

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE : 20.12.2019

CORAM

THE HONOURABLE MR. JUSTICE M.DHANDAPANI

CRL. A. NO. 822 OF 2009

State, rep. By
The Inspector of Police
Special Investigation Team
CB-CID, Chennai. ... Appellant/Complainant

- Vs -

1. Erwadi Kasim @ Syed @ Mohammed Kasim
@ Syed Meeran @ Abbas
2. Ali Abdullah
3. Kutty @ Mohammed Alikhan
4. Jamshed Ahmed
5. Riyas Hur Rahman ... Respondents/Accused A1 to A5

Criminal Appeal filed u/s 378 of the Code of Criminal Procedure, against the judgment dated 15.10.2009 passed by the learned Sessions Judge, Sessions Court for Exclusive Trial of Bomb Blast Cases, Poonamallee, Chennai, in S.C. No.10/03.

For Appellant : Mr. Iyyapparaj, APP

For Respondents : Mr. Xavier Felix

JUDGMENT

The accused/respondents herein, who were arrayed as A-1 and A-5 along with one Mohammed Dastagir, who died pending trial, and one other accused, viz., Ayub @ Ashraf Ali, who was absconding and, therefore, the case against him was split up, were charged and tried before the learned Sessions Judge, Sessions Court for Exclusive Trial of Bomb Blast Cases, Poonamallee, Chennai, in S.C. No.10/03 for various offences under the Indian Penal Code, Explosives Substances Act, 1908 and Tamil Nadu Public Property (Prevention of Damage & Loss) Act, 1992 and the trial court

found that the prosecution, having not proved the case as against the accused beyond reasonable doubt, acquitted the accused/respondents herein. 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 :-

It is the case of the prosecution that in furtherance of the common intention of the accused against the high-handed act of the police authorities against a particular community and also to teach a lesson to the police authorities, the accused, conspired and in furtherance of the said conspiracy, procured explosive substances and on 1.12.97 at about 9.10 p.m., the accused using a bucket bomb caused explosion in front of Vepery Police Station.

3. P.W.s 1 and 2 were having shops opposite the Vepery Police Station. On 1.12.97, at about 9.10 p.m., P.W.s 1 and 2 along with one Manickam were conversing with each other. P.W.3 along with his friend Ramesh Babu, were nearing the Vepery Police Station at about 9.10 p.m. on the said date and at the same time, P.W.4 was also nearing Vepery Police Station. P.W.s 1 to 4 saw two persons standing near the police station in a two wheeler and at that time, there was a loud explosion in front of the police station. Due to the said explosion, Manickam, who was standing along with P.W.s 1 and 2 fainted and fell down. The two persons, who were standing with the two wheeler left the place. P.W.s 1 to 3, with the help of the streetlight, saw the identity of the two persons in the two wheeler, when they left the scene of occurrence. P.W.6, who was on traffic duty, while heard the explosion, also saw the two persons passing him in the motorcycle. After the explosion, based on the complaint, Ex.P-1, given by P.W.1, a case in Crime No., 2996/97 was registered. The printed FIR, Ex.P-25 was sent to higher officials.

4. P.W.23, the Inspector of Police, on receipt of Ex.P-25, commenced investigation. The injured witnesses, P.W.s 3, 4, Ramesh Babu and other were examined and their statements were recorded. P.W.s 3 and 4 were sent to the hospital for treatment. P.W.s 3 and 4 were examined at the hospital by P.W.s 12 and 20, the doctors, who issued wound certificate, Exs.P-7 and P-8.

5. P.W.23, continuing with his investigation, inspected the scene of occurrence and prepared the rough sketch, Ex.P-26. Mahazar, Exs.P-2 to P-5 were prepared for the recovery of sand, bricks, etc., which were collected from the scene of occurrence and marked as M.O.s 3 to 6, which was attested by P.W.5 and

another. The material objects were sent for forensic analysis and Ex.P-13 to P-15, the forensic analysis report was obtained. Sanction for investigation was given by the District Collector under Ex.P-20.

6. Continuing with the investigation, P.W.23 arrested the accused on various dates. Based on the request made by P.W.23, on the orders of the Chief Metropolitan Magistrate, Ex.P-17, P.W.17, the Judicial Magistrate, conducted test identification parade in which P.W.s 1, 2 3 and 6 participated and identified the accused. P.W.24 the investigating officer, who succeeded P.W.23, after going through the investigation conducted by P.W.23, examined the doctors and other witnesses and recorded their statements. P.W.25 succeeded P.W.24, and he, after going through the materials collected by his predecessors, and after examining the rest of the witnesses and recording recording their statements, filed the final report against the accused/respondents herein.

