

Bail Slip.

The 1st Appellant/2nd Accused viz., Siva @ Jeeva @ Atham @ Mottai Khadar @ Abdullah , S/o. Lakshmanan aged about 33 years and Sheikh Moideen @ Nazrudeen 2nd Appellant/Accused No.3, S/o. Nazoor Pitchai were directed to be released on bail vide Crl.M.P. 3/2007 in Crl.A. No. 1049/2006 dated 12.02.2007 and Crl.M.P. 4/2007 in Crl.A. 1049/2006 dated 03.03.2007 respectively.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON: 11.03.2019

PRONOUNCED ON: 16.04.2019

CORAM:

THE HONOURABLE MR.JUSTICE A.D.JAGADISH CHANDIRA

Crl.A.No.1049 of 2006

1.Siva @ Jeeva @ Atham @ Mottai Khadar @ Abdullah

Appellant/A2

2.Sheikh Moideen @ Nazrudeen

Appellant /A3

Vs

State by Inspector of Police

Special Investigation Team

CBCID, Chennai-2

Respondent

Prayer:- This Criminal Appeal is filed against the judgement of conviction and sentence, dated 17.11.2006, made in SC.No.13 of 2001, by the Special Court for Exclusive Trial of Bomb Blast Cases, Poonamallee.

For Appellant : Mr.C.Vijayakumar

For Respondent : Mr.K.Prabakar, APP

JUDGEMENT

1.This Criminal Appeal is filed against the judgement of conviction and sentence, dated 17.11.2006, made in SC.No.13 of 2001, by the Special Court for Exclusive Trial of Bomb Blast Cases, Poonamallee.

- 2.The 1st Appellant/A2 was convicted and sentenced (a) for the offence under Section 120B of IPC read with 307 of IPC, to undergo Rigorous Imprisonment for eight years, (b) for the offence under Section 120B of IPC read with Section 3 of the Explosive Substances Act, to undergo Rigorous Imprisonment for eight years, (c) for the offence under Section 120B of IPC read with Section 4 Tamil Nadu Property (Prevention of Damages and Loss) Act (in short TNPP Act), to undergo Rigorous Imprisonment for three years, (d) for the offence under Section 3 of the Explosive Substances Act, read with Section 34 of IPC, to undergo Rigorous Imprisonment for eight years, (e) for the offence under Section 307 read with 34 of IPC (14 counts), to undergo Rigorous Imprisonment for eight years under each count and (f) for the offence under Section 4 of the TNPP Act, to undergo Rigorous Imprisonment for three years and was directed to undergo the sentences concurrently.
- 3.The 2nd Appellant/A3 was convicted and sentenced (a) for the offence under Section 120B of IPC read with Section 3 of the Explosive Substances Act, to undergo Rigorous Imprisonment for eight years, (b) for the offence under Section 120B of IPC read with 307 of IPC, to undergo Rigorous Imprisonment for eight years, (c) for the offence under Section 120B of IPC read with Section 4 Tamil Nadu Property (Prevention of Damages and Loss) Act, to undergo Rigorous Imprisonment for three years, (d) for the offence under Section 3 of the Explosive Substances Act, read with Section 6 of the Act to undergo Rigorous Imprisonment for eight years and (e) for the offence under Section 4 of the TNPP Act, to undergo Rigorous Imprisonment for three years and was directed to undergo the sentences concurrently.
- 4.There are three accused persons, namely, A1 to A3 in SC.No.13 of 2001 and they are alleged to be religious fundamentalists. The Appellants herein are A2 and A3. The accused were charge sheeted for the offences under Sections 120B, 436 and 307 of IPC and Sections 3 and 6 of the Explosive Substances Act and Section 4 of the Tamil Nadu Property (Prevention of Damages and Loss) Act, 1992, read with 109 of IPC, alleging that the accused/A1 to A3, conspired among themselves in the month of July 1996 to stall the cabaret dance performance at Maxim's Hall, within Imperial Hotel at Egmore and accordingly, A3 arranged a house for A1 and A2 at No.5/121, 115th Street, Muthamiz Nagar, Kodungaiyur, belonging to one Sabu, residing at No.38, 4th Street, TVK Nagar, Chennai and conspired to blast the dance floor of the said Hotel. It is further alleged that A1 manufactured an improvised explosive device and A3 helped in concealing that bomb at his Scrap Iron Shop, located at No.110. TH Road, Erukkancheri and that in furtherance of the above conspiracy, A1 and A2 obtained the stored bomb from A3, made

entry into the Maxim Hall of the Imperial Hotel on 27.09.1996 and planted the bomb below the 2nd and 3rd tables under the cover of semi darkness and that when the dancing programme was going on, A1 switched the bomb and left the Maxim Hall with A2 and that within few minutes thereafter, the bomb exploded with a huge noise, which caused various types of injuries to the customers who witnessed the programme and to the employees of the programme. It is further alleged that the loss occurred to the furniture and the floor of the dance hall was estimated to be Rs.1,50,000/- and thereby, the accused appeared to have committed the offences under the above provisions of law.

