

(1971) 11 GUJ CK 0005
In the Gujarat High Court

Mehboob Usmanbhai

APPELLANT

Vs

The State of Gujarat

RESPONDENT

Date of Decision : 16-11-1971

Acts Referred:

Explosive Substances Act, 1908 — Section 4, 5, 6
Penal Code, 1860 (IPC) — Section 115, 120B, 302, 304A, 326

Citation : (1973) CriLJ 80

Hon'ble Judges : M.P. Thakkar, J;C.V. Rane, J

Bench : Division Bench

Judgement

C.V. Rane, J.—This appeal is directed against the order of conviction and sentence passed by the learned Additional Sessions Judge, Ahmedabad, in Sessions Case No. 26 of 1970 on 22.6.1970.

2. The prosecution story in the above case was in brief as under. The members of muslim community had attacked the temple of Jagannathji situated outside Jamalpur Darwa is in Ahmedabad on 18.9.1969 and 12 sadhus were alleged to have been injured during the above attack. As a result of the above attack, riots broke out in Ahmedabad. The normalcy was, however, restored in Ahmedabad city from 3.10.69 onwards. On 17.10.1969 at 0.45 hours, there was an explosion in Salian Jamdar Mohalla in Dariapur. On 21.10.1969 another explosion took place at about 7.30 p.m. in Nariawad in Jamalpur locality. Lance Naik Rameshchandra who was on duty on hearing the report of the explosion, went to the actual place of explosion. The above place was situated in an open land which was known as Jay Maidan. He found some persons running away from that place the however made a cordon with the help of the police constables and arrested 14 persons. One person was seriously injured and he subsequently died. Two other persons were also injured as a result of the explosion. The above information was communicated to Police Inspector Kanade. who carried on (investigation into the above offence. Some live bombs and other articles were attached from the site of the, explosion. The accused and some other persons were arrested by the police 12 persons including the present appellant were

committed to the court of Session to stand their trial for various offences.

3. The accused and 11 other persons were tried for offences punishable u/s 120B read with Sections 302, 326, 115 of the Indian Penal Code and Sections 4(a), 4(b) and 6 of the Explosive Substances Act. 1908. (herein after referred to as the Act), They Were also separately charged for the offers under Sections 4(a), 4(b) and 6 of the Act read with Section 34 of the Indian Penal Code which were alleged to have been committed by them in pursuance of the criminal conspiracy pointed out in the earlier part of the charge. Third part of the charge related to an offence punishable u/s 304A of the Indian Penal Code.

4. The learned Additional Sessions Judge has acquitted 11 accused of the offences with which they were charged; whereas the present appellant (hereinafter referred to as the accused) has been convicted of the offences punishable under Sections 4(b) and 5 of the Act and sentenced to suffer rigorous imprisonment for five years.

Paras 5 to 17 * * *

18. It is not disputed that, a statement made by the accused in consequence of which a particular incriminating article is discovered, is admissible in evidence. In the present case, the statement made by the accused is capable of only one interpretation and when that statement is taken into consideration along with the fact that, he actually showed the place from where 13 crude bombs were found, it becomes evident that, they were found from his possession or that they were under his control. It has already been pointed out that 13 bombs contained highly explosive substances. According to Section 4(b) of the Act.

any person who unlawfully and maliciously 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 in India, 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 with transportation for a term which may extend to twenty years, to which fine may be added, or with imprisonment for a term which may extend to seven years, to which fine may be added.

The very fact that the accused had kept or had under his control explosive substances in such a large quantity, shows that, he had kept them in his possession or under his control with the intention of endangering life or to cause serious injury to person or property, as contemplated by Section 4(b) of the Act. That being so. he should be held guilty of the offence punishable u/s 4(b) of the Act. The learned Additional Sessions Judge has however convicted him of the above offence as well as u/s 5 of that Act which reads:

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 punished with transportation for a term which may extend to fourteen years to which fine may be added, or with imprisonment for a term which may extend to five years, to which fine may be added.

Once it is established that the explosive substances in such a large quantity were found from the possession of the accused, it cannot be denied that he did not have them in his possession or under his control for a lawful object and in that case, he can also be convicted of the offence punishable u/s 5 of the Act. The learned advocate for the accused however argues that, as the accused was not specifically charged with the offence u/s 5 of the Act. His conviction under that section is not legal. Looking to the ingredients of the offences under the aforesaid two sections of the Act, and the extent of imprisonment provided by each of the sections, it is found that the offence u/s 5 is a lesser offence as compared to that u/s 4(b) of the Act. It also appears that, a person committing the offence u/s 4(b), of the Act is necessarily guilty of the offence u/s 5 of the Act. Under these circumstances, it cannot be said that, the learned Additional Sessions Judge has committed any illegality in convicting the accused both u/s 4(b) and Section 5 of the Act. Moreover he has not awarded any separate sentence for each of the aforesaid two offences. Under these circumstances the sentence passed by him can be treated to have been passed for the offence u/s 4(b) of the Act and the conviction of the accused u/s 5 need not be disturbed. For the reasons stated above, we agree with the findings of the learned Additional Sessions Judge that, the accused is guilty of the offences punishable under Sections 4(b) and 5 of the Act.