

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE : 19.12.2019

CORAM

THE HONOURABLE MR. JUSTICE M.DHANDAPANI

CRL. A. NO. 54 OF 2008

State, rep. By
The Addl. Superintendent of Police
Special Investigation Team
CB-CID, Coimbatore (Camp at Trichy).
... Appellant/Complainant

- Vs -

1. Rahamathullah Khan @ Khan @ Sathick
2. Siddiq Ali @ Sulthan
3. Sam Sahabudeen @ Sahabudeen
4. Syed Mohamed Buhari @ Kitchen Buhari
5. Mohammed Moideen Abdul Kadar
@ Umar Farook @ Mohamed Rafi
6. Amman @ Amanullah
7. TADA Moosa @ Mohammed
Moosa @ Moosa @ Syed
8. Ammani @ Rizwan
... Respondents/Accused A1 to A8

Criminal Appeal filed u/s 378 of the Code of Criminal Procedure, against the order dated 15.1.0.07 passed by the learned Sessions Judge, Sessions Court for Exclusive Trial of Bomb Blast Cases, Poonamallee, Chennai, in S.C. No.14/01.

For Appellant : Mr. Iyyapparaj, APP

For Respondents : Mr. C.Vijayakumar for RR-1 to 4
Mr. Sankarasubbu for RR-5 to 8

JUDGMENT

The accused/respondents herein, who were arrayed as A-1 and A-8, were charged and tried before the learned Sessions Judge, Sessions Court for Exclusive Trial of Bomb Blast Cases, Poonamallee, Chennai, in S.C. No.14/01 for the offences u/s 307 r/w 120 (B), 148, 307, 307 r/w 149 IPC and Section 4 (a) of the Explosive Substances Act, 1908 r/w 149

IPC and the trial court found that the prosecution, having not proved the case as against the accused beyond reasonable doubt, the trial court acquitted the accused. The State, aggrieved by the said order of acquittal has preferred the present appeal. For the sake of convenience, the accused/respondents herein will be referred to as accused.

2.. The brief facts, necessary for disposal of this appeal, are as hereunder :-

P.W.1 is the Inspector of Golden Rock Police Station, Trichy; P.W.2 is his personal security guard and P.W.34 is the driver of the jeep allotted to P.W.1. It is the case of the respondents that on 4.6.98, at about 13.12 hours, when P.W.1 was proceeding in his official vehicle driven by P.W.34 along with his security guard, P.W.3, when the vehicle neared the Armoury Gate Road at the Golden Rock Area, the accused, viz., A-1 to A-6, who are alleged to be cadres belonging to the terrorist outfit, Al Umma, followed the jeep in which P.W.1 was travelling. The accused, viz., A-1, A-2 and A-3, who were in possession of hand grenades and A-1 was the pillion rider in the second motorcycle, came by the left side of the vehicle and on getting signal from the pillion rider in the first motorcycle, threw the hand grenade into the jeep in which P.W.1 was travelling and sped away from the scene of occurrence. P.W.1, however, caught the hand grenade and threw it out and tried to follow the motorcycle in an attempt to catch the accused, but the accused evaded his attempts and escaped from the scene. After placing a security guard at the place where the grenade was thrown to safeguard the evidence, P.W.1 proceeded to the police station and, thereafter, submitted a report to his higher official and on the directions of the higher official, based on the complaint, Ex.P-1, given by P.W.1, a case in Crime No.108/98 was registered by P.W.36, the Sub Inspector of Police, who prepared printed FIR, Ex.P-15.

3. On receipt of the FIR, Ex.P-15, P.W.46, the investigating officer, took up investigation. He went to the scene of occurrence at about 2.20 p.m. and in the presence of witness, P.W.6, he prepared the observation mahazar, Ex.P-2 and drew the rough sketch, Ex.P-20. The hand grenade, which was alleged to have been thrown at P.W.1 was recovered under the cover of mahazar and the same were forwarded to the jurisdictional court under Form-95. Continuing with the investigation, P.W.46, examined P.W.2 and P.W.34, who were riding in the vehicle along with P.W.1 and recorded their statements. He examined P.W.s 4, 6 and other witnesses and recorded their statements.

