

IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPEAL NO.1162 OF 2009

Harijana Bellam Vijaya Mohan

... Appellant

VERSUS

State of A.P.

... Respondent

O R D E R

The present appeal is directed against the judgment dated

17.07.2007 passed by the Division Bench of the High Court of

Andhra Pradesh at Hyderabad in Criminal Appeal No.506 of 2005

whereby it has affirmed the conviction and sentence recorded by

the learned Additional Sessions Judge, Kurnool at Nandyal in

Sessions Case No.107 of 2003 whereby the present appellant was

found guilty of the offence punishable under Section 302 IPC.

The

appellant was tried along with other accused for the murder of

Pullakura Bala Subba Reddy. The other accused persons were

prosecuted under Section 302 read with Section 149 of the IPC and

under Section 3 of the Explosive Substances Act, 1908 (for brevity,

'the Act') whereas the appellant was charged under Section

302 of the IPC and Section 3 of the Act.

Be it stated, the

appellant was convicted to suffer life imprisonment and pay a fine

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of Rs.1,000/- with a default clause for the offence punishable

Gulshan Kumar Arora

Date: 2015.01.15

16:31:32 IST

Reason:

under Section 302 of the IPC and sentenced to undergo rigorous

imprisonment for ten years under Section 3 of the Act and to pay a

fine of Rs.1,000/- and in default to suffer simple imprisonment

for one month.

The prosecution case, sans unnecessary details, is that P. Siva Kumar Reddy, PW-1, the nephew of the deceased, lodged an FIR on 4.11.2001 at 3.15 p.m. vide, Exhibit P-I, alleging that due to the political rivalry, the present appellant, along with six others, had hurled bombs at the deceased as well as at him while they were returning after attending a marriage ceremony in the village Mahanandi. After the criminal law was set in motion, the investigating officer arrested the accused persons, sent the dead body for postmortem, examined a number of witnesses including PW-1, to PW-3, who have been treated as eye witnesses. It is apt to note here that PW-3 was riding as a pillion rider on the motorcycle which was driven by the deceased. PW-1 is the nephew of the deceased and PW-2 is a co-villager who was a pillion rider on the motorcycle driven by PW-1. PW-4, is the wife of the deceased. The investigating agency after completing the investigation placed the charge-sheet before the competent court which, in turn, committed the case to the court of session.

All the accused persons adjured their guilt and pleaded to be tried.

The prosecution in order to establish the charges levelled against the accused persons examined 14 witnesses in toto. The principal witnesses are PW-1 to PW-4 and the doctor, PW-9 who had conducted the autopsy on the deceased and PW-12, the doctor who had examined PW-3, the injured witness. All other witnesses are basically formal witnesses.

The accused persons, in their statement recorded under Section 313 of the Code of Criminal Procedure, took the stand of total denial.

It is apposite to mention here that the case was committed in respect of six accused persons as the accused A-5, Itha Raja Babu

@ Raju, had expired before the committal of proceeding. The learned trial Judge did not find any material against accused nos. 6 and 7, however, he expressed the view that the prosecution had brought home the charges against the other accused persons and accordingly convicted them for the offences charged.

The convicted accused persons, four in number, preferred an appeal before the High Court which after re-appreciating the evidence on record, found that the other accused persons, barring the present appellant, could not be convicted in aid of Section 149 of the IPC and accordingly acquitted them. As far as the present appellant is concerned, it took note of evidence of PW-1 to PW-4 and the Postmortem report and found that the conviction that was recorded by the learned trial Judge against him was flawless and accordingly dismissed the appeal.

We have heard Mr. S.S. Ray, learned counsel appearing for the appellant and Mrs. Prerna Singh, learned counsel appearing for the State.

It is submitted by Mr. Ray, learned counsel for the appellant, that the trial Court as well as the High Court has fallen into error by giving credence to the testimony of PW-1. From the evidence brought on record, it is clearly invincible that PW-1 could not have been regarded as an eye witness to the occurrence. Learned counsel would submit that PW-3, who was the pillion rider had turned hostile and in the cross-examination by the prosecution, nothing has been elicited so that the prosecution can rely on that part of the testimony of the hostile witness. It is urged by him that though the postmortem report would reveal that the accused had died due to bomb injuries, yet no acceptable material has been brought on record to establish the complicity of the accused-appellant in the crime in question.

Ms. Prerna Singh, learned counsel appearing for the State

would submit in her turn that if the testimonies of PW-1 and PW-2 are scanned in proper perspective, it would be graphically clear that both of them are witnesses to the crime and minor

discrepancies cannot be highlighted to discard their testimony or to show that they are not eye witnesses but planted witnesses.

Learned counsel would also contend that from the

examination-in-chief of PW-3, it is limpid that he has admitted

the injuries sustained by him which also gets support from the

medical evidence and further it unfolds the story of the

prosecution as regards the occurrence. The submission of Ms.

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Singh is that the part of the evidence of hostile witness can be relied upon and that will clearly show that the occurrence had taken place on a particular day, at a particular place and also dislodges the specious plea that was endeavoured to be advanced by the accused-appellants in their cross-examination that the murder had taken place sometime during the morning and because of animosity, they have been roped in.

To appreciate the rival submissions raised at the Bar, it is necessary to reproduce the injuries sustained by the deceased.

