**(1910) 01 MAD CK 0018**

**Madras High Court**

**Case No:** None

In Re: Chukkapalli Ramayya — APPELLANT

Vs

RESPONDENT

**Date of Decision:** Jan. 1, 1910

**Acts Referred:**

- Evidence Act, 1872 - Section 106

**Citation:** (1910) 20 MLJ 657

**Hon'ble Judges:** Benson, J; Abdur Rahim, J

**Bench:** Full Bench

**Judgement**

Benson, J.
In Sessions Case No. 28 of 1909 the Additional Sessions Judge of Guntur convicted the appellant, Chukkapalli Ramayya, of

having murdered one Chennugadu on the 27th March last by means of a bomb, and sentenced him to death. The appellant was also convicted of

minor charges under Ss. 3 and 5 of the Explosive Substances Act VI of 1908.

2. He appeals against his conviction on all the charges. Two other young men, Brahmans, were also tried with him but were acquitted.

3. It is clearly proved that in the early morning of the 27th March last a Pariah, named Chennugadu, was blown to pieces by the explosion of an

infernal machine which had been buried in a pit about a foot deep and a foot wide which had been dug in a frequented foot-path between the

villages of Nandivelugu and Tenali. Various broken fragments of the machine were found near the spot. The most important of these were a piece

of iron band with a nipple soldered on it (Material Object No. 2), a similar piece of iron without a nipple (Material Object No. 3), a tin tube with a

hole at each end (Material Object No. 1), some broken glass, and some pieces of paper with English print on them (Material Object No. 8). From

these fragments and from the evidence of the Government Inspector of Explosives, who visited the spot on the 3rd April, it appears that the

machine probably consisted of"" (1) an outer thin iron cylinder, with an explosive at the bottom, (2) of an arch shaped like over the explosive, of

which material Objects Nos. 2 and 3 were parts, the nipple being hollow and containing the igniting substance, (3) the tin tube, Material Object

No. 1, placed vertically over the nipple, the nipple fitting into a hole at the bottom of the tube, and (4) possibly a rod running through the tube

which has holes at each end. His opinion is that the machine was buried in the ground with an inch or two of the tube exposed, the application to

which of force either vertically or horizontally would spark the igniting substance and fire the explosive. The report of the Chemical Examiner

embodied in Exhibit C, shows that the explosive used was a mixture of sulphide of arsenic and chlorate of potash. It was apparent from the

beginning of the investigation that Material Objects No. 2 and 3 formed one piece originally. The ragged edges of each fit exactly. And it was also

apparent from the other ragged edge of Material Object No. 2 that another piece or other pieces, similar probably to Material Object No. 3, had

existed and had not been found. A search was instituted and on the morning of the 8th April, 1909, one was found. It is Material Object No. 9

and its edge exactly fits the other edge of Material Object No. 2. Material Objects Nos. 2, 3 and 9 thus form a kind of arch 3|2|9 and were

undoubtedly originally one piece and probably also the whole piece as the other edge of Material Objects Nos. 2 and 9 are wrought smooth.ï¿½

4. It will thus be seen that a peculiar and essential portion of the bomb was the iron arch and the prosecution has proved by the evidence of five

witnesses (Prosecution Witnesses Nos. 11 to 15) that the appellant got this arch made about ten days previous to the explosion by a blacksmith of

Tenali named Rajagopalan (Prosecution Witness No. 11), and that the appellant when asked his name by the smith gave a false name and a false

residence and a false purpose for which the iron was required. The chief question in the case is whether the evidence of these men is true, as

alleged by the prosecution, or false, as alleged by the defence.

5. [After stating the account given by the witnesses and discussing the circumstances which, according to his Lordship, shewed the truth of that

account, his Lordship proceeds:ï¿½]

On this evidence it would seem to be difficult to deny that the 1st accused is the man who got the arch (Material Objects Nos. 2, 3 and 9) made

by Rajagopalan some ten days before the explosion. The defence has, however, made an elaborate attempt to show from the prosecution

evidence that the prosecution has completely changed its original ground. The contention is that Subbarayudu originally told the police that the man

who got the arch made was one Kadayala Kottayya of Kettevarom, that that man was the brother-in-law of the Village Magistrate, and that the

latter and the police got the witnesses No. 11 to 15 to change their story and accuse the 1st accused instead of the Village Magistrate''s brother-in

law. It is, however, a significant fact in connection with this defence that 1st acused, in his statement in the lower Court or throughout the trial there,

never pat forward such a defence or hinted in any way that he had been made the scapegoat for the Village Munsif''s brother-in-law. In his

statement he hints he has been made the scapegoat for the Karuam''s son, a different person altogether from the Village Munsif''s brother-in-law.

As, however, the contention has been strongly urged before us, it is necessary to examine it in detail. It will be remembered that Subbarayudu, in

his evidence already quoted, said that when he told the constable about having seen a thing like the bit of the bomb he had with him made at

Rajagopalan''s smithy, he said that the constable took him to the Inspector and that he then told the Inspector that the man who was getting it made

said he was Kadayala Kottayya of Kattavaram and described him as a man a span taller than the witness, fair, and with a beard 6 or 7 inches long.

The Inspector referred to is the local Inspector, Kasim Khan (Prosecution Witness No 25).

6. [After stating the evidence of the Inspector, on this part of the case, His Lordship proceeds:]

The Inspector''s examination in the Sessions Court, however, removes all doubt as to his meaning; and a reference to his note-book which both the

Sessions Judge and this Court sent for and examined show clearly that the information given by Subbarayudu to this Inspector on the 3rd April, as

recorded by him on that day, was that he saw "" a man whose name is said to be Kadayala Kottayya of Kattevaram"" getting the iron made, and he

added ""I did not see him before this."" If he had not seen him previously he could not have then known him as Kadayala Kottayya of Katteveram.

His knowledge was evidently derived from what the man said of himself. What is recorded in the note-book cannot, of course, be used as

evidence against the accused, but it is admissible for the purpose of showing that the words in Exhibit Evidence of Subbarayudu at the preliminary

inquiry :-ï¿½Ed. I should not be construed as contradictory of the witness''s evidence at the trial or as showing that the latter is false. It is clear

beyond doubt that from the beginning the case for the prosecution was that the man gave himself out as Kadayala Kottayya of Katteveram, not

that Subbarayudu knew him previously by that name and address. [The learned Judge then discusses the evidence supporting the above point.]

