

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 23.01.2019

CORAM

THE HONOURABLE MR.JUSTICE M.DHANDAPANI

Crl.A.No.1027 of 2003

State by:

Inspector of Police,
"Q" Branch C.I.D.,
Chennai.

Rep. by

Public Prosecutor,
High Court, Madras.

.... Appellant

Vs.

1.Deenadayalan

2.Velayuthapani

3.Selikamasthan

4.Annadurai

5.Kumar @ Thalikumar

.... Respondents

Prayer:

Appeal filed under Section 378 of Cr.P.C. seeking to set aside the order of acquittal passed by the trial court in S.C.No.268/95 on the file of Additional District and Sessions Judge, (Fast Track Court No.I), Chennai and that the accused be convicted for the offence as charged.

For Appellant : Mr.R.Ravichandran

Government Advocate (Crl. Side)

For Respondents: Mr.Vasanth for R1, R2 and R4

Mr.B.Vijay for R3

Mr.V.S.Elangovan for R5

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The appeal has been filed by the State against the order of acquittal passed by the learned Additional District and Sessions Judge, (Fast Track Court No.I), Chennai, in S.C.No.268 of 1995 dated 29.05.2002.

2.The brief facts of the case are as follows: The present

case has a chequered history. Nine TADA detainee who were supporters of LTTE and who have been detained in a special cell in Central Prison, Madras, escaped on 27.02.1995 at about 22.15 hours by climbing over the wall by using cloth ropes and iron rods. Immediately the Superintendent of Central Prison preferred a complaint in Chintadripet Police Station and a case was registered in Cr.No.354 of 1995 under Sections 223, 224, 34, 109 of IPC and Section 14 r/w 3 and 4 of Foreigners Act, 1946.

3. In his complaint the Superintendent of Central Prison has stated that while he was in his house, he received a telephonic message on 27.02.1995 at about 22.30 hours that nine TADA (LTTE) prisoners who were lodged in the second special cell have escaped from Central Prison. On that information, he rushed to the Central Prison at about 22.50 hours and visited the spot and found live TADA detainee who were kept in second special cell no.2 upstairs and also four TADA detainee who were kept in cell no.3 of the first floor, totally 9 TADA detainee escaped. He has further stated that the detainee have manhandled Warden Chelika Mastan and Warden Raj and tied them with piece of clothes and put them inside the cell while they were escaping from the Central Prison near Park Railway Station by using cloth ropes, bedsheet and iron rods.

4. He has further stated that Warden No.102 Deenadayalan has not locked the cell on that night and it was not properly checked by Gr.I Warden Surulinathan. In the same way, night Sentry Warden No.24 Chelika Mastan also not checked the cell properly. Further, wall Sentry Warden No.50 Annadurai whose duty was very close to the place of escape and who has seen the nine TADA detainee escaping through the compound wall did not give alarm. Thereby, the Wardens have colluded with the escaped detainee and helped them to escape from the Central Prison and requested to take necessary action against them and to secure the escaped detainee.

5. Immediately after receipt of the complaint, the Chintadripet Police Station registered a case and on the same day forwarded the FIR along with complaint to the "Q" Branch C.I.D. for further investigation. Immediately, P.W.18/Inspector of Police, "Q" Branch C.I.D., took up the case for further investigation and went to the place of occurrence and prepared observation mahazar and sketch. Thereafter on 28.02.1995 at 1.30 hours one Balan @ Ganesan and Balendran were arrested at Arambakkam and the Police also seized one cyanide capsule from each and cash from them. Two TADA detainee namely, Menon @ Kutty and Shanmugavel @ Meistry died by consuming cyanide and their bodies were recovered from different places.

