



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPEAL NO. 413 OF 2002

Geetaram s/o Laxman Nimse
Age 52 years, Occu: Agril.,
R/o. Khare Karjune,
Taluka and District Ahmednagar.

... Appellant
[Orig. Accused]

Versus

The State of Maharashtra

... Respondent

.....
Mr. R. S. Shinde, Advocate for the Appellant.
Mr. S. M. Ganachari, APP for the Respondent-State.
.....

CORAM : ABHAY S. WAGHWASE, J.

Reserved on : 07.03.2024

Pronounced on : 18.03.2024

JUDGMENT :

1. Judgment and order of conviction dated 18.07.2002 passed in Sessions Case No. 23 of 2000 for offences punishable under Sections 3, 4 and 5 of the Explosive Substances Act, 1908, sentencing the appellant herein to suffer suffer rigorous imprisonment of 7 years, 4 years, 2 years and to pay fine, respectively, is questioned by filing instant appeal.

FACTS IN BRIEF LEADING TO TRIAL ARE AS UNDER

2. Accused was a scrap dealer. On 27.10.1999, accused Geetaram, who had committed theft of ammunition, had engaged services of deceased Nana and Ramdas i.e. to extract metal. He visited their places and took them to his own house. According to prosecution, he handed over bomb to them for segregating metal. While handling the same, there was an explosion of said ammunition resulting into instant death of Nana and Ramdas along with some live stock. Therefore, on report by son of deceased Nana i.e. PW1 Navnath, crime was registered, duly investigated and on being chargesheeted, charge Exhibit 4 was explained to the accused. On his denial of charge, he was made to fact trial.

3. At trial, prosecution adduced evidence of in all 15 witnesses and relied on documentary evidence like FIR, panchanamas, postmortem reports, certificate Exhibit 53 etc.

Learned First Ad-hoc Additional Sessions Judge, Ahmednagar, who conducted trial, reached to a finding that prosecution failed to establish offences punishable under Sections 379, 304 Part II, 429 of the Indian Penal Code [IPC] and acquitted accused of the same.

However, conviction for offences punishable under Sections 3, 4 and 5 of the Explosive Substances Act, 1908 was recorded. Now said judgment is taken exception to.

SUBMISSIONS

On behalf of the appellant :

4. Learned counsel for the appellant would point out that here, prosecution has apparently failed to establish charges under Sections 379, 304 and 429 of IPC, which were the main charges and hence there is also acquittal for the same. However, according to him, on the same set of evidence, guilt for offences under Sections 3, 4 and 5 of the Explosive Substances Act, 1908 was therefore unwarranted. He specifically pointed out that here, at first count, there is no evidence, either oral or documentary, to show that the incident or occurrence was an explosion of only and only ammunition or explosive substance and not otherwise. He pointed out that though prosecution came with a case that accused had committed theft of military ammunition, investigating machinery did not gather any evidence in that regard. Even there is no complaint of theft either by military or police. Therefore, he expresses deep concern about the story of prosecution about theft of ammunition/explosive substance.

5. He next pointed out that here, services of forensic experts were not procured to show that the blast was of a bomb only and nothing else. He also pointed out that here, prosecution's own witness PW15 has also admitted in cross that he had advised police department to approach military but no such steps were taken and therefore, it is his submission that, by all means, evidence of prosecution was weak.

6. He further submitted that here, very Investigating Officer has not been examined. Almost all witnesses have retracted and have not supported prosecution including pancha to spot, house search etc.

7. According to him, the only circumstance which prosecution is relying on is last seen together, but even said theory is not proved beyond reasonable doubt and there is nothing to show that accused had engaged deceased for handling any explosives. Hence, according to him, there is not a single circumstance which is firmly and cogently proved by prosecution.

8. Lastly he submitted that required ingredients for attracting provisions under Sections 3, 4 and 5 of the Explosive Substances Act, 1908 are patently missing and therefore learned trial court erred in holding appellant guilty for the same.

On behalf of the State :

9. In answer to above, learned APP pointed out that accused was a dealer in scrap material. Investigation revealed that he had committed theft of military ammunition with sole intention to extract the metal. For separation of metal, he had visited houses of deceased and had procured their services and had handed over explosive substance to them, who unfortunately, while handling, met with a very tragic death. He pointed out that the impact of explosion which apparently took place in the house of accused, has taken away lives of two human beings and cattle i.e. a calf and a ship. Spot panchanama supports explosion to be in the house of accused. Therefore, he was in possession of explosive substance. That, daughter-in-law of deceased Nana and wife of deceased are categorical about accused coming to their house that day and taking them to his house and shortly thereafter, explosion having taken place. That, accused is solely responsible. He is not authorized or licence holder to possess explosive substances. There is breach of provisions of the Explosive Substances Act, 1908. According to him, evidence to that extent being available, learned trial Judge has correctly convicted accused and therefore he prays to dismiss the appeal for want of merits.

