

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 02.11.2015

CORAM:

THE HONOURABLE MR.JUSTICE A.SELVAM

Criminal Appeal No.701 of 2006

State rep.by

The Inspector of Police

"Q" Branch C.I.D.Tuticorin

(Thattaparai P.S.

Crime No.51/1999)

....Appellant/Complainant

Vs.

1. J.K.Jayakumar @ Natarajan

2. Ponnivalavan @ Murugan

3. Aneed @ Anees Raj @ Rajesh @ Sundar @ Vijayan

4. Amalraj

5. Kannan @ Malkannan

6. Senthil @ Senthilkumar

7. Alagiri

8. Pasupathy @ Udirapathy

9. Peter @ John Peter

10.Maran @ Chenguttuvan

....Respondents/Accused

Criminal Appeal filed under Section 378 of Cr.P.C., against the judgment dated 18.5.2006 in S.C.No.6 of 2002 on the file of Sessions Judge for Exclusive Trial of Bomb Blast Cases, Poonamallee, Chennai.

For Appellant : Mr.P.Govindarajan,
Additional Public Prosecutor.

For Respondents : Mr.P.Pugalendhi for
R3, R5, R6 & R7

No Apperance for R1, R2, R4,
R8 to R10

JUDGMENT

The order of acquittal dated 18th May, 2006 passed in Sessions Case No.6 of 2002 by the Sessions Judge for Exclusive Trial of Bomb Blast Cases, Poonamallee, Chennai is being challenged in the present Criminal Appeal.

2. The case of the prosecution is that all the accused are members of Tamil Nadu Liberation Army and for the purpose of promoting its activities and also with an intention to cause loss to public properties, all the accused have formed an unlawful assembly from 1.4.1999 to 3.4.1999 and in pursuance of the same, on 3.4.1999 during night hours, the accused have blasted Power Feeder Tower, which belongs to the Tamil Nadu Electricity Board. After occurrence, a complaint has been lodged on 4.4.1999 and the same has been registered in Crime No.51 of 1999. The complaint alleged to have been given with regard to occurrence has been marked as Ex.P.1.

3. On receipt of Ex.P.1, the Investigating Officer has taken up investigation, examined connected witnesses and arrested some of the accused and on the basis of their confessions, recovered some material objects from the place of occurrence and also from other places and after completing investigation, laid a final report on the file of Judicial Magistrate, Tuticorin and the same has been taken on file in C.C.No.1 of 2002 and subsequently, the case has been transferred to the trial court and taken on file in Sessions Case No.6 of 2002.

4. The trial court, after hearing arguments of both sides and upon perusing the relevant documents, has framed necessary charges under sections 148 and 149 of Indian Penal Code and also under section 3 of Tamil Nadu Public Property (Damages and Loss) Act and also under sections 3, 4 and 5 of Explosive Substances Act and the same have been read over and explained to them. All the accused have denied the charges and claimed to be tried.

6. On the side of the prosecution, P.Ws.1 to 26 have been examined and Exhibits P.1 to P.46 and M.Os.1 to 39 have been marked.

7. When the accused have been questioned under Section 313 of the Criminal Procedure Code, as respects the incriminating

materials available in evidence against them, they denied their complicity in the crime.

8. On the side of the accused, Exhibits D.1 to D.4 have been filed.

9. The trial court, after hearing arguments of both sides and upon perusing the relevant evidence has found all the accused not guilty under the sections mentioned in the charges and ultimately acquitted them. Against the order of acquittal passed by the trial court, the present Criminal Appeal has been filed at the instance of the complainant as appellant.