6. The accused were arrested on 28.02.1995 and sent for

remand. In the course of investigation, one DICO 203 - 7 Lever - Iron Lock , a false key with blue colour thread, one DICO 201 - 7 Levers - Iron Lock, two 7 shaped iron rods with white cloth ropes etc, original keys 201 and 203 were seized on 28.02.1995 at 04.15 hours. On production by Jailor Ramamoorthy, about 3 feet length blue colour thread was seized at cell no.2 of the first floor of the II Special Quarantine block of the Central Prison on 03.03.1995.

7. During the course of investigation, Tamil Nadu Retrieval Troop

(TNRT) case accused one Veerakumar was interrogated and he gave information about the letter written by him, on the request of one Thali Kumar another TNRT case accused, to Rajkumar LTTE accused. Thereafter, Thali Kumar was examined and he stated that on 16.09.1994, he was released on bail and that on 06.10.1994, he went to Central Prison, Madras and met Rajkumar. The said Rajkumar gave a blank key and sketch of a prison key to him and asked him to fabricate a false key using the sketch.

8. Thali Kumar further stated that on 12.11.1994, he again visited Central Prison along with one Veerakumar and met Rajkumar. Rajkumar said to him that Ragavan @ Aruviral Ragavan would handover cyanide capsules either in front of the Central Prison, Madras on 12.11.1994 or at Thiruvalluvar Bus Stand, Tambaram, at 19.00 hours on 13.11.1994 and instructed him to handover the cyanide capsules to Rajkumar. He further stated that on 13.11.1994 forenoon, he went to a duplicate key making shop situated in a street near Park Town Post Office, Madras and fabricated the false key. On 13.11.1994 evening he received a packet containing 10 cyanide capsules from the said Ragavan @ Aruviral Ragavan at Tambaram. On 09.12.1994, he visited the Central Prison along with Veerakumar and Subramanian

and handed over the packet containing 10 cyanide capsules and false key to Rajkumar.

9. It is relevant to note here that initially, there were 16 accused in this case. Out of the 16 accused, A1 to A5 were working as Wardens in Central Prison, out of whom, one warden died during the pendency of the trial. The case was charge sheeted before the 14th Metropolitan Magistrate Court, Egmore in C.C.No.7373 of 1995. The case was committed to Sessions in S.C.No.268 of 1995 before the III Additional Sessions Court, Chennai. After framing of charges, the case was committed to the file of the learned Additional District and Sessions Judge, (Fast Track Court No.I), Chennai. Since two accused namely, Balan and Balendiran admitted the offence they were convicted. Some of the accused died and some of the accused are absconding

and not traceable. Hence, trial was proceeded as against the respondents herein/ accused, in S.C.No.268 of 1995 arraying them as A1 to A5.

10.The Trial Court framed charges as against, accused 1 to 4 under Sections 120 (b) r/w. 224 and 222 of IPC; fifth accused under Sections 120 (b) r/w. 224, 224, 306 r/w.109 of IPC.

11.On the side of prosecution, 21 witnesses were examined as P.W.1 to P.W.21, 39 documents were marked as exhibits Ex.P.1 to Ex.P.39 and 38 material objects were marked as M.O.1 to M.O.38.

12.When the Trial Court examined the accused under Section 313 of Cr.P.C., in respect of the incriminating evidences available against them, they denied their complicity in the crime and pleaded innocence. However, they neither choose to examine any witness nor marked any documents.

13.The Trial Court after considering the oral and documentary evidence, acquitted the accused. Challenging the said acquittal, the appellant has filed this appeal before this Court.

14.The learned Government Advocate (Crl. Side) appearing for the appellant would submit that the Trial Court acquitted the accused on the extraneous ground that the other Officers were not implicated in the offence and the evidence of the prosecution witnesses did not corroborate with each other.

15.The learned Government Advocate (Crl. Side) would further submit that A3 who is incharge Warden of front side of cell no.2, A4 is para Warden of backside of the cell. Their primary duty is to watch the prisoners. In the present case, the detainee belong to LTTE and they are anti - nationalists. The failure on the part of the Warden to watch the prisoners itself is an offence. In the present case, they have conspired together and allowed the prisoners to escape from the Central Prison which is serious in nature. Hence, the Trial Court acquitting the accused is un-sustainable one.