EVIDENCE BEFORE THE TRIAL COURT

10. On re-appreciation and re-examining the papers, prosecution seems to have relied on testimonies of following witnesses :

PW1 Navnath, son of deceased Nana, stated that incident took place two years back. His father was an agriculturist. On that day, accused had visited their house at around 7.00 a.m. He did not state the reason of his arrival but he had come to visit his father. At that time, this witness himself was present. Accused took his father with him. Around 10.30 a.m., he received message that his father had expired and so he went to the house of accused and saw dead body of his father in mutilated condition. He stated that thereafter he approached police and gave *khobar*.

PW2 Baba claims that he knew deceased. That, he was called by police to act as pancha but according to him, he merely signed on the panchanama and he does not know the contents. Therefore he was, with permission of court, cross-examined by learned APP himself.

PW3 Shivaji, pancha to inquest panchanama, also did not support and so was cross-examined.

PW4 Macchindra also did not support to the panchanama of inquest of live stock.

- PW5** Namdeo, pancha to house search, denied going to the house of accused for any house search panchanama. Therefore he has also not supported.
- PW6** Vilas denied knowing accused. He also denied any house search panchanama or seizure of articles found in the house of accused on 27.10.1999. Therefore, he also was declared hostile.
- PW7** Genubabu, pancha to scene of occurrence, also retracted and denied having acted as pancha to scene of occurrence panchanama Exhibit 26.
- PW8** Dr. Laxman Pawar is the autopsy surgeon who conducted postmortem of dead bodies of both, Nana and Rambhau, and he identified both postmortem reports Exhibits 29 and 30. According to him, injuries on the dead bodies are possible by explosion.
- PW9** Balu Lande, pancha to scene of occurrence, also did not support.
- PW10** Mangal Navnath Gaikwad, daughter-in-law of deceased Nana, stated that on that day, accused present in the court came to their house at around 7.00 a.m. and asked her father-in-law to accompany him for some work. According to her, accused told her father-in-law that he had little work of opening bomb. He took her father-in-law and around 10.00 a.m. there was noise of bomb explosion and so she went to the house of accused

and saw dead body of her father-in-law in mutilated condition.

PW11 Mathurabai Darandale is the wife of deceased Ramdas. According to her, accused came to their house but he did not disclose the work which was to be get done through her husband and accused merely made him accompany for doing some work. Shortly thereafter, they heard noise and when she went to the house of accused, she found dead body of her husband.

PW12 Macchindra Darandale, son of deceased Rambhau, also stated that accused came to their house and took his father at about 7.00 a.m. for doing daily wage work. He claims that he learnt about the incident when there was some explosion and he saw dead body of his father. According to him, some bombs were also found in the house of accused.

PW13 Sahebrao was brother-in-law of deceased Nana. According to him, on that day at 8.00 a.m., he was going towards his brother-in-law. That time, his deceased brother-in-law Nana, deceased Rambhau and accused Geetaram had arrived at *bajartal*. He claims that he asked his deceased brother-in-law to accompany him for fixing date of marriage of his son, but accused told that he will sent deceased immediately after the work is over. That, around 9.00 to 9.30 a.m., there was explosion and all villagers rushed near the house of accused and saw pieces of dead bodies of Nana and Rambhau lying there.

PW14 Sindhubai Gaikwad, wife of deceased Nana, deposed that accused came and took her husband and from people she learnt that a bomb had fallen from the airplane.

PW15 P.S.I. Dhondiram Chavan was attached to Bomb Detection and Disposal Squad at Aurangabad. He claims that he received message from the Superintendent of Police, Ahmednagar and accordingly, he visited the spot. He found three military cannons but they were useless. He issued certificate Exhibit 53.

11. Here conviction is for commission of offences under Sections 3, 4 and 5 of the Explosive Substances Act, 1908. For proper comprehension, the provisions are reproduced as under:

3. Punishment for causing explosion likely to endanger life or property.-

Any person who **unlawfully** and **maliciously** causes by -

- (a) any explosive substance an explosion of a nature likely to endanger life or to cause serious injury to property shall, whether any injury to person or property has been actually caused or not, be punished with imprisonment for life, or with rigorous imprisonment of either description which shall not be less than ten years, and shall also be liable to fine;

(b) any special category explosive substance an explosion of a nature likely to endanger life or to cause serious injury to property shall, whether any injury to person or property has been actually caused or not, be punished with death, or rigorous imprisonment for life, and shall also be liable to fine.

