Science Laboratory for chemical analysis. In absence of any such test report of the Forensic Science Laboratory, this Court fails to understand how the discovery of the remnants said to be connected with the crime. Assuming for the moment that there is a discovery of the remnants of explosive substances, but same must have nexus with the crime.

The other evidence of the formal witnesses/punch witnesses, as also, in the absence of reports of the forensic Science Laboratory, and the identity of the accused, as the perpetrators of crime, could be said to be hardly of any consequence, to connect them with the present occurrence. Had the identity of the accused been proved, beyond a reasonable doubt, and the ocular evidence of the prosecution witnesses, been held to be reliable, these pieces of circumstantial evidence, would have furnished some corroboration. No help, therefore, can be drawn, from the circumstantial evidence, referred to above, by the prosecution.

Further it is to be seen that P.W.8 deposed in his evidence that he knows the accused for more than five years as they are nearby villagers. He also deposed that all the accused threatened the villages by showing pistol and axes and stating that they planted bombs and going to blast the house of P.W.1. He also narrated the remaining incident that took place. But, nothing prevented him to inform about the incident and the accused to the police in the first information report after the incident or during the course of recording of the statements while investigation was going on.

Another significant aspect needs to be noticed is that as on the date of incident, when P.W.1 was going towards Machanur along with P.W.2 and L.W.3 (wife of P.W.2) on a motorcycle, the accused abducted them by parking a bullock cart on the main road in the outskirts of the village. After revealing their identity, A.1 pointed pistol to the head of P.W.1

and A2 and A3 surrounded them with axes. Then the accused asked P.W.1 to accompany them to his house. At that time, upon the request of P.W.1, the accused released P.W.2 and his wife to leave the place with a warning not to disclose anybody. However after leaving the place which is about ½ km away from the village, P.W.2 and L.W.3 did not disclose either to the villagers or the police. If it is assumed that if really accused are going to kill P.W.1, nothing prevented P.W.2 and L.W.3 to disclose the same to the police or take the aid of the villagers to save the life of P.W.1. But that was not the situation.

P.W.16 was the then DSP who took over the investigation. He deposed that he apprehended A2 and A3 nearly after 2 ½ months. He further deposed that no cases were registered or pending against the A2 and A3 prior to the incident to show that they are extremists and that P.W.1 did not state before him that the accused came there to kill him. No satisfactory evidence was brought on record to show that A2 and A3 are extremists nor any cases are pending against them prior to the incident.

Another significant factor needs to be noticed is that when the P.W.1 accompanied with accused to his house, about 50 villagers came to the house of P.W.1. On seeing the villagers, the accused threatened them stating that they have planted bombs in the house of P.W.1 and thereafter started running away from the house of P.W.1. When the villagers chased them, the accused hurled bombs on the lives of the villagers. However, none of the villagers have suffered any injury due to hurling of bombs. P.W.16 the then DSP deposed

that he did not receive any information regarding the incident till P.W.1 told while lodging complaint. This was about 31/2 hours after the incident took place. It is also stated that the villagers admitted about the killing of A.1, however, no case was registered against the killers of A.1. It is difficult to accept that when such a major incident took place, the police were not aware about it till the complaint was filed.

Further it is to be seen that the accused threatened the villagers by saying that they have planted bombs in the house of P.W.1 to blast his house. The accused have spent considerable time in the house of P.W.1 before they ran away from his house. However, no incriminating evidence has been seized by the Investigating Agency from the house of P.W.1. On the other hand, it is to be seen that if really the accused have confined P.W.1 for the purpose of killing him, they might have caused some injury to P.W.1. Even when the accused released P.W.2 and his wife L.W.3 from the place of incident, it shows that they have accompanied P.W.1 not for the purpose of killing him. If really the accused have intention to kill P.W.1, they could not have released P.W.2 and his wife from the place of abduction. What all to be presumed is that the prosecution witnesses have stated on oath infra only to escape from the charge of killing A.1, the prosecution witnesses concocted story, which is difficult to believe.

To attract the provisions of Section 506 of the Indian Penal Code, there should be criminal intimidation and on plain reading of the complaint there is no such charge. The evidence

on record established that the accused have not threatened the complainant with any injury, or his personal reputation or property and there is no any supporting evidence on record. Therefore, the learned Counsel would submit that provisions under Section 506 of the Indian Penal code are not attracted in the case of the petitioners. Furthermore, the prosecution, for attracting prosecution for criminal intimidation must prove that the threat should be perceived by the persons so threatened and that could have an effect, impact upon his mind. Apart from having inconsistency amongst the evidence of the PWs on this very score, the evidence of none of the PWs satisfies the aforesaid ingredients.

For the foregoing discussion, in my opinion, prosecution could not succeed to prove its case beyond all shadow of reasonable doubts and both the Courts below committed error in convicting and sentencing the petitioners/A2 and A3. Consequently the petitioners are acquitted of the charges levelled against them.

In the result, Criminal Revision Case is allowed and the conviction and sentence imposed by the trial Court and modified by the lower appellate Court is hereby set aside. Fine amount if any paid the petitioners shall be refunded to them. Bail bonds executed by the petitioners shall stand discharged.

JUSTICE M.S.K. JAISWAL

DATED 3RD SEPTEMBER, 2015.
Msnr_x