Sheelam Ramesh And Anr vs State Of Andhra Pradesh on 12 October, 1999

Equivalent citations: AIR 2000 SUPREME COURT 118, 1999 (8) SCC 369, 1999 AIR SCW 4080, 1999 SCC(CRI) 1437, 1999 (6) SCALE 499, 2000 ALL MR(CRI) 287, 2000 (2) LRI 1193, 2000 CRILR(SC MAH GUJ) 30, (1999) 8 JT 537 (SC), 1999 (8) JT 537, 1999 (10) SRJ 276, (2000) 1 ALLCRILR 216, (2000) 1 PUN LR 302, (2000) 1 RECCRIR 271, (2000) 1 BANKCAS 577, (2000) 1 ALLCRILR 246, (1999) CRILT 375, 1999 CHANDLR(CIV&CRI) 631, (1999) 3 SCJ 663, (1999) 4 CRIMES 354, (1999) 4 RECCRIR 573, (2000) 1 CIVILCOURTC 213, (2001) BANKJ 708, (2000) 3 CRIMES 595, (2000) SC CR R 216, 2000 CRILR(SC&MP) 30, (1999) 4 CURCRIR 149, (1999) 9 SUPREME 181, (1999) 26 ALLCRIR 2599, (1999) 6 SCALE 499, (2000) 40 ALLCRIC 20, (1999) 3 CHANDCRIC 172, 2000 (1) ANDHLT(CRI) 264 SC

Bench: G.T. Nanavati, S.N. Phukan

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           CASE NO.:
Appeal (crl.)  685 of 1999

PETITIONER:
SHEELAM RAMESH AND ANR.

RESPONDENT:
STATE OF ANDHRA PRADESH

DATE OF JUDGMENT: 12/10/1999

BENCH:
G.T. NANAVATI & S.N. PHUKAN

JUDGMENT:
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JUDGMENT 1999 Supp(3) SCR 589 The Judgment of the Court was delivered by PHUKAN, J. This appeal under Section 19 of the Terrorist and Disruptive Activities (Prevention) Act, 1989 (for short the TADA) is against the judgment and order of the learned Sessions Judge (Designated Court), Karimnagar, Andhra Pradesh. By the impugned judgment and order accused- appellants Sheelam Ramesh (A-2) and Samudrala @ Kummari Mallesham @ Rajanna (A-3) were convicted under Section 302 IPC read with Section 34 I.P.C., Section 27 of the Arms Act, 1959 and Sections 3(2)(i)(ii) and 5 of the TADA.

A2, A3 and another Bheemanna @ Bairi Ramchander (A-l) are members of CPI (ML) Peoples War Group (in short PWG). Deceased Ramtenki Chandraiah, Manchikatla Shankar (PW1) and Thota

Paul (PW2) were members of the said PWG but they severed their connections with the group since four years prior to occurrence and they were residing at Jagtial for their safety and security, away from their villages.

On 30.01.1993 at about 07.00 p.m. deceased, PWs-1 and 2 were sitting as usual in front of Shri Venkateshwara Hair Cutting Saloon near the bus stand of Jagtial. Suddenly Al to A3 armed with pistol and tamanchas (country made gun) came and fired at the deceased. PW1 escaped and ran to Jagtial police station. Deceased-Ramtenki Chandraiah was hit by gun fire and was injured. He was taken to the Government Hospital, Jagtial where he succumbed to the injuries. Thereafter, accused went away from the place of occurrence on their cycles. PW2 went towards another side. Subsequently, A2 and A3 were apprehended. After investigation, charge-sheet was submitted under Sections 302, 307 read with 34 IPC, Section 7 of the Arms Act, 1959 and Sections 3 and 4 of the TADA. The case of Al 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 accused - appellants guilty under the aforesaid section except Section 307 I.P.C. and convicted them accordingly.

