

THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

CRIMINAL REVISION CASE No.599 OF 2005

ORDER:

This revision is filed, under Sections 397 and 401 Cr.P.C., questioning the propriety, legality and correctness of the order passed by the Sessions Judge dated 01.04.2005 in CrI.A.No.3 of 2002 whereby he affirmed the conviction and sentence imposed against the petitioners for the offence punishable under Section 5 of Explosive Substance Act (for short 'the Act') and sentencing them to undergo Rigorous Imprisonment for three years and to pay a fine of Rs.1,000/- passed by the Judicial Magistrate of II Class, Gurazala in C.C.No.519 of 2000.

Brief facts of the case are that the Sub-Inspector of police, on receipt of information, at about 11:30 A.M. at Nallavagu bridge situated on Dachepalli Hyderabad State Highway road, conducted search and found A1 in possession of 25 gelatin sticks and 120 detonators, which were seized under the cover of Ex.P2 mediators report dated 27.03.2000. On the basis of confessional statement and information given by A1, he lead the police party and the mediators to the house of A3 situated in Patiguntla of Piduguralla where 400 gelatin sticks and 70 bundles of fuse wire and 225 detonators were seized in the presence of A3 at his house and Ex.P3 mediators report was drafted at 2:00 pm on the same day. On the basis of confessional statement of A1, A2 was arrayed as accused and on the basis of the confessional statement of A3, A4 and A5 were arrayed as accused. During investigation, the confessional statements of A2, A4 and A5 were also recorded.

Out of explosive materials seized from the possession of A1 and A3, samples of each explosive material was sent to the Forensic Science Laboratory, Vijayawada and the Analyst opined in Ex.P5 report that the remnants and other material examined related to explosive material are used in high explosives. By obtaining sanction for prosecution, from the District Collector, Guntur, charge-sheet was filed against all the accused.

During investigation, A1 and A3 were arrested on 28.03.2000, A2 surrendered before the Court on 08.05.2000 and A4 and A5 were surrendered before the Court on 11.04.2000. The Court took cognizance for the offences punishable under Sections 5 and 6 of the Act.

On securing the presence of petitioners, after compliance of Section 207 Cr.P.C., framed a charge under Section 5 of the Act against A1 and A3 and a charge under Section 6 of the Act against A2, A4 and A5, read over and explained to them in Telugu and they pleaded not guilty and claimed to be tried.

During trial, the prosecution examined P.Ws.1 to 8 and marked Exs.P1 to P7. After closure of the prosecution evidence, the accused were examined under Section 313 Cr.P.C. and reported no defence evidence.

Upon hearing argument of both the counsel, the trial Court found A1 and A3 guilty for the offence punishable under Section 5 of the Act, sentenced them to undergo rigorous imprisonment for a period of three years and to pay a fine of Rs.1,000/- with default

sentence while acquitting A2, A4 and A5 for the offence punishable under Section 6 of the Act.

Aggrieved by the conviction and sentence under the impugned calendar and judgment passed by the II Additional Munsif Magistrate, Gurazala, preferred an appeal before the District Court and X Additional District and Sessions (FTC), Guntur by judgment dated 01.04.2005 dismissed the appeal confirming the conviction and sentence imposed by the trial Court against the petitioners-A1 and A3 for the offence punishable under Section 5 of the Act. Aggrieved by the concurrent findings of both the Courts below, the present revision is filed raising several contentions.

The main ground urged before this Court is that the investigating agency did not secure the presence of any respectable person of the locality where the search was conducted in compliance of Section 100 of Cr.P.C. and failure to secure such local witnesses is fatal to the case to disbelieve such search and seizure. It is also contended that Exs.P2 and P3 were prepared at the police station and obtained the signatures of Village Administrative Officer and Revenue Inspector, subsequently. Therefore, the evidence adduced by prosecution cannot be accepted as the mediators i.e., Village Administrative Officer and other witnesses are stock witnesses, consequently, recording conviction based on stock witnesses and confirmation thereof by the Appellate Court is illegal and prayed to set aside the conviction and sentence passed against the petitioners and acquit them finding not guilty.

During hearing, Sri K.Suresh Reddy, learned counsel for the petitioners would contend that the revision was filed in the year 2005 and after lapse of 12 years, the matter reached today and it is one of mitigating circumstances to take lenient view and placed reliance on two judgments of the Apex Court in ***B.C.Goswami v. Delhi Administration***¹ and ***Jagdish Chander v. State of Delhi***². He further contended that the search itself is vitiated for failure to secure independent mediators from the locality where the search was conducted. When the search and seizure were vitiated, the petitioners are entitled for acquittal and requested to acquit the petitioners finding them not guilty for the offence punishable under Section 5 of the Act.