4. In the meantime, P.W.46, sent intimation to various police station for the arrest of the accused. Accordingly, the accused were arrested based on information received at the various police station and remanded to judicial custody. P.W.47, the investigating officer, who succeeded P.W.46, took up investigation, went through the investigation done by P.W.46. He examined further witnesses and recorded their statements. Requisition was made to the head of the explosives unit for defusing the hand grenade, which was in the custody of the police authorities after receipt of it from the court. Based on the request, P.W.39 the commando attached to the explosives unit along with his assistant, examined the hand grenade and took steps to defuse the same. During the course of defusing, the officials of the police department were present along with P.W.46 and P.W.1. The entire process of defusing of the bomb was photographed/videographed and prepared report, Ex.P-18. The parts of the defused bomb, viz., M.O.s 1 and 2 were seized under Form-95 and sent to the jurisdictional court under Ex.P-12. He examined P.W.39 and the photographer, P.W.5 and recorded their statements. On the requisition made by P.W.47, the material objects were sent for forensic examination on the order of the court under Ex.P-13.

5. P.W.42, the Judicial Magistrate No.I, Trichy, at the relevant point of time, on receipt of direction from the Chief Judicial Magistrate, conducted test identification parade for identification of the accused by four of the witnesses and prepared report, Ex.P-19.

6. The accused were arrested under PT warrant by P.W.49 and brought for the purpose of conducting test identification parade by P.W.42 on 1.2.00. , the subsequent investigating officer. After examining witnesses and recording their statements, P.W.49 filed the final report against the accused for the offences stated supra before the learned Judicial Magistrate V, Trichy.

7. The accused/respondents herein were furnished with the relied upon documents u/s 207 Cr.P.C. and the case was committed to the Sessions Court for Exclusive Trial of Bomb Blast cases after framing charges viz., u/s 307 r/w 120 (B), 148, 307 and 307 r/w 149 IPC and Section 4 (a) of the Explosive Substances Act. When questioned, the accused pleaded not guilty.

8. To prove the case, the prosecution examined P.W.s 1 to 49, marked Exs.P-1 to P-23 and M.O.s 1 to 8. When the accused/respondents herein were questioned u/s 313 Cr.P.C. about the incriminating circumstances appearing against them, they denied the same as false. Neither any oral nor any documentary

evidence was marked on the side of the defence. The trial court, after hearing either side and after considering the materials, both oral and documentary, on record, acquitted the accused/respondents as aforesaid, aggrieved by which the State/appellant has filed the present appeal against the said acquittal.

9. Learned Addl. Public Prosecutor, assailing the order of the trial court, submitted that though P.W.s 1, 2 and 34 were eye witnesses to the occurrence and were at the scene at the time of the occurrence and have categorically deposed about the occurrence and have identified A-1 to A-6 in the test identification parade. The evidence of P.W.s 7, 8, 9, 11 and 12 have supported the version as spoken to by P.W.s 1, 2 and 34. The prosecution, through the evidence of P.W.s 14 and 15, have categorically proved the conspiracy hatched by the accused. Further, there was no delay in the recording of the evidence of the witnesses. However, the evidences of the witnesses have not been appreciated in proper perspective by the court below and the court below has erroneously acquitted the accused on mere surmises and conjectures and, therefore, the order of the court below warrants interference.

10. Per contra, learned counsel appearing for the respective respondents submitted that the trial court has appreciated the evidence in proper perspective and has come to the categorical conclusion that the evidence of the eye witnesses, viz., P.W.s 1, 2 and 34 do not corroborate each other on material particulars and their evidence as to the happening of the incident is at variance. The evidence of P.W.s 1, 2 and 34 contradict each other as to the number of motorcycles in which the accused came to commit the offence. Further, the evidence of P.W.1, who is the complainant and against whom there is stated to be a threat perception, has, at the earliest point of time stated that there were two motorcycles in which four persons came to carry out the dastardly act, however, he has improved his complaint at a later point of time and has gone further and has identified more than four persons in the test identification parade, which belies the prosecution version. It is the submission of the learned counsel for the respondents herein that the evidence of P.W.s 1, 2 and 34 categorically reveal that they were not aware of the physical characteristics of the accused, viz., colour of eyes, hair, etc., nor have they seen the face of the accused, yet they have identified the accused at the test identification parade and the identification of the accused at the test identification parade was only due to P.W.49 enlightening P.W.s 1, 2 and 34 about the names of the persons and their identity in the test identification parade

and, therefore, no value can be attached to the identification in the test identification parade. It is succinctly submitted by the learned counsel appearing for the respondents herein that the trial court has pointed out 15 infirmities in the investigation, which strikes at the root of the prosecution theory, which cannot be brushed aside and, therefore, on account of the investigative lacunae, has thought it fit to acquit the accused and this Court, sitting in appeal, unless materials which categorically prove the involvement of the accused in the commission of the offence, would not alter the acquittal recorded by the trial court, which has been the consistent ratio laid down by this Court and the Apex Court time immemorial and, therefore, prayed for dismissing the appeal.

