

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 14.09.2017

CORAM

THE HONOURABLE MR. JUSTICE C.T.SELVAM

CrI.A.No.840 of 2006

State represented by
Inspector of Police,
C.B.C.I.D.,
Special Investigation Team,
Chennai.

... Appellant/Petitioner

vs

1. Erwadi Kasim @ Syed Mohammed Kasim
@ Syed Meeran @ Abbas,
S/o.Asan Kani

2. Shahul Hameed @ Afthar
S/o.Ibrahim

3. Mohamed Ali Khan @ Kutty,
S/o.Anwar Khan

4. Zakir Hussain @ Ismail @
Abdul Anuz @ Usman Ali
S/o.Salavuddin

... Respondents/Accused

Criminal Appeals filed u/s.378 of the Code of Criminal Procedure against judgment of Sessions Court for Exclusive Trial of Bomb Blast Cases, Poonamallee, Chennai, passed in S.C.No.1 of 2002 on 05.07.2006.

For Appellant : Mr.R.Rajaratnam,
Public Prosecutor

For Respondents: Mr.S.Xavier Felix

JUDGMENT

This appeal arises against the judgment of Sessions Court for Exclusive Trial of Bomb Blast Cases, Poonamallee, Chennai, passed in S.C.No.1 of 2002 on 05.07.2006.

2. Prosecution case is that respondents/A1 to A4 being sympathizers and believers in Militant Islamic Fundamentalism and involved in various terrorist activities, conspired to do away with Manirathinam, a Film Director, for his Un-Islamic portrayal of the heroine in his film 'Bombay'. Pursuant thereto, accused 1 and 2 threw two pipe bombs into the house of

Manirathinam on 10.07.1995 at about 08.15 a.m. Manirathinam and another sustained injuries and damage also was caused to the house. The further accusation is that second accused threatened persons, who chased them, by showing a country made pistol and accused escaped. Case was registered in Crime No.1033 of 1995 on the file of E3, Teynampet Police Station. Upon completion of investigation and filing of charge sheet informing commission of offences u/s.120-B, 307(2 counts), 436, 506(ii), 109, 212 IPC and 3 and 5 of Indian Explosive Substances Act. Though the case was taken on file by learned XVIII Metropolitan Magistrate, Saidapet, Chennai, in C.C.No.4365 of 1998, the Magistrate, on framing the opinion that offences exclusively were triable by Court below, the case was tried in S.C.No.1 of 2002 on the file of Sessions Court for Exclusive Trial of Bomb Blast Cases, Poonamallee, Chennai.

3. Before trial Court, prosecution examined 29 witnesses and marked 16 exhibits and 28 material objects. None were examined on behalf of defence nor were any exhibits marked. On appreciation of materials before it, trial Court, under judgment dated 05.07.2006, acquitted respondents/A1 to A4. There against, the present appeal has been preferred by the State.

4. Heard learned Public Prosecutor for appellant and learned counsel for respondent.

5. The reasons informed by trial Court in rendering a finding of acquittal are very many. This Court finds no reason to interfere and informs hereunder a few telling features of the case which justify acquittal:

- (i) PWs.1 and 15 are husband and wife and the occupants of the house into which the pipe bombs were thrown. Prosecution sought to prove its case through testimony of alleged eye witnesses as also through circumstantial evidence. Accused 1 and 2 have been subjected to test identification parades. Though PW-1 was one of the alleged eye witnesses, he has not participated therein. PW-15, wife of PW-1 as also PWs.9 and 16 allegedly were eye witnesses. PW-15, in cross, has admitted to her inability to identify the accused.
- (ii) PW-16 was the maid of one Sundariammal, elder sister of PW-1. She had deposed that after completing her work she proceeded to the first floor of the house, heard a noise and sustained injuries. PW-16 hence cannot be considered as an eye witness.
- (iii) PW-8 had been examined to speak to his having accompanying the other witnesses in chasing the accused. Section 161(3) Cr.P.C. statement of neither PW-9 nor PW-12, both of whom gave chase to the accused, makes mention of PW-8. Trial Court rightly held that PW-8 had been introduced only to fortify the prosecution case and his identifying first accused could be given no credence.

