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Crl.A.Nos.462 of 2014, 83 of 2015, 152 of 2016
and 311 of 2016

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 31.07.2024

CORAM :

THE HONOURABLE MRS. JUSTICE R.HEMALATHA

Crl.A.Nos.462 of 2014, 83 of 2015,
152 of 2016 and 311 of 2016

In Crl.A.No.462 of 2014 :

Gandhirajan

... Appellant /A2

vs.

State represented by
Inspector of Police,
Pollachi Town East Police Station,
Coimbatore District
(Crime No.1027/2007)

... Respondent

In Crl.A.No.83 of 2015 :

Vijayan @ Vijayakumar

... Appellant /A4

vs.

State represented by
Inspector of Police,
Pollachi Town East Police Station,
Coimbatore District
(Crime No.1027/2007)

... Respondent

In Crl.A.No.152 of 2016 :

Rathinam @ Rathinakumar

... Appellant /A3



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vs.

State represented by
Inspector of Police,
Pollachi Town East Police Station,
Coimbatore District
(Crime No.1027/2007)

... Respondent

In Crl.A.No.311 of 2016 :

John Anthonisamy @ John

... Appellant /A1

vs.

State represented by
Inspector of Police,
Pollachi Town East Police Station,
Coimbatore District
(Crime No.1027/2007)

... Respondent

COMMON PRAYER : Criminal Appeals filed under Section 374 Criminal Procedure Code, 1973, against the judgment and orders dated 22.07.2014 passed in S.C.No.188 of 2008 by the Sessions Judge for Trial of Bomb Blasts Cases, Coimbatore.

In all appeals :

For Appellants : Mr.T.Saravanan
Legal Aid Counsel

For Respondent : Mr.S. Rajakumar
Additional Public Prosecutor.

COMMON JUDGMENT



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Challenging the conviction and sentence dated 22.07.2014 passed in S.C No.188/2008 by the learned Sessions Judge for Trial of Bomb Blasts Cases, Coimbatore, the present Criminal Appeals are filed.

2.The appellants stood charged for the offences punishable under Sections 120(b), 397, 394 and 394 r/w.120(b) IPC by the trial court in S.C.No.188/2008.

3.The learned trial court judge, after full trial, convicted and sentenced the appellants, vide his judgment dated 22.07.2014 as detailed hereunder :

<i>Accused</i>	<i>Conviction</i>	<i>Sentence</i>
A1 - A4	Section 120(b) IPC	Rigorous imprisonment for a period of six months.
A1 - A4	Section 394 IPC	Rigorous imprisonment for a period of seven years and to pay a fine of Rs.1,000/- each, in default, to undergo, simple imprisonment for a period of six months.
A1 - A4	Section 394 r/w.120(b) IPC	Rigorous imprisonment for a period of seven years.
The aforesaid sentences shall run concurrently. The period of sentence already undergone is set off under Section 428 Cr.P.C.		



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4. The case of the prosecution as could be discerned from the oral and documentary evidence is as follows:

4.1.Thiru. Balu @ Balasubramaniam (P.W.1) is a driver by profession and he was employed under Thiru.V.Muruganantham (P.W.7), owner of a Maruthi Omni Van bearing Registration No.TN-41-R-1534 (M.O.1). P.W.1 used to park his omni van near I.B. car stand, Coimbatore Road, Pollachi. On 14.12.2007, at about 2.00 p.m, the accused 2 to 4 approached PW.1 and booked his Omni van to go to Palani from Pollachi. PW.1 informed them that the hire charges is Rs.1,000/- and the accused 2 to 4 paid an advance of Rs.100/- to him. On 15.12.2007 at about 7.00 a.m, the accused 2 to 4 got into the car and Thiru.Ramakrishnan (PW.11) who is also a driver had witnessed this. PW.1 and the accused 2 to 4 proceeded to Palani and the accused 2 to 4 got down from the car near Swamy Theatre, Palani. They informed P.W.1 that they would be coming back soon as they have to solve a problem between the fourth accused's sister and her husband. PW.1 had tea in a nearby tea shop and was waiting near his car for about half an hour. At that time, the first accused John Anthonisamy @ John came over there. P.W.1 already knew the first accused and they were chatting for some time. The accused 2 to 4 came back and got into the car. The accused 2