11. In dealing with matters, where the acquittal rendered by the court below is put to test, it is trite that unless the order of the court below suffers from the vice of perversity, the High Court ought not to interfere with the said order. In *Shailendra Pratap & Anr. - Vs - State of U.P.* (2003 (1) SCC 761), the Supreme Court has categorically held that the appellate court would not be justified in interfering with the order of acquittal unless the same is found to be perverse. The relevant portion of the order is extracted hereunder for better clarity :-

"8. Having heard learned counsel appearing on behalf of the parties, we are of the opinion that the trial court was quite justified in acquitting the appellants of the charges as the view taken by it was a reasonable one and the order of acquittal cannot be said to be perverse. It is well settled that the appellate court would not be justified in interfering with the order of acquittal unless the same is found to be perverse. In the present case, the High Court has committed an error in interfering with the order of acquittal of the appellants recorded by the trial court as the same did not suffer from the vice of perversity."

12. Yet again, in *Ram Kumar - Vs - State of Haryana* (1995 Supp. (1) SCC 248), the Hon'ble Supreme Court has once again highlighted the need for the High Court to give proper weight and consideration to the view of the court below and has further held that if the view taken by the court below is reasonable and plausible, order of acquittal should not be disturbed. In the above context, the Supreme Court held as under :-

"15. Learned counsel for the appellant contended that the trial court had recorded the

order of acquittal of all the accused persons including the appellant giving sound and cogent reasons for disbelieving the prosecution case and, therefore, the High Court should not have interfered with the order of acquittal merely because another view on an appraisal of the evidence on record was possible. In this connection it may be pointed out that the powers of the High Court in an appeal from order of acquittal to reassess the evidence and reach its own conclusions under Sections 378 and 379 (sic 378) CrPC are as extensive as in any appeal against the order of conviction. But as a rule of prudence, it is desirable that the High Court should give proper weight and consideration to the view of the trial court with regard to the credibility of the witness, the presumption of innocence in favour of the accused, the right of accused to the benefit of any doubt and the slowness of appellate court in justifying a finding of fact arrived at by a judge who had the advantage of seeing the witness. No doubt it is settled law that if the main grounds on which the court below has based its order acquitting the accused, are reasonable and plausible, and the same cannot entirely and effectively be dislodged or demolished, the High Court should not disturb the order of acquittal."

13. The Hon'ble Apex Court, in V.Sejappa - Vs - State by Police Inspector, Lokayukta, Chitradurga (2016 (12) SCC 150) reiterating the principles to be followed in an appeal against acquittal, as has been laid down in a catena of judgments, held as under :-

"22. If the evaluation of the evidence and the findings recorded by the trial court do not suffer from any illegality or perversity and the grounds on which the trial court has based its conclusion are reasonable and plausible, the High Court should not disturb the order of acquittal if another view is possible. Merely because the appellate court on reappreciation and re-evaluation of the evidence is inclined to take a different view, interference with the judgment of acquittal is not justified if the view taken by the trial court is a possible view. In State v. K.Narasimhachary [State v. K. Narasimhachary, (2005) 8 SCC 364 : (2006) 1 SCC

(Cri) 41] , this Court reiterated the well-settled principle that if two views are possible, the appellate court should not interfere with the acquittal by the lower court and that only where the material on record leads to an inescapable conclusion of guilt of the accused, the judgment of acquittal will call for interference by the appellate court. The same view was reiterated in T. Subramanian v. State of T.N. [T.Subramanian v. State of T.N., (2006) 1 SCC 401 : (2006) 1 SCC (Cri) 401]

23. In Muralidhar v. State of Karnataka [Muralidhar v. State of Karnataka, (2014) 5 SCC 730 : (2014) 2 SCC (Cri) 690] , this Court noted the principles which are required to be followed by the appellate court in case of appeal against order of acquittal and in para 12 held as under: (SCC pp. 735-36)