5. The case was taken on file in SC.No.13 of 2001, by the Special Court for Exclusive Trial of Bomb Blast Cases, Poonamallee. Upon appearance of the accused and after hearing both sides, necessary charges under Sections 120B, read with 307 of IPC and 34 of IPC and Section 3 of the Explosive Substances Act, 1908 and Section 4 of the TNPP Act and Section 3 of the Explosive Substances Act, 1908 and Section 34 of IPC and Section 307 (18 counts) of IPC and Section 4 of the TNPP Act or alternative charge under Section 436 read with 34 of IPC, were framed against A1 and A2. Charges under Sections 120B, read with 307 of IPC and 34 of IPC and Section 3 of the Explosive Substances Act, 1908 and Section 4 of the TNPP Act, 1992 and Section 3 of the Explosive Substances Act, 1908 read with 109 of IPC and Section 4 of the TNPP Act or alternative charge under Section 436 read with 109 of IPC, were framed against A3. The accused had denied the charges and sought for trial. In order to bring home the charges against the accused, the Prosecution examined fifty four witnesses as PW.1 to PW.54 and also marked Exs.P1 to P54 and Mos.1 and 25. Ex.C1 was marked as Court Exhibit.
6. On completion of the evidence on the side of the prosecution, the accused were questioned under Section 313 Cr.PC as to the incriminating circumstances found in the evidence of prosecution witnesses and the accused have come up with the version of total denial and stated that they have been falsely implicated in this case. The court below, after hearing the arguments advanced on either side and also looking into the materials available on record, found the accused/appellants guilty and awarded punishments, as referred to above, which is challenged in this Criminal Appeal by the Appellant/A2 and A3 alone.
7. This court heard the submissions of the learned counsel on either side.
8. The learned counsel for the Appellants would contend that the facts of a bomb blast in the Dance Hall in the Hotel and the subsequent treatment to the victims are not disputed and that though the case relates to planting of improvised explosive

substances in the Dance Hall, the Prosecution has not proved the charges against the Appellants beyond all reasonable doubts, by valid and clinching evidence and that the entire case of the Prosecution rests only on the circumstantial evidence. He would further submit that the Trial Court erred in convicting the Appellants/ accused on mere presumptions and assumptions and that the entire evidence of the Prosecution is concocted and fabricated and that the Appellants were implicated based on the alleged conspiracy said to have been hatched in the presence of PW.41, whose evidence is unbelievable and not credible and does not inspire confidence and that the investigation has proceeded only after falsely fixing the accused and that the materials have been fabricated and a false case had been webbed to prove the alleged involvement of the Appellants in this case.

9. The learned counsel for the Appellants would further contend that the Trial Court erred in believing the evidence of PW.15 and PW.16, whose evidence also are artificial and do not inspire confidence and cannot be believed and that the alleged occurrence had taken place on 27.09.1996 at 9.50 p.m. and that the First Information Report does not disclose anything with regard to the identity of the accused or suspicion on anybody to have involved in the occurrence. He would further contend that the Trial Court erred in convicting the Appellants based on illegal identification of showing the Appellant/A2 to the witness, PW.1 and obtaining the signature of PW.1 in the photograph of the Appellants and that initially the case was registered by the local Police and since there was no progress in the investigation, it was later transferred to the Respondent, Special Investigation Team, CBCID, Chennai.

10. The learned counsel for the Appellants would further submit that even as per the evidence of PW.51, the involvement of A1, Mohammed Kasim, was known to them, while, on 14.6.1997, examining one Raja Hussain, son of Mohammed Ali, the accused in Cr.No.381 of 1997 on the file of the Kondungaiyur Police Station and he was examined in the Kothavalchavadi Police Station and only thereafter, as per the evidence of PW.52, the involvement of the 1st Appellant/A2 came to the knowledge through one Ali Abdullah on 16.4.1998, who was in custody in R7 K.K.Nagar Police Station and that only after such intimation, the Appellants/A2 and A3 and A1 were implicated in this case, however, neither Raja Hussain nor Ali Abdullah have been examined, which creates a serious dent in the case of the Prosecution. He would further submit that no Officer in the Police Station had been examined to prove that the Respondent Police got information about the involvement of the Appellants while examining the above persons who were in custody and that the alleged confessions or information cannot be legally sustainable to base conviction.