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to 4 were also already known to the first accused and with the permission of the accused 2 to 4, the first accused also got into the car. P.W.1 was driving the car. There was a speed breaker near Thalaiyuthu railway gate and P.W.1 had to slow down the car. At that point of time, the accused 2 to 4 pushed P.W.1 from the driver seat to the back seat and tied his hands and legs with ropes (M.O.3 series). The first accused started driving the car and the accused 2 to 4 after some time got down from the car near Dharapuram. Since the vehicle had less fuel, the first accused wanted to refuel in a petrol bunk at Dharapuram. Therefore, he stopped the omni van in Nataraja Petrol Bunk at Dharapuram and got down from the car. While the first accused was filling up the fuel, P.W.1 managed to open the door of the omni van and alighted from the van. He also raised an alarm. Thiru.Kalidass (P.W.8), one of the persons who was working in the petrol bunk had witnessed the same. The first accused immediately took the omni van and escaped from the scene. P.W.1 was advised by the persons working in the petrol bunk to lodge a police complaint and also to go to a hospital. However, P.W.1 took a bus from a nearby bus stop and directly went to the house of Muruganantham (P.W.7), the owner of the Maruthi Omni Van (M.O.1) at Poonga Garden, Thippampatty. P.W.1 narrated the incident to P.W.7 and both of them went to Pollachi East



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Town Police Station and lodged a complaint with Thiru.P.Vasudevan (P.W.6), the then Head Constable of Police, Pollachi East Town Police Station.

4.2. P.W.6 recorded the complaint statement (Ex.P1) of P.W.1 and registered FIR (Ex.P11) in Crime No.1027/2007 against the first accused and three other persons for an offence punishable under Section 394 IPC. He also sent P.W.1 to Government Hospital, Pollachi along with a police memo. He then placed the records before Thiru.K.Mani (P.W.20), the then Inspector of Police, Pollachi East Town Police Station.

4.3. P.W.20 took up investigation in Crime No.1027/2007, went to the Taxi stand at about 10.45 p.m. on 15.12.2007, where PW.1 used to park his omni van. He prepared an observation mahazar (Ex.P13) and a rough sketch (Ex.P22) in the presence of the witnesses Arumugam (P.W.12) and Prabhakaran (not examined).

4.4. In the meanwhile, P.W.7 got an information from Thiru.Sivakumar (P.W.10) that an omni van (M.O.1) bearing Registration No.TN-41-R-1534 was abandoned 50 meters away from



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Kottamuthampalayam diversion road of Udumalai - Dharapuram Main Road. He informed the same to P.W.20, the Investigation Officer. Accordingly, P.W.20 went to Kottamuthampalayam Road and recovered the Maruthi Omni Van bearing Registration No.TN-41-R-1534 under the cover of a mahazar (Ex.P12) in the presence of the witnesses Sivakumar (P.W.10) and Krishnamoorthy (not examined).

4.5. Thiru.Sivakumar (P.W.10) in his evidence had deposed that he saw the Maruthi Omni Van bearing Registration No.TN-41-R-1534 (M.O.1) at about 6.00 p.m. near Kottamuthampalayam Diversion Road on 15.12.2007. He saw the same omni van abandoned in the same place the next day morning also. Since the mobile number was indicated on the front windshield glass of the omni van, he contacted that number and informed the person who attended his call.

4.6. P.W.20 went to Natraj Petrol Bunk and examined the workers where the first accused reportedly filled up fuel in the omni van (M.O.1). He recovered the ropes (M.O.3 series) from the petrol bunk which were used to tie PW.1 under the cover of a mahazar (Ex.P23) in the presence of the witnesses Manikandan and Bharathiraja (both not examined).