7. The defence had welt on the improbability of a man getting part of a bomb openly made by a strange smith and in the presence of witnesses.

The argument is entitled to weight, but it must be remembered that whoever wanted an iron implement like the arch and nipple would, of necessity,

have to go to some smith to get it made. The thing in itself would not suggest any preparation for an offence, and the man may well have failed to

realise that it would be found after the explosion and give a clue to the offender. Moreover, it was probably safer to go in an ordinary way by

daylight than to attract suspicion by going secretly, or at night. The smith and his assistants were comparatively recent arrivals at Tenali and did not

previously know the 1st accused or his address. He probably did not anticipate witnesses like the 12th and 15th Prosecution Witnesses coming in

while the thing was being made.

8. On the whole, then, it must be held that the evidence of Prosecution Witnesses Nos. 11 to 15 establishes beyond reasonable doubt that it was

the 1st accused who got the iron arch (Material Objects Nos. 2, 3, 9) made about ten days before the explosion, and that he then gave a false

name and address, and falsely stated that he was having it made for the distillation of essences.

9. Apart from the making of the iron arch, the prosecution has sought to establish the guilt of the 1st accused by showing that at the search of his

house, two hours after his arrest on the 6th April, a paper with a little picric acid in it was found tied in a corner of a cloth in his house and also that

a quantity of violet powder was found in his house wrapped in a piece of paper [Material Object No. 13) which was part of page 14 of the

Introduction to the ""Report of the Tenth National Indian Congress, 1894."" It will be remembered that among the scattered contents of the bomb

found at the scene of the explosion were a number of bits of paper (Material Object No. 8). That these were part of the contents of the bomb is

proved by the Chemical Examiner''s report which shows that they bore traces of sulphide of arsenic and chlorate of potash, which chemicals

formed the explosive material of the bomb. These bits of paper are proved to be portions of various pages of the Introduction to that Report

including page 14 which is also the page to which Material Object No. 8 belongs. It is not proved that Material Object No. 13 and any of the bits

of print in Material Object No. 8 belong to the same identical page of one particular copy of the Report of 1894. All that can be said is that each

belongs to page 14 of some copy of that report. They may both belong to the same copy or to different copies. It is pointed out by the defence

that copies of old books like this Report may be sold as waste paper and used for wrappers by the shops, but though this is so and though no

conclusive deduction against the innocence of the 1st accused can be drawn from the finding of Material Object No. 13 in his house, still the

coincidence is so remarkable as to be of real probative force, and the 1st accused has not attempted to show that he obtained Material Object

No. 13 under such circumstances as to rebut any presumption that might arise from the coincidence. The fairness of the search and the finding of

the articles at it is spoken to by a number of witnesses including the Village Munsif, a Village Panchayatdar and several superior officers of Police.

The evidence is that the 1st accused was arrested about 1 P.M., on the 6th April, after the identification parades, that constables were at once told

off to guard his house, while the superior police officers went to have their food as they had had nothing up to that time, and that the search was

made with all due formality and precautions about 3 P.M. The contention for the defence is that the paper with picric acid and Material Object

No. 13 may have been introduced into the house in this interval. It is certainly to be regretted that the superior officer of police did not instantly go

to search the house when 1st accused was identified, and thus leave no room for the plea that is now put forward ; but, in point of fact, there is no

evidence to support the suggestion of the defence and no reason to suppose that it is true. The house was in the occupation at the time of the 1st

accused''s father and mother and mother''s sister; and 1st accused signed the search list himself and did not then make any complaint that the things

had been foisted on him. It is unlikely that if the police desired to fabricate evidence they would have chosen picric acid as the medium, since the

Inspector of Explosives had two days previously (Exhibit B) laid it down definitely as his opinion that picric acid was not the explosive used, and it

was not until the 18th April, (i. e., twelve days after the search) that the pieces of paper (Material Object No. 8) found in the bomb were

discovered to be part of the Congress Report of 1894. It is, however, argued with truth that the evidence of the Sub-Magistrate who had

possession of the articles found at the search until they were sent to the Chemical Examiner is not altogether clear as to the paper said to contain

picric acid, and the person who actually packed and sealed the articles for despatch to the Chemical Examiner has not been called as a witness.

This leaves room for the argument that it is possible that the ""pieces of paper stained with yellow powder"" which form item No. 10 in the Chemical

Examiner''s list (Exhibit D) and which he certified were ""stained with picric acid,"" may not be the very pieces of paper found in the search

containing a pinch of yellow powder, and which the Sub-Magistrate believed were sent to the Chemical Examiner as No. 10 in the Magistrate''s

list (Exhibit W) which runs "" Yellow powder with newspaper containing it and stitched paper pouch."" I think that the person who actually packed

and sealed the articles for despatch should have been called and, in his absence, I think we ought not to regard it as strictly proved that picric acid

was found at the search. But this flaw does not affect Material Object No. 13 which was never sent to the Chemical Examiner at all, but remained

with the Magistrate. The powder in Material Object No. 13 was sent and was found to be harmless, but Material Object No. 13 itself was not

sent. The conclusion I arrive at in regard to Material Object No. 13 is that it was, in fact, found in the 1st accused''s house at the search, as alleged

by the prosecution, and was not foisted on him by the police or through their agency. The fact, however, does not carry the case much further than

it was carried by the finding that the material portion of the bomb (Material Objects Nos. 3, 2 and 9) was made for the 1st accused and was

traced to his possestion and that he gave no explanation to show that his possession was innocent. It is argued that the 1st accused is an ignorant

ryot, who would be most unlikely to be engaged in making bombs. There is little or nothing on record regarding the man''s antecedents except that

he is described as a small cultivator. He writes a good running hand in Telugu, but does not appear to know English. There is nothing in these facts

to render his guilt so improbable as to make it incredible that the direct evidence against him is true.

