

HIGH COURT OF ANDHRA PRADESH AT AMARAVATI

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**CRIMINAL APPEAL No.452 OF 2009**

**Between:**

Kola Mani, W/o.Bhaskar,  
Aged about 35 years, Occ:Agriculture,  
R/o.Diguvametta Village,  
Giddalur Mandal,  
Prakasam District. .... Appellant/Accused

*Versus*

The State of A.P.,  
Rep. by its Public Prosecutor,  
High Court of A.P.,  
Amaravathi. .... Respondent/Respondent.

DATE OF JUDGMENT PRONOUNCED : 28.12.2023

**SUBMITTED FOR APPROVAL:**

**HON'BLE SRI JUSTICE A.V.RAVINDRA BABU**

1. Whether Reporters of Local Newspapers  
may be allowed to see the judgment? Yes/No
2. Whether the copy of judgment may be  
marked to Law Reporters/Journals? Yes/No
2. Whether His Lordship wishes to see  
The fair copy of the judgment? Yes/No

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**A.V.RAVINDRA BABU, J**

**\* HON'BLE SRI JUSTICE A.V.RAVINDRA BABU**

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Rep. by its Public Prosecutor,  
High Court of A.P.,  
Amaravathi. .... Respondent/Respondent.

**! Counsel for the Appellant** : Sri D. Ramaswamy Reddy, Rep.  
Sri Devakumar Salikiti

**^ Counsel for the Respondent** : Sri N. Sravan Kumar,  
Learned Special Asst.  
Rep. Learned Public  
Prosecutor.

**> Head Note:**

**? Cases referred:**

1) (2004) 7 SCC 178

This Court made the following:

**HON'BLE SRI JUSTICE A.V.RAVINDRA BABU****CRIMINAL APPEAL No.452 OF 2009****JUDGMENT:**

Challenge in this Criminal Appeal is to the judgment, dated 07.04.2009, in Sessions Case No.331 of 2008 on the file of the Court of Sessions Judge, Prakasam Division, Ongole (for short, 'the learned Sessions Judge') where under the learned Sessions Judge found the Accused/Appellant guilty of the charge under Section 5 of the Explosive Substances Act, 1908 (for short, 'the SCs and STs Act'), convicted her under Section 235(2) Cr.P.C and after questioning her about the quantum of sentence, sentenced her to suffer Rigorous Imprisonment for a period of one year and to pay a fine of Rs.100/- in default to suffer Simple Imprisonment for a period of one month. However, the learned Sessions Judge, acquitted the accused of the charge under Section 8 of the Andhra Pradesh Public Security Act, 1992 (for short, 'the APPS Act')

2. The parties to this Criminal Appeal will hereinafter be referred to as described before the trial Court, for the sake of convenience.

3. The Sessions Case No.331 of 2008 arose out of the committal order in PRC No.49 of 2008 on the file of the Court of Additional Judicial Magistrate of First Class, Giddalur pertaining to Crime No.84 of 2003 of Giddalur Police Station registered for the offences under Section 5 of the Explosive Substances Act and Section 8(1) of the APPS Act.

4. The case of the prosecution, in brief, according to the charge sheet filed by the Sub-Inspector of Police, Giddalur Police Station is that on 07.07.2003 at 11:00 p.m. the SI of Police, Giddalur along with his staff near Diguvametta side during night rounds found the accused proceeding by walk. On suspicion, they stopped her and found one polythene bag. On search of it, on further suspicion, they found 6 gelatin sticks. As there were no mediators, the Police seized the gelatin sticks and arrested the accused under the cover of Police proceedings. Basing on the Police proceedings, a case in Crime No.84 of 2003 on the file of Giddalur Police Station was registered and investigated into. Accused was forwarded to the Court for remand. The Judicial First Class Magistrate, Giddalur granted permission to defuse the 6 gelatin sticks by the Expert. On 01.08.2003, the Expert, RSI, DAR, Guntur defused 6 gelatin sticks and preserved a small quantity of the substances for

sending to FSL, Hyderabad. On 09.12.2005, the preserved substance liquid was sent to FSL, Hyderabad for chemical analysis and report. On 13.02.2006, the FSL, Hyderabad gave a report that that the substance is of highly explosive. After obtaining due sanction of prosecution of the accused from the Collector and District Magistrate, Prakasam District, charge sheet is filed.

5. The learned jurisdictional Magistrate took cognizance of the case for the offence under Section 5 of the Explosive Substances Act and Section 8(1) of the APPSC Act and numbered it as PRC No.49 of 2008 and, after completing the formalities under Section 207 Cr.P.C, committed the case to the Sessions Court and thereupon it was numbered as Sessions Case No.331 of 2008.