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4.7. Thiru.Kalidass (P.W.8) in his evidence had deposed that he saw the Maruthi Omni Van bearing Registration No.TN-41-R-1534 refilling fuel in his petrol bunk and a person rolling down from the omni van with his mouth and hands tied up. According to him, the person removed the rope on his own and sought for help. He also saw the driver of the omni van taking his vehicle and left the petrol bunk leaving the person who rolled down from the vehicle. He identified the first accused in the court. His further evidence was that he enquired the person (P.W.1) who got down from the omni van who in turn narrated the incident.

4.8. P.W.20 examined the witnesses and recorded their statements under Section 161 (3) Cr.P.C. On 30.12.2007 at about 1.15 p.m. when he was in Pollachi East Town Police Station, Thiru. Karthikeyan (P.W.16) came down to the police station and handed over an Inland letter (Ex.P18) to him. In the said letter, the address was indicated as Karthikeyan (P.W.16), S/o.Kandhasamy, 86/125, Appar Street, Venkatesa Colony, Pollachi, Coimbatore District. The sender's address was mentioned as John Anthonisamy (A1). In the said letter, A1 had



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sought financial assistance from Karthikeyan (P.W.16) in order to come out of the clutches of law as he has been searched by the police. He also had confessed the various offences committed by him including the present one. P.W.16 in his evidence had stated that the first accused was working for him as a driver.

4.9. On 30.12.2007 at about 7.00 p.m, P.W.20 arrested the first accused (John Anthonisamy) near the house of P.W.16 and recorded his confessional statement in the presence of the witnesses Balan (P.W.17), the then Village Administrative Officer and Thangavelu (not examined). According to P.W.20, the first accused was involved in two FIRs in crime numbers 363/2006 and 422/2007 of Pollachi East Town Police Station. As per his confessional statement, P.W.20 exhumed the bodies of Kunjan and one John Thomas (who were also drivers by profession) from the place where the first accused buried them after murdering them. P.W.20 then produced the first accused before the Judicial Magistrate No.I, Pollachi for remanding him to judicial custody. On 11.01.2008, the second accused (Gandhirajan) surrendered before the Judicial Magistrate No.II, Udumalpet, who remanded him to judicial custody and then sent the records to Judicial Magistrate – I, Pollachi. In the meanwhile, the



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other accused 3 and 4 were also arrested by P.W.20 and were remanded to judicial custody.

4.10. Thiru.Ezhil (P.W.4), the then Judicial Magistrate No.II, Pollachi as per the proceedings of the Chief Judicial Magistrate, Coimbatore for conducting an identification parade, fixed the date as 30.01.2008 and issued summons to witnesses Balu @ Balasubramaniam (P.W.1), Ashraf Ali (not examined), Ramakrishnan (P.W.11) to be present on 30.01.2008 at Central Prison, Coimbatore. On 30.01.2008 at about 4.00 p.m. he conducted an identification parade after observing necessary legal formalities. According to him, Balu @ Balasubramaniam (PW.1), Raja (PW.9) and Ramakrishnan (PW.11) identified the accused. His report was marked as Ex.P9.

4.11. PW.20, the Investigation Officer submitted the Inland Letter (Ex.P18) before the Judicial Magistrate No.I, Pollachi along with a requisition (Ex.P21) to get sample signatures of the first accused who was in judicial custody. Accordingly, Thiru.Ravindran (P.W.19), the then Judicial Magistrate No.I, Pollachi got the sample writings and signatures of the first accused in the court on 25.01.2008 and sent the same to



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Forensic Department, Chennai, along with the Inland Letter (Ex.P18)

allegedly written by the first accused for comparison.

4.12. Thiru.Tamilselvan (P.W.18), the Handwriting Expert compared the signatures and submitted his report (Ex.P5) dated 13.02.2008 stating that the signatures found on Ex.P18 and the sample are one and the same. His opinion is extracted hereunder :

“The person who wrote the red enclosed signature and writing stamped and marked S1 and S2 also wrote the red enclosed signature and writings similarly stamped and marked Q1 to Q3.”

4.13. In the meanwhile, Dr.Raja (P.W.5), Assistant Medical Officer attached to Pollachi Government Hospital examined P.W.1 on 16.12.2007 at about 12.45 p.m. and found the following injuries :

- (a) A swelling measuring 4 x 2 cm was found on the left wrist.
- (b) A stunted wound was found on the lower part of the eye.