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), 307 and 307 r/w 109 IPC and Section 4 (a), 4 (b) and 3 (b) of the Explosive Substances Act and under the relevant provisions of the Tamil Nadu Public Property (Prevention of Damage & Loss) Act, 1992. When questioned, the accused pleaded not guilty.

8. To prove the case, the prosecution examined P.W.s 1 to 25, marked Exs.P-1 to P-30 and M.O.s 1 to 21. 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 herein 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 P.W.s 1, 2, 3 and 6 were eye witnesses to the occurrence and they saw the accused proceeding from the scene of crime immediately after the explosion and P.W.3 having identified the accused in the test identification parade. The evidence of P.W.s 1, 2, 3 and 6 corroborate each other on all material particulars. The evidence of the witnesses categorically prove the conspiracy hatched by the accused. 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 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, 3 and 6 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, and 6 contradict each other as to accused fleeing in the motorcycle immediately after the occurrence. Further, the test identification parade has been conducted after a long period of eight months from the date of occurrence and that before the test identification parade, the photographs of the accused have been shown to the witnesses and, therefore, no sanctity can be attached to the test identification parade. P.W.1 has categorically deposed that police came to the scene only after the information was given to them, which belies the prosecution version that police authorities immediately came out on hearing the explosion. It is the further submission of the learned counsel for the accused that the occurrence had happened during night hours and all the witnesses, viz., P.W.1, 2, 4 and 6 have only had a fleeting glimpse of the accused and, therefore, they could not have clearly seen the accused. It is the further submission of the learned counsel that the seizure of motorcycle, as spoken to by the witnesses contradict each other and the motorcycle in which the accused are alleged to have fled from the occurrence has not been seized at all. There are very many infirmities in the investigation and the evidence of the witnesses do not corroborate each other and this strikes at the root of the prosecution theory, which cannot be brushed aside and, therefore, on account of the investigative lacunae, the court below has thought it fit to acquit the accused and this Court, sitting in appeal, unless materials are available on record, 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. This Court heard the learned Addl. Public Prosecutor appearing for the appellant and the learned counsel appearing for the respondents and perused the materials available on record to which its attention was drawn.

12. 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."

13. 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.”

14. 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 reappraisal 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."

15. 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.

16. The evidence of P.W.s 1, 2, 3 and 4 reveal that prior to the explosion, when they were near the police station, they saw two persons standing near a motorcycle and immediately after the occurrence they left the place. P.W.6, the traffic policeman, who was manning the traffic in the said area has also spoken about two persons proceeding on a motorcycle immediately after the explosion. However, it is to be noted here that two persons were said to be standing near a motorcycle, who left the place immediately after the explosion. Mere movement of two persons from the place near which a bomb exploded alone cannot be a ground to fasten the criminal act on those persons. Further, it is the evidence of P.W.1, who was at the scene that immediately after the explosion, the two persons, who were standing there, left the motorcycle and left the place immediately. However, the said statement does not find support from the evidence of P.W.6, the traffic constable, who has deposed that he saw two persons fleeing away from the scene of occurrence in a motorcycle. It is to be noted at this juncture that neither the motorcycle, as deposed by P.W.1, which was left at the scene of occurrence was recovered, nor the motorcycle in which the two persons left the place was seized. A motorcycle, which is alleged to have been used by the accused persons, was seized from the house in which the respondents herein were residing. However, in the absence of the said vehicle, being the vehicle in which the accused had fled the scene of occurrence, the seizure of the motorcycle would not be of any value to further the prosecution case.

17. Further, it is the deposition of the eye witnesses that they saw the accused in the streetlight that was burning near the police station. However, the prosecution has not, through any convincing evidence, shown that the streetlight was glowing and that it was possible for the eye witnesses to identify the accused with the aid of the said light. In the absence of proof thereof, the mere statement of the witnesses that they saw the accused in the light, for a fleeting second when the accused fled away after the explosion would not be sufficient to hold that the persons, who fled away from the occurrence were the persons who were responsible for the explosion.

18. P.W.s 8 and 9 are the owners of the house in which the respondents herein were alleged to be staying. However, except for the fact that the respondents herein were staying in the said house prior and after the occurrence, nothing worthwhile or

incriminating could be imported to their evidence to the benefit of the prosecution.

19. According to P.W.12, the doctor, who treated the injured P.W.3, he was brought to the hospital by a police constable. However, the said statement of the doctor has been contradicted by P.W.3, who has deposed that he went to the hospital on his own and he was accompanied by his friend Ramesh Babu. However, it is the case of the prosecution that P.W.3 was sent to the hospital and there is no clarity whether any police official accompanied P.W.3. It is the further evidence of P.W.12 that the injuries sustained by P.W.3 could not have been on account of a bomb blast. However, it is the categorical deposition of P.W.3 and also the other injured witnesses, that the injuries suffered by them are on account of bomb blast.