6. On appearance of the accused before the learned Sessions Judge, charges under Section 5 of the Explosive Substances Act and Section 8(1) of the APPS Act were framed against the accused, read over and explained to her in Telugu for which she pleaded not guilty and claimed to be tried.

7. To bring home the guilt of the accused, the prosecution, during the course of trial, examined PWs.1 to PW.5 and marked Exs.P-1 to P-5 and MO.1. In Ex.P-3 series, Ex.P-3(1), Ex.P-3(2)

and Ex.P-3(3) were marked. Further, Ex.C-1, Ex.C-1(1) and Ex.C-1(2) were marked by the Court. No documents were marked on behalf of the defence.

8. After closure of the evidence of the prosecution, accused was examined under Section 313 Cr.P.C with reference to the incriminating circumstances appearing in the evidence let in by the prosecution for which she denied the incriminating circumstances and stated that she has no defence evidence. She put forth a version during her 313 Cr.P.C examination that she used to cook food in the school as a livelihood. She was taken to Police Station and confined for 20 days with an enquiry to reveal the information about the naxalites and after that the Police implicated her in the present false case.

9. The learned Sessions Judge, on hearing both sides and after considering the oral and documentary evidence on record, found the accused not guilty of the Charge under Section 8 of the APPS Act and acquitted her under Section 235(1) Cr.P.C but found her guilty of the charge under Section 5 of the Explosive Substances Act, convicted her under Section 235(2) Cr.P.C and, after questioning her about the quantum of sentence, sentenced her, as above.

10. Felt aggrieved of the same, the unsuccessful accused in the aforesaid Sessions Case, filed the present Criminal Appeal.

11. Now, in deciding this Criminal Appeal, the points that arise for consideration are as follows:

1) Whether the prosecution before the Sessions Court proved beyond reasonable doubt that the accused was found in possession of explosive substances *i.e.*, 6 gelatin sticks on 07.07.2003 at 11:00 p.m. in the manner as alleged?

2) Whether the judgment in Sessions Case No.331 of 2008, dated 07.04.2009, is sustainable under law and facts?

**POINT Nos.1 & 2:**

12. Sri D. Ramaswamy Reddy, learned counsel, representing Sri Devakumar Salikiti, learned counsel for the appellant, would contend that as evident from the cross-examination part of the witnesses, at a distance of 100 meters there were houses. Evidence did not disclose that the Police party made any efforts to secure the independent witnesses. The evidence of the Police party is not free from blemish and their evidence suffers with serious

infirmities. Prosecution miserably failed to establish the identity of the so called liquid substance took over from the alleged 6 gelatin sticks. There was delay of 2 years 4 months in sending the sample to the chemical analysis. Chain of the custody of the sample was not proved. Their own record reveals that some other sample was sent to the chemical analysis. With the above submissions, he would contend that the Appellant is entitled for acquittal.

13. Sri Naidana Sravan Kumar, learned Special Assistant, representing learned Public Prosecutor, would contend that because there were no mediators and as the seizure was in odd hours, there was no other go for the Police party except to resort to seizure and arrest under the cover of Police proceedings. Their evidence reveals that there was no possibility to get the mediators. Prosecution obtained due sanction to prosecute the accused. The sample that was examined by the Forensic Science Laboratory was of a highly explosive substance. The learned Sessions Judge rightly appreciated the evidence on record as such the Appeal is liable to be dismissed. He would rely upon a decision of the Hon'ble Apex Court in ***Union of India v. Munna and another***<sup>1</sup>.

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<sup>1</sup> (2004) 7 SCC 178



14. Admittedly, it is a case where prosecution sought to prove the guilt against the accused before the learned Sessions Judge basing on the evidence of PW.1 and PW.2 – Police Constables who were the so called members of the raid party and PW.5, the SI of Police. PW.3 was the successor of PW.5. PW.4 was the Inspector of Police who received sanction orders to prosecute the accused.

15. During the evidence, PW.1, PW.2, and PW.5 spoke the facts as narrated in Ex.P-1 police proceedings. Their say was that as the place of seizure was a remote place and as it was at odd hours, no mediators were joined to witness the recovery. During the course of cross-examination of PW.1, he deposed that about 100 meters away to *Sagileru* Bridge there are houses. They did not ask any passersby or the residents of those houses to come and act as mediators. When it comes to the cross-examination of PW.5 – SI of Police, he did not admit that there were residential houses within their reach. However, he admitted that the place where the recovery was affected used to be with vehicular moment. Ex.P-1 – Police proceedings did not disclose about the location of houses at a distance of 100 meters and whether the Police party went to that place with a request to the residents of those locality to come as mediators.