Learned Public Prosecutor for the State of Andhra Pradesh would contend that the investigating agency need not secure punch witnesses from the locality where the search was conducted and securing the presence of any villagers is sufficient and placed reliance on the judgment of Madras High Court reported in ***In re, Rajabather***³ and it is sufficient compliance and lenient view cannot be taken since the offence committed by the petitioners is a serious offence.

The revision petition is filed under Sections 397 and 401 Cr.P.C. The power of this Court is limited and this Court, normally, while exercising power under Sections 309 and 401 Cr.P.C. would not interfere with the concurrent findings of the Courts below unless the fact findings are not based on any evidence or

¹ AIR 1973 SC 1457

² AIR 1973 SC 2127

³ AIR 1959 MADRAS 450

manifestly perverse or apparently erroneous. Learned counsel for the petitioners pointed out before this Court that search and seizure of explosive substances under the cover of Exs.P2 and P3 cannot be accepted since it is in contravention of Section 100 of Cr.P.C. It reads as follows:

“100. Persons in charge of closed place to allow search.

- 1) Whenever any place liable to search or inspection under this Chapter is closed, any person residing in, or being in charge of, such place, shall, on demand of the officer or other person executing the warrant, and on production of the warrant, allow him free ingress thereto, and afford all reasonable facilities for a search therein.
- 2) If ingress into such place cannot be so obtained, the officer or other person executing the warrant may proceed in the manner provided by sub- section (2) of section 47.
- 3) Where any person in or about such place is reasonably suspected of concealing about his person any article for which search should be made, such person may be searched and if such person is a woman, the search shall be made by another woman with strict regard to decency.
- 4) Before making a search under this Chapter, the officer or other person about to make it shall call upon two or more independent and respectable inhabitants of the locality in which the place to be searched is situate or of any other locality if no such inhabitant of the said locality is available or is willing to be a witness to the search, to attend and witness the search and may issue an order in writing to them or any of them so to do.”

Therefore, it is obligatory on the part of the Investigating Officer to secure the presence of two independent and respectable inhabitants of the locality at the time of conducting search and seizure.

In the present case, the Village Administrative Officer of the Village and the Revenue Inspector were secured as punch witnesses in whose presence, search and seizure under Exs.P2 and P3 were conducted. The identical question came before Madras High Court in ***In re, Rajabather's case*** (3 supra), wherein it was held that:

“6) Section 103 of the Criminal Procedure Code embodying the general principle of searches requires that the search should be conducted in the presence of two or more respectable inhabitants of the locality. The respectability of a witness does not connote any particular status or wealth or anything of that kind. Any person is entitled to claim respectability, provided he is not disreputable in any way.

The words “respectable inhabitants of the locality” must be construed in the light of the object of the section in accordance with *maxim ut res magis valeat quam pereat*-that an act may avail rather than perish. The Legislature has made this provision to ensure fair dealing and a feeling of confidence and security amongst the public in regard to a sometimes necessary invasion of a private right regarded as almost sacred under the British system.

In order to give effect to this object, it is necessary that the persons selected should be absolutely unprejudiced and uninterested in the result of what they have to take part in. The selection of officers connected with the Police, or persons who are not impartial, is not contemplated by the section. Having been a prosecution witness is not sufficient to deprive one of one’s title to respectability. Only respectable persons of the locality are to be selected as witnesses for the search. The words “of the locality” do not mean that they should be living within a stone’s throw of the house to be searched. Nor are the words restricted to mean the same quarter.

They are comprehensive and include places even within three or four miles of the place of search. But the fact that the witnesses are from a different locality will not necessarily make the search invalid or make the evidence of such witnesses inadmissible. Similarly, the mere fact that the witnesses are taken from another locality should not be looked upon as a factor militating against their respectability. The emphasis of the section is on the word “respectable” and not on the word “locality.”

The Madras High Court finally concluded that securing witnesses of the same village is sufficient compliance of Section 100(5) of Cr.P.C. and the Investigating Officer need not secure any punch witnesses from a stone throw distance.

Therefore, in the present case, the Village Administrative Officer and the Revenue Inspector were actual witnesses and because of conducting search in their presence, who are not the residents of the locality where the subject property is situated is not a ground to disbelieve the search and seizure.

Another contention of the learned counsel for the petitioners is that P.Ws.6 and 7 are acted as mediators in more than 50 crimes. The Village Administrative Officer is the revenue head of the village and he is bound to accept the request of the police to act as mediator. Acting as a mediator in number of cases is not disqualification and it cannot be said to be a stock witness or interested witness. He acted as a mediator because of his official position as Village Administrative Officer. Therefore, he is not a stock witness. At the same time, he is not an interested witness because he will not get anything out of the criminal proceedings initiated against the petitioners. Hence, I find no substance in the contention of the learned counsel for the petitioners.

