Sheelam Ramesh

Vs

State of A.P.

Criminal Appeal No. 685 of 1999

(G. T. Nanavati, S. N. Phukan JJ)

12.10.1999

JUDGMENT

PHUKAN J.-

1. This appeal under Section 19 of the Terrorist and Disruptive Activities (Prevention) Act, 1989 (for short "TADA") is against the judgment and order of the learned Sessions Judge (Designated Court), Karimnagar, Andhra Pradesh. By the impugned judgment and order the accused appellants Sheelam Ramesh (A-@) and Samudrala @ Kumari Mallesham @ Rajanna (A-3) were convicted under Section302 IPC read with Section 34 IPC, Section 27 of the Arms Act, 1959 and Sections 3(2)(i) and (ii) and 5 of TADA.

2. A-2, A-3 and another Bheemanna @ Bairi Ramachander (A-1) are members of CPI (ML) Peoples' War Group (in short "PWG"). Deceased Ramtenki Chandraiah, Manchikatla Shankar (PW 1) and Thota Paul (PW 2) were members of the said PWG but they severed their connections with the group since four years prior to the occurrence and they were residing at Jagtial for their safety and security, away from their villages.

3. On 30-1-1993 at about 7.00 p.m. the deceased and PWs 1 and 2 were sitting as usual in front of Shri Venkateshwara Hair-cutting Saloon near the bus-stand of Jagtial. Suddenly A-1 to A-3 armed with pistol and *tamanchas* (country-made guns) came and fired at the deceased. PW 1 escaped and ran to Jagtial Police Station. Deceased Ramtenki Chandraiah was hit by gunfire and was injured. He was taken to Government Hospital, Jagtial where he succumbed to the injuries. Thereafter, the accused went away from the place of occurrence on their cycles. PW 2 went towards another side. Subsequently, A-2 and A-3 were apprehended. After investigation, chargesheet was submitted under Sections 302, 307 read with Section 34 IPC, Section 7 of the Arms Act, 1959 and Section 3 and 4 of TADA. The case of A-1 was separated as he was absconding. Eleven witnesses were examined on behalf of the prosecution. Seized articles were produced and the Court below found both the accused appellants guilty under the aforesaid section except Section 307 IPC and convicted them accordingly.

4. The trial court believed the evidence of eyewitnesses PW 1 to PW 4 and came to the finding that PW 1 and PW 2 severed their connection with PWG about 4 years prior to the occurrence and they were on the hit list of the above group and this was the motive for causing death of the deceased. The trial court also accepted the prosecution version of the story that PWs 1, 2 and the deceased who were on the hit list of PWG were residing by the side of the house of the Deputy Superintendent of Police at Jagtial for their safety. Accepting the above evidence for the prosecution, the trial court came to the finding that the prosecution could prove the charge under

Section 302 read with Section 34 IPC against A-2 and A-3.

5. In view of the clear evidence of PW 1 to PW 4 that the accused were in possession of firearms and had fired at the deceased, the Court held that the charge under Section 27 of the Arms Act has also been proved.

6. The evidence of PW 1 to PW 4 that the accused persons were armed with firearms and caused death of the deceased was sufficient to come to the conclusion that they did so to strike terror in the people of the area. Accordingly, the Court held that charge under Section 3(2)(I) and (ii) and Section 5 of TADA was proved by the prosecution.

7. Regarding the charge under Section 307 read with Section 34 IPC, the trial court held that in the absence of statements by PW 1 or PW 2 or any other eyewitnesses that there was an attempt to cause death of PW 1 and PW 2, the charge could not be proved by the prosecution and accordingly acquitted the accused.

8. The first contention raised by the counsel for the accused appellants was that there was delay of one hour in filing the first information report though the police station was at t distance of 200 ft from the place of occurrence. We find from the evidence that the offence took place at 7.00 p.m. and PW 1 rushed to the police station and came back to the place of occurrence with the police. The deceased was taken in a rickshaw to the hospital. PW 1 also went there. PW 2 has also deposed that after the incident, he came back to the place of occurrence and he, along with the police and PW 1, took the deceased to the hospital.

9. Dr. Rao, PW 6 has deposed that on the date of occurrence, he examined the deceased at 7.45 p.m. PW 6 has clearly deposed that he found several injuries on the deceased and death was caused due to hemorrhage and shock from these injuries caused by firearms. According to PW 6, these injuries were sufficient to cause death in the ordinary course of nature.

10. From the evidence of M. Maruthi, PW 8, the Head Constable, we find that PW 1 came to the police station on the date of occurrence at 8.00 p.m., gave an oral statement which was recorded and treated as the FIR (Ex. P-1).