PW-9, who is the Civil Assistant Surgeon, Government Hospital,

Nandyal. In his autopsy report, he has mentioned, thus :

"External examination: A male body (1) Irregular lacerated injury in front of the chest mostly on left side extending on to the abdomen upto umbilicus. The injury is 12" x 10" size with irregular skin margins blackening present. The distended intestinal coils with small black blood clots and sheet of abdominal fat of 4" x 3" protruding from the injury. On exploring the injury lower half of the sternum with 4, 5, 6, 7 and 9 ribs on both sides opened and projecting into the injury. The left lung is lacerated. The heart is ruptured and the heart chambers empty. The diaphragm is ruptured. The stomach is intact and contained semi solid rice with liquid of about 300 ml. Spleen is pale. Left lobe of liver. Blood clots liquid blood present in thoracic and abdominal cavity and is reddish black in colour. Glass pieces nails of about 10 in number recovered from the injury. (2) four puncture lacerations are present on lower 1/3rd of left thigh 1-2" apart, glass pieces present in

wound and skin margin are black. (3) Abrasion of 1" x 1" on lateral aspect of left knee, reddish black in colour. (4) 2" x 1" abrasion on left side of head over temporal and parietal region placed horizontally reddish black in colour. (5) Three puncture lacerations on right thigh on

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lower 1/3, glass pieces present in the injury with blackening margins."

On a perusal of the aforesaid examination report, it is quite clear that the deceased had sustained injuries because of the attack with the bomb. The issue, thus, emerges whether the oral evidence is consistent with the medical evidence and whether the testimony of prosecution witnesses are acceptable.

As has been indicated earlier, learned counsel for the appellant has submitted that the presence of PW-1 and PW-2 at the spot at the relevant time is doubtful. To appreciate the said submission, we have studiously scrutinised the evidence of the prosecution witnesses. PW-1, the nephew of the deceased, has deposed that after attending the marriage ceremony, the deceased was returning along with PW-3 on a motorcycle and he along with PW-2 were coming on another motorcycle and the distance between the two motorcycles was ten yards. He has clearly stated that the appellant had hurled the bomb which landed on the chest of the deceased and he fell down from the motorcycle. The narration of the incident by him is absolutely graphic. Learned counsel for the appellant would submit that if the cross-examination of the said witnesses is properly appreciated, it will clearly show that he was not present at the spot. For the aforesaid purpose, he has drawn inspiration from part of evidence where he has testified that after the accused persons left the spot, he along with PW-2 and come to the spot and found his uncle, the father's younger

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brother, who was assaulted by the bomb, had expired. On a careful reading of the evidence, we have no iota of doubt that what the witness has actually stated is that he was 10 yards away from the place of occurrence; that he had seen the appellant hurling the bomb at the deceased; that the deceased who was driving the

motorcycle had fallen from it; and that he along with PW-2 went to the spot after the accused left the scene of occurrence.

Ms.

Prerna Singh, learned counsel for the State would submit that the said witness is absolutely truthful, for had he deposed that he immediately rushed to the spot, he would have been branded as untruthful. Any person in such a situation would wait till the

assailants leave the place and then only proceed to the spot.

It

is absolutely in tune with human nature and on the said basis, it cannot be inferred that he was not present at the spot and is not an eye witness to the occurrence.

As far as the evidence of PW-2 is concerned, he has narrated the incident with meticulousness and

nothing has been elicited in the cross-examination as a consequence of which his evidence cannot be given credence to.

As

far as PW-3 is concerned, he has deposed in his evidence that he was accompanying the deceased on a motorcycle as a pillion rider; that there was an assault of bomb on the deceased; and that he was injured in the course of that attack.

However, he had stated that he was not in a position to say who had hurled the bomb.

That is

the only deviation. As far as the other three facets are concerned, they can definitely be relied upon by the prosecution.

Thus, the genesis of occurrence and other evidence as deposed by

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PW-3 deserved to be accepted. PW-4, who is the wife of the deceased had stated that they had gone to attend the marriage ceremony and they were coming in the jeep.

As we find, the learned trial Judge and the High Court have appreciated the evidence in an apposite manner and we do not find any perversity in the same. That apart, as has been stated earlier, we have scrutinised the evidence and find that it is clear as crystal that the witnesses were present at the spot and the appellant had hurled the bomb on the chest of the deceased. Once there is direct evidence, there is no need to go to any kind of motive though the prosecution had come with the story of political rivalry.

In view of the aforesaid analysis, we do not perceive any merit in this appeal and accordingly, the same stands dismissed.

.....,J.
(Dipak Misra)

.....,J.
(Uday Umesh Lalit)

New Delhi;
November 27, 2014.

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ITEM NO.102

COURT NO.5

SECTION II

S U P R E M E C O U R T O F I N D I A
RECORD OF PROCEEDINGS

Criminal Appeal No(s). 1162/2009

HARIJANA BELLAM VIJAYA MOHAN

Appellant(s)

VERSUS

STATE OF A.P.

Respondent(s)

(with office report)

Date : 27/11/2014 This appeal was called on for hearing today.

CORAM : HON'BLE MR. JUSTICE DIPAK MISRA
HON'BLE MR. JUSTICE UDAY UMESH LALIT

For Appellant(s) Mr. S.S. Ray, Adv.
Ms. Rakhi Ray, Adv.

Mr. Ashok K. Panda, Sr. Adv.
Mr. Arijit Prasad, Adv.
Mr. Binu Tamta, Adv.
Mr. Ravindra Kumar Verma, Adv.
Mr. B.K. Prasad, Adv.

For Respondent(s) Mr. D. Mahesh Babu, Adv.

UPON hearing the counsel the Court made the following
O R D E R

The appeal is dismissed in terms of the signed order.

(Gulshan Kumar Arora)
Court Master

(H.S. Parasher)
Court Master

(Signed order is placed on the file)