4. Punishment for attempt to cause explosion, or for making or keeping explosive with intent to endanger life or property.-

Any person who unlawfully and maliciously -

(a) does any act with intent to cause by an explosive substance, or special category explosive substance, or conspires to cause by an explosive substance or special category explosive substance, an explosion of a nature likely to endanger life or to cause serious injury to property; or

(b) makes or has in his possession or under his control any explosive substance with intent by means thereof to endanger life, or cause serious injury to property or to enable any other person by means thereof to endanger life or cause serious injury to property in India.

Shall, whether any explosion does or does not take place and whether any injury to person or property has been actually caused or not, be punished -

- (i) in the case of any explosive substance, with imprisonment for life, or with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine;
- (ii) in the case of any special category explosive substance, with rigorous imprisonment for life, or with rigorous imprisonment for a term which may extend to ten years, and shall also be liable to fine.

5. Punishment for making or possessing explosives under suspicious circumstances. -

Any person who makes or knowingly has in his possession or under his control any explosive substance, under such circumstances as to give rise to a reasonable suspicion that he is not making it or does not have it in his possession or under his control for a lawful object shall, unless he can show that he made it or had it in his possession or under his control for a lawful object, be shall, unless he can show that he made it or had it in his possession or under his control for a lawful object, be punished, -

- (a) in the case of any explosive substance, with imprisonment for a term which may extend to ten years, and shall also be liable to fine;
- (b) in the case of any special category explosive substance, with rigorous imprisonment for life, or with rigorous imprisonment for a term which may extend to ten years, and shall also be liable to fine.

ANALYSIS

12. On carefully sifting the available evidence, here, it is noticed that very informant PW1 Navnath, i.e. son of deceased Nana, merely deposed about accused visiting his house and taking his father. His evidence does not show as to for what purpose his father was taken or what accused was involved into. Though prosecution claims that accused was a scrap merchant, there is no iota of evidence for name's sake to show that accused was a dealer in scrap.

13. PW3 Shivaji and PW4 Macchindra i.e. panchas to inquest panchanama, PW5 Namdeo and PW6 Vilas i.e. panchas to house search and PW7 Genubhau and PW9 Balu i.e. panchas to scene of occurrence panchanama have apparently not supported prosecution.

14. Apart from PW1 informant, prosecution has examined PW10 i.e. daughter-in-law of deceased Nana, namely, Mangal. She contradicts her husband, as she at Exhibit 33 deposed that accused present in the court had come to their house around 7.00 a.m. and she directly speaks of her father-in-law being taken for little work of opening the bomb, which is not stated by her husband informant. She further deposed about hearing some noise at 10.00 a.m. and her

father-in-law found dead in pieces near the house of accused. In cross, she has admitted that her father-in-law was not competent to handle or to do work of breaking bomb.

15. Likewise, PW11 Mathurabai, wife of deceased Ramdas, did not state the timing of arrival of accused to their house. She merely speaks that accused came and merely told that her husband should accompany him for work. After some time, she also heard noise and then found dead body of her husband near the house of accused.

16. Another son of deceased Ramdas i.e. PW12 Macchindra also stated that accused came to their house at around 7.00 a.m. to call his father for daily wage work. He claims that he received information from villagers about explosion.

17. PW13 Sahebrao is the brother-in-law of deceased Nana. He states that on that day he had requested deceased at around 8.00 a.m. to accompany him for settling date of marriage of his son but accused allegedly told him that he would sent him after the work is over and thereafter, around 9.00 to 9.30 a.m., there was explosion.

18. PW14 Sindhubai, wife of deceased Nana, stated that on the day of incident, accused had come to her house at 7.00 a.m. and had taken her deceased husband with him.

Therefore, on carefully going through the testimonies of family members of deceased, it has merely come on record about accused visiting their house and taking both deceased on the pretext of daily wage work. As stated above, no one uttered about accused to be dealing in scrap and deceased were taken for said work. Therefore, what is emerging is that deceased were taken by accused towards his house and there, some explosion has taken place.

19. Specific charge of prosecution was that there was bomb explosion. But there is no reliable evidence about accused to be in possession of bomb. As stated above, neither information is gathered from military department nor police department. Accusation is of theft and stealing of bomb but apparently there is no complaint by either of the authorities. It needs to be noted that at the threshold, prosecution was expected to establish that the explosion that took place was of military bomb. Here apparently, investigating machinery has not bothered to procure services of bomb expert or even forensic experts who were competent to opine what exactly the explosion was

of, or could have been. Expert bomb handler or an expert who was acquainted with such material, was expected to be consulted but that has not happened. Therefore here, at the outset, it is doubtful whether so called explosion which took two lives, was a result of explosion of military bomb.