16.The learned Government Advocate (Crl. Side) would further submit that the guilt on A5 has been clearly established. He would further submit that it is A5 who handed over cyanide capsules and false key to one Rajkumar who was in prison along with the other prisoners. He would further submit that P.W.6 is an eye witness to prove that A5 visited the Central Prison. He would further submit that P.W.18 Investigating Officer has clearly established the case of the prosecution before the Trial Court, however, the Trial Court

acquitted the accused which is un-sustainable one.

17.Per contra, the learned counsel appearing for the third respondent/ A3 would submit that the escaped prisoners were detained in cell nos.2 and 3. The case of the prosecution, as per the initial ranking, is that A8, A6 and A7 conspired with A1 to A5 to escape from prison or otherwise to commit suicide by consuming cyanide. A1 and A2 were incharge of special quarantine cell nos.2 and 3 and they failed to survive as to whether prison was properly locked or not. Further at 10.15 p.m. A6 and A7 and other accused escaped from prison and at that time A4 was on duty from 9 p.m. to 12 p.m.

18.The learned counsel appearing for the third respondent would submit that the specific charge against A3 is that he is negligent in keeping surveillance of cell no.2. He would further submit that the evidence of P.W.2 would indicate that immediately after the information, he rushed to the cell and there he found A3 inside cell no.3. However, the evidence of P.W.4 indicates that A3 was found outside cell no.2. Further, the evidence of P.W.5 indicates that A3 was in cell no.2. The evidence let in by all the three witnesses are contradictory in nature. The above witnesses clearly indicate that A3 was locked in cell. Therefore, the allegation of the prosecution that A3 was negligent in keeping surveillance does not arise. Hence, the prosecution failed to prove the conspiracy theory that the prison Wardens conspired with the prisoners and allowed them to escape from the prison.

19.The learned counsel appearing for the third respondent would further submit that there are other responsible Officers namely, Jail Superintendent, Additional Superintendent, Jailor, Deputy Jailor, Assistant Jailor and their duty is also to supervise the quarantine block and they are not arrayed as accused. They were simply examined as prosecution witnesses and only the last grade staffs were implicated in the offence.

20.The learned counsel appearing for the third respondent would further submit that originally the key was under the charge of one Rajendran and there is no proper explanation as to how the accused Rajkumar took the original key from the said Rajendran and handed over to the accused for preparing duplicate key and would further submit that the said Rajendran was also not implicated in the offence.

21.The learned counsel appearing for the third respondent would further submit that on the particular day, one Duraisamy was incharge of the two special cells. He was also not arrayed as accused and he was simply cited as prosecution witness. He would further submit that the prosecution deliberately saved the

Higher Officials and implicated the lower grade staffs which is un-sustainable one.

22.The learned counsel appearing for the third respondent would further submit that the prosecution has to establish that the Wardens intentionally allowed the prisoners to escape from prison. Mere negligence on the part of the Wardens would not amount to guilt. He would further submit that after elaborate trial, the Trial Court rightly acquitted the accused, hence, the order of the Trial Court need not be interfered with in a mechanical manner.

23.In support of his contentions, the learned counsel appearing for the third respondent relied upon the following decisions:

(i)The decision of the Hon'ble Apex Court reported in 2003 (1) SCC 204 (Dwarka Das and others Vs. State of Haryana), the relevant portion of which reads as follows:

"2.While there cannot be any denial of the factum that the power and authority to appraise the evidence in an appeal, either against acquittal or conviction stands out to be very comprehensive and wide, but if two views are reasonably possible, on the state of evidence : one supporting the acquittal and the other indicating conviction, then and in that event, the High Court would not be justified in interfering with an order of acquittal, merely because it feels that it, sitting as a trial court, would have taken the other view. While reappreciating the evidence, the rule of prudence requires that the High court should give proper weight and consideration to the views of the trial Judge. But if the judgment of the Session Judge was absolutely perverse, legally erroneous and based on a wrong appreciation of the evidence, then it would be just and proper for the High Court to reverse the judgment of acquittal, recorded by the Session Judge, as otherwise, there would be gross miscarriage of justice - so said Pattanaik, J. in Hariram & ors. v. State of Rajasthan, 2000(3) RCR(Cr1.) 414 (SC) : [2000(9) SCC 136]."

