

**THE HON'BLE SRI JUSTICE C.V.NAGARJUNA REDDY
AND
THE HON'BLE SRI JUSTICE M.S.K.JAISWAL**

Criminal Appeal No.952 of 2010

Dated: 06th April, 2016

Between:

T.Hanumantha Rao

..Appellant/Accused

And

The State of Andhra Pradesh,
represented by its Public Prosecutor,
Hyderabad

..Respondent

Counsel for the appellant: Sri T.Bali Reddy
for Sri H.Prahallada Reddy

Counsel for the respondent: Public Prosecutor

The Court made the following:

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JUDGMENT: (per Hon'ble Sri Justice C.V.Nagarjuna Reddy, J)

The appellant, a police constable in C.R.P.F. campus, stood trial for killing one of his superiors and attempting to kill another. He was, accordingly, charged for the offences punishable under Sections 302 and 307 IPC; Section 3 of the Prevention of Damage to Public Property Act, 1984 (for short 'the PDPP Act') and Section 27 of the Arms Act, 1959 (for short 'the Act').

The case of the prosecution, in brief, is that the appellant was working as a Constable in Armed Force of C.R.P.F. campus, Chandrayangutta, Hyderabad, at the time of occurrence. He entered the chambers of one Syed Sirajuddin Ali Khan @ S.S.A.Khan (hereinafter referred to as 'the deceased'), the Additional D.I.G., C.R.P.F. campus, Southern Sector, Chandrayangutta, on 31.01.2008 between 1800 and 1815 hours, opened fire at a close range using INSAS rifle with twenty rounds, fired one round at the head of the deceased causing his death on the spot, broke open the door of another chambers of one Kishore Kumar Arya (PW.2), the Deputy Commandant (Legal), C.R.P.F. campus, Southern Sector, Head Quarters, Chandrayangutta, Hyderabad, and attempted to kill him by firing another round, but as the witnesses overpowered the appellant, the aim of the weapon was got diverted at the floor causing a pit and ricochet.

The incident was reported by PW.1, the Additional Deputy Inspector General, C.R.P.F., Southern Sector, Head Quarters, Chandrayangutta, based on which, Crime No.24 of

2008 for the offences punishable under Sections 302 and 307 IPC; Sections 3 and 4 of the PDPP Act and Section 27 of the Act was registered by the Chandrayangutta Police. During the course of investigation, the statements of PWs.1 to 12 and Bhosle Raju, Sanjay Kumar Singh and Balram Singh (LWs.12 to 14 respectively) were recorded. Exs.P3 and P4, scene of offence panchanama and rough sketch respectively, were drawn on the same day at 2100 hours in the presence of PW.15 and Trilochan Behra (LW.20) and the incriminating material, such as blood stains, empty cartridge etc., were seized.

Immediately, after the occurrence, PW.2 with the help of PWs.4, 5 and 7 overpowered the appellant, arrested him, lodged him in Quarter Guard of C.R.P.F. campus and seized the rifle and material from him. Inquest over the dead body of the deceased was held in the mortuary of the Osmania General Hospital on the same day from 2130 to 2230 hours before PWs.16 and 17 and the blood stained clothes of the deceased were seized.

During the course of further investigation, it came to light that the appellant was married eight years prior to the date of the incident, but he had no children, that he desired to have his progeny and that he could not take his wife for medical examination due to the rigorous duties. He also could not get his official gas and television connections and he could not get proper treatment at C.R.P.F. hospital for his swollen legs. Out of frustration and depression, the appellant, who possessed officially issued rifle, entered the chambers of the deceased and shot him from a close range at the head and killed him. The appellant also went to the chambers of PW.2 by breaking open the door of the chambers to kill him, but he was overpowered by PW.2 with

the help of PWs.4, 5 and 7.

In support of its case, the prosecution examined P.Ws.1 to 23, marked Ex.P1 to P16 and produced MOs.1 to 20. On behalf of the defence, no oral evidence was let in, but Exs.D1 and D2, the relevant portions of Section 161 statements of PWs.2 and 6 respectively, were marked.

On appreciation of the oral and documentary evidence, the trial Court convicted the appellant for the offences punishable under Sections 302 and 307 IPC; Section 3 of the PDPP Act and Section 27(1) of the Act and he was sentenced to suffer life imprisonment and to pay a fine of Rs.1,000/-, in default to suffer simple imprisonment for six months for the offence punishable under Section 302 IPC; to suffer rigorous imprisonment for a period of seven years and to pay a fine of Rs.1,000/-, in default to suffer simple imprisonment for six months for the offence punishable under Section 307 IPC, to pay a fine of Rs.1,000/-, in default to suffer simple imprisonment for three months for the offence punishable under Section 3 of the PDPP Act and to suffer rigorous imprisonment for a period of seven years and to pay a fine of Rs.1,000/-, in default to suffer simple imprisonment for six months for the offence punishable under Section 27(1) of the Act. All these sentences imposed against the appellant were directed to run concurrently.

