

HON' BLE SRI JUSTICE C.PRAVEEN KUMAR

AND

HON' BLE SMT. JUSTICE T. RAJANI

CRIMINAL APPEAL No.1285 of 2011

JUDGMENT : (per Hon' ble Sri Justice C.Praveen Kumar)

1) The sole accused in Sessions Case No.320 of 2011 on the file of the II Additional District and Sessions Judge, Madanapalle, is the appellant herein. He was tried for the offences punishable under Sections 307 and 302 IPC and under Section 3 (a) of the Explosive Substances Act. Vide judgment dated 01.11.2011, the learned Sessions Judge, while acquitting the accused for the offences punishable under Section 307 IPC, convicted him for the offences punishable under Section 302 IPC and under Section 3 (a) of the Explosive Substances Act and sentenced him to undergo 'imprisonment for life' and to pay fine of Rs.1,000/- in default to suffer simple imprisonment for a period of one month for the offence punishable under Section 302 IPC. The accused was also sentenced to undergo rigorous imprisonment for a period of ten years and to pay fine of Rs.1,000/- in default to suffer simple imprisonment for a period of one month for the offence punishable under Section 3 (a) of the Explosive Substances Act.

2) The case of the prosecution in brief is as under:

i) PW.1, who is the father of the deceased, is having two sons and one daughter. There were some disputes in the village with regard to utilization of surplus water towards irrigation. On 07.09.2005 at about 7.00 p.m., while PW.1, the deceased and other villagers namely PW.2, PW.11 and others were present near the house of one Maddi Reddy and were discussing the issue with regard to filling up of pond by using surplus water that comes from the bore well so as to provide drinking water to the village cattle. At that time, the accused approached and informed that the surplus water will be utilized by him for irrigating his fields, to which the villagers, who were present there, refused. They informed the accused that the said water has to be utilized for providing drinking water to the cattle in the village. On that the accused grew wild and raised a dispute. It is said that during the course of the said dispute the accused threatened to see their end. Thereafter, in anger, he left to his house, came back with two bombs and hurled one bomb at the place where the deceased was sitting, along with his daughter Sravani. As a result of which, both the legs of the injured were cut and fell on the wall. The accused also hurled another bomb, which hit the wall of Nagaraju, but the said bomb did not explode. Thereafter the accused is said to have ran away from the spot. The villagers, who were present there, also sustained injuries. Immediately thereafter, PW.1 made a phone call to his younger brother by name Subba Reddy (PW.12),

who was residing in Madanapalle, and informed him about the incident. After the arrival of PW.12, the deceased and his daughter were shifted to Government Hospital, Madanapalle in Tata Sumo vehicle. On the advise of the doctors at Madanapalle, the injured were shifted to SVRR Hospital, Tirupati, for better treatment. PW.1 return back to the village for securing money, by the time he reached, the S.I. of Police, Thamballapalle and other police personnel were present in the village. On that PW.1 is said to have presented a report which was scribed by a police person, on the instructions of S.I. of Police. Ex.P1 is the said report.

It is to be noted here that on the date of incident at about 9.00 p.m., while PW.23 was in the police station, he received a phone call from PW.15 informing him about a bomb blast in Diguvapalle village and the bombs being hurled by the accused in which some villagers sustained injuries. He made a G.D.entry and proceeded to Diguvapalle village. He reached the said village at 11.00 p.m. The villagers informed him that the persons, who sustained injuries, were shifted to Government Hospital, Madanapalle, but however none came forward to give any report. He deputed his staff to guard the scene of offence, who stayed in Diguvapalle village during the said night. On 08.09.2005 at about 5.30 a.m., PW.1 came for securing money to the treatment to his son. On seeing the police, he lodged a report, which was forwarded through PC for registering a crime. Basing on the said

report, PW.21, registered a case in Crime No.34 of 2005 and issued Ex.P.23-the first information report. After receipt of a copy of the first information report, he informed the same to the Inspector of Police, through phone. On the instructions of Inspector of Police, he prepared a rough sketch of the scene, which is placed on record as Ex.P.27. He also inspected the scene of offence in the presence of PW.15 and found blood stains and flesh here and there. He also found one toe of the deceased near the wall of the house of Ramakrishna Reddy and PW.14. He also noticed black marks of bomb explosion near the scene of offence. Ex.P14 is the scene of offence panchanama. Thereafter, he got the scene of offence photographed. During the course of conducting panchanama of the scene he examined PWs.1 to 6 and 15 and recorded their statements.

Further investigation was taken up by the Inspector of Police. According to PW.26, who is the Circle Inspector of Police on 08.09.2005 at 9.00 a.m., while he was at Chittoor, he received information through phone from PW.23 about the incident. Immediately he left Chittoor and reached the scene by 1.00 p.m. and perused the investigation done by PW.23. He said to have examined PWs.1 to 6 but did not record their statements as their statements were recorded by PW.23. He also examined Pws.7 to 10 and recorded their statements. Thereafter, he went to the Government hospital, Madanapalle at 6.30 p.m., where he was

informed that the injured was shifted to SVRR Hospital, Tirupati and from there to CMC, Vellore. He left Madanapalli and went to C.M.C. Vellore at about 9.30 p.m. He found the injured in unconscious state, as such he could not examine him. At C.M.C. Vellore, he examined PWs.12 and 13 and recorded their statements. On 09.09.2005 he examined PW.14 at Government Hospital, Madanapalle. At that time he was informed that the deceased died at SVRR Hospital, Tirupati. On that he went to SVRR hospital, Tirupati and conducted inquest over the dead body of the deceased. Ex.P33 is the inquest report. Thereafter, the body was sent for postmortem examination.