(ii)The decision of the Allahabad High Court reported in 7 Ind Cas 411 (Durga Prasad Vs. Emperor), the relevant portion of which reads as follows:

"3.As the above statement of facts

shows, the prisoners were not in the immediate custody of the applicant when they escaped. But the Courts below consider that he may be held responsible for the escape because he did not make proper arrangements for the despatch of the prisoners. It was, no doubt, the duty of the applicant to arrange for the despatch of the prisoners, but the question is whether he can be said to have "negligently suffered them to escape" within the meaning of Section 223, Indian Penal Code. It appears to me that before a person can be convicted under this Section of having negligently suffered a prisoner to escape, it must be shown not only that he was guilty of negligence, but that the escape was atleast the natural and probable consequence of his negligence. Indeed, I am disposed to think that it must be shown that the escape was directly due to the negligence."

(emphasis supplied)

24.The learned counsel appearing for the fifth respondent/A5 would submit that A5 is not a prisoner. He in order to meet one Rajkumar went to the Central Prison after due checking as per the Jail Manual and he conveyed the legal assistance taken outside the prison and he did not commit any offence as alleged by the prosecution.

25.The learned counsel appearing for the fifth respondent/A5 would further submit that P.W.18 in his evidence has clearly deposed

that A5 collected the key sketch from one Rajkumar and the same was handed over for the purpose of making duplicate key, for which, P.W.18 alleged that A5 met one Sivalaya Sivagnanam/ owner of Thai Hardwares. However, the said Sivalaya Sivagnanam was not examined as witness. He would further submit that without examining the said Sivalaya Sivagnanam, implicating A5 in the offence is un-sustainable.

26.The learned counsel appearing for the fifth respondent/A5 would further submit that P.W.6 in his evidence has deposed that one Veerakumar and A5 visited the Central Prison for the purpose of meeting one Rajkumar and his name was entered in the interview record. He would further submit that mere visiting the Prison for meeting an accused does not mean A5 committed guilt unless that meeting was for illegal purpose. In the present case, the prosecution miserably failed to establish that

A5 handed over cyanide capsules and duplicate key to Rajkumar. All these things were elaborately considered by the Trial Court and the Trial Court acquitted the accused, which is perfectly valid and this Court need not interfere with the order of the Trial Court unless the order is perverse.

27. In the light of the above submissions, now it has to be analysed whether the order of acquittal passed by the Trial Court is valid or not.

28. It is represented that during the pendency of this Appeal, respondents 1, 2 and 4/ accused 1, 2 and 4 died.

29. Admittedly, A1 to A4 were Prison Wardens and A5 is a non prisoner. The Central Prison, Madras is situated at the heart of the city and near the Central Railway Station. The Central Prison was manned by Jail Superintendent, Additional Superintendent, Jailor, Deputy Jailor, Assistant Jailor, Head Constable and other last grade staffs.

30. In the present case except A1 to A4 and one another Warden no other superior Officer incharge of Prison was implicated as accused in the charge sheet. It is also admitted fact that each block of cell is supervised by one Head Warden and two Wardens. In the present case, the Head Wardens were not implicated as accused and only Warden posted in the front side of the cell and backside of the cell were implicated. Though initially 16 accused were implicated in the FIR, only 5 accused faced the trial and all the prosecution witnesses were examined to implicate the accused. Most of the prosecution witnesses are superior Officers of A1 to A4. They generally gave incharge of surveillance to A1 to A4 of the particular cells as it is their duty and responsibility.