10. The facts, then, that are proved are that the 1st accused got a blacksmith to make the iron arch, which is a material and essential feature of the

bomb, some ten days before the explosion ; that when questioned, at the time of procuring it, the 1st accused gave a false name and address, and

falsely stated that it was required for the purpose of distillation ; that ten days after the iron arch was procured by the 1st accused, it formed part of

a bomb which was buried in a frequented foot-path between two villages and which exploded and killed Chennugadu ; that some of the papers

used in making the bomb were portions of page 14 of the National Congress Report of 1894, and a portion of page 14 of the National Congress

Report of 1894 was also found in the 1st accused''s house some ten days after the explosion ; that 1st accused gives no explanation at all in regard

to these facts, but simply denies their truth. I think that the reasonable inference from these facts is that the 1st accused is guilty of the several

offences charged against him. The metis rea, or guilty knowledge, of the man from the first is shown by his giving a false name and address and by

his false statement as to the purpose for which he required the iron arch. He makes no attempt to show that he got the iron arch made innocently,

or that it left his possession under circumstances indicative of, or consistent with, his innocence. Why he got the iron arch made and how it left his

possession are matters which must be ""especially within his knowledge,"" and the burden of proving them therefore lies on him u/s 106 of the Indian

Evidence Act ; and u/s 114 of the same Act, the Court may presume the existence of any fact which it thinks likely to have happened regard being

had to the common course of natural events, and human conduct in their relation to the facts of the particular case [see illustration (h) and Section

342, Criminal Procedure Code]. The illustration to Section 106 says that when a person does an act with some intention other than that which the

character and circumstances of the act suggest, the burden of proving that intention is upon him. Now when a person gets an essential part of a

bomb made and at the same time makes false statements as to his name and the purpose for which he is having it made, the character and

circumstances of his act suggest that he is getting it made with the intention of using it for the manufacture of a bomb, and when we find that it is, in

fact, used a few days afterwards for the manufacture of a bomb, and the person who had it made and in whose possession it was, gives no

explanation as to how it came to be so used, and does not show that it was so used without his knowledge or against his will, I think the

reasonable and natural inference is that such parson himself made the bomb or caused it to be made by some other person.

11. It is true there is no eye-witness in the present case to the making of the bomb or to its burial in the path, nor is there mathematical proof that it

was made and placed there by the 1st accused ; but the law does not require such proof. Under the Indian Evidence Act, Section 3, "" a fact is said

to be proved when, after considering the matters before it, the Court either believes it to exist or considers its existence so probable that a prudent

man ought, under the circumstances of the particular case, to act on the supposition that it exists."" The facts proved in this case lead me clearly to

the belief that the 1st accused either himself made the bomb and buried it in the path where it exploded, or caused it to be made and buried there

by some other person, and in either case he is equally guilty on the principle qui facit per alium facit per se.

12. If a person buries a bomb in a frequented path where it is almost certain to be trodden on and to explode and cause the death of any one

treading on it, and if it does, in fact, explode and cause death, that person is guilty of murder unless he can explain his action in such a way as to

negative the inference as to his intention which the nature and circumstances of the act suggest.

13. It is not at all necessary that he should intend to cause the death of any particular person. For example ""if a person, without any excuse, fires a

loaded cannon into a crowd of persons and kills one of them, he is guilty of murder although he may not have had a premeditated design to kill any

particular individual. "" [Indian Penal Code, Section 300, Illustration (d)].

14. I do not think there is any reason to suppose that the deceased was engaged in digging the hole in order to bury the bomb and had taken on

himself the risk of doing so and was blown up by his own incautious act. The bomb was evidently in a pit when it exploded and the sides of the pit

bore marks of having been dug by a crow-bar, but no crow-bar was found there as it would have been if the deceased had been burying the bomb

at the time. There is nothing to suggest that there were other people with deceased at the time who removed the crow-bar. If there had been such,

they would hardly have escaped injury in the explosion and they would surely have removed the broken pieces of the bomb if they thought it worth

while to remove the crow-bar. The circumstances suggest that the deceased, walking on the path in the early morning, saw the end of the tin tube

sticking up out of the ground where the bomb had been buried and stooped down to feel it or pick it up and thereby caused it to explode. The fact

that the body was found above 15 yards from the spot does not suggest to me that it was carried there by other persons. It is well known that

persons and animals shot through the heart do often go some distance before falling.

15. In my opinion the 1st accused has been rightly convicted of murder, and also of the minor offences under the Explosives Act. It is true no

motive for the murder has been shown but that does not lessen the accused''s guilt. For aught that appears he may have designed to kill some

particular person, or he may have acted out of mere recklessness and from curiosity to see the effect that would be produced by the explosion, but

that would make no difference in his guilt. I find no extenuating circumstances proved. I would therefore confirm the sentence of death passed by

the Sessions Judge, but as my learned brother takes a different view the case will be laid before another Judge for decision u/s 378, Criminal

Procedure Code. No separate sentences for the offences under the Explosives Act are, in the circumstances, necessary.

Abdur Rahim, J.

16. The prisoner Chukkapalli Ramayya has been found guilty by the Additional Sessions Judge, Guntur Division, differing from the Assessors, of

an offence u/s 302, Indian Penal Code, having caused the death of one Chennugadu under circumstances which made accused guilty of murder,

u/s 3 Explosive Substances Act VI of 1908 for unlawfully and maliciously causing by an explosive substance anexplosion likely to endanger life or

property, and u/s 5 of the same Act for having knowingly in his possession an explosive substance under circumstances giving rise to a reasonable

suspicion that he had it for an unlawful object. u/s 302, Indian Penal Code, the Judge has passed the sentence of death on the prisoner. u/s 3 of the

Explosive Substances Act, the sentence awarded is transportation for life and u/s 5 of the same Act transportation for ten years.

17. The dead body of Chennugadu was found on the 27th March last in the morning lying across the Nandivelugu channel and from the nature of

the injuries observable on the corpse and the evident traces of a recent explosion on the spot there can be no doubt that the death of the

unfortunate man was caused by the explosion of some sort of explosive machine. The body bore marks of burning on the face, chest and arms,

and had on it considerable lacerated wounds the edges of some of which were burned ; the left arm was shattered, some of the ribs were exposed

and the heart punctured. One of the wounds was soiled with mud and from it the Surgeon extracted a piece of iron. About 15 yards from the

corpse, in a cattle track which is used as a footpath running along the bund of the channel from Nandivelugu to Tenali, there was a pit 1 foot 1 inch

deep and 1 foot 1 inch in diameter and the earth round its mouth was discoloured. In the pit lay a round piece of iron with a nipple on it and

another round piece of iron not far off, and these two along with a third piece of iron found on the 8th April formed when put together a sort of

arch with a nipple on the top something like this (sic) There was a tin tube lying near the pit with its lid lying separate from it and round the pit there

were pieces of a broken soda water bottle, rags, bits of paper, pieces of iron and on the bund an iron disc. Near the pit was also found a blood-

stained cloth and blood stains on the ground, and blood was also found on the bund at a point near the corpse.