We have heard Sri T.Bali Reddy, learned Senior Counsel appearing for the appellant, and the learned Public Prosecutor.

The learned Senior Counsel for the appellant, has taken this Court through the evidence and submitted that it has come out in the evidence of PW.3, the P.A. to the deceased, that one A.Raghunadha Rao, a C.R.P.F. Head

Constable, also entered the chambers of the deceased at the same time when the appellant entered there. That as spoken to by PW.12, the Head Constable in C.R.P.F., Chandrayangutta, Hyderabad, the said Raghunadha Rao was also issued the same type of rifle prior to the issuing of such rifle to the appellant, that therefore, there was a possibility of the said Raghunadha Rao killing the deceased and that the prosecution failed to prove with certainty that it is the appellant, who has killed the deceased. The learned Senior Counsel has also pointed out certain discrepancies in the evidence of the material witnesses in order to create reasonable doubt in the case of the prosecution. He has further submitted that going by Ex.P4, the rough sketch pertaining to the scene of offence, it is not possible for the deceased to receive the gun shot injury on the right side below the ear and that considering the place at which the deceased suffered the gun shot injury, any amount of doubt arises as to whether the alleged offence has taken place in the manner as projected by the prosecution. The learned Senior Counsel further argued that the prosecution failed to prove motive on the part of the accused and that in the absence of any motive, it is not safe to convict the accused/appellant when the case is based solely on circumstantial evidence.

Opposing the above submissions, the learned Public Prosecutor has submitted that the facts that the appellant was overpowered by PW.2 with the help of others and the weapon was snatched from him are not in dispute and as the presence of the appellant at the scene of offence was proved, the *onus* lies on the appellant to probablise the attack on the deceased in the manner different from what was projected by the prosecution. In support of his

submission, he has relied upon the judgments of the Supreme Court in **State of U.P. vs. Mohd. Iqram and another**^[1] and **Satni Bai vs. State of Madhya Pradesh (now Chhattisgarh)**^[2].

It is not in dispute that the death of the deceased was homicidal. As noted hereinbefore, apart from the documentary evidence, the prosecution has let in oral evidence of which the evidence of PWs.1 to 4 is highly material. PW.1 on whose report FIR was registered, deposed that at the relevant point of time, he worked as Additional DIG, Southern Sector, CRPF, Chandrayangutta, Hyderabad, that on 31.01.2008 between 1800 hours and 1815 hours, when he was attending to his office work, he heard a gun shot from the neighbouring room where the deceased was sitting. That he came out shouting as to what happened, that he saw a person in uniform with a riffle in his hand rushing towards the room of PW.2, Deputy Commandant, that he went out behind the assailant and he saw the latter trying to forcibly entering the room of PW.2 and immediately thereafter, he heard another gun shot, that the assailant was caught by PW.2, his office runner, PW.4 and others, that barrel of the gun was held by PW.2 towards the ground and PW.1 took out the magazine from the riffle and disarmed the assailant with the help of others. PW.1 has pointed at the dock in the Court and identified the accused as the assailant. That he has ordered the accused to be taken to the quarter guard, rushed to see as to what happened to the deceased in his room, that he found the deceased in a pool of blood and he was immediately brought out and put on the vehicle and taken to the hospital within the campus, that after giving first aid, the deceased was taken to the Osmania General Hospital where the

doctors attended on him declared him dead. Thereafter, he lodged Ex.P-1 report to the police. A perusal of the contents of Ex.P1 reveals that they completely correlate with the deposition of PW.1.

PW.2 has also given a graphic description of the entire occurrence. He has *inter alia* deposed that when he has heard the gun shot sound between 6.00 pm and 6.15 pm, he came out of the office along with the runner and saw the accused coming from the Officers block in uniform where the deceased was sitting, holding INSAS rifle 5.56 mm, that he noticed that the accused was in furious mood and seeing his body language, facial expressions and his brisk walk, he and his office runner took shelter in his chamber and tried to close the door and bolt the door, that meanwhile the accused came and kicked the door twice or thrice and then half of the door broke opened and he saw the barrel pointing towards him, that since he is in danger, he held the rifle with his right hand and subsequently his runner came from behind on his instructions and tried to push the accused out of the office chamber but the accused held the weapon tightly and fired second round which hit the veranda. The witness further deposed that after hearing the second gun shot sound PWs.3, 4 and 7 tried to catch hold of the accused from behind and with the help of others, they have over powered the accused and disarmed him. That at the time of taking the weapon from the possession of the accused, he has found one live round in the chamber of the weapon which indicates that the weapon is loaded. On enquiry, the accused informed the witness that he wanted to kill PW.2 also but he has escaped. That on the instructions of PW.1, he has taken the weapon and the magazine and put the accused in the quarter guard. That at

that time he has seen the deceased being shifted in Tata sumo and blood was oozing from his head.

