SUPREME COURT OF INDIA

State of A.P.

Vs.

S. Appa Rao

(K.T. Thomas and R.P. Sethi JJ.)

21.11.2000

ORDER

K.T. THOMAS, J.

1. This is an appeal filed by the State of Andhra Pradesh under Section 19 of Terrorist and Disruptive Activities (Prevention) Act (in short 'TADA'). There are thirteen respondents who were arrayed along with a number of other persons as accused before a Designated Court. Altogether forty seven persons were charge-sheeted by the police for various offences under the Indian Penal Code and under Sections 3, 4, 5 and 6 of TADA; and also under certain Sections of the Indian Arms Act as well as under Section 4 of the Explosives Act. The case proceeded against 17 of those charge-sheeted persons. At some stage of the trial, the Public Prosecutor before the Designated Judge did not press the case relating to offences under the Penal Code. So the case was considered only in respect of the remaining offences. During the stage of arguments, the Public Prosecutor candidly admitted that offence under the Explosive Substances Act could not be established on evidence.

2. Ultimately the Designated Judge acquitted all the accused of all offences as per the judgment impugned in this appeal. But this appeal is confined to 13 out of 47 persons tried before the TADA Court. It would be convenient for us to refer to the 13 respondents with reference to the rank allotted to them in the trial court.

3. At the outset we put a question to Mr. A.S. Nambiar, learned senior Counsel who argued for the State of Andhra Pradesh as to whether there is any need for probing into the evidence in respect of the offences under Section 3 or 4 of the TADA (though Section 6 is also included in the indictment, we may point out that the said provision relates only to enhanced penalties and will not by itself constitute an offence). Learned Counsel made an endeavour first to show that the aforesaid offence can also be considered in this appeal. But after making a serious exercise, he realised that it would be an exercise in futility to press for those two offences under TADA. Even the endeavour to bring the offence within the purview of Sub-section (3) of Section 4 also was discovered to be an uphill task beyond the limit of mere argument.

4. We, therefore, point out at this stage itself that prosecution cannot even venture to establish, on the fact situation in this case, that any of the respondents can be convicted of the offences under Section 3 or 4 of TADA. Learned senior Counsel then focused his address on Section 5 of TADA vis-a-vis three of the respondents. They are A.22-Rajaiah, A.23-Rajeshwari (wife of A.22-Rajaiah)

and A.28 Shafat Ali Khan. Learned Counsel contended that arms and ammunition were recovered from those three accused at places which fell within the territorial limits of State of Andhra Pradesh and that the said area had already been notified under Section 5 of TADA.

5. When we went into the evidence we noticed that prosecution has given two diametrically divergent evidence regarding A.22-Rajaiah and is wife A.23-Rajeshwari. When PW.104, Police officer said that he visited the house of A.22-Rajaiah and found him as well as his wife emerging out and in the search, the arms and ammunition were recovered from that house, PW.25 (who was cited to support the former evidence) said that it was A.8 Appa Rao (and not A.22-Rajaiah) who emerged along with A.23 Rajeshwari. We thought initially that it would have been a mistake committed by PW.25 and the same would have been corrected by the Public Prosecutor. But it appears that the Public Prosecutor in the Designated Court had also accepted the said version as true and therefore no effort was made by him to rectify it. The learned Designated Judge adverted to this aspect and made a mention in the impugned judgment itself that PW.25 not only said that is was A.8 Appa Rao but he identified that accused correctly in the Court. In such a situation the TADA Court had no escape from passing a verdict of acquittal in favour of A.22-Rajaiah and A.23-Rajeshwari. The said position could not be salvaged by Mr. A.S. Nambiar, learned senior Counsel.

6. Regarding A.28-Shafat Ali Khan the evidence is that PW. 65 police officer recovered an 1895 model rifle (MO 357) from the possession of A.28. It is unnecessary for us to delve into the evidence relating to the said recovery, for, it is admitted that nobody had tested to know whether it was a toy rifle or an actual one.

7. Evidence of testing the rifle is necessary to prove that it is a weapon falling within any of the categories mentioned in Section 5 (vide-titled: Jagjit Singh v. State of Punjab and titled: Manoj Kumar Achhelal Brahman v. State of Gujarat)

8. We have, therefore, no possibility of reversing the order of acquittal as against the aforesaid three accused even in respect of Section 5 of TADA.

9. Mr. A.S. Nambiar, learned senior Counsel made a last attempt to sustain the charge against A.18-Venkateshwarulu as for offences under the Arms Act. The evidence adduced by the prosecution against A.18 was that PW.104 intercepted a jeep on 23.4.1992 in which three persons including A.18 were travelling and arms and ammunition were stocked in the jeep. The Designated Court discussed the said evidence and pointed out that even after A. 18 was produced in court on the next date the report relating to the seizure had not even been shown to the Magistrate and the said report had seen the light of the day in any court only as late as 4.5.1992. That apart, those arms and ammunition were also not tested to know whether they were the weapons falling within the purview of the penalising Sections of the Arms Act.

10. No effort was made by the prosecution as against any other accused. For the aforesaid reasons we confirm the order of acquittal and dismiss this appeal.