"12. The approach of the appellate court in the appeal against acquittal has been dealt with by this Court in Tulsiram Kanu [Tulsiram Kanu v. State, AIR 1954 SC 1 : 1954 Cri LJ 225], Madan Mohan Singh [Madan Mohan Singh v. State of U.P., AIR 1954 SC 637 : 1954 Cri LJ 1656], Atley [Atley v. State of U.P., AIR 1955 SC 807 : 1955 Cri LJ 1653] , Aher Raja Khima [Aher Raja Khima v. State of Saurashtra, AIR 1956 SC 217 : 1956 Cri LJ 426], Balbir Singh [Balbir Singh v. State of Punjab, AIR 1957 SC 216 : 1957 Cri LJ 481], M.G. Agarwal [M.G. Agarwal v. State of Maharashtra, AIR 1963 SC 200 : (1963) 1 Cri LJ 235], Noor Khan [Noor Khan v. State of Rajasthan, AIR 1964 SC 286 : (1964) 1 Cri LJ 167], Khedu Mohton [Khedu Mohton v. State of Bihar, (1970) 2 SCC 450 : 1970 SCC (Cri) 479], Shivaji Sahabrao Bobade [Shivaji Sahabrao Bobade v. State of Maharashtra, (1973) 2 SCC 793 : 1973 SCC (Cri) 1033], Lekha Yadav [Lekha Yadav v. State of Bihar, (1973) 2 SCC 424 : 1973 SCC (Cri) 820], Khem Karan [Khem Karan v. State of U.P., (1974) 4 SCC 603 : 1974 SCC (Cri) 639], Bishan Singh [Bishan Singh v. State of Punjab, (1974) 3 SCC 288 : 1973 SCC (Cri) 914], Umedbhai Jadavbhai [Umedbhai Jadavbhai v. State of Gujarat, (1978) 1 SCC 228 : 1978 SCC (Cri) 108], K. Gopal Reddy [K. Gopal Reddy v. State of A.P.,

(1979) 1 SCC 355 : 1979 SCC (Cri) 305], Tota Singh [Tota Singh v. State of Punjab, (1987) 2 SCC 529 : 1987 SCC (Cri) 381], Ram Kumar [Ram Kumar v. State of Haryana, 1995 Supp (1) SCC 248 : 1995 SCC (Cri) 355], Madan Lal [Madan Lal v. State of J&K, (1997) 7 SCC 677 : 1997 SCC (Cri) 1151], Sambasivan [Sambasivan v. State of Kerala, (1998) 5 SCC 412 : 1998 SCC (Cri) 1320], Bhagwan Singh [Bhagwan Singh v. State of M.P., (2002) 4 SCC 85 : 2002 SCC (Cri) 736], Harijana Thirupala [Harijana Thirupala v. Public Prosecutor, (2002) 6 SCC 470 : 2002 SCC (Cri) 1370], C. Antony [C. Antony v. K.G. Raghavan Nair, (2003) 1 SCC 1 : 2003 SCC (Cri) 161], K. Gopalakrishna [State of Karnataka v. K. Gopalakrishna, (2005) 9 SCC 291 : 2005 SCC (Cri) 1237], Sanjay Thakran [State of Goav. Sanjay Thakran, (2007) 3 SCC 755 : (2007) 2 SCC (Cri) 162] and Chandrappa [Chandrappa v. State of Karnataka, (2007) 4 SCC 415 : (2007) 2 SCC (Cri) 325]. It is not necessary to deal with these cases individually. Suffice it to say that this Court has consistently held that in dealing with appeals against acquittal, the appellate court must bear in mind the following:

(i) There is presumption of innocence in favour of an accused person and such presumption is strengthened by the order of acquittal passed in his favour by the trial court;

(ii) The accused person is entitled to the benefit of reasonable doubt when it deals with the merit of the appeal against acquittal;

(iii) Though, the powers of the appellate court in considering the appeals against acquittal are as extensive as its powers in appeals against convictions but the appellate court is generally loath in disturbing the finding of fact recorded by the trial court. It is so because the trial court had an advantage of seeing the demeanour of the witnesses. If the trial court takes a reasonable view of the facts of the case, interference by the appellate court with the judgment of acquittal is not justified.

Unless the conclusions reached by the trial court are palpably wrong or based on erroneous view of the law or if such conclusions are allowed to stand, they are likely to result in grave injustice, the reluctance on the part of the appellate court in interfering with such conclusions is fully justified; and

(iv) Merely because the appellate court on reappreciation and re-evaluation of the evidence is inclined to take a different view, interference with the judgment of acquittal is not justified if the view taken by the trial court is a possible view. The evenly balanced views of the evidence must not result in the interference by the appellate court in the judgment of the trial court."