20. As pointed out by learned counsel for accused appellant, very Investigating Officer who conducted investigation has not stepped into the witness box. PW15, who claims to be employed in Bomb Detection Squad at Aurangabad, has testified that he was summoned to Ahmednagar and he had visited the spot and had issued Exhibit 53. He is mere policeman who claims to be in service of Bomb Detection Squad ,but he does not seem to be an expert to opine or comment. His cross itself shows that he had suggested police department to approach military department for clarification and opinion, but no such steps are apparently taken. Therefore, in view of such casual investigation and in absence of expert's evidence, it cannot be for sure said that the blast or explosion which took place was of a bomb as is claimed by prosecution.

21. The Hon'ble Apex Court in *Mohammad Usman Mohammad Hussain Maniyar and another v. State of Maharashtra* [Criminal

Appeal Nos. 150/76 and 285 of 1976 decided on 03.03.1981], has held that in order to bring home the offence under Section 5 of the Explosive Substances Act, the prosecution has to prove : (i) that the substance in question is explosive substance; **(ii) that the accused makes or knowingly has in his possession or under his control any explosive substance;** and (iii) that he does so under such circumstances as to give rise to a reasonable suspicion that he is not doing so for a lawful object.

22. Therefore, provisions under Sections 3, 4 and 5 of the Explosive Substances Act, 1908, for which guilt is recorded, contemplate possession of explosive substance. As stated above, in the instant case, there is no concrete evidence that accused was in possession of such explosive material. As stated above, there is no material about accused to be dealer in scrap and that he to be in conscious possession of such explosive substance. Learned trial court has already acquitted appellant from the charge under Section 379 IPC. Therefore, question arises is how he is held to be in possession of explosive substance and accordingly held guilty and further punished.

23. Mere accused and deceased to be in company of each other and deceased allegedly taken to the house of accused, would itself cannot be held to be sufficient to charge accused for commission of offence under Sections 3, 4 and 5.

24. On carefully going through the impugned judgment, learned trial court in para 10 itself has observed that though PW15 has issued Exhibit 53, he has answered in cross about asking police of Ahmednagar to take advice from Military Bomb Disposal Squad, Khadki because he could not state exactly that the three ammunition found on the spot were of military make. But still learned trial court has further observed that in view of his evidence, it has been proved by prosecution that three used cannons of military were found in the place of occurrence. Therefore, learned trial court has contradicted itself by arriving to above observations. Apparently, investigating machinery has also not collected distinct oral or documentary evidence to show that the spot of possession was in exclusive ownership and possession of accused. In spite of discussing to that extent, learned trial court has refused to entertain the submissions advanced by defence in trial court to that extent, holding that it is not necessary to gather documentary evidence about ownership of spot house. Merely findings of autopsy doctor seem to have prevailed

over the opinion of learned trial court to hold that there was bomb explosion. In para 11, apparently learned trial court seems to have entertained suspicion that accused was in possession of unexploded bomb with unlawful object and he maliciously caused the explosion. There is no foundation or reasoning for reaching to such conclusion.

25. To sum up, here, at the first count, prosecution could not establish that accused was a scrap dealer. Secondly, there is no evidence that he was in possession of a military bomb. Thirdly, there is no evidence that he had engaged services of deceased to separate and extract metal of a live bomb. Fourthly, it has not been cogently established that the explosion was due to handling at the hands of deceased. Fifthly, entrusting of explosive substance to deceased has also not been established by adducing direct or circumstantial evidence. Sixthly, it has not been firmly and cogently established that accused was in conscious possession of explosive substance.

26. Therefore, as necessary ingredients for attracting provisions of the Explosive Substances Act, 1908 not being available, judgment under challenge cannot be allowed to be sustained. Resultantly, interference is necessary. Accordingly, I proceed to pass the following order:

ORDER

- I. The appeal is allowed.
- II. The conviction awarded to the appellant Geetaram s/o Laxman Nimse by learned First Ad-hoc Additional Sessions Judge, Ahmednagar in Sessions Case No. 23 of 2000 for offences punishable under Sections 3, 4 and 5 of the Explosive Substances Act, 1908 on 18.07.2002 stands quashed and set aside.
- III. The appellant stands acquitted of the offence punishable under Sections 3, 4 and 5 of the Explosive Substances Act, 1908.
- IV. The bail bonds of appellant stand cancelled.
- V. Fine amount deposited, if any, be refunded to the appellant after the statutory period.
- VI. It is clarified that there is no change as regards the order regarding disposal of *muddemal*.

[ABHAY S. WAGHWASE, J.]

vre