In the opinion of the doctor, the injuries sustained by PW.1 are simple in nature. The wound certificate was marked as Ex.P10.



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4.14. P.W.20 after completing investigation laid a final report against the appellants / accused for the offences punishable under Sections 120(b), 394, 397 IPC in P.R.C.No.8/2008 before the Judicial Magistrate No.I, Pollachi.

4.15. The learned Judicial Magistrate after furnishing copies of records to the appellants under Section 207 Cr.P.C, committed the case to the Court of Sessions, Coimbatore. The learned Principal Sessions Judge, took the case on file in S.C.No.188/2008 and made over the same to the Sessions Judge for Trial of Bomb Blast Cases, Coimbatore.

4.16. The learned Sessions Judge framed charges against the accused as stated in paragraph No.3.

4.17. In order to bring home the guilt of the appellants, the prosecution examined 20 witnesses, marked 27 documents and 4 Material Objects.

4.18. The appellants, when questioned under Section 313 Cr.P.C with regard to the incriminating circumstances appearing in evidence



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against them, denied of having committed any offence. They examined one witness and marked 5 documents.

4.19. The learned Sessions Judge after analyzing the oral and documentary evidence on record, convicted and sentenced the appellants as stated in Paragraph No.4, vide his judgment and orders dated 22.07.2014.

4.20. Aggrieved over the same, the appellants have preferred the present appeals.

5. Heard Mr.T.Saravanan, learned Legal Aid Counsel for the appellants and Mr.S. Rajakumar, learned Additional Public Prosecutor for the respondent.

6. The case of the prosecution is that all the appellants conspired with each other to commit theft of the Maruthi Omni Van bearing Registration No.TN-41-R-1534 owned by V.Muruganandham (P.W.7). Balu @ Balasubramaniam (PW.1) was the driver of the said Omni van. According to P.W.1, the accused 2 to 4 booked the omni van for hire for



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going over to Palani from Pollachi and also paid an advance of Rs.100/- on 14.12.2007 to him. P.W.1's further evidence was that the first accused joined the accused 2 to 4 at Palani and when they were all returning back to Pollachi, he was pushed to back seat by the accused 2 to 4 and his hands and legs were tied up with the seat. According to him, the accused 2 to 4 got down near Dharapuram and the first accused took the omni van to a petrol bunk at Dharapuram to fill up fuel. In the petrol bunk, P.W.1 had managed to escape from the first accused with the help of Kalidass (P.W.8) who is one of the workers of the petrol bunk. Kalidass (P.W.8) had deposed that the Maruthi Omni Van bearing Registration No.TN-41-R-1534 came down to his petrol bunk to refill fuel and in fact the first accused filled fuel in the petrol bunk after getting down from the van. However, the prosecution did not produce the Registers to show that the omni van came down to the petrol bunk on 15.12.2007 and refilled fuel. The incident had occurred in a broad daylight and according to P.W.8, P.W.1 rolled down from the omni van with his hands and mouth tied up.

7. It is not the case of P.W.1 that the windows of omni van were covered with black tainted glasses. It is pertinent to point out that the omni van is used for commercial purpose and therefore, it cannot have a



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black tainted glass. Therefore, anybody on the road can view what is happening inside the omni van. The entire incident took place in broad daylight and it is difficult to believe that the persons in the petrol bunk saw P.W.1 alone inside the omni van. P.W.1 in his evidence had stated that he was tied up with a rope in the back seat of omni van. On the other hand, Kalidass (P.W.8) had stated that the hands and mouth of P.W.1 were tied up and that P.W.1 himself removed it. It is to be noted that the petrol bunk is situated near the bus stand of Dharapuram as per the evidence of the Investigation Officer (P.W.20) and it is difficult to believe that the first accused drove the omni van all the way to petrol bunk with P.W.1 tied up to the back seat. It is also the evidence of P.W.1 that the accused 2 to 4 got down from the van before they reached Dharapuram. The prosecution theory is that all the accused conspired with each other to commit theft of Maruthi Omni Van bearing Registration No.TN-41-R-1534 and in further of their common object had tied the hands of P.W.1, the driver of the omni van. It is not known as to why the accused 2 to 4 got down midway, especially, when the fuel in the omni van was less as per the evidence of P.W.1 and the first accused wanted to refill the fuel. If really, P.W.1 was tied up with ropes, the accused 2 to 4 would not have got down from the van at Dharapuram



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leaving the first accused and P.W.1 alone in the van.