- (iv) PW-9 was the watchman at the house of PW-1. He has spoken to seeing two persons running after explosion of bombs and that he and others chased them. In test identification parade, he has identified A1 but he is found to be a person given to frequently travelling in a police van. The records reveal that on 14.06.2015 when PW-12 was being examined, A4 had informed the Court that PW-9 was inside the police van whereupon the trial Court had required the police to produce him and he was so produced. Besides the identification of the first accused being of a date two months after the occurrence, identification by one such as PW-9 cannot be accepted.
- (v) PW-12 has identified second accused two years after the occurrence. Trial Court had taken note of the violation of mandatory provisions by the Magistrate concerned in conducting the test identification parade. Trial Court has noted that accused had complained of having been shown to the witnesses much prior to the conduct of test identification parades and on consideration of the facts and circumstances in totality considered it appropriate to reject the identification of the accused at the Test Identification Parade.
- (vi) PW-29, Investigation Officer, has spoken to coming to know of the involvement of accused 1 and 2 in the case through the confession of one Ali Abdullah tendered in another case. He has admitted to not recording any statement from such person. Quite rightly, it has been the defence suggestion that the statement of such person has not been produced since the same would disclose that the same does not implicate accused 1 and 2 and quite expectedly PW-29 has denied such suggestion.
- (vii) There is no material to support the prosecution case of the third accused having gone over to Karnataka to bring explosives using funds provided by fourth accused.
- (viii) The investigation in the case has been transferred on two occasions. PW-27 was the initial investigation officer. On transfer to CBCID, PW-28 took up investigation. On further transfer to Special Investigation Team, PW-29 took up investigation. According to the prosecution, PW-28 has examined PW-1 on one occasion and PW-29 had done so twice. All three 161(3) Cr.P.C. statements bear neither the initial of the Magistrate nor the Court seal to indicate that they were forwarded to Court.

The Criminal Appeal shall stand dismissed.

s/d-
Assistant Registrar (CS VII)

True Copy

Sub-Assistant Registrar

gm

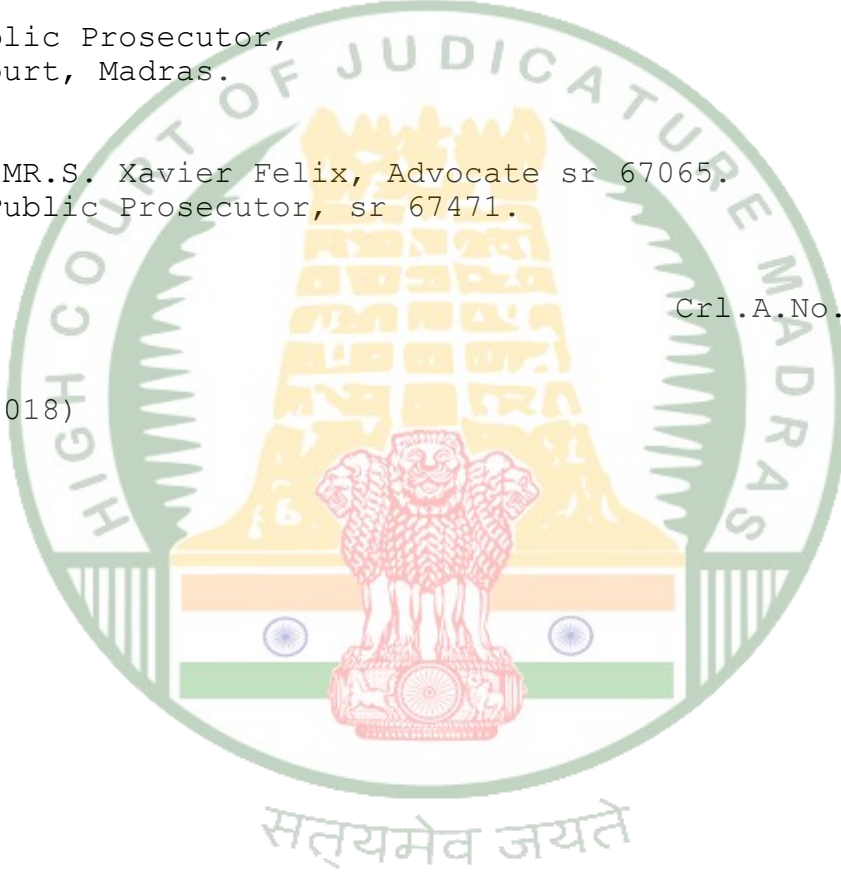
To

1. The Sessions Judge,
Court for Exclusive Trial of Bomb Blast Cases,
Poonamallee, Chennai.
2. The Inspector of Police,
C.B.C.I.D.,
Special Investigation Team,
Chennai.
3. The Public Prosecutor,
High Court, Madras.

+2 Ccs to MR.S. Xavier Felix, Advocate sr 67065.
+1 CC to Public Prosecutor, sr 67471.

Crl.A.No.840 of 2006

NM(CO)
SP(16/02/2018)



WEB COPY