11. It was natural human conduct for the informant PW 1 (who was on the hit list) to run towards the police station as the deceased was hit by gunshots and suffered injuries. His first duty, in addition to his safety, was to bring the police to the place of occurrence and to ensure that medical help he given to the deceased. He came back to the place of occurrence with the police and the deceased was taken to the hospital where he succumbed to the injuries at 7.55 p.m. From the above evidence, we hold that there was no delay in filing the FIR.

12. The next contention is that there was no sufficient light for identification of the accused by PW 1 and PW 2. PW 1 and PW 2 were members of PWG and therefore, the accused persons were known to them. In cross-examination of PW 1, it was brought out that he could identify the accused due to the street light and light coming from the neighboring shops. PW 2 has deposed that he knew the accused even before the incident and he was able to identify them in the lights of the area. It is true that this fact was not stated by PW 2 in his statement under Section 161 CrPC but only because of this omission, the identification cannot be discarded in view of the clear evidence of PW 1. Rachakonda Rakaiah, PW 3 and Kandi Lakshman, PW 4 who are partners of the hair-cutting saloon have clearly deposed before tie Court that they could identify the accused persons as the street lights

and the lights in the shops were burning. These two witnessed also identified A-2 and A-3 in the Court. Therefore, this submission of learned counsel for the appellant has no force.

13. The next point urged is that in view of the contradictions in the evidence of PW 1 and PW 2 regarding the part played by accused A-2 and A-3, Conviction is not sustainable. It is true that there are some contradictions regarding the part played by the accused A-2 and A-3.

14. PW 1 and PW 2 have deposed before the Court that all the accused persons came holding firearms. According to PW 1, accused A-1 was holding a pistol. A-2, a country-made gun and A-3 bag and they fired from both the pistol and the country-made gun at the deceased. In cross-examination, it has been brought out that according to these witnesses. A-1 placed his pistol on the chest of the deceased and fired it and A-2 fired from the country-made gun. According to PW 2, A-1 came inside and fired at the deceased and subsequently, A-3 came and fired at the deceased with the country-made gun PW 3, owner of the hair-cutting saloon deposed before the Court that three people came on the cycle with firearms and fired at the deceased and went away. PW 4 deposed that two or three people came and fired at the deceased.

15. The accused persons have been charged under Section 302 IPC read with Section 34 IPC. From the evidence on record, it is established that they came together armed with firearms and A-1 fired from the pistol and A-2 from the country-made gun. From the seizure memo, we find that from the place of occurrence, two 9 mm empty cartridges and one 12 bore empty cartridge were recovered. From the evidence on record, we find that A-1 was holding a pistol and other accused were carrying country-made gun. Both the pistol and the country-made gun were used and this fact is established from the empty cartridges recovered from the place of occurrence.

16. The very fact that the accused A-1 to A-3 came together to the place of occurrence with firearms would prove that there was a pre-arranged plan amongst them to cause death. As there was participation of A-2 and A-3 in furtherance of the common intention of causing death, conviction under Section 302 IPC read with Section 34 IPC can be sustained. Therefore, the contention of the learned counsel for the appellants has no force.

17. Another fact to which our attention has been drawn in the recovery of the material objects from the place of occurrence after 12 hours though the distance from the police station was 200 ft. From the evidence of the Investigation Officer, Shri Reddy, PW 7, we find that after arranging an escort to guard the dead body of the deceased and the scene of occurrence, he went in search of the accused along with his staff in and around Jagtial town for the whole night and next morning at 6.00 a.m., he went to the hospital and till 8.00 a.m., he was there. Thereafter, he came to the place of occurrence and collected the material objects. It is quite natural for the police officer to go in search of the accused person. In addition, he took the precaution of keeping a guard at the place of occurrence. So, this delay has been duly explained and adequate measures were taken so that the place of occurrence could not be disturbed. Therefore, the prosecution cannot be faulted and the contention of the learned counsel is rejected.

18. According to learned counsel for the accused appellant, though PW 3 has deposed that 10-15 persons were in the vicinity at the time of occurrence, no independent witness was examined by the prosecution. There is nothing on evidence to show that there was examined by the prosecution. There is nothing on evidence to show that there was any other eyewitness to the occurrence. Having examined all the eyewitnesses even if other persons present nearby were not examined, the evidence of the eyewitnesses cannot be discarded. Courts are concerned with quality and not with quantity of

evidence and in a criminal trial, conviction can be based on the sole evidence of witness if it inspires confidence.

19. From the reasons stated above, we find no merit in this appeal and accordingly it is dismissed.