18. Captain Rush, Inspector of Explosives, who arrived at the scene on the 3rd April, says that he was shown the above objects (with the

exception, of course, of the iron piece found later) and that they smelt of exploded matter. In the opinion of the Chemical Analyser to the

Government, who detected arsenic and obtained Chlorate reaction in all the objects, the explosive probably consisted of Chlorate of Potash mixed

with Sulphide of Arsenic and containing the fragments of a soda water bottle, the whole being placed in a round ended tin. Captain Rush gives it as

his opinion that the iron arch formed a leading part of the explosive and the tin tube which had a hole at the bottom fitting the nipple on the arch

was an essential part of the machinery which he thinks was buried in the ground with a portion of the tube projecting above the ground. He also

says that the tube might have contained a loose rod to keep it upright, and supposing there was sensitive explosive at the bottom and any one

touched the tube explosion would follow. In his letter written on the 4th April to the Chief Inspector of Explosives, Captain Rush states that it is

somewhat difficult to reconstruct, even in imagination, a weapon of this nature after it has exploded. He also observes that while the serious nature

of the injuries found on the person killed by the explosion, especially the entire separation of the bones of the left arm, point to some explosive

being used, the undamaged sides of the pit on which marks of the crowbar are still visible while he would have expected more or less of a crater to

have been formed there, the uninjured state of the tin tube and the size of some of the fragments of sheet iron recovered, all pointed to a low

explosive, or a very small charge, if a high explosive was used. This was before the examination of the exhibits by the Chemical Examiner when

Captain Rush was not aware of the nature of the explosive used, and in his evidence in Court he says that if the bomb was buried in the pit with

loose earth placed all round it that would explain the absence of any damage to the sides of the pit. I may mention here that there is the evidence of

the 8th prosecution witness that at sunrise on the day the dead body of Chennugadu was found he heard,when he was just outside the village of

Kancherlapalam which is some distance from the scene of explosion, a loud report like that of a gun. But I am not inclined to place much reliance

on his evidence. The witness says that he had heard such reports before and if the report was loud enough to be heard at Kancherlapalam, in all

probability there would have been evidence forthcoming that other villagers also heard it. But whatever was the strength of the explosion the

suggestion of Mr. Sundara Iyer who appeared for the prisoner that the machine might have been an ordinary bomb which is, used in pyrotechnic

displays is quite untenable having regard to the construction of the weapon, its composition and the place and circumstances of its explosion. I have

no hesitation in accepting the opinion of Captain Rush that what caused the death of Chennugadu by its explosion was an infernal machine, i.e., as I

understand, a machine esigned for the destruction of human life and property.

19. There is no eye-witness available to tell us how the explosion was actually caused and by whom ; what the deceased Chennugadu was doing

then or how he came within the range of the bomb so as to be killed by its exploding. Chennugadu who was a Mala by caste and employed

somewhere as a farm servant had left his house alone in the early morning of the day on which his dead body was found to go to Tenali in order to

get a shuttle repaired. This is what his father, prosecution witness No. 6, tells us. But it should be noted here, as it seems to be a very remarkable

fact, that though this witness was informed of his son''s death the same evening, neither he nor any of his other sons went to see the corpse, while a

number of other villagers went to see it, nor did they take any step to ascertain how Chennugadu met with his death in an open field as the result of

an explosion.

20. Before proceeding further I would pause here to observe that from the facts narrated above, supposing there was nothing else to guide

usï¿½and as I read the evidence there is nothing else bearing on the point--it would be impossible, in my opinion, for a Court to come to any

reasonably certain conclusion as to how the explosion was caused and whether the death of Chennugadu was due to crime or to accident. It is

possible on the above facts to build more than one theory to explain the circumstances in which the fatal explosion occurred. And no doubt some

one of those theories would appeal more strongly to one mind than another, but, left with these facts alone, we are more or less in the region of

conjectures. Yet it is necessary to dwell on the various suggestions which they convey to one''s mind in connection with the question how far the

charges u/s 302, Indian Penal Code, and u/s 3 of the Explosive Substances Act, can be said to have been proved. What probably was the nature

of the explosive machine would indicate that whoever constructed it had for his object the furtherance of murderous designs either for anarchical or

seditious purposes or to wreak vengeance on enemies. The machine on the other hand was placed in the midst of fields a considerable distance

from the nearest human habitation, and there is no evidence to show that any person whom an anarchist or seditionist was likely to mark out as his

victim was expected to pass over the place where the explosion took place. Similarly, in the absence of any evidence to show that the unfortunate

man who was killed or any other person in the neighbourhood had an enemy who was likely to have compassed his death and to have employed a

bomb for the purpose. I should not feel myself at liberty to infer that the infernal machine was used with the intention of killing any particular human

being. On the other hand, the place and time of the explosion which must have occurred very early in the morning, if not earlier still, might fairly be

taken to show that whoever wanted to cause the explosion intended to conceal the fact from the knowledge of others and perhaps also to guard

against causing injury to human life or property. What seems to be probable is that some person or persons were experimenting with the machine

to see how it would act. But the learned Sessions Judge infers from the fact that the hole in which the machine exploded was dug in a foot-path in

the fields shows that the machine was planted there either with the intent that whoever passed that way and happened to tread on the projecting

tube or touched it out of curiosity should be killed or in utter recklessness as to how dangerons it might prove to the life of people passing along the

path. The theory of the bomb being placed where it eventually exploded from sheer carelessness or reeklessness as to the consequences seems to

be untenable, for it is hardly likely that any one who took the risk and trouble of making an infernal machine like this containing explosives of a

highly sensitive character, and carried it right into the fields in order to plant it there, should not have done so with some definite object in view. The

author of the machine could hardly be, supposed under the circumstances to have planted the bomb where it exploded without intending to cause

an explosion, being content to leave it there or careless as to what might happen to it. I think there can be no doubt that whoever took the machine

to the place did so with the intention of causing an explosion. Now is it likely that the object of the man in causing an explosion was to destroy

human life either to test the efficiency of the invention or from a wanton desire to kill human beings? If that were so, where was the necessity to go

so far away from the villages while the man could have accomplished either of these objects more satisfactorily to himself by placing the machine in

some frequented place in or near one of the villages. What as I have said, seems to be more probable is that the explosion occurred in the course

of an experiment with the machine. The next question which one has to ask himself is : what was the deceased doing at the scene of the explosion ?