20. 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 the eye witnesses, viz., P.W.s 1, 2, 3 and 6 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 eye witnesses should not be given much importance to doubt the version of the prosecution.

21. In the case on hand, it is pertinent to note that neither the deposition of P.W.s 1, 2, 3 and 6 reveals that they were aware of the physical characteristics of the accused. It is only their evidence that they saw two persons standing near a bike and immediately after the explosion, they left the place. It is not their evidence that they 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 consistently held by the courts, 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, except for seeing two persons standing near the place of occurrence near a motorcycle. It is further evident from the evidence of P.W.3 that photographs of the accused were shown to the witnesses before they identified the accused in the test identification parade.

22. 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."

23. 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.

24. At this juncture, one vital lacunae in the test identification parade requires a mention. Though the occurrence is alleged to have taken place on 1.12.97, however, the test identification parade has been conducted only after a period of eight months. Even according to the deposition of the witnesses, they had only a fleeting glimpse of the persons, who were standing near the motorcycle and who left the place immediately after the occurrence. It is not the case of the prosecution that the accused were known to the witnesses, but they were total strangers.

25. It is borne out by records that the arrest of the accused was made on 22.5.98 and in the present case, the accused were arrested on PT warrant on 5.8.98. However, curiously, the investigating officer has given a request for conduct of test identification parade only on 10.8.98. It is almost after a period of three months from the date of initial arrest of the accused. No cause has been placed by the prosecution for conducting test identification parade after a lapse of three months. Test identification parade is conducted basically for testing the memory of the witnesses to identify the alleged accused. Greater the delay, greater is the chances of error in identification. But in the present case, the identification has been bolstered by the conduct of the prosecution in showing the photographs of the accused to the eye witnesses before the test identification parade. In such a backdrop, no sanctity could be attached to the identification of the accused in the test identification parade.

26. Delay in conduct of test identification parade, though by itself cannot be said to be fatal, however, the prosecution, in case of delay in conduct of identification parade, is bound to explain the same. In the absence of any tenable explanation for the delayed conduct of the identification parade, the identification of the accused in the said parade loses its credence and significance. This has been the time tested view of the Hon'ble Supreme Court as well as this Court. In the case on hand, as pointed out above, though the arrest was made on 22.5.98, yet till 10.8.98, no steps have been taken by the prosecuting agency for identification of the accused by conducting test identification parade. The accused were not known to the eye witnesses and the passage of time in the conduct of the identification parade only furthers the weakness of the eyewitnesses to identify the accused. In the case on hand, the identification parade having been conducted after a prolonged delay and there being no plausible explanation for the said delay, this Court is left with no other alternative, but to

disbelieve the identification of the accused by the eye witnesses.

27. The whole prosecution web lingers on the so called conspiracy hatched by the accused as they were dissatisfied with the treatment meted out to their brethren and due to the meeting of minds, conspiracy was hatched leading to the incident of explosion. Though the genesis is stated to be the strained feelings of a particular community, which led to the conspiracy, however, it is to be pointed out that there is not even an iota of evidence through which the prosecution has laid out the part of conspiracy between the accused leading to the incident. No witness has been examined to establish the charge of conspiracy and the witnesses, who have been examined by the prosecution have also not spoken anything about the conspiracy. The prosecution cannot, on surmises and conjectures, plead that the conspiracy hatched by the accused resulted in the incident. Mere surmises and conjectures cannot take the place of proof and in a case of this nature, proof is essential to bring home the charge of conspiracy.

28. Once the charge of conspiracy fails, the meeting of minds between all the accused fails and, the prosecution having not proved that the accused partook themselves in the incident through legal and credible evidence, this Court is left with no other alternative but to affirm the view taken by the trial court. In spite of persuasive arguments, the prosecution is not able to point out the illegality and perversity in the findings arrived at by the trial court so as to enable this Court to dislodge the said findings to arrive at a contra finding. In fact, the whole investigative fabric has been blown to smithereens and shred to pieces not only by the learned trial Judge while dissecting the prosecution case and giving reasons for arriving at a just and reasonable finding, but also by the prosecution themselves in the form of witnesses contradicting themselves on all aspects, let alone material aspects.

29. To sum up, 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.

30. 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 15.10.09 passed by the learned Sessions Judge, Sessions Court for Exclusive Trial of Bomb Blast Cases, Poonamallee, Chennai, in S.C. No.10/03.

s/d-
Assistant Registrar

True Copy

Sub-Assistant Registrar

To

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

2) The Public Prosecutor
High Court
Madras.

+1 CC to Mr.S. Xavier Felix, Advocate sr 492.

CRL. A. NO. 822 OF 2009

VGII(CO)
SP(04/02/2020)

सत्यमेव जयते

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