16. Even by giving utmost allowance to the case of prosecution, for non-joining of mediators, still the case of prosecution must crumble on its own because the prosecution failed to establish the identity of the sample that was claimed to be lifted. As seen from Ex.P-1, the alleged offence was on 07.07.2003. As seen from Ex.C-1 the Police filed a Memo before the jurisdictional Magistrate seeking permission to defuse 6 gelatin sticks. Accordingly orders were passed under Ex.C-1(1) and Ex.C-1(2) and it was dated 19.07.2003. According to Ex.P-5, disposal certificate issued by P. Vijaya Saradhi, RSI, DAR, Prakasam, the so called gelatin sticks were destroyed on 01.08.2003 in the presence of Sub-Inspector and before destroying small quantity of representation sample of the substance from each item so preserved for examination by the FSL. So, their case was that on 01.08.2003 the gelatin sticks were destroyed after preserving the substance therein for the chemical analysis. When that was the situation, the prosecution did not explain as to why there was delay of 2 years 4 months in sending the sample. Ex.P-3(1) letter of advice did not show the date of sending. However, Ex.P-3(2) reveals that A.V.Ranganath, Additional Superintendent of Police sent the sample on 04.12.2005 to the Director, Forensic Science Laboratory, Red Hills, Hyderabad. According to the evidence of PW.3, he was the

successor of PW.5, who forwarded the sample to the SDPO. According to PW.5, he handed over the investigation to his successor. So, when there was abnormal delay of 2 years 4 months in sending the sample to the Forensic Science Laboratory, the chain of custody of the sample was not proved. The chain of the custody of the sample assumes greater importance in this case because of the discrepancy in Ex.P-3(2). As seen from Ex.P-3(2), it reads that Additional Superintendent of Police forwarded the objects preserved by the B.D. and B. Team expert at the time of defusing gelatin sticks on 20.11.2005. So, it means that what was seen under the cover of Ex.P-3(2) was the sample that was preserved on 20.11.2005. The case of prosecution is that on 01.08.2003 sample was preserved. So, if Ex.P-3(2) is considered, it is very clear that the sample so preserved on 01.08.2003 was not forwarded to the chemical examiner. So, what is evident is that under the guise of material objects in Crime No.84 of 2003, the sample that was preserved on 20.11.2005 was sent to the Director, Forensic Science Laboratory, Red Hills, Hyderabad. So, not only the prosecution failed to explain the delay in sending the sample and even otherwise the evidence on record goes to prove that the substance that was preserved on 01.08.2003 was not at

all forwarded but on the other hand a different sample preserved on 20.11.2005 was forwarded.

17. The decision of the Hon'ble Apex Court in ***Union of India*** (*supra*), cited by the learned Public Prosecutor, arose under the provisions of Narcotic Drugs and Psychotropic Substances Act, 1985 (for short, 'the NDPS Act'), wherein the High Court of Allahabad did not consider the effect of presumption under Section 54 of the NDPS Act and admission of the accused before the Customs Authorities. The Hon'ble Apex Court remanded the matter to the High Court for consideration. Absolutely, the decision of the Hon'ble Apex Court in ***Union of India*** (*supra*), with the facts, has nothing to do with the present case on hand.

18. A perusal of the judgment reveals that the learned Sessions Judge did not look into these serious flaws, which goes to the very root of the case. So, when the own documents relied upon by the prosecution presents serious infirmities in the prosecution, the very conviction of the accused for the charge under Section 5 of the Explosive Substances Act is not at all sustainable. The prosecution miserably failed to prove that what was alleged to be found in possession of the accused was of a highly explosive substance. As rightly contended on behalf of the appellant the

case of prosecution must crumble on its own documents. Hence, the Criminal Appeal is liable to be allowed.

19. In the result, the Criminal Appeal is allowed setting aside the conviction and sentence imposed against the appellant/accused for the charge under Section 5 of the Explosive Substances Act in Sessions Case No.331 of 2008, dated 07.04.2009, on the file of the Court of Sessions Judge, Prakasam Division, Ongole. The fine amount, if any, paid by the appellant/accused shall be refunded to her after the Appeal time is over.

20. The Registry is directed to take steps immediately under Section 388 Cr.P.C to certify the judgment of this Court including the trial Court record, if any, to the trial Court on or before 09.01.2024. A copy of this judgment be placed before the Registrar (Judicial), forthwith, for giving necessary instructions to the concerned Officers in the Registry.

Consequently, Miscellaneous Applications pending, if any, shall stand closed.

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**JUSTICE A.V.RAVINDRA BABU**

Date: 28.12.2023

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