The evidence of his father is that he left the house to go to Tenali in order to get a shuttle repaired. I have already pointed out how strange was the

conduct of the deceased''s father and brothers in not showing the least concern on hearing of the man''s death in such unusual circumstances.

Another noteworthy fact in connection with the evidence of Chennugadu''s father is that though the scene of occurrence was carefully and minutely

searched for days together, and we have a list of all the articles found there, no shuttle appears to have been found. Yet in all probability

Chennugadu, an illiterate Mala, was not likely to have been interested in the manufacture of bomb and experimenting with them. That, however,

does not preclude the possibility that he might have been helping other persons, either for hire or without hire, at the time of the experiment, if not

also at an earlier stage. That other persons were present at the time seems to be more than probable. The hole, when first seen, still bore marks of

the crowbar but no crowbar was found on the spot. The deceased was lying in the channel some yards from the pit while one of his clothes lay

near the pit ; and it is extremely unlikely, if not impossible, having regard to the terrible nature of the injuries inflicted on the deceased, including

puncture of the heart, that death should not have been instantaneous or that he should have been ableï¿½ supposing he was not killed at onceï¿½to

walk or crawl across to the place where he was found. This also points to other men being present, and if Chennugadu''s death was due to an

accident and not the result of a premeditated design, the men that were there were likely to have carried him to the channel in which there was then

some water and tried to revive him. It might be asked that if this was what took place, how is it that the men who were on the scene did not inform

the relatives of the deceased of what had happened? But one would not ordinarily expect people concerned in making such an experiment, as the

argument supposes, to disclose their identity and run the risk of a prosecution under the Explosive Substances Act. Most of the injuries on the

deceased were on the face, hands and the chest, and that would go to show that in all probability the deceased was near the machine and facing it,

either in the act of fixing it in position or igniting it, when the explosion occurred. The explosive being of a highly sensitive nature, any negligence in

handling the bomb was likely to make it explode. The absence practically of injuries on the legs goes against the suggestion that the man might have

unknowingly trodden on the projecting tube, and if, as seems to be probable, there were men engaged in making an experiment they would not

have allowed an unwary passer-by to handle it. The fact that the hole for planting the machine was dug in a foot track, which, it must also be

remembered, is in the midst of fields, to my mind proves nothing, for an experiment such as this was not likely to occupy much time, and the men

engaged in the experiment would be there to warn unwary travellers. All the facts to my mind point to the deceased being one of the party of men

engaged in testing the power of the explosive machine, though probably he himself had nothing to do with its manufacture, nor was privy to the

ultimate criminal purpose which, we may reasonably assume, the invention was designed to subserve, though not on the particular occasion. It is

not possible to argue much further from the circumstantial evidence available at the place of explosion. For instance, whether the deceased,

supposing he was handling the machine in the course of an experiment, was fully warned of the risk he was running or he was not properly warned,

or whether, being warned of the danger, he was negligent in following his instructions, it is difficult to say.

21. I now come to the evidence by which the prosecution seeks to connect the accused with the explosion and the death of Chennugadu. The

prisoner, who is a Kamma, was originally tried with two young Brahmins, Lakkaraju Basavayya and Kotamraju Venkatarayudu, upon the same

charges. The evidence against these latter was that these two young men who were friends, and one of whom was proprietor of Swadeshi stores in

the village of Tenali, had got made the tin tube which was found on the scene of occurrence, and that they had been circulating seditious leaflets

which, among other things, inculcated the manufacture of bomb for the purpose of killing ''the enemies,'' meaning thereby, English people in India.

The Sessions Judge was not satisfied with the evidence that the tube in question was made at the instance of the two Brahmans, and therefore

rightly acquitted them. I may, however, mention that they have been subsequently tried and convicted on the charge of circulating seditious leaflets

and the convictions have been upheld by this Court. The present accused is an ordinary cultivator, can read and write Telugu but does not know

English ; and it is not shown that he has been in any way connected with seditious movements or has ever concerned himself with any form of

politics. The evidence on which he has been found guilty by the Sessions Judge of the charges preferred against him is thus summed up: ""I hold it

proved that he got the iron arch (Material Objects Nos. 2, 3 and 9) made by Prosecution Witness No. 11 a fortnight or so before the explosion,

that he had picric acid in his house when it was searched a few days after the explosion, and that in his house was found a piece of paper from the

same volume from which many scraps of paper which were in the bomb were taken."" I wish to deal very briefly with the evidence relating to the

making of the iron arch as I agree in the finding of the Sessions Judge on this point. [The learned judge then discusses the evidence and

states:ï¿½]As regards the search of the prisoner''s house, the facts are these. He was arrested at 1 p.m., and two constables were then despatched

to watch his house. The search did not take place until 3 p. M., and in the meantime the accused was in custody somewhere else and the other

inmates of the house had been removed. The house is a small hut with its main door facing the street. This door at the time of search was found to

be open and neither of the two constables has been examined, so that we do not know at what points they were stationed and with what vigilance

they did their duty in guarding the house. The evidence in the case does not enable me to say with any degree of certainty that during these two

hours any one who wanted to do so could not have entered the house unobserved. As remarked by the Sessions Judge the delay is to be

regretted, though I have no doubt that the explanation given for it, namely, that the officers engaged in the investigation were tired and wanted to

refresh themselves, is quite bona fide so far as it goes. But why after they had time to refresh themselves, the superior Police officers, I mean the

