

Abdula Pochamma

Vs

State of Andhra Pradesh

Criminal Appeal No. 294 of 1988

(S. Natarajan, K. Jagannatha Shetty, Kuldip Singh JJ)

28.03.1989

ORDER

1. The appellant has been convicted under Section 3(3) of the Terrorist and Disruptive Activities (Prevention) Act, 1985 (hereinafter referred to as the 'Act') by the Designated Judge (Sessions Judge), Khamman and sentenced to undergo RI for three years and to pay a fine of Rs. 100, in default to undergo simple imprisonment for one month. She has also been convicted under Section 5 of the Explosive Substances Act and sentenced to undergo RI for two years, the said sentences to run concurrently with the former sentence.
2. The prosecution case was that at about 3.00 p.m. On August 12, 1986, a police party headed by a Deputy Superintendent of Police proceeded to Narasimhaswamy Temple in two jeeps to apprehend UG cadre terrorists said to be moving there. After stopping the jeep near the hillock the party got itself divided into three groups and went up the hill from three different directions. One of the groups headed by PW 3, Sub-Inspector of Police found the appellant sitting on a stone in front of the temple with a rexine bag hanging on her shoulder. On being questioned the appellant gave prevaricating replies about her name etc. The bag was found to contain a hand grenade and some terrorist literature. She was, therefore apprehended and a case was registered against her under sections 3 and 4 of the Act and Section 5 of the Explosive Substances Act. The Designated Judge accepted the evidence of PW 3 and the other prosecution witnesses and convicted and sentenced the appellant as stated above.
3. Learned counsel for the appellant argued before us that except the ipse dixit of PW 3 there is no evidence to show that the object found in the appellant's handbag was indeed a hand grenade or other explosive substance. Admittedly the alleged hand grenade had not been sent to any expert to find out whether it was, in fact, a hand grenade or an explosive substance. Even so, the Designated Judge has proceeded on the basis it was a hand grenade and convicted the appellant solely relying on the statement of PW 3 that as a police officer he was in a position to say that the object recovered from the appellant was indeed a hand grenade. No evidence had been let in to show that PW 3 had the requisite knowledge of explosive substances and the competence to certify that the object found in the appellant's bag was a grenade. The fact remains that the services of an expert were sought for to examine the alleged hand grenade but when the expert failed to respond to the call, the prosecution had simply chosen to make PW 3 certify that what was recovered was indeed a hand grenade.
4. In the circumstances, we are of the opinion that the prosecution has not proved in an acceptable manner that what had been seized from the appellant was indeed a hand grenade or any other explosive substance so as to attract the operation of Section 3(3) of the Act. The appellant is,

therefore, entitled to the benefit of doubt. Consequently, the appeal is allowed and the conviction and sentences awarded to the appellant are set aside and she is ordered to be released from custody.

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