14. Keeping the above principles of law laid down by the Apex Court in mind, this Court will now proceed to examine the evidence and the materials on record to see whether the conclusions recorded by the court below for acquitting the accused/respondents herein are reasonable and plausible or the same stands vitiated by manifest illegality or the conclusions recorded by the appellate court are such which could not have been possibly be arrived at by any court acting reasonably and judiciously, which could in turn be said to be perverse.

15. Before proceeding to analyse the evidence on record, a cursory glance at the impugned order, which is relied on by the learned counsel for the respondents herein to buttress their contention, reveals that the trial court has not only applied its mind to the materials available on record, but has also pointed out the investigative flaws in its order and for better appreciation of the case, the same is extracted hereunder :-

"31. A thorough and detailed analysis of materials relating to facts, the following contradictions, infirmities emanate, etc.

a) FIR does not disclose any identity of the accused;

b) Till 25.6.99, there was no break through in the investigation;

c) Who was posted as sentry to guard the thrown out hand grenade is not made clear even by the investigating officer;

d) P.W.s, P.W.2, P.W.34 did not disclose in the statement recorded on 25.6.99 as to why they fail to name six persons in the place of four offenders;

e) When there is no specific clue against the suspect, how an identification parade will improve the case, that too when conducted after several months;

f) Crucial statement dated 28.1.2000 explaining the readiness of the witness to identify the accused only reached the court on 3.10.2000. Whereas post-identification parade statement dated 19.4.2000 and 20.4.2000 reached the court on 24.4.2000;

g) Despite a chase of ten minutes by four persons in a jeep the register number of none of the three motorcycles could be noted by the police officers;

h) Witnesses of identification parade are only policemen even though private individuals were available;

i) During the period of conspiracy claimed by the prosecution, A-8 was in prison;

j) No witness has even spoken about Accused A-7 and A-8;

k) Where did the police leave the grenade till its defusal;

l) The statement allegedly recorded from P.W.14 to 18 in the month of February, March, 2000 reached court only on 3.10.2000;

m) P.W.14 was confined for 23 days in prison prior to the statement before police;

n) The demeanor of P.W.4 in response to questions raised by the defence in cross;

o) Witnesses to test identification parade could not conclusively fix the accused."

16. From the order passed by the trial court, it is evident that the court below has adverted to many contradictions and infirmities in the version projected by the prosecution. Therefore, the question that falls for the determination of this Court is whether the acquittal of the respondents is sustainable as falling within the four corners of the contradictions and infirmities tabulated by the trial court or the appeal filed by the prosecution deserves to be allowed on the basis of the materials available on record.

17. The issues that falls for determination in this appeal are on precisely on the following heads :-

- i) Discrepancies and contradictions in the evidence of P.W.s 1, 2 & 34;
- ii) Conduct of the Test Identification Parade for identifying the accused;
- iii) Conspiracy theory as put forth through the evidence of P.W.s 14 to 18.

Discrepancies and contradictions in the evidence of P.W.s 1, 2 & 34 :

18. While it is the vehement contention of the prosecution that the evidence of P.W.s 1, 2 and 34, who are eye witnesses to the occurrence corroborate each other, it is stoutly countered by the respondents herein contending that corroboration, which is sine qua non to acceptance of the evidence for basing the conviction is totally absent in the evidence of P.W.s 1, 2 and 34.

19. P.W.1, in his evidence in chief has deposed that two motorcycles with a driver and pillion rider in each were coming on the left side and the pillion rider in the first motorcycle signalled whereupon, the pillion rider in the 2nd vehicle threw the hand grenade at the vehicle of P.W.1. However, equally in his deposition in chief, he has contradicted his own statement and has deposed that except for A-7 and A-8, the other six accused were the persons, who are present in court are those persons, who had chased him. It further reveals from the deposition of P.W.1 in chief that he deputed one constable to guard the area in which the grenade was thrown, however, curiously in cross, P.W.1 has stated that he does not know the name of the constable, who was deputed for guarding the scene of occurrence. P.W.1 has categorically deposed in cross that he does not know the accused before the occurrence. P.W.1 has further stated that he does not know the physical characteristics of the accused. However, P.W.1 has deposed in cross that the Judicial Magistrate, who conducted the test identification parade has informed him the names of the accused.