Deputy Superintendent of Police and the Sub-Magistrate, were not present at the search when it took place, is not explained. It strikes one that,

considering the explosion occurred ten days previously and a large body of the Police force were actively engaged in making investigations in the

villages, it was hardly to be expected that the accused, supposing he was concerned in manufacturing the bomb, would have left incriminating

evidence in his house, and it is not unlikely that the Police officers themselves might have taken that view. That was possibly another reason why

the search did not take place immediately after the arrest. The case of the prosecution is that two small paper packets were found tied at two

corners of a cloth ""which was on a pole in the very first room as one enters the hut from the main door. In one packet there was some violet tooth

powder, but the paper, Material Object No. 13, which contained this powder is from a page in a Congress Report of the year from which some of

the bits of paper found at the scene of explosion having been apparently used in the composition of the bomb, were also taken. It should not,

however, be understood that Material Object No. 13 and the bits of paper found on the scene are from one and the same identical book. The

paper of the other packet is of no evidentiary value, but it is alleged to have contained picric acid, a stuff which has been generally used in the

making of bombs in this country. As regards the piece of paper (Material Object No. 13) it must be remembered that the accused does not know

English and there is no suggestion that any other inmate of his house knows English. No English, book, or newspaper, or any other paper

containing writing in English was found at the search, so that the accused was not likely to have a Congress Report in his house. Any portions of a

page in a Congress report that might have found their way there, must, therefore, have been brought in as waste paper. And if such a piece of

paper was available to the accused, is it unlikely that there might have been more such papers in the village? On the other hand it is in accordance

with our common experience that, with the exception of a few copies which might be preserved in libraries, the Congress Report of 1854 would,

like most of such literature having a more or less temporary interest, be ultimately treated as waste paper, and it would be nothing surprising if

pages from such reports found their way into remote villages, being used as wrappers or in various other ways. Further, we know that several bits

of paper which formed parts of the Congress Report for the same year were found at the scene of explosion, and if Material Object No 13 had

been sent to the Chemical Examiner we would have known if it bore traces of the explosion or not, and thus be certain that it was not found on the

scene but this unfortunately was not done The reason given for not sending this piece of paper while everything else was sent is that the Police

wanted to find out where that paper came from. It is possible that this action of the Inspector was bona fide, but one cannot help remarking that his

object would have been equally served if he had copied the printed matter in Material Object No. 13 and sent up the Exhibit for examination,

making a special request to the Chemical Examiner to return it to him after examination if that was necessary. However that may be, the argument

of the Sessions Judge based on the difficulty of procuring such a paper so as to preclude the possibility of its being introduced in the accused''s

house can have no weight in these circumstances. I may also say that, even if I was satisfied that possession of Material Object No. 13 was traced

to the accused, I should not think that it advanced the case of the prosecution to any appreciable extent.

22. As to the alleged finding of picric acid at the search, that has not been proved at all. The case of the prosecution is that the yellow powder

found in the other packet was picric acid. But the report of the Chemical Examiner does not show that he received any such powder. All that it

states is that picric acid was detected in certain pieces of paper. There is no proof that those pieces of paper were found at the search. No initials

were put on the papers containing the yellow powder, and the man who packed the exhibits in order to send them to the Chemical Examiner has

not been examined. And it appears from the report that besides the object found at the search or on the scene of explosion many other objects

were sent in the same parcel to the Chemical Examiner. It also appears that the objects sent were not exclusively in the custody of the Sub-

Magistrateï¿½and on this point the Sessions Judge has apparently misread the evidenceï¿½or of any other equally responsible officer until their

despatch. The law makes the contents of a report of a Chemical Analyst to the Government evidence, and dispenses with the necessity of

examining the expert as a witness in the case. But such report can be of no use unless there is proof of the identity of articles found during

investigation and sent to the Chemical Examiner with the articles examined by him. The Sessions Judge argues that if the Police wanted to foist any

incriminating substance on the accused they would not have chosen picric acid, as no picric acid was found in the composition of the bomb. But it

must be remembered that it was the duty of the prosecution to prove their allegations by means of sufficient and reliable evidence, and if the

evidence of the prosecution is neither satisfactory nor conclusive that defect cannot be cured by the fact that the accused is unable to make out

positively that such evidence is false and has been manufactured by any particular person or persons interested in the prosecution. The Court trying

a case is not ordinarily in a position when it must either pronounce a particular piece of evidence to be false and fabricated or act upon it. And in a

criminal trial, even if the evidence in support of a charge is in fact false, it would more often than not be impossible for an accused person on his

trial to show how it came to be fabricated. I have been constrained to make these general observations, especially as the learned Counsel who

appeared for the Crown, on more than one occasion, in the course of his argument, seemed to assume that there was no alternative for us but

either to accept the case of the prosecution as regards the finding of Material Object No. 13 and the picric acid as proved or to find that the Police

officers concocted the evidence on the point. In my opinion, we are faced with no such difficulty as will be obvious from what I have already said. I

may also point out that the reasoning of the Sessions Judge with reference to picric acid being found at the search is based on a this appreciation of

the evidence. He assumes that it was known at Tenali at the time of the search that picric acid was not an ingredient in the composition of the

bomb. But the evidence does not bear this out. It is true that Captain Rush, in a letter written by him 011 the 4th April to the Chief Inspector of

Explosives at Simla stated as his opinion that the discoloration of the pit was not caused by picric acid. But it is not shown that Captain Rush''s

opinion was known to any one at Tenali. And the Chemical Analyst made his report long after the search. I am unable to find that the accused is

proved to have been in possession of Material Object No. 13 or picric acid.

23. The whole case, therefore, against the prisoner is that he had the iron arch made a fortnight before the occurrence. It was used as an important

part of the machine and a t the blacksmith''s shop he had given a false name and stated that it was wanted for distilling medicine, which has not

been made out. The explosive machine, in the construction of which the arch was actually utilised, is such as is generally used for the destruction of

human life and property. At his trial the prisoner denied having had anything to do with the iron implement, and consequently we have no

explanation from him as to what he did with it or how it came to be used in the bomb.