The Trial Court believe the evidence of eye-witnesses 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 in 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 PW-1, 2 and the deceased who were in the hit list of PWG were residing by the side of house of Deputy Superintendent of Police, at Jagtial for their safety. Accepting the evidence of the prosecution, the Trial Court came to the finding that PW-1, PW-2 and deceased were in the habit of sitting at Sri Venkateshwara Hair Cutting Saloon. PWs 1 to 4 categorically deposed that all the three accused persons came and fired at deceased and that evidence of PW-1 to PW-4 could not be shattered in cross-examination. Accepting the above evidence for the prosecution, the Trial Court came to the finding that prosecution could prove the charge under Section 302 read with Section 34 I.P.C. against A2 and A3.

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

The evidence of PW-1 to PW-4 that the accused persons were armed with fire arms 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)(ii) and Section 5 of TADA was proved by the prosecution.

Regarding the charge under Section 307 read with Section 34 I.P.C., the Trial Court held that in absence of statements by PW- 1 or PW-2 or any other eye witnesses 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 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 the distance of 200 ft. from the place of occurrence. We find from the evidence that 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 police. Deceased was taken in the 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, alongwith the police and PW1, took the deceased to the hospital.

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 haemorrhage and shock from these injuries caused by fire arms. According to PW-6, these injuries were sufficient to cause death in the ordinary course of nature.

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. P1).

It was natural human conduct for the informant PW1 (who was on the hit list) to run towards the Police Station as the deceased was hit by guns and suffered injuries. His first duty, in addition to his safety, was to bring police to the place of occurrence and to ensure that medical help be given to the deceased. He came back to the place of occurrence with police and the deceased was taken to the hospital where he succumbed to the injuries at 7.55 p.m. Immediately thereafter, PW1 returned to the Police Station and lodged the formal FIR. The doctor PW6 has deposed that the deceased died at 7.55 p.m. From the above evidence, we hold that there was no delay in filing the FIR.

The next contention is that there was no sufficient light for identifica- tion of the accused by PW1 and PW2. PW1 and PW2 were the members of PWG and therefore, accused persons were known to them. In cross-examination of PW1, it was brought out that he could identify the accused due to street light and lights coming from the neighbouring shops. PW2 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 PW2 in his statement under Section 161 Cr. P.C. but only because of this omission, the identification cannot be discarded in view of the clear evidence of PW1. Rachakonda Rakaiaha, PW3 and Kandi Lakshman PW4 who are partners of the hair cutting saloon have clearly deposed before the Court that they could identify the accused persons as the street lights and the lights in the shops were burning. These two witnesses also identified A2 and A3 in the Court. Therefore, this submission of learned Counsel for the appellant has no force.

The next point urged is that in view of the contradictions in the evidence of PW1 and PW2 regarding the part played by accused A2 and A3, conviction is not sustainable. It is true that there are some contradictions regarding the part played by the accused A2 and A3.

PW1 and PW2 have deposed before the Court that all the accused persons came holding fire arms. According to PW1, accused Al was holding a pistol, A2 country made gun and A3 a 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, Al placed his pistol on the chest of the deceased and fired it and A2 fired from the country made nun. According to PW-2, Al came inside and fired at the deceased and subsequently, A3 came and fired at the deceased with country made gun. PW3, owner of the hair cutting saloon deposed before the Court that three people came on the cycle with fire arms and fired at the deceased and went away. PW4 deposed that two or three people came and fired at the deceased.

The accused persons have been charged under Section 302 I.P.C. read with Section 34 I.P.C. From the evidence on record, it is established that they came together armed with fire arms and Al fired from the pistol A2 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 A1 was holding a pistol and other accused were carrying country made gun. Both pistol and the country made gun were used and this fact is established from the empty cartridges recovered from the place of occurrence.

The very fact that the accused Al to A3 came together to the place of occurrence with fire arms would prove that there was a pre-arranged plan amongst them to cause death. As there was participation of A2 and A3 in furtherance of the common intention of causing death, conviction under Section 302 I.P.C. read with Section 34 I.P.C. can be sustained. Therefore, the contention of the learned Counsel for the appellants has no force.

Another fact to which our attention has been drawn is 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 Investigating Officer, Shri Reddy, P.W. 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.

According to learned Counsel for the accused-appellants, though PW3 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 any other eye-witness to the occurrence. Having examined all the eye-witnesses even if other persons present nearby not examined, the evidence of the eye-witnesses 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 a witness if it inspires confidence.

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