20. However, a perusal of the deposition of P.W.42 reveals that he did not inform the names of the accused to any of the witnesses, who took part in the parade for identifying the witnesses. Further, it is evident from the deposition of P.W.49 that it is he who informed the witnesses about the names of the accused prior to the conduct of the test identification parade. The above contradictions in the evidence of P.W.1 vis-a-vis P.W.42 and P.W.49 really throw the case of the prosecution overboard as to the possibility of P.W.1 seeing the

accused/assailant who threw bomb at the vehicle in which he was travelling.

21. The deposition of P.W.1 in cross further reveals that the accused only came in two bikes of totally four members. It is not in one place where P.W.1 has stated about the accused coming in two motorcycles, but it is in multifarious places, P.W.1 has stated about the accused coming in two motorcycles and on the signalling done by the pillion rider in the first motorcycle, the pillion rider in the second motorcycle threw the bomb at him. Therefore, categorically, P.W.1 has deposed that it is only in two motorcycles the accused came and attacked him. That being the case, a careful perusal of the report of the test identification parade reveals that P.W.1 has identified six persons as the accused, when in his complaint as well as during his examination by the investigating agency, he has deposed about only the accused coming in two motorcycles. The identification of six accused by P.W.1 during the test identification parade not only demolishes the case of the prosecution, but also clearly reveals the improvements made by the witnesses during their deposition to sustain the prosecution version.

22. A perusal of the evidence of P.W.1 vis a vis the evidence of P.W.2 and P.W.34, who are the personal security guard and the driver of the jeep in which P.W.1 was travelling reveals that their depositions are totally contradictory to the evidence of P.W.1. While it is the evidence of P.W.2 that on the accused hurling the bomb at the vehicle, it fell inside the vehicle, which was taken by P.W.1 and thrown out, however, the deposition of P.W.1 is to the effect that he caught the bomb on it being hurled and then threw it out of the vehicle. Further, it is the evidence of P.W.1 that the accused came in two motorcycles on the left side of the vehicle, however, curiously, it is the evidence of P.W.3 that there was also a third motorcycle, which came on the right side of the jeep and went past it. It is the further deposition of P.W.2 that though he was aware that persons came in three motorcycles and mounted the attack on the jeep, however, since there was no enquiry on that aspect by the investigating agency, he did not come forward to state the same to the investigation officer. This conduct of P.W.2 in not informing about the presence of the third vehicle carrying two persons, who are also accused of the attack, not only casts a bitter taste in the mouth of this court about the attitude of P.W.2, but also creates a grave suspicion in the prosecution version.

23. Similar to the evidence of P.W.1, P.W.2 has also deposed that he came to know about the names of the accused from P.W.42 before the conduct of the test identification parade, which has been contradicted by P.W.42.

P.W.34, the driver of the jeep in his evidence has deposed that persons/accused came in three motorcycles, of which two motorcycles were on the left side near the side of P.W.1 and one motorcycle was on the right side towards the driver. To this extent, there is corroboration in the evidence of P.W.s 2 and 34. However, P.W.34 has further deposed that on the bomb being hurled at P.W.1, it hit the door of the jeep and, thereafter, the hand of P.W.1 and fell down, which P.W.1 took and noting that it was a bomb, he threw the same outside.

Conduct of the Test Identification Parade for identifying the accused :

24. Much emphasis was laid by the prosecution on the identification of the accused in the test identification parade. The prosecution has further submitted that not only in the test identification parade had P.W.s 1 and 2 identified the accused, but they have also identified the accused in court, which is a substantive piece of evidence and, therefore, the identity of the accused having been established, their culpability in the commission of offence stands established, and minor discrepancies and contradictions, if any, in the evidence of P.W.s 1 and 2 should not be given much importance to doubt the version of the prosecution.

25. In the case on hand, it is pertinent to note that neither the deposition of P.W.1 nor the deposition of P.W.2 reveals that they were aware of the physical characteristics of the accused. In fact, it is their evidence that they do not know about the physical characteristics of the accused. In such cases, a test identification parade in terms of Section 9 of the Evidence Act, as has been held in the above decision, is desirable and the same is held for the purpose of testing the veracity of the witness in regard to his capability of identifying persons who were unknown to him. Had the accused been known, their identity would have been disclosed in the first information report. However, P.W.1, in the complaint as well as in his deposition has categorically stated that he is not aware of the accused nor their physical characteristics. It is further evident from the evidence of P.W.s 1 and 2 that they came to know of the names of the accused only at a later point of time, i.e., on the day of the conduct of test identification parade.