11. The learned counsel for the Appellants would further submit that the Trial Court failed to take into consideration that there had been two sanction orders and that as per the original sanction order, one Zakir Hussain, was added as the accused and later, the 1st Appellant/A2 had been added in this case and that no explanation had been given by the Respondent for deleting the name of the said Zakir Hussain and thereby, creating a doubt in the case of Prosecution.
12. The learned counsel for the Appellants would further contend that the 1st Appellant/A2 was arrested in the case under PT Warrant on 27.07.1999, after three years of the alleged occurrence and that the 2nd Appellant/ A3 was arrested on 03.03.1998 and that even after six months of the alleged occurrence, no incriminating materials were disclosed by the Prosecution witnesses, PW.1 to PW.50 and that it was admitted by PW.50 that till the case was under investigation by him for six months, no clue about the involvement of any accused was disclosed to him by anyone, including PW.1 and that for the first time in the Court, PW.1 implicated the accused, though nothing is revealed in the complaint or statement. He would further contend that except the belated and tutored unbelievable evidence of PW.41, there is no proof for the charge of conspiracy. Further, the conduct of PW.41 being silent and not having spoken to anyone, after having known about the conspiracy and having immediately known about the blast in the Hotel, makes her evidence unbelievable.
13. The learned counsel for the Appellants would further contend that no test identification parade was held for the 1st Appellant/A2 and only in the court, for the first time, the 1st Appellant/A2 was identified and ultimately contend that it is a case of circumstantial evidence, which has not been proved to complete the chain of circumstances and that there was no direct eye witness to the occurrence and in the First Information Report, no accused persons were named and that the case has been foisted based on the circumstantial evidence and that the accused were implicated after a very long period of time, thereby creating a grave doubt in the case of the Prosecution and that the Prosecution has miserably failed to prove the case against the Appellants and the standard proof needed for convicting an accused person laid down by the Honourable Supreme Court and the other decisions were not considered by the Trial Court and hence, the Appellants deserve to be acquitted.

14. In support of his contentions, the learned counsel for the

Appellants would rely on the following decisions:-

- 1.2017 3 Crimes 201 SC (Seeni Nainar Mohammed Vs. State by Deputy Superintendent of Police.
- 2.AIR 1982 SC 839 (Mohanlal Vs. State)
- 3.Ravi Vs. State by Inspector of Police (AIR 2007 SC 1729)
- 4.Ramesh Vs. State of Karnataka (Crimes 2009 3 SC 349)
- 5.Shaik Umar Ahmed shaik Vs. State of Maharashtra (AIR 1998 SC 1922)
- 6.Sharad Vs. State of Maharashtra (Air 1984 SC 1622)
- 7.Sujit Biswas Vs. State of Assam (AIR 2013 SC 3817)
- 8.Padala Veera Reddy Vs. State of AP (AIR 1990 SC 79)
- 9.Rajkumar Singh Vs State of Rajasthan (AIR 2013 SC 3150)
- 10.Karunakaran Jabamani Nadar In Re (1974 LW-Crl.190)
- 11.Abuthagir @ Thagir Vs. State (2006 1 LW Crl. 179)

15.On the contrary, the learned Additional Public Prosecutor would contend that the case, which is based on both direct and circumstantial evidence, has been proved beyond all reasonable doubts against the accused, by cogent and convincing evidence of all the injured, evidence of the Doctors, Forensic Experts and on the specific evidence of PW.14 to PW.16, PW.41, PW.45 and PW.46 and PW.50 to PW.55, who are the Investigating Officers and that there is also intensive nature of the evidence found embedded in the testimony of the Prosecution witnesses, which unhesitatingly proved the culpability of the accused, and their accountability to the charges and that the Trial Court had rightly come to the conclusion that the accused had clandestinely planned and executed the evil design in a most calculated manner. He would further contend that since the probability of the case very much stood against the accused and the evidence before the Court alone is substantive in nature and considering the importance and seriousness of the case, though there were minor contradictions during the course of the investigation, which are nothing unusual in a case of this grave nature, the Trial Court had found the Appellants/accused guilty and they were penalized as stated above, by the impugned judgement, which warrants no interference.