Considering the time lapsed after filing of the revision and committal of the offence i.e., as the revision was filed 12 years ago and the alleged offence was committed 17 years ago and it is one of the mitigating circumstances, learned counsel for the petitioners requested this Court to reduce the substantive sentence of imprisonment and placed reliance on the judgments of the Apex Court in ***B.C.Goswami and Jagdish Chander's cases*** referred 1 and 2 supra. In both the judgments, the Apex Court held that long lapse of time after commission is one of the mitigating circumstance.

In ***State of Madhya Pradesh v. Santosh Kumar***⁴, it was held that:

“It will be a mockery of justice to permit the accused to escape the extreme penalty of law when faced with such evidence and such cruel acts. To give the lesser punishment for the accused would be to render

⁴ (2006)6 SCC 1

the justicing system of the country suspect. The common man will lose faith in courts. In such cases, he understands and appreciates the language of deterrence more than the reformatory jargon”.

In ***State of Punjab v. Rakesh Kumar***⁵, it was held that:

“In order to exercise the discretion of reducing the sentence the statutory requirement is that the Court has to record "adequate and special reasons" in the judgment and not fanciful reasons which would permit the Court to impose a sentence less than the prescribed minimum. The reason has not only to be adequate but also special. What is adequate and special would depend upon several factors and no strait-jacket formula can be indicated. What is applicable to trial Courts regarding recording reasons for a departure from minimum sentence is equally applicable to the High Court. The only reason indicated by the High Court is that the accused belonged to rural areas. The same can by no stretch of imagination be considered either adequate or special. The requirement in law is cumulative.”

Time and again several Courts including the Apex Court laid down certain guidelines for imposing sentence in serious and grave crimes that is known as sentencing policy. The policy of sentencing is to reform such culprits and the Court has to keep in mind both mitigating and aggravating circumstances while imposing sentence. Mitigating circumstances means:

- 1) The manner and circumstances in and under which the offence was committed, for example, extreme mental or emotional disturbance or extreme provocation in contradistinction to all these situations in normal course.
- 2) The age of the accused is a relevant consideration but not a determinative factor by itself.
- 3) The chances of the accused of not indulging in commission of the crime again and the probability of the accused being reformed and rehabilitated.
- 4) The condition of the accused shows that he was mentally defective and the defect impaired his capacity to appreciate the circumstances of his criminal conduct.

⁵ (2008)12 SCC 33

5) The circumstances which, in normal course of life, would render such a behaviour possible and could have the effect of giving rise to mental imbalance in that given situation like persistent, harassment or, in fact, leading to such a peak of human behaviour that, in the facts and circumstances of the case, the accused believed that he was morally justified in committing the offence.

In ***State of Madhya Pradesh v. State of Mehtab***⁶, the Apex Court observed that it is the duty of the Court to award just sentence to a convict against whom charge is proved. While mitigating and aggravating circumstances may be given due weight, mechanical reduction of sentence to the period already undergone cannot be appreciated. Sentence has to be fair not only to the accused but also to the victim and the society.

In ***Gurubachan Sing v. Satpal Singh***⁷, the Apex Court cautioned saying that exaggerated devotion to rule of benefit of doubt must not nurture fanciful doubts or lingering suspicion as they destroy social defence. Justice cannot be made sterile on the plea that it is better to let hundred guilty escape than punish an innocent. Letting guilty escape is not doing justice according to law.

In ***Shailesh Jasvantbhai and another v. State of Gujarat and others***⁸, it was held by the Apex Court that:

“In operating the sentencing system, law should adopt the corrective machinery or deterrence based on the factual matrix. By deft modulation, sentencing process be stern where it should be, and tempered with mercy where it warrants to be. The facts and given circumstances in each case, the nature of the crime, the manner in which it was planned and committed, the motive for commission of the

⁶ CrI.A.No.290 of 2015, dt.13.02.2015

⁷ AIR 1990 SC 209

⁸ (2006) SCC 359

crime, the conduct of the accused, the nature of the weapons used and all other attending circumstances are relevant facts which would enter into the area of consideration.”

Keeping in view, the law laid down by the Apex Court with regard to sentencing policy, it is clear that the Court has to keep in mind both mitigating and aggravating circumstances while imposing sentence. But the earlier line of judgment of Apex Court is somewhat liberal. However, taking into consideration the facts and circumstances of the present case, due to lapse of more than 17 years and as A1 is aged 60 years approximately and A3 is aged 50 years approximately, I deem it appropriate to reduce the sentence to two years from three years while confirming the fine imposed by the trial Court by exercising power under Sections 397 and 401 Cr.P.C. within its limited jurisdiction.

In the result, the Criminal Revision Case is partly allowed.
No costs.

The Miscellaneous petitions, if any, pending in this Criminal Revision Case is closed.

M.SATYANARAYANA MURTHY, J

Dt.18.08.2017
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