31. During the pendency of this Appeal, respondents 1, 2 and 4/ accused 1, 2 and 4 died. Hence, I feel that it is enough to discuss the issue with regard to the respondents 3 and 5/ accused 3 and 5. The relevant witnesses who deposed as against the third respondent/ A3 are P.W.1, P.W.2, P.W.4 and P.W.5. The relevant witnesses who deposed as against the fifth respondent/ A5 are P.W.6, P.W.13 and P.W.18.

32. P.W.1 in his evidence has stated that from 9 p.m. to 12 p.m., Chelika Mastan/ A3 was posted as Warden and one Annadurai/ A4 was para Warden in the particular cell. Charge against A1 to A4 is that they were negligent in surveillance of the prisoners and the same was confirmed by P.W.2 in his evidence. However, P.W.2 in his evidence has deposed that immediately after the offence, he rushed to the cell and found Chelika Mastan/ A3

locked in cell no.3 and one Raj locked in cell no.2. However, for the reasons best known to the prosecution, only Chelika Mastan was implicated and Raj was not implicated in the offence and there is no proper explanation as to why the said Raj came to cell no.2.

33.P.W.4 in his evidence indicate that A3 and one Raj was standing outside the Prison and that he went along with P.W.12. Further P.W.5 in his evidence has deposed that A3 and one Raj were locked in different cell contrary to the evidence of P.W.2. The glaring discrepancy was not noted by the Trial Court.

34.Perusal of the evidence of P.W.2, P.W.4 and P.W.5 does not corroborate with each other. The prosecution has not even established the negligence on the part of A3 and that A3 has allowed the prisoners to escape from the prison. Though P.W.1 and P.W.8 have deposed that A3 was incharge of surville duty on that particular day, however, the evidence of P.W.2, P.W.4 and P.W.5 are contradictory in nature and no evidence is available to implicate A3 to establish that A3 was negligent and he along with the other Prison Wardens conspired together and allowed the prisoners to escape from the prison.

35.It is relevant to note here that A3 joined the Central Prison, Madras, only on 27.02.1995, when the occurrence happened. Hence A3 conspired with the other accused is not proved and the prosecution also miserably failed to prove the case beyond reasonable doubt in respect of A3.

36.It is relevant to note that the entire cell key was under the charge of P.W.6. He was having possession of the original key and there was no explanation from the prosecution side as to how the original key was taken from P.W.6 and who prepared the sketch. The admitted case of the prosecution is that one Rajkumar/ prisoner prepared the sketch of the original key and handed over to A5 for preparation of duplicate key. It is also the case of the prosecution that A5 handed over the sketch of the key to one Sivalaya Sivagnanam/ owner of Thai Hardwares in the Evening Bazaar Street. However, the said Sivalaya Sivagnanam was neither examined as witness nor arrayed as accused.

37.It is also relevant to note that the evidence of P.W.18 indicate that search was conducted in the house of A3 and no incriminating materials were recovered from his house. On a perusal of evidence of P.W.18/ Investigating officer indicate that he was arrested in Arambakkam and remanded to judicial custody. Thereafter, he recorded his confession statement in which he revealed immediately after the arrest on the same day at 17.30 hours recovered his money purse which contained sketch

of key and photo of LTTE leader and all the documents were entered in the mahazer in the presence of one Ezhumalai and Munusamy.

38.However, on perusal of the evidence of P.W.13/ Ezhumalai/ mahazer witness, he deposed that he was residing in No.44, Lloyds Road and doing dry cleaning works. When he and his friend were standing in Lloyds Road - Natesan Road junction, at that time two Policemen came and requested them to come as mahazer witnesses. Accordingly, they went to "Q" Branch C.I.D. Office and signed as mahazer witnesses.