16.I have given my careful and anxious consideration to the rival contentions put forward by either side and thoroughly scanned through the entire evidence available on record and also perused the impugned judgement of conviction, including the relevant provisions of Law and authorities of various Courts.

17.The grounds, on which the learned counsel for the Appellants/A2 and A3 has sought to acquit the Appellants/A2 and A3 are that the alleged offence of conspiracy envisaged under

Section 120B of IPC and the Appellants/A2 and A3 having planted the explosives in the dance hall have not been proved by the Prosecution, by reliable and valid evidence and that non-conducting of test identification parade is fatal to the case of the Prosecution and that the circumstantial evidence is not proved to complete the chain of circumstances and that there was a long delay in sending the First Information Report and documents to the Court and that there are no incriminating materials found to implicate the Appellants/A2 and A3.

18. It is seen from the impugned judgement of conviction and sentence and the other materials that the case of the Prosecution main rests on the evidence of the injured witnesses, the Doctors, the Forensic Experts and on the specific evidence of PW.14 to PW.16, PW.41, PW.45 and PW.46 and PW.50 to PW.55, who are the Investigating Officers.

19. In so far as the offence under Section 120B of IPC, namely, the charge of 'conspiracy', is concerned, the Prosecution as well as the Trial Court has mainly relied on the evidence of PW.41, who was also a tenant in the premises, where the A1 was residing as a tenant and in respect of the charge of the 1st Appellant/A2, procuring the explosive from the 2nd Appellant/A3, the Prosecution has relied on the evidence of PW.15 and PW.16. Further, with respect to the intimation/information regarding the involvement of A1 and the 1st Appellant/A2 in the offence, had been spoken to by PW.51 and PW.52.

20. The occurrence had taken place on 27.09.1996. PW.41 is the person, who has spoken about the conspiracy said to have been hatched between A1 and the 1st Appellant/A2. She was a tenant along with the accused in a portion. She has stated that during July 1996, on a particular day, when she had gone to the upstairs, she had heard A1 and the 1st Appellant/A2, discussing about the dance programme being held at Imperial Hotel along with one another person and that three persons have discussed to plant bombs in the Hotel and that in the same month, on a day, three persons came back home at 11.00 p.m. and that since she was having the gate key, she had opened the common gate and allowed them inside and that on the next day, A1 left to his home town, saying that his father was not feeling well and that the other accused also left and that on the next day, she had come to know about the bomb explosion in the Imperial Hotel.

21. PW.41 has further deposed that during 1998, one Police Officer had shown a photograph and enquired her whether the person in the photograph was residing upstairs and thereafter, he had obtained her signature in the photograph and left away. Thereafter, during 1999, another Inspector came along with the 1st Appellant/A2 to her house and when before he could enquire

her, the 1st Appellant/A2 had informed him that he was staying in the house and she was asked to affix her signature in the photograph. During the cross examination, she had stated that on 31.8.1998 and 29.7.1999, she was examined by the Police and she had also stated that she got knowledge about blasting of bombs in the Imperial Hotel on 27.9.1996, by reading from the Newspaper. Whereas, strangely, she had neither spoken or discussed about the alleged conspiracy and the subsequent bomb blast, despite having knowledge of the same on the next day. It is also highly strange that even during her examination on 31.8.1998 and 29.7.1999 by the Police, she has not stated it to the Police or made any whisper about the same to anybody. In fact, having known about the conspiracy and the incident, it is really strange that she had not even discussed with her husband or to the owner of the house, where she and the accused were living as tenants and thereby, the evidence of PW.41 with regard to the alleged conspiracy is unnatural and is unreliable and thereby cannot be believed.

22. Further, the evidence of PW.15 and PW.16 in respect of the 1st Appellant/A2, having confessed in their presence to the Police that the 2nd Appellant/A3 had handed over the explosives to him, cannot be believed at all. Admittedly, PW.15 and PW.16 have stated that they have been tutored to give evidence in the Court and further their evidence do not inspire confidence, regarding the manner of the 1st Appellant/A2 having confessed about having received the explosive device from the 2nd Appellant/A3.