26. The necessity of conduct of test identification parade and its substantive value as evidence in Court has been dealt with by the Apex Court in Mulla - Vs - State of U.P., (2010 (3) SCC 508), wherein the Apex Court held as under :-

"42. Failure to hold test identification parade does not make the evidence of identification in court inadmissible, rather the same is very much admissible in law. Where identification of an accused by a witness is made for the first time in court, it should not form the basis of conviction.

43. As was observed by this Court in Matru v. State of U.P. [(1971) 2 SCC 75 : 1971 SCC (Cri) 391] identification tests do not constitute substantive evidence. They are primarily meant for the purpose of helping the investigating agency with an assurance that their progress with the investigation into the offence is proceeding on the right lines. The identification can only be used as corroboration of the statement in court. (Vide Santokh Singh v. Izhar Hussain [(1973) 2 SCC 406 : 1973 SCC (Cri) 828] .)

44. The necessity for holding an identification parade can arise only when the accused persons are not previously known to the witnesses. The whole idea of a test identification parade is that witnesses who claim to have seen the culprits at the time of occurrence are to identify them from the midst of other persons without any aid or any other source. The test is done to check upon their veracity. In other words, the main object of holding an identification parade, during the investigation stage, is to test the memory of the witnesses based upon first impression and also to enable the prosecution to decide whether all or any of them could be cited as eyewitnesses of the crime."

27. It is settled position of law that identification tests do not constitute substantive evidence and they are primarily meant for the purpose of helping the investigating agency with an assurance that the investigation is proceeding on the right lines and that the persons implicated therein are involved in the offence. Substantive evidence is the testimony of a witness in court, and identification of an accused in court is

substantive evidence of the person identifying and lend assurance to his earlier identification of an accused in a test identification proceeding. However, in the case on hand, the hands of the clock goes anti-clockwise. While it is the categorical deposition of P.W.s 1 and 2, as noted above, that they are not aware of the physical characteristics of the accused, and that the complaint of P.W.1 as well as his deposition reveal that he is not aware of the physical characteristics of the accused, yet they identified the accused in the test identification parade. In this regard, the evidence of P.W.49 assumes significance.

28. P.W.49, in cross examination has deposed that even during the identification proceedings, P.W.s 1 and 2 were not aware of the names of the accused. It is his further deposition that on the day of the test identification parade, P.W.49 was in front of the prison and that he identified the accused to both P.W.s 1 and 2 and informed their names to P.W.s 1 and 2. Further, it is to be pointed out that though it is the evidence of P.W.s 1 and 2 that the names of the accused were revealed to them by P.W.42, the Judicial Magistrate, who conducted the test identification parade. However, the said evidence gets pushed back in view of the above deposition of P.W.49 that it was he who identified the accused and informed the names of the accused to P.W.s 1 and 2. further, the evidence of P.W.42 nowhere reveals that he informed the names of the accused to P.W.s 1 and 2. In view of the above contradiction in the evidence of P.W.s 1 and 2 vis-a-vis, P.W.49, the veracity of identification of the accused in the test identification parade becomes a farce. In the above backdrop, it is unambiguously clear that the substantive identification of the accused in court was the result of the test identification parade conducted so as to enable P.W.s 1 and 2 to be aware of the characteristics of the accused so as to enable them to identify the accused in court. Therefore, the said identification of the accused in court could in no way be termed to be a substantive piece of evidence, which gets corroboration from the identification of the accused in the test identification proceedings, as it is the other way round and, therefore, this piece of evidence would in no way advance the case of the prosecution.

Conspiracy theory as put forth through the evidence of P.W.s 14 to 18 :

29. The last of the limb of the prosecution version is the conspiracy hatched by the accused as having spoken to by P.W.s 14 to 18. It is the case of the prosecution that the accused,

in the presence of P.W.s 14 to 18, hatched the conspiracy to do away with P.W.1, as he was instrumental for the killing of 18 Muslim youths in the riots that took place at Coimbatore in the wake of the bomb blast that happened there.

