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In the Andhra Pradesh High Court

Case No : Criminal Appeal Nos. 1732 and 1740 of 2009

Gunturu Venkateswarlu — APPELLANT

Vs

The State of Andhra Pradesh — RESPONDENT

Date of Decision : 11-03-2014

Acts Referred:
Explosive Substances Act, 1908 — Section 3, 5
Penal Code, 1860 (IPC) — Section 148, 149, 302, 427

Citation : (2015) 3 ALT(Cri) 22

Hon'ble Judges : M.S.K. Jaiswal, J;L.N. Reddy, J

Bench : Division Bench

Advocate : H. Prahlada Reddy, O. Kailashnath Reddy, A. Gayatri Reddy and Suresh Kumar Reddy Kalava, Advocate for the Appellant

Final Decision : Allowed

Judgement

L. Narasimha Reddy, J.—As many as 27 persons were tried by the Court of V Additional District & Sessions Judge, Guntur in S.C. No. 624 of 2003 on the allegation of committing murder of two persons (D1 and D2) and injuries to P.W. 1 and L.W. 2, who died during the pendency of the case. During the pendency of the trial, A11, A19 and A27 died and the case against them abated.

2. After a lengthy trial, wherein 18 witnesses were examined and 23 documents were filed by the prosecution and M.Os. 1 to 21 were taken on record and Exs. D1 to D7 were relied upon by the defence, the trial Court delivered its judgment on 24.11.2009 convicting A9, A15 and A24 for the offence punishable u/s 302 I.P.C. and imposed the punishment of imprisonment for life and fine.

3. A3, A4, A5, A6, A8, A14, A17, A25 and A26 were convicted for the offences punishable under Sections 302 read with Section 149 I.P.C. and were sentenced to undergo imprisonment for life and to pay fine. Remaining accused were convicted for the offences punishable under Sections 148 and 427 I.P.C. and were imposed punishment of imprisonment, ranging from one year to six months.

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4. These two appeals are filed by the accused, assailing the judgment of the trial Court.

5. The incident is said to have occurred on 02.10.2001 at Yenugupalem Village, Vinukonda Mandal, Guntur District. The background of the case, as presented before the trial Court is that: there are two groups in the Village, one associated with Telugudesam party and the other with Congress party. One Sri Nageswara Rao, son-in-law of A3, is said to have sold his land of Acs.2.70 cents in the Village in favour of L. Venkata Anjaneyulu, L.W. 11, Sri M. Venkata Subba Rao, P.W. 7, and few others. A3 and his followers were said to be opposing the sale and obstructing the purchasers from cultivating. A suit is said to have been filed, in relation thereto.

6. On 02.10.2001, L.W. 11, P.W. 1, P.W. 2, P.W. 7 and some others are said to have gone to the land, at about 10.00 a.m. in the context of transplantation of paddy and those persons, together with D1 and D2 have assembled in front of the hotel of P.W. 4, at about 4.00 p.m. When all of them were chitchatting, about 30 persons, who included women, carrying bombs, knives and axes, are said to have, at once attacked P.Ws. 1 and 2 and others sitting in front of the hotel. Womenfolk is said to have carried chilli powder. It was alleged that A4 to A7, A12 and A14 carried buckets containing bombs, out of them, A6 and A14 hurled the bombs at the group, D1 and L.W. 2 sustained bum injuries and thereafter, they were hacked by certain persons in the mob. P.Ws. 1 and 2 and D2 are said to have ran away towards Rama Temple on seeing the mob and hearing the sounds of bombs. A7 is said to have hacked both the legs of P.W. 1 with an exe from behind, whereas P.W. 2 is said to have received splinter injuries. A3 is said to have hacked him. D2 is said to have been killed by the persons from the attacking party.

7. After the attackers left the site, P.Ws. 1 and 2 and D1 and D2 are said to have been shifted to the hospital at Vinukonda. There, P.W. 16, the Assistant Civil Surgeon, is said to have given intimation of the crime through Ex. P14, to the police and thereon, P.W. 14, a Head Constable of Vinukonda Police Station, is said to have come to the hospital and recorded the statement of P.W. 1, marked as Ex. P1.

8. P.W. 1 gave the brief background of the disputes that were subsisting between two groups and named as many as 23 persons i.e. A1 to A23. In addition to that, he stated that there were some more persons totalling to 30, which included women also. He has also described the nature of attack, which the accused are said to have caused. Based upon Ex. P1, Crime No. 224 of 2001 was registered by Vinukonda Police Station, citing relevant provisions of law. While D1 was declared dead at Vinukonda itself, D2 is said to have been declared dead when he was being shifted to Government hospital, Guntur. P.Ws. 1 and 2 and L.W. 2 were treated by P.W. 16 at Government Hospital at Vinukonda.

9. A27 is said to have surrendered before the Court on 07.12.2001 and he was

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handed over to the police custody on 21.12.2001. P.W. 17 recorded his confessional statement and seized six country made bombs.