23. Further, the involvement of A1 and the 1st Appellant/A2, as per the Prosecution, was known to them while investigating one Raja Hussain and one Raja Abdullah, who were in custody in the Kothavalchavadi Police Station and K.K.Nagar Police Station, respectively. Non-examination of the persons/informants and non examination of the Station House Officers, in whose presence, they were said to have been examined also creates a doubt with regard to the information regarding the involvement of the Appellants/A2 and A2 in the crime.

24. An offence of conspiracy cannot be deemed to have been established on mere conjectures and surmises or suspicion or inferences, which are not supported by cogent and legally acceptable evidence. There must be prima facie evidence that a person was a party to the conspiracy and that there was an agreement for that purpose and there must be meeting of the minds and that mere knowledge or discussion would not be sufficient. Anything said or done or written by the conspirators after the formation of the conspiracy will be very material. Thus, to make out an offence of criminal conspiracy, it is not sufficient to establish that a number of persons had a common intention to commit an act opposed to or

forbidden by the Law and it has further to be proved that they agreed to commit the relevant act. Similarly, the Law requires specific proof against each of the conspirators, participating in doing a particular criminal offence.

25. It is settled law that to prove a criminal conspiracy, there must be evidence, direct or circumstantial to show that there was an agreement between two or more persons to commit an offence. There must be a meeting of minds, resulting in ultimate decision taken by the conspirators, regarding the commission of offence and where the factum of conspiracy is sought to be inferred from circumstances, the Prosecution has to show that those circumstances give rise to a conclusive or irresistible inference of an agreement between two or more persons to commit an offence.

26. The Honourable Supreme Court has held in *R. Venkatakrisnan Vs. CBI* (2009-11-SCC-737) that the Court, for the purpose of arriving at a finding as to whether the said offence of conspiracy has been committed or not, may take into consideration the circumstantial evidence and while doing so, the court must bear in mind that meeting of the minds is essential and that mere knowledge or discussion would not be sufficient.

27. Merely levelling a charge of conspiracy, without proper and believable evidence, is not sufficient to mulct criminal liability on the Respondents. The purpose or circumstances, warranting an inference of existence of a conspiracy, should be proved so as to bring the Respondents to face the trial in criminal court.

28. In the case on hand, there is nothing in the statement of PW.41, based on which, the Trial Court uphold the charges under Section 120B of IPC, to show that there was a meeting of minds amongst the accused to commit the offence. Further, apart from the evidence of PW.41, which is contradictory in nature, there is no other proof to base conviction under Section 120B of IPC and consequently, the evidence of PW.41 cannot be believed to base conviction under Section 120B.

29. Another ground raised is that no test identification parade was conducted by the Prosecution and that there was no identification of the Appellants/A2 and A3 by the witnesses as to the persons, who have involved in the occurrence. When the Appellants were identified for the first time in court, in the absence of a test identification parade, the evidence of the witnesses becomes valueless and their evidence could not be relied upon to base conviction.

30. In this regard, it is relevant to refer to the evidence of PW.1, who according to the Prosecution, is a star witness. The

accused were identified for the first time only in the Court. A perusal of Ex.P1, statement of PW.1 shows that when the bomb exploded, all the lights were not functioning and in the dark, he was not able to see anything and he was badly injured. In Ex.P1, there is no identity of any person to have planted the bomb and he stated that somebody might have planted the bomb. In the First Information Report, Ex.P52 also, there were no named accused persons. There is also no description of any of the suspected persons and their appearance mentioned.

31. In his evidence in chief, PW.1 has deposed that the Police enquired him about three to four times and that after two years of the occurrence, he saw only one person, out of the persons who came to the Dance Hall and that in the year 1999, A2 was brought and shown to him in the Dance Hall and a photograph was also shown to him and his signature was obtained in the photograph and he identified the person in the said photograph as A2 only in the Court. He also denied the suggestion that when he went to the Office of CBCID, the accused persons were present. He also denied the suggestion that he identified the accused as and when he was brought to the Court. Thus, it is seen that for the first time in the Court, PW.1 implicated the accused, despite the fact there is nothing revealed in the complaint or statements with regard to the identity of the accused or suspicion on anybody to have involved in the occurrence. There is also clear crystal evidence by PW.53 that except A1, no test identification parade was conducted in respect of the Appellants/A2 and A3 and he also denied the suggestion that there were witnesses present to identify the accused persons.