PW.20-the Professor of Forensic Medicine, S.V.Medical College, Tirupati, conducted autopsy over the dead body of the deceased and issued Ex.P22-the postmortem certificate. According to the doctor, the cause of death was "due to pneumonia along with hypovolemic shock".

On 26.10.2005, PW.26 arrested the accused. On interrogation he is said to have confessed about the commission of offence. He recorded the statement of the accused in the presence of PWs.16 and 19. After collecting all the material papers and after completing the investigation, PW.26 filed the charge sheet, which was taken on file as P.R.C.No.14 of 2006 on the file of the Judicial Magistrate of First Class, Thamballapalle, who inturn committed the case to Sessions Division under Section

209 of Cr.P.C. On committal the same came to be numbered as S.C.No.320 of 2011.

3) On appearance, charges under Sections 302 and 307 IPC and Section 3 (a) of the Explosive Substances Act came to be framed, read over and explained to the accused, to which the accused pleaded not guilty and claimed to be tried.

4) In support of its case, the prosecution examined PWs.1 to 27 and got marked Exs.P1 to P41 and MOs.1 to 15. Out of whom PWs.2 to 11, 13, 14, 17, 18 and 19 did not support the prosecution case and they were treated hostile by the prosecution. After the closure of prosecution evidence, the accused was examined under Section 313 Cr.P.C., with reference to the incriminating circumstances appearing against him, in the evidence of the prosecution witnesses, to which he denied. Neither oral nor documentary evidence was adduced on behalf of the accused.

5) Basing on the evidence of PWs.1 and 12, which gets corroboration from medical evidence, the trial Court convicted the accused for the charges referred to above. Challenging the same, the present appeal came to be filed.

6) Learned counsel for the appellant mainly submits that except the evidence of PW.1, there is no other evidence to connect the accused with the crime. According to him, even the evidence of PW.1 does not inspire confidence to show that he was

present at the scene of offence and witnessed the incident. He took us through the evidence of PW.1 to show that he was not present at the scene and that he was in his house at the time of incident.

7) The learned Additional Public Prosecutor opposed the same contending that though the injured eye witnesses did not support the prosecution case, the evidence of PW.1 inspires confidence and is sufficient to base a conviction.

8) Since the entire case revolves around the evidence of PW.1, it would be useful to refer to the cross-examination of PW.1. Two things emanate from the evidence of PW.1. In Ex.P1, it was mentioned that the accused hurled bomb by standing behind the house of Chilakala Nagaraju. A perusal of the rough sketch of the scene would show that the bombs were hurled from behind the house of Chilakala Nagaraju. So PW.1, who claims to be at the house of Maddireddy, could not have seen the assailant, more so, when the incident took place at about 7.00 p.m., in the month of November, by which time darkness must have been set in. Apart from that in the cross-examination PW.1 admits that his house is situated in a separate street and he was present at his house when the bomb was exploded. He further admits that his grand daughter was present with him in the house. It would be useful to refer to the admissions in the words of the witness, which are as under:

“The distance between my house and the place of occurrence will be around 100 meters. My house is situated in a separate street. I was present at my house when the bomb exploded. It is true that my granddaughter Sravani was present with me at my house when the bomb exploded. I admit that, due to smoke one could not see what is happening at the place where the incident occurred.”

9) From the admissions of PW.1, it is clear that his version in chief that he was present at the house of Maddireddy along with his grand daughter is incorrect. His evidence further discloses that immediately after the incident, he informed his brother-PW12 about the manner in which the incident took place, who said to have come to the scene of offence in his tata sumo vehicle and then shifted the injured to Government Hospital. But the evidence of PW.12 (brother of PW.1) does not indicate the same. According to him on that day at about 8.30 or 9.00 p.m., he received a phone call from PW.1, who informed that the deceased sustained injuries due to bomb blast. On that, he sent one Tata Sumo to Diguvapalle village to bring the injured to Madanapalli for treatment. Thereafter, he went to the Government Hospital, Madanapalli and saw the injured. Later, the injured was shifted to SVRR Hospital, Tirupati. He states that except the same he does not know anything.

10) From the evidence of PW.12, who is no other than the brother of PW.1, it is clear that PW.1 did not inform him about the

name of the assailant when he called him at 8.30 or 9.00 p.m. and the version of PW.1 also appears to be incorrect with regard to PW.12 coming to the scene of offence and then shifting the injured to the hospital. In the absence of any other evidence connecting the accused with the crime, we feel that the evidence of PW.1 cannot be made the basis to convict the accused.

11) Accordingly, the Criminal Appeal is allowed. The conviction and sentence recorded against the appellant/ accused in the judgment, dated 01.11.2011 in S.C.No.320 of 2011 on the file of the II Additional District and Sessions Judge, Chittoor at Madanapalle, for the offences punishable under Section 302 IPC and Section 3 (a) of the Explosive Substances Act are set aside. Consequently, the accused shall be set at liberty forthwith, if he is not required in any other case or crime.

12) As a sequel to it, miscellaneous petitions, if any, pending shall stand closed.

C.PRAVEEN KUMAR, J

T. RAJANI, J

25.06.2018
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