

Erram Santosh Reddy and others

Vs

State of A.P.

Criminal Appeal No.292 of 1988

(S. R. Pandian, K. Jayachandra Reddy JJ)

08.01.1991

JUDGMENT:-

1. This appeal is filed under S. 16 of the Terrorist and Disruptive Activities (Prevention) Act, 1985 (for short 'Tada') against the judgment of the Designated Court, Khammam. The appellants were found guilty under S. 307 read with S. 34 and sentenced to undergo rigorous imprisonment for a period of five years and under Ss. 3 and 3(2)(ii) of the 'Tada' for a period of five years and also to pay a fine of Rs. 100/- each for the above offence in default to undergo simple imprisonment for one month each. They were also convicted under S. 5 of the Explosive Substances Act and sentenced to three years' imprisonment. A-1 is also convicted and sentenced to two years imprisonment for the offences under S. 25(1)(a) of the Indian-Arms Act. The prosecution case is as follows :.

2. These appellants along with another accused A-3 were tried for the above said offence. It is alleged that all these accused are the organising cadre of the CPI (ML) Group lead by Sri Kondappalli Seetharmaiah, creating terror in the people with the intention to overawe the Government established by law in the State of Andhra Pradesh by using fire-arms, bombs etc. and they were involved in number of cases. On 12-1-1986 in the early hours the Inspector of Police, P.W. 5, on receiving credible information that A-1, who had gone underground, is organising his party to commit terrorist acts and disruptive activities in a house rented by A-3 at Burhanpuram locality, raided the premises. Observing that the appellants have been surrounded by the police party, A-1 to A-5, who were in the house, hurled a bomb with a view to kill the police. Then P.W. 5 gave a warning and the accused surrendered and from them several arms and other explosives were recovered. Punchnama was duly prepared in the presence of panch-witnesses. A-1 was in possession of loaded revolver, A-2 was in possession of one handgranade, A-3 to A-5 were in possession of country made bombs. The First Information Report was lodged and a case was duly registered in the abovesaid offences. During the investigation it was established that the premises was taken on lease by A-3 and the other four accused A-1, A-2 and A-4 and A-5 were residing therein. After obtaining the sanction from the District Collector, under S. 8 of the Explosive Substances Act and Section 25(1)(a) of Indian Arms Act, the charge-sheet was laid. The charges under the above sections were framed and in support of its case the prosecution examined P.W. 1 to P.W. 6. The accused when examined under S. 313 denied the case.

3. The evidence for. the prosecution mainly consists of the persons who conducted the raid namely P.W. 1 and P.W. 5. P.W. 2 the owner of the premises, having supported the prosecution in his earlier statement, turned hostile. P.W. 3 and P.W. 4 are the other material witnesses. The learned Designated Judge accepting the evidence of P.Ws. 1, 3 and 5 reached the conclusion that during the raid the police recovered the fire-arms and explosive substance from the possession of the appellants. A-3

was, however, acquitted on the ground that he was only a tenant and case against him was not established. With the circumstances P.W. 2, the landlord, himself turned hostile. The learned Designated Judge concluded that the evidence of P. W. 5 coupled with the evidence of P.W. 1 establish the prosecution case.

4. In this appeal the learned counsel firstly submitted that the acts alleged to have been committed by the appellants did not come within the meaning of Terrorist Act as defined under S. 3(1). He submits that no section of people was terrorised nor any one of them in the locality was injured because of the hurling of the bomb and that the prosecution did not establish that the appellants acted in a manner with such intention as mentioned in S. 3 and they do not come within the meaning of the word 'terrorist'. S. 2(f) of the Act defines the 'terrorist act' and lays down that the expression has the meaning assigned to it under sub-sec. (1) to S. 3 and that expression 'terrorist' (Terrorist) shall be construed accordingly. S. 3 lays down that 'whoever with intent to overawe the Government as by law established or to strike terror in the people or any section of the people, does any act or think by using bombs, dynamite or other explosive substances and fire-arms etc., it is terrorist act.' S. 3(2), however, lays that whoever commits a terrorist act shall, if such act has resulted in the death of any person, be punishable with death and in any other case be punishable with imprisonment for a term which shall not be less than five years but which may extend to term of life and shall also be liable to fine. For all purposes it may be necessary to refer to the provisions of S. 4. We may at this stage point out that we have carefully gone through the evidence of P.Ws. 1, 2 and 5 and it is established that the police party raided the premises and that one of the appellants hurled bomb on them. When the appellants surrendered fire-arms and explosives substances were recovered from them. That being so, the ingredients of S. 2(f) as well as S. 3(1) are attracted. S. 3(1) is very wide and covers any act which strikes terror in the people or section of the people would attract the said provisions. The fact that the appellants were armed with the fire-arms as well as explosive substance and also hurled a bomb on the police who were in the premises would go to show that the offence of the appellant was to strike terror in the people or a section of the people including the police. Therefore, we are unable to agree with the learned counsel in this regard.

5. The next submission of the learned counsel is that hurling of the bomb has not caused any injury to any one and that being so act committed by the appellants will not bring them within the meaning of the terrorist. It must be remembered that S. 2(f) lays down that the 'terrorist act' is within the meaning of sub-sec. (1) to S. 3 and expression 'terrorist' shall be construed accordingly. Therefore, the meaning of the 'terrorist' has to be gathered from S. 3(1). That being so the facts established by the prosecution would go to show that these appellants were armed with the fire-arms as well as explosives, come within the meaning of 'terrorist'. Hurling the bomb at the police and other literature recovered from their possession in addition would show that they were indulging in 'terrorist acts' and, therefore, accordingly they come within the meaning of the word 'terrorist'.

6. Yet another submission by the learned counsel is that there is delay of six hours in lodging the report. We are unable to see as to how this delay would in any manner affect the prosecution case. After aiding, the veries were effected and thereafter a report was lodged in the concerned police station Under these circumstances we do not think that the delay in any manner warrant, adverse inference.

7. The last submission is that no sanction was obtained from the Central Government as laid down under S. 7 of the Explosive Substances Act for prosecuting the appellants for the offences under the Explosive Substances Act. From the judgment we do not find that any such objection was taken. In any event from the record we find that the Collector granted permission and this must be pursuant to

the delegation of powers as contemplated under S. 18(2) of the 'Tada'. Therefore, for the above reasons we see no merits in any one of the submissions. With the result the appeal is dismissed.

Appeal dismissed.

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