24. By section 2 of the Explosive Substances Act which defines " explosive substance'' as ''any apparatus, machine, implement or material used in

causing an explosion or any part of such apparatus'', &c, the iron arch becomes an explosive substance and there can be no doubt that the

prisoner knowingly got it made under circumstances which afford reasonable grounds for suspicion that he got it made for an unlawful object. He

has thus committed an offence u/s 5 of the Act. Under this section it is not necessary to come to any more definite finding than that the accused had

possession of the explosive substances under suspicious circumstances and the possibility, which I have suggested elsewhere, that the particular

explosion might have been caused in the course of an experiment, is not inconsistent with such finding. In this connection I might observe that the

iron arch might have been expected to serve for a future unlawful purpose ; that it happened to be broken by the explosion appears to have been

more or less an accident. The other section of the Act under which the accused has been convicted is Section 3. That makes it an offence more

severely punishable than an offence u/s 3 for a person '' to unlawfully and maliciously cause an explosion by an explosive substance of a nature

likely to endanger life or to cause serious injury to property.'' The gist of this section is the causing an explosion unlawfully and maliciously which

must be proved in the ordinary way. Suspicion would not suffice as in a case u/s 5, and if possession of an explosive under circumstances

mentioned in the later section were sufficient for the purposes of Section 3, the legislature would have said somewhat to this effect :ï¿½""Whoever

makes or knowingly has in his possession an explosive substance in the circumstances mentioned in Section 5 and an explosion occurs or is caused

by such substance, shall be guilty of unlawfully and maliciously causing an explosion, &c."" There is no evidence, direct or circumstantial, to show

that the prisoner caused the explosion.

25. The charge u/s 302, Indian Penal Code, is equally unsustainable. In convicting the prisoner under that section the Sessions Judge gives as his

reasons that he has no doubt the 1st accused knowingly took part in the making of the bomb and that in all probability he placed it where it

exploded with the intention of causing the death of some person or other or in utter recklessness whether it caused such death with knowledge that

he was doing an imminently dangerous act. In coming to this conclusion he relies largely on the fact that the accused has not attempted to explain

how the iron arch left his possession, and that being a fact peculiarly within his especial knowledge, the burden of proving it lay on him (S. 106,

Indian Evidence Act), The prisoner undoubtedly failed to discharge this burden, but what follows? Does it follow that it must be presumed that it

never left his possession until explosion actually occurred and hence he must have used it in the bomb and placed the bomb where it is exploded?

If that were the legitimate effect of Section 106, Evidence Act, it would, I am afraid, revolutionise the methods of criminal trial, and I admit I have

never known such use being made of the section. If the argument of the Sessions Judge were well founded, then if a person is found to have met

his death by means of a dangerous weapon and that weapon is proved to have been in the possession of another person and the latter does not

explain how he came to part with it he will be presumed to have had continuous possession and control of the weapon until it was used in killing the

deceased, with the result that he would be guilty of murder unless he is able to rebut these presumptions. And this would be so apart from anything

to show that the owner of the weapon had any sort of motive to kill the man or whether death was homicidal, suicidal or accidental. The very

statement of the results which would follow by the application of Section 106 of the Indian Evidence Act in the way suggested by the prosecution

shows that it can have, no such application. The question at issue on the charge of murder in this case is, who caused the explosion and with what

intention or knowledge and how Chennugadu came to be killed by the explosion, and not what happened to the iron arch after the accused had it

manufactured. And if the accused failed to prove how he came to part with possession of the arch, that cannot relieve the prosecution of the

burden of proving the essential facts which would make out a case of murder. Section 114 of the Evidence Act has also been invoked in support

of this charge The most effective answer to this part of the argument is again supplied by the extravagant nature of the proposition which must be

sustained if the charge of the murder be said to be proved in the circumstances of the case. For instance if the gap in the evidence of the

prosecution could be supplied by raising a presumption u/s 114 of the Evidence Act, it would follow that if a person gets an implement of, rather

peculiar nature manufactured, trying at the same time to conceal his identity, and that instrument is found subsequently to form the leading feature of

an infernal machine which explodes a fortnight after the manufacture of the implement in a path in an open field a long distance from human

habitations under circumstances unknown and caused the death of a person, stranger to the man who got the implement made, the owner of the

implement is guilty of murder. One might generalize still further, keeping closely to all the material and significant facts proved in the case and we

should have a proposition to this effect : If any person is killed by the explosion of an explosive machine or by means of any other weapon of a like

dangerous character and another person is proved to have made or been in possession, a few days before the deceased met with his death, of an

article, or implement forming an important part of that machine or weapon under suspicious circumstancesï¿½e.g., in this case attempting to

conceal his identity by giving a false name at the time the implement was manufacturedï¿½the latter would, without anything more being proved, be

guilty of murder unless he is able to satisfy the Court that he did not have the article or implement made or was in possession of it for the purpose

of killing the deceased or any other human being and is unable to explain how he came to part with possession of it. The words of Section 114,

Evidence Act, as is abundantly clear from the illustrations appended to it, indicate that the existence of only such facts may be presumed as are

likely to have happened having regard to the common course of natural events in their relation to the facts of the particular case. Does our

experience enable us to say that a man who gets made an implement of the nature of the article found in the bomb and the bomb explodes a few

days afterwards in a footpath in the midst of fields killing another person, that the person must have planted it there with such intention and

knowledge as would make the man''s act an offence of murder? The general tenor of the facts of this case, especially when regarded in the light of

the allegations of the prosecution, are so unusual and extraordinary that Section 114, Evidence Act, can have no possible application to them. Nor

is there the least analogy as suggested on behalf of the prosecution, between the case of the man found in possession of goods recently stolen and

such a case as this. It is in accordance with our common experience that persons found in possession of stolen goods a few days after the theft are

more often than not men who themselves took part in the theft or received such goods with knowledge of their being stolen, while in a case like the

present there is no experience whatever to guide us. The case Queen Empress v. Sami ILR (1890) M. 426 which was one of robbery

accompanied with murder, to my mind is of no use whatever in the present enquiry. The passage in the judgment in that case which is relied on is:

In cases in which murder and robbery have been shown to form parts of one transaction it has been held that recent and unexplained possession of

stolen property, which would be presumptive evidence against the prisoners on the charge of robbery, was similarly evidence against them on the

charge of murder."" If these words be read in connection with the facts of the particular case, I have nothing to say: because, as the learned Judges

themselves point out, all the facts which told against the accused pointed equally to the conclusion that he was guilty as well of the murder as of the

robbery. But if put forward as an abstract proposition of law, I am not prepared to accept it without further consideration, and I may say I have

never known a conviction for murder based solely on such presumptive evidence. In any case the dictum has no bearing on the circumstances of

the present case- In my opinion, therefore, the convictions for murder as well as u/s 3 of the Explosive Substances Act have nothing for their basis

but mere surmises and suspicions, and I would therefore reverse those convictions but confirm the conviction u/s 5 of the Explosive Substances

Act.