PW.3 another crucial witness who was the Steno/P.A., to the deceased deposed that at about 6.10 pm when she was attending to her work as P.A., to the deceased, she saw one person entering the chamber of the deceased with a weapon, that after two seconds she heard a gun shot sound and a few seconds later, the assailant came out and went away. That she presumed something untoward happened and rushed to the room of PS to IG (PW.6) to inform him that something has happened and that as she did not find PW.6 in his office room, she washed her face in the bathroom attached to the office room of PW.6 and she was shivering terribly. She has further deposed that she could not go into the room of the deceased, as she was the only lady posted in the office and when she came out from the bathroom to the varanda, she observed that the deceased was being shifted to the hospital and that the blood was oozing from his body. The witness identified the person in the dock as the one whom she has seen entering the room of the deceased with weapon and at 7.15 pm she came to know that the deceased succumbed to injuries. PW.4 fully corroborated with the evidence of PW.2. PW.6 has fully corroborated with the evidence of PW.3.

On a careful perusal of the cross-examination of these witnesses, nothing material could be elicited by the defence to discredit the testimony of the above-mentioned witnesses.

PW.12, who worked as head constable of C.R.P.F., Chandrayanagutta is another material witness who deposed that he has issued INSAS 5.56 mm rifle to the accused when he assumed duty on 31.01.2008 at 6.00 pm along with three

magazines consisting of sixty rounds. He has further deposed that he has entered the said fact in Ex.P2, extract of register containing the relevant entry pertaining to the issue of Arms and Ammunition. He has also deposed that at about 6.30 pm, PW.2 has handed over the rifle and magazines issued to the accused asking him to deposit the same in kothe, that he has received the same after obtaining the signatures of PW.2 and he pointed out that when he counted the rounds in the magazines, he found two magazines of 20 rounds each and the third magazine containing only 18 rounds and that the two empty shells were handed over to him by PW.2. The witness has, however, admitted in his cross-examination that on the same day, he has issued INSAS 5.56 mm rifle to one A.Raghunadha Rao, head constable and two others for performing night guard duty at I.G. Bungalow.

Ex.P12, FSL report, was issued by PW.21. In his evidence, PW.21 has testified that he has examined as many as 26 items sent to him for analysis and compared the riffling marks present on the two copper jacket pieces (item No.23 referred to him) with the riffling marks present on the bullet test fired from INSAS rifle (without marks) (item No.1) under comparison microscope and they were tallying. He has deposed *inter alia* that item Nos.21 and 22 empty rimless metallic cartridge cases and item No.23, two copper cartridge jacket pieces were fired from item No.1 and item Nos.23 and 24, two copper jacket pieces and lead core pieces and aluminium piece could have been fired from item No.1 and got fragmented on hitting any hard object, that the gun shot residue is present on kaki colour pant and kaki colour full sleeved shirt, item Nos.4 and 5 seized from the accused under Ex.P7 admissible portion of confession-

cum-seizure panchanama. This evidence of PW.21 without any doubt connects the bullets and cartridges that were seized from the scene of offence.

In the face of the above discussed evidence, we have to consider the submission of the learned Senior Counsel that as another police head constable, namely, A.Raghunadha Rao, was also issued a similar weapon as was issued to the accused, on the same day before the occurrence and he was also seen entering the chamber of the deceased at the same time when the accused has allegedly entered the chamber and gun shots were heard by PW.3, there is every possibility for the said Raghunadha Rao to have killed the deceased.

As noted hereinbefore, it is proved from the above discussed evidence that INSAS rifle along with three magazines each containing 20 rounds was issued to the accused by PW.12. It is also proved that when PW.2 has returned the rifle along with the magazines and one of the magazines was having 18 rounds as against 20 rounds issued to the accused. The two rounds which were found at the scene of offence were found tallying with the magazines issued to the accused and used from the rifle seized from him. The gun shot residue found on M.O.Nos.4 and 5 belonging to the appellant proved beyond any pale of doubt his participation in the commission of offence. In the teeth of this evidence, there is no possibility for any one else other than the accused killing the deceased. It is not the pleaded case of the defence that any of the witnesses including PWs.1 to 6 had any reason to falsely implicate the accused. It is also not the case of the defence that the case of the prosecution that the appellant was found entering the chamber of the deceased was false.