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8.The Hon'ble Supreme Court had time and again emphasized the importance of corroborative evidence in proving criminal conspiracy. In the present case, P.W.1 had stated that the accused 2 to 4 booked his omni van for hire for going over to Palani and at Palani the first accused joined them. However, according to P.W.1, the accused 2 to 4 got down near Dharapuram and the vehicle was driven by the first accused alone for filling up fuel in the petrol bunk which is nearer to the Dharapuram bus stand. Moreover, P.W.1 after escaping from the accused 1 to 4 did not attempt to go to the police station immediately, though he was reportedly advised so by the workers in the petrol bunk. The workers of the petrol bunk also did not think it fit to call the police immediately especially when a grave offence like this had happened. It is not also the case of the prosecution that the workers including P.W.8 informed the owner of the petrol bunk. P.W.1 had taken a bus from Dharapuram and went to his owner's house (P.W.7) at Thippampatti. Thereafter, on the night of 15.12.2007 a written complaint (Ex.P1) was lodged with



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Thiru.P.Vasudevan (P.W.6), the Head Constable of Police, Pollachi East Town Police Station. The sequence of events as narrated by PW.1 seems to be highly improbable and also suspicious in nature. In order to circumvent this, the prosecution has pressed into service the Inland letter (Ex.P18) allegedly written by the first accused to Karthikeyan (P.W.16). In the said letter, the first accused had sought financial assistance from PW.16. However, it is not known as to why he has to confess to P.W.16 about the offences committed by him, especially, when he was not working under him anymore.

9. It is seen from the records that based on this letter (Ex.P18), the prosecution was able to crack two cases in crime numbers 363/2006 and 422/2007 of Pollachi East Town Police Station. However, as already observed, there is absolutely no evidence to show that there was conspiracy between the accused 1 to 4 to commit an offence under Section 394 IPC. It is settled law that mere presence of circumstances that raise suspicion is not sufficient to prove criminal conspiracy. Thus, the prosecution has failed to establish the existence of consensus of mind among the appellants to commit the alleged offences and therefore it is difficult to hold that the accused 2 to 4 are guilty of the offences



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punishable under Sections 120(b) r/w. 394 IPC. The first accused cannot be convicted based on the Inland letter (Ex.P18) since the entire case of the prosecution is built up on a weak foundation. Therefore, the conviction and sentence passed by the trial court judge is set aside.

10. In the result,

- i. The Criminal Appeals are allowed.
- ii. The judgment and orders dated 22.07.2014 passed in S.C.No.188 of 2008 by the Sessions Judge for Trial of Bomb Blasts Cases, Coimbatore, is set aside.
- iii. The appellants (accused in S.C.No.188 of 2008) are acquitted from all the offences, of which they are charged. Bail bonds, if any, shall stand cancelled. Fine amount, if already paid, shall be refunded.
- iv. This Court places on record its appreciation to Mr.T.Saravanan learned Legal Aid counsel, for his valuable assistance in deciding these cases. The High Court Legal Service Committee shall pay his fees in accordance with rules.

31.07.2024

Index : yes/no
Speaking /Non speaking Order
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Copy to

The Secretary,
High Court Legal Services Committee,
High Court Campus, Chennai 104.

To

1. The Sessions Court for Trial of Bomb Blasts Cases, Coimbatore.
2. The Inspector of Police,
Pollachi Town East Police Station, Coimbatore District.
3. The Public Prosecutor, High Court, Madras.
4. The Section Officer, Criminal Section, High Court, Madras



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R.HEMALATHA, J.

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