26. The Sessions Judge who held that the prisoner caused the explosion and was responsible for the death of Chennugadu passed a sentence of

ten years'' transportation u/s 5 of the Act. I have been unable to accept that finding and I cannot divest my mind of the impression that persons

other than the accused who is a mere cultivator must have conceived the construction of the bomb and that the accused in procuring the iron arch

which played a part in the construction of the machine was acting as more or less a minor agent of persons of a higher station in life and of some

pretence to education. But the prisoner''s conduct at the time he ordered the arch affords reasonable grounds for suspecting that he knew that the

implement was wanted for making an explosive machine, and having regard to the use which has been made within recent times of such explosive

machines in order to destroy life and create disturbance in the land, the case calls for a deterrent sentence. I would sentence the prisoner to

undergo rigorous imprisonment for three years u/s 5 of the Explosive Substances Act,

27. This case coming on for hearing under the provisions of Section 378 of the Code of Criminal Procedure before the Chief Justice, his lordship

delivered the following

28. In this case the accused was convicted by the Sessions Judge of murder and sentenced to death, of an offence u/s 3 of the Explosive

Substances Act, 1908 (Act VI of 1908) and sentenced to transportation for life, and of an offence u/s 5 of that Act and sentenced to

transportation for ten years. On appeal from these convictions my learned brother Mr. Justice Benson was of opinion that the convictions and

sentences should be confirmed. My learned brother Mr. Justice Abdur Rahim was of opinion that the convictions and sentences for murder and for

an offence u/s 3 of the Explosive Substances Act (Act VI of 1908) should be set aside, and that the conviction u/s 5 of the Act should be

confirmed and the accused sentenced to three years'' rigorous imprisonment on that Conviction. The case now comes before me u/s 378 of the

Code of Criminal Procedure.

29. On March 27th 1909, an infernal machine which had been buried in a footpath between the villages of Nandivelugu and Tenali exploded and

killed a man.

30. The Sessions Judge held it to be proved that the accused got a small iron arch, which was an essential part of the infernal machine, made for

him a fortnight or so before the explosion, that he had picric acid in his house when it was searched a few days after the explosion, and that in his

house was found a piece of paper from the same volume from which scraps of paper which were in the infernal machine were taken.

31. On the hearing of the appeal both my learned brethren were of opinion that the evidence established that the accused had got the iron arch

made as found by the Sessions Judge and they also agreed in holding that the accused gave a false name at the time he got the arch made. As

regards the picric acid Benson J. was of opinion that it was not strictly proved that picric acid was found at the search. Abdur Rahim J. was of

opinion that the alleged finding of the picric acid at the time of the search of the accused''s house was not proved at all.

32. With regard to the search at which the piece of paper was found Benson J. held that it was in fact found at the accused''s house at the search

and that it was not foisted on the accused by the Police or through their agency. Abdur Rahim J. was not satisfied that the possession of this piece

of paper was traced to the accused. I agree with Benson J. I see no reason to doubt the genuineness of the search or the fact that this piece of

paper was found at the accused''s house.

33. The piece of paper in question was the lower portion of a page taken from a copy of the Congress Report for 1894. The scraps of paper

found at the scene of the explosion were also taken from a copy of the Congress Report for 1894. It was not shown that the piece of paper found

at the house and the scraps found at the scene of the explosion were taken from the same copy of the report. The piece of paper and the scraps

were taken from from different parts of a copy or copies, of the Report. It is true, as stated by my learned brother Benson J. hi judgment, that the

paper used in making the infernal machine formed portions of page XIV of the Congress Report for'' 1894 and a portion of page XIV of the

Report was also found in the accused''s house some ten days after the explosion. But, as pointed out by the Public Prosecutor, the copy of the

Report contains two pages XIV, and the piece of paper found in the house was taken from one part of a volume and the scraps found at the scene

of the explosion were taken from another part. What was proved, therefore, was that the piece of paper found at the house was taken from a copy

of the Congress Report for 1894 and the scraps found at the scene of the explosion were taken from a copy of the Congress Report for 1894.

34. Now how does the case stand ?

35. It was proved that the accused got made for him the iron arch and gave a false name at the time of so doing. The essence of the offence u/s 3

of the Act VI of 1908 is the unlawfully and maliciously causing by any explosive substance an explosion of a nature likely to endanger life or to

cause serious injury to property. The question I have to consider isï¿½is the evidence sufficient to support the conviction of the accused for having

caused the explosion which undoubtedly took place, and which resulted in a lamentable loss of life. We have the evidence as to the making of the

arch. There is no evidence as to the making of the machine, or any other part thereof. The evidence adduced at the trial that another portion, the tin

tube, was made under the orders of the 2nd and the 3rd accused was disbelieved by the Sessions Judge and these two accused were acquitted.

There is no evidence with reference to the burying of the machine. There is no evidence as to what was the immediate cause of the explosion.

36. The Public Prosecutor argued that, when once it was proved that the accused made (or got made) a part of the machine, a presumption arose

that he caused the machine to explode. It may be that on the strength of the fact that he made a part of the machine a presumption arises that he

made the whole machine. It may be that on the strength of the fact that he made the machine (assuming the fact that he made the machine to have

been proved) a presumption arises that he caused it to explode. But I cannot hold that from the fact that the accused made a part of the machine it

may reasonably and legitimately be inferred that he (alone or with others) buried the machine under conditions which rendered an explosion highly

probable and that he thereby caused the explosion. I do not think the further fact that the accused gave a false name when he got the arch made

(there is some evidence that he also said the arch was for distilling essence, but the blacksmith who made the arch says nothing about this) would

warrant the drawing of the inference which the prosecution asks me to draw, although it is no doubt a piece of evidence of considerable

importance as indicating a guilty knowledge of some sort in the mind of the accused. I do not think it is open to me to consider the evidence with

regard to the alleged finding of the picric acid. If this