10. The learned Additional Public Prosecutor has contended that in the instant case, the occurrence has taken place on 3.4.1999 and all the accused are the members of Tamil Nadu Liberation Army (banned organization) and with a view to promote its activities, on 3.4.1999, they blasted 'Feeder Tower' which belongs to Tamil Nadu Electricity Board by using bombs and after occurrence, Ex.P.1 has come into existence. On receipt of Ex.P.1, the Investigating Officer has taken up investigation, examined connected witnesses and arrested some of the accused and on the basis of their confession statements, some Material Objects have been recovered from the place of occurrence and also from other places and since on the side of the prosecution, confession statements coupled with recovery have been established, the Court can very well come to a conclusion that all the accused have committed the offences mentioned in the charges, but the trial court, without considering the replete evidence, on the side of the prosecution, has erroneously acquitted all the accused and therefore, the order of acquittal passed by the trial court is liable to be set aside.

11. Per contra, the learned counsel appearing for the respondents/accused has contended that in the instant case, absolutely there is no evidence, which connects all the accused with the crime and the accused have no connection whatsoever with the crime and they have been falsely implicated and since on the side of the prosecution, no credible evidence is available for the purpose of proving its case, the trial court has rightly acquitted all the accused and therefore, the order of acquittal passed by the trial court does not require any interference.

12. The specific case put forth on the side of the prosecution is that all the accused are members of Tamil Nadu Liberation Army and from 1.4.1999 to 3.4.1999, they formed an unlawful assembly with deadly weapons and in pursuance of the same, on 3.4.1999, they blasted Feeder Tower, which belongs to Tamil Nadu Electricity Board and thereby caused damages. Under such circumstances, the accused are said to have committed offences punishable under the sections mentioned in the charges.

13. The entire case of the prosecution is based upon circumstantial evidence. For the purpose of proving the alleged circumstances, M.O.1 Series has been filed on the side of the prosecution and the same is nothing but pamphlets standing in the name of Tamil Nadu Liberation Army. Only on the basis of M.O.1 Series, the accused have been dragged on in the present case.

14. The prosecution has also relied upon the confessions alleged to have been given by some of the accused and thereby leading to recovery of some Material Objects.

15. It is seen from the records that some of the accused after their arrest have given confession statements and in pursuance of the same, some Material Objects have been recovered from the place of occurrence and also from some other places.

16. It has already been pointed out that the entire case of the prosecution is based upon mere circumstances. It is the duty of the prosecution to prove its case apart from the confessions coupled with recoveries. To put it in short, mere recovery on the basis of confession would not be sufficient so as to point out the alleged guilt of the accused and further mere presence of M.O.1 Series in the place of occurrence, cannot be a basis for coming to a conclusion that the accused have committed the offences mentioned in the charges.

17. In the instant case, as noted down earlier, except confessions alleged to have been given by some of the accused and recovery of some Material Objects, no other material evidence is available for the purpose of connecting all the accused with the crime. As stated earlier, mere recovery on the basis of confession would not be sufficient for coming to a conclusion that all the accused are real culprits. Therefore, virtually, no evidence is available on the side of the prosecution for the purpose of proving the alleged guilt of the

accused in respect of sections mentioned in the charges.

18. The trial court, after contemplating available evidence on record, has found that absolutely there is no evidence on the side of the prosecution for coming to a conclusion that they have committed the offences mentioned in the charges. In view of the discussions made earlier, this Court has not found any acceptable force in the contentions put forth on the side of the appellant/complainant and altogether, the present Criminal Appeal deserves to be dismissed.

In fine, this Criminal Appeal is dismissed. The order of acquittal dated 18.5.2006 passed in Sessions Case No.6 of 2002 by the trial court is confirmed.

Sd/-
Assistant Registrar(CS-II)

//True Copy//

Sub Assistant Registrar

ajr

To

1.Sessions Judge for
Exclusive Trial of Bomb Blast Cases,
Poonamallee, Chennai.

2.The Public Prosecutor,
High Court, Chennai.

3.The Inspector of Police,
'Q' Branch, CID,
Tuticorin.

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Crl.A.No.701 of 2006

JSV (CO)
PSI (06.11.2015)