39.The evidence of P.W.18 and P.W.13 are contradictory in nature. The above said money purse containing sketch of key and LTTE leader photo was recovered from A5 at the time of arrest. However, the evidence of P.W.13 clearly indicate that he was taken to "Q" Branch C.I.D. Office and his signature was obtained in the mahazer. It also creates serious doubt in the manner in which the prosecution conducted the investigation.

40.Further, the order of acquittal cannot be interfered with in a mechanical manner. This Court is well aware that re-appreciating the evidence is not permissible unless the order of the Trial Court is perverse, legally erroneous and based on wrong appreciation of facts.

41.Thus, I am of the view that the prosecution has not established the guilt on the accused beyond all reasonable doubt and the order of acquittal passed by the Trial Court need not be interfered with.

42.In the result, the criminal appeal is dismissed as abated as against the respondents 1, 2 and 4/ accused 1, 2 and 4.

43.The criminal appeal is dismissed as against the respondents 3 and 5/ accused 3 and 5. The order of acquittal passed by the learned Additional District and Sessions Judge, (Fast Track Court No.I), Chennai in S.C.No.268 of 1995 dated 29.05.2002, is hereby confirmed.

Sd/-
Assistant Registrar (CS-VIII)

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Sub Assistant Registrar

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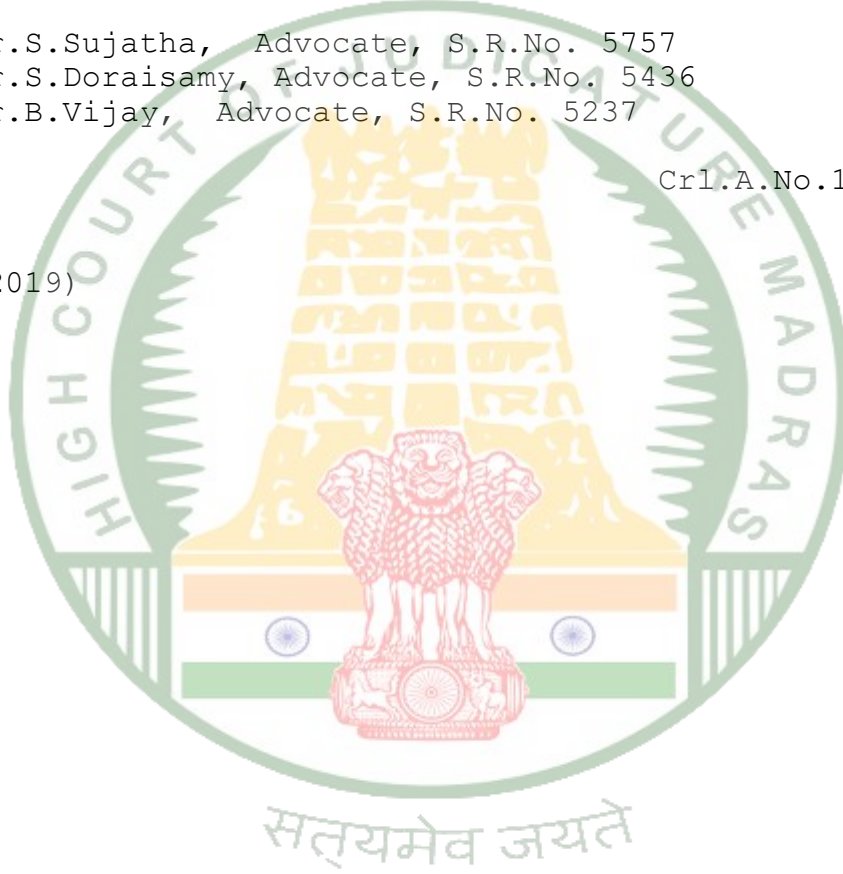
1.The Additional District and Sessions Judge,
(Fast Track Court No.I), Chennai.

2.The Inspector of Police,
"Q" Branch C.I.D.,
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High Court, Madras.

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+1cc to Mr.B.Vijay, Advocate, S.R.No. 5237

Cr1.A.No.1027 of 2003

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