In **State of U.P. vs. Mohd. Iqram** (1 supra), the Supreme Court held that once the prosecution had brought home the presence of the accused at the scene of the crime, then the onus shifts to the defence to bring forth suggestions as to what could have brought him to the spot. The defence failed to discharge its onus either by making possible suggestions to the witnesses or by the accused giving proper answers to the questions put to him under Section 313 of Cr.P.C. Though as many as 95 questions were put to the accused, the only answer given by him was 'false'. He has not even indicated anywhere in his examination under Section 313 Cr.P.C., that he was falsely implicated in the case.

With regard to the submission of the learned Senior Counsel that the prosecution failed to prove the motive and that therefore, the appellant is not liable for conviction.

No doubt, the lower Court has rendered a finding that the prosecution failed to produce sufficient evidence to prove the motive. It has nevertheless held and in our view rightly that there is clear, cogent and reliable evidence through the evidence of witnesses pointing to the guilt of the accused and therefore, absence of motive does not affect the case of the prosecution. Furthermore, from the evidence on record, the prosecution succeeded in proving the guilt of the appellant beyond all reasonable doubt.

In addition to the offences punishable under Section 302 IPC, for having caused the death of the deceased and Section 307 IPC, for having attempted to kill PW.2, the appellant was charged and found guilty for the offence punishable under Section 3 of the PDPP Act and Section 27(1) of the Act.

Insofar as charge under Section 3 of the Act is

concerned, Ex.P-3-the scene of offence panchanama, shows that the door of the chambers of PW.2 was broken due to the appellant kicking it and there was also a hole on the floor caused due to the fire from MO.1. Therefore, his conviction for the said offence cannot be interfered with.

Insofar as the charge under Section 27(1) of the Act is concerned, the same cannot be said to arise in the case. The allegations that stood proved against the appellant are that he being a Constable in CRPF was on guard duty and was provided with MO.1, INSAS Rifle, and the magazines for performing his duty of providing security to the officials. This fact is spoken to by PW.12. The appellant has used the said weapon for committing the crime.

Section 27 of the Act reads as under:-

“Punishment for using arms, etc. -(1) Whoever uses any arms or ammunition in contravention of Section 5 shall be punishable with imprisonment for a term which shall not be less than three years but which may extend to seven years and shall also be liable to fine.

(2) Whoever uses any prohibited arms or prohibited ammunition in contravention of Section 7 shall be punishable with imprisonment for a term which shall not be less than seven years but which may extend to imprisonment for life and shall also be liable to fine.

(3) Whoever uses any prohibited arms or prohibited ammunition or does any act in contravention of Section 7 and such use or act results in the death of any other person, shall be punishable with death.”

Section 7 of the Act reads as under:-

“Prohibition of acquisition or possession, or of manufacture or sale, of prohibited arms or prohibited ammunition - No person shall -

- (a) acquire, have in his possession or carry; or
- (b) use, manufacture, sell, transfer, convert, repair, test or prove; or
- (c) expose or offer for sale or transfer or have in his possession for sale, transfer, conversion, repair, test or proof,

any prohibited arms or prohibited ammunition unless he has been specially authorised by the Central Government in this behalf.”

If the above provisions are carefully analyzed, we are of the opinion that the appellant cannot be said to have committed the offence punishable under Section 27 r/w Section 7 of the Act.

As already noted, the appellant was authorized to possess the weapon for the purpose of providing security to the officials but he used the same to target the protectee.

His conviction for the offence under Section 27(1) of the Act cannot, therefore, be sustained.

In the result, the Criminal Appeal is dismissed confirming the conviction of the appellant for the offences punishable under Sections 307, 302 of IPC and Section 3 of the PDPP Act and the sentences imposed against him. However, the appellant is acquitted of the charge punishable under Section 27(1) of the Act and his conviction and sentence on this count are set aside. The fine amount, if any paid for this charge shall be refunded to the accused.

C.V.NAGARJUNA REDDY, J

M.S.K.JAISWAL, J

06th April, 2016

L.R. copies

GHN/**VGB**/DSR

[\[1\]](#) 2011 (2) ALD (CrI.) 830 (SC)

[\[2\]](#) 2010 (1) ALD (CrI.) 850 (SC)