10. The Investigating Officer got the scene of offence panchanama prepared, conducted inquest and post-mortem on D1 and D2 and arrested the various accused. Further investigation was carried out and P.W. 17 and he filed a charge sheet. The trial Court framed as many as nine charges under different provisions of the I.P.C. Here itself, it is important to mention that though the charge sheet referred to Sections 3 and 5 of the Explosive Substance Act (for short ''the Act''), that too, on permission being accorded by the District Collector, vide proceedings, dated 13.03.2002, Ex. P25, no charge, with reference to those provisions, was framed.

11. The nature of disposal given by the trial Court has already been indicated.

12. Sri O. Kailashnath Reddy, Sri G. Prahalada Reddy, Smt. A. Gayatri Reddy and Sri Suresh Kumar Reddy Kavala, who appeared for the various accused, advanced arguments covering the entire case. They submit that the version presented by P.W. 1 and extracted in Ex. P1, which constituted the basis for prosecution itself, became shaky, once P.W. 1 was examined in the Court. They contend that P.W. 1, who is said to have furnished the names of as many as 23 persons together with the names of their fathers, deposed in the cross-examination that he can recollect the names of only four or five persons, who are known to him and not more than that. It is also their case that though 23 names were mentioned in Ex. P1, the prosecution was not able to state the basis for inclusion of four more accused.

13. Learned counsel for the accused submit that the allegation that substantial number of the accused were carrying bombs in buckets and some of them thrown bombs at the deceased and the injured is belied by the fact that P.W. 14, who examined the injured as well as the deceased, clearly stated that no injuries referable to bomb explosion were noticed by her on the bodies of D1 and D2 and obviously for that reason, the trial Court also did not frame any charge under the provisions of the Act. Learned counsel further submit that while according to P.W. 1, the group of the accused started attacking P.Ws. 1 and 2 and D1 and D2 and others present at that place, the version of P.W. 4, the owner of the hotel, was that the group at once attacked the hotel itself, and in the process, injuries or deaths, as the case may be, have taken place. They further submit that the omission on the part of the prosecution to examine several listed witnesses or the persons, who were named by P.W. 1 in Ex. P1, is certainly fatal to the case. They submit that the credibility of the evidence of P.W. 1 is seriously marred on account of the fact that though he stated that A7 attacked him on both the legs from behind with an axe, injuries were noticed only on the left leg. Other contentions were also urged.

14. Sri Mohammed Abdul Qadir, learned Public Prosecutor, on the other hand, submits that this is a case in which gruesome murder of two persons, injuries to

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several others and damage to property was caused on account of political group rivalries and that the prosecution has placed before the trial Court, a cogent and consistent evidence, leading to the conviction of the accused. He further submits that the earliest information was received by P.W. 14 through Ex. P14 and soon thereafter, statement was received from P.W. 1 without any loss of time. He submits that each death and injury that resulted in the attack was explained by examining the concerned witnesses and the minor discrepancies pointed out by the learned counsel for the accused are of no consequence. He submits that mere failure to mention the provisions of the Act in the charges cannot lead to any inference that the bombs were not used at all. According to him, the F.S.L. report, scene of offence panchanama and the evidence of the witnesses demonstrate that bombs were hurled and the deaths and injuries were caused.

15. Intimation about the incident reached the police through Ex. P14 from the Doctor, it took place in a village and obviously on account of the seriousness of the persons who received injuries, all of them were shifted to nearest Government hospital at Vinukonda. P.W. 16, the Duty Doctor, gave immediate intimation to the Police and P.W. 14 came and recorded the statement of P.W. 1. The basis for registration of the case is Ex. P1 and no formal complaint was submitted by anyone.

16. The root cause for the clashes between the parties is said to be the sale of land by the son-in-law of A3. From almost all the prosecution witnesses, it was elicited that a suit was filed by L.W. 11 and others, against A3 and others in relation to the land dispute and that the suit ended in dismissal The dispute is said to be subsequent to the dismissal of the suit.

17. P.Ws. 1 and 2 and other witnesses stated that on the date of incident, themselves and owners of the land went to the field for transplantation and no resistance whatever was offered by A3 and others at that place. Gathering of P.Ws. 1 and 2 and others in front of the hotel of P.W. 4 appears to be almost as an informal act, for discussing or chitchatting at leisure. There is some discrepancy or uncertainty as to who are the persons that gathered at the hotel of P.W. 4. While according to P.W. 2, it was only four, P.W. 1 named some more. At about 4.00 p.m., 30 persons are suddenly came there armed with bombs, knives, axes etc., and that the womenfolk were holding the chilli powder. The sequence of events, as furnished by P.W. 1, is as under:

About 30 persons including male and female persons at once came upon us for attack armed with buckets containing bombs, axes and knives and the ladies are having chilli power in their hands. The persons, namely Papasani Nageswara Rao (A6), Vajja Subba Rao (A14), Chinthala Sarath Banu (A7), Gunturu Brahman (A12), Davuluri Chinna Pulla Rao (A4), Somepalli Chinna Venkateswarlu (A5) came buckets containing bombs. Papasani Nageswara Rao (A6) and Vajja Subba Rao (A14) hurled bombs. Madineni China Subbaiah (D1), Vejendla Lakshmaiah (L.W. 2) sustained injuries due to bomb blasting. China Subbaiah (D1) and Vejendla Lakshmaiah were hacked with axes and knives. By then, having been