30. A perusal of the deposition of P.W.14 reveals that he was employed in a footwear shop at Trichy. It is the deposition of P.W.14 that on 3.6.98, the accused had gathered in the shop in which P.W.14 was working and that a conspiracy was hatched on that day to do away with P.W.1 on the next day, i.e., 4.6.98. It is the further deposition of P.W.14 that in pursuance of the conspiracy, hand grenades were handed over by him to the accused persons. It is the further deposition of P.W.14 in cross that prior recording his statement, he was in the custody of the police for 23 days after which he gave the confession statement on 14.2.00. P.W.14 has further deposed in cross that though he was examined on various dates prior to his examination on 14.2.00, his statement was not recorded prior to 14.2.00.

31. P.W.s 15 to 18 have spoken on the lines as spoken to by P.W.14. They have deposed that they were present when the plot was hatched to do away with P.W.1 and in that process, the accused had given two bombs to P.W.16 and asked him to keep it and after some time, P.W.16 returned the hand grenades back to the accused. P.W.18 had further gone on to depose that after the attack, the accused came and informed him that the attack had not resulted in doing away with P.W.1.

32. From a careful perusal of the deposition of P.W.s 14 to 18, it is amply clear that they had also participated in the discussion when a plot was hatched to do away with P.W.1. In fact, it is their deposition to the investigating agency that they were also present when the conspiracy was hatched to do away with P.W.1. That being the case, this Court is at a loss to understand as to why they were not roped in as accused with the aid of Section 120 (B) IPC, but were arrayed as witnesses to the conspiracy. Except for P.W.s 14 to 18, there is no other evidence to prove the conspiracy alleged to have been hatched by the accused. Therefore, the substratum of the prosecution case relating to conspiracy falls to the ground.

33. Apart from the above discrepancies and contradictions that galore in the version projected by the prosecution, yet another crucial aspect which affects the substratum of the case is that even according to the evidence of P.W.1, the police

officials chased the motorcycle in which the accused were escaping for a period of about ten minutes, but they could not apprehend the accused. However, nowhere in the complaint or in his statement to the police officials or even at the time of trial, none of the three witnesses, viz., P.W.s 1, 2 and 34 have uttered any word about the registration number of the motorcycle. It is to be remembered that the persons, who were chasing the accused are not layman or normal persons, but are police officials of which one was in the rank of Inspector of Police. That being the case, the most prudent thing that would have been done by the eye witnesses to the occurrence would be to reveal the registration number of the vehicle that was used by the accused to flee from the scene of occurrence. The non-mentioning of the registration number of the vehicle, even though the police officials had chased the vehicle for quite a considerable period of time, leaves no room for this Court to opine that the trial court has considered all the materials placed before it before recording its finding.

34. It is to be stated here that the trial Judge has recorded 15 fatal omissions of investigative lacunae committed by the investigating agency. All the omissions are borne out by materials available on record and the appellant herein could in no way dislodge the said findings as illegal or perverse. In fact, the whole investigative fabric was shred to pieces by the learned trial Judge while dissecting the prosecution case and giving reasons for arriving at a just and reasonable finding.

35. The Apex Court, in the recent decision in Shailendra Rajdev Pasvan - Vs - State of Gujarat (2019 SCC OnLine SC 1616) has reiterated the ratio consistently laid down that unless the acquittals were vitiated by manifest illegality or such a conclusion could not have been possibly arrived at by any court acting reasonably and judiciously and is, therefore, liable to be characterised as perverse, proper weight should be given to the presumption of innocence in favour of the accused. Therefore, on an overall conspectus of the materials available on record, both oral and documentary, this Court is led to the irrefutable conclusion that the acquittal of the respondents herein, ordered by the appellate court is based on just and reasonable findings and there being no materials available on record to dislodge the said findings, this Court is left with no other alternative, but to dismiss the appeals.

36. For the reasons aforesaid, this Court does not find any reason to differ from the findings recorded by the appellate

court to acquit the respondents herein and, accordingly, these appeals are dismissed confirming the judgment and order dated 15.1.0.07 passed by the learned Sessions Judge, Sessions Court for Exclusive Trial of Bomb Blast Cases, Poonamallee, Chennai, in S.C. No.14/01.

Sd/-
Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

GLN

To

- 1) The Sessions Judge
Sessions Court for Exclusive Trial
of Bomb Blast Cases, Poonamallee
Chennai.
- 2) The Public Prosecutor
High Court
Madras.

+3cc to Mr. C.Vijayakumar, Advocate sr.105988

CRL. A. NO. 54 OF 2008

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