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afraid I, Vemula Subbaiah (D2), Ganga Devi, Venkata Narasimha (P.W. 2) fled away towards Rama Temple. By them, they cashed and hurled bombs upon us. Chinthala Subba Rao @ Sarath (A7) hacked on the ankles of my both legs with an axe. On hurling the bomb by Papasani Nageswara Rao (A6), Gangadevi, Venkata Narasimha (P.W. 2) sustained bomb blast injuries on his both shoulders. Papasani Kotayya (A3) hacked with an axe on the right hand of Narasimha (P.W. 2). Vemuka Subbaiah (D2) also sustained bomb injuries de to bomb blasting and hacking by axe. I came to know that they also chased our President Madineni Sampurna (P.W. 4) for which she entered the house of Thunga Seshaiah (not examined) and hide there and I came to know that they also broke the doors of that house. On knowing this, our people i.e. Lagadapati Venkata Najaneyulu (L.W. 4), Thunga China Seshayya, Gumma Galeyya, Gaddam Venkateswarlu and some others who were working in the fields came to the village, brought us the injured, to the Government Hospital, Vinukonda in a jeep and got admitted us. After Madineni China Subba Rao (D1) was brought to the Hospital, the Doctor said that he was head. The doctor told that he would sent four of us to Guntur after giving treatment to us.

18. Earlier to this, the names of A1 to A23 were furnished, together with their names and the names of their fathers. Names of the women were not mentioned.

19. The trial Court was mostly impressed by the evidence of P.Ws. 1 and 2. However, a close scrutiny of the evidence of these two witnesses and comparison of the same with the other evidence on record would lead to a different conclusion. For instance, though P.W. 1 stated that A4 to A7, A12 and A14 carried the buckets containing bombs, A6 and A14 alone hurled them. His deposition as well as Ex. P1 are silent as to at whom those bombs were hurled. He stated that D1 and L.W. 2 were attacked, but did not give the names of the persons who attacked them. Similarly, P.W. 1 stated that when he was running towards his house, on seeing the attack, A7 came behind him and hacked his both the legs from behind. In her evidence, P.W. 16, the doctor, stated that she noticed an injury only on the left leg of P.W. 1. Here itself, it needs to be mentioned that she treated P.Ws. 1 and 2 and the deceased and in respect of all of them, she stated that she did not notice any wound, referable to bomb blast. Relevant portion reads as under:

In none of the wound certificates, I have found any bomb blast injuries. The injuries where I noticed bleeding is present, they are fresh.

Obviously because of this, the trial Court did not frame any charge under the Act. Once that is so, the statements of P.Ws. 1 and 2 that the named accused carried bombs and hurled at them becomes unacceptable.

20. The manner, in which the death of D2 occurred, is not explained by the prosecution. No specific acts were mentioned by P.W. 1 in his statement, Ex. P1, about the attack on D2. It was only in his chief-examination, P.W. 1 stated that A24 hacked D2 with an axe on his head. This is a clear and substantial

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improvement, not supported by any other witness. We have already pointed out that only 23 persons were named in Ex. P1.

21. During the course of the scrutiny of the original record, we found that the name of D2 was inserted in Ex. P14, as item No. 5. We have also noticed a serious discrepancy and inconsistency as to the manner in which the mob is said to have attacked. According to P.Ws. 1 and 2, themselves, the deceased, and certain others were waiting in front of the hotel of P.W. 4 and as soon as the mob reached them, it started attacking the persons. P.W. 4, however, stated that the mob straightaway entered her hotel and trespassed into the hotel, threw away the tables into a pell-mell condition, broke the cool drink bottles, damaged the wooden tables, snatched away her golden necklace of three savars, Rs. 2,000/- from the cash box, burnt the accounts book of the hotel and then attacked D1, L.W. 2 and others. This is at variance with what was spoken by P.Ws. 1 to 3 and other witnesses.

22. These serious discrepancies disclose that the entire episode was given a political colour and efforts were made to implicate as many persons as possible on the lines of political affiliation. Other aspects include the source of intimation to the police, about not only the date of occurrence, but also the time at which the intimation was dispatched. When this is fluidity of the evidence on record, it is not at all safe to convict so many accused.

23. Hence, the Criminal Appeals are allowed. The conviction and sentence ordered in S.C. No. 624 of 2003 on the file of the V Additional District & Sessions Judge (Fast Track Court), Guntur, dated 24.11.2009, against the appellants-accused, are set aside. The appellants-accused shall be set at liberty forthwith, unless their detention is needed in any other case. The fine amount, if any, paid by the appellants-accused shall be refunded to them. The miscellaneous petitions filed in these appeals shall also stand disposed of.

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