32. The mere identification of the accused persons, at the trial for the first time is from its very nature inherently of a weak character. The purpose of prior test identification parade is to test and strengthen the trustworthiness of that evidence. It is, accordingly, considered as a safe rule of procedure to generally look for corroboration of the sworn testimony of the witnesses in Court as to the identity of the accused, who are strangers to them, in the form of earlier identification proceedings. In the case on hand, PW.14 identified A3 for the first time in the Court in the year 2003, after more than five years of the occurrence. PW.15 has deposed that he was enquired by the Police, after nearly three years of occurrence on 29.07.1999 and on that date, only A2 was shown to him for the first time and that he never seen A2 before the said date. PW.15 has further deposed that no statement was obtained from him in the place of occurrence and only on reading the summon received by him on 17.6.2003, he came to know the name of the accused persons. In his cross examination, PW.15 has deposed that he saw A3 for the first time in the Court. PW.16 has also deposed in similar lines to that of the deposition of PW.15.

Therefore, the identification of the accused persons by PW.1, PW.14 and PW.15, for the first time in court, cannot be safely relied upon as no probative value could be given to such uncorroborated evidence of PW.1. A conviction should not be based on a vague identification. Unless the evidence is absolutely clear, it would be unsafe to convict the accused for such a serious offence.

33. In AIR 1982 SC 839 (Mohanlal Gangaram Gehani Vs. State of Maharashtra), it was held that when the victim did not know the accused prior to the occurrence and when the test identification parade was not held, identification of the accused for the first time in the Court is valueless and cannot be relied upon.

34. In AIR 2007 SC 1729 (Ravi @ Ravichandran Vs. State), it was held that where the manner in which occurrence took place as well as conduct of Prosecution witnesses do not lead to an inference that the accused has been properly identified, the conviction is not sustainable and the accused is entitled to the benefit of doubt.

35. The statement of the witnesses in the Court identifying the accused in the Court lost all its value and could not be made basis for recording conviction against the accused. The reliance of evidence of identification of the accused in the Court by PW.2 and PW.11 by the Designated Court, was an erroneous way of dealing with the evidence of identification of the accused in the Court by the two eye witnesses and had caused failure of justice. Since the conviction of the Appellants have been recorded by the Designated Court on wholly unreliable evidence, the same deserves to be set aside, as has been held in AIR 1998 SC 1922 (Shaik Umar Ahmed Shaik and another Vs. State of Maharashtra).

36. In 2010 3 SCC 508 (Mulla Vs. State of UP), it was held that test identification parade has to be conducted timely, if not, then the delay has to be explained and such delay should not cause exposure of the accused.

37. In a recent decision of the Honourable Supreme Court reported in 2019 2 SCC 303 (State of UP Vs. Wasif Haider and others), it was held that not only there was a delay in conducting the test identification parade, but no explanation for the same has been forthcoming from the Prosecution and this creates a considerable doubt about the genuineness of the test identification parade.

38. Though photograph identification of the accused is permissible, a condition is there that if, during the investigation, a witness indicates the identifying features of

the accused, the same can be confirmed by showing him more than one photograph of the same person. But, if the accused is available for identification, his photograph should not be shown. For such proposition, reliance can be placed on the decision of the Honourable Supreme Court reported in 2005 1 SCC 85 (D.Gopalakrishnan Vs. Sadanand Naik and others), wherein the Honourable Supreme Court has deprecated the procedure by photograph identification, when nothing had been spoken earlier by the witnesses with regard to identity of the accused. In the case on hand, no test identification parade has been conducted in respect of the 1st Appellant/A2. Moreover, PW.1 has stated that the 1st Appellant was brought by the police and shown to him and thereafter, his signature was obtained in the photograph and thereby, the procedure adopted, by the Investigating Officer with regard to the identifying of the 1st Appellant/A2 cannot be justified, that too, when especially PW.1 has not stated anything about for having suspected the involvement of the accused the identification of the accused.

39. In the case on hand, yet another contention of the Appellants/A2 and A3 is that the witnesses PW.1, PW.14 to PW.16 are all tutored witnesses and hence, their evidence cannot be relied and believed.

40. The evidence of PW.1, as narrated above, is to be eschewed as it is full of contradictions and the evidence of PW.14, PW.15 and PW.16 as well. It was based on the confession said to have been given by A2, in their presence that A3 handed over the explosive to him prior to the date of occurrence. No mahazar was drawn regarding such a confession and the so called confession against A3 by A2 cannot be taken as a legally acceptable evidence. PW.14 and PW.15 have admitted that they had let in evidence on the instructions of the Respondent Police. It is, thus, clear that they are tutored witnesses and hence, their evidence cannot also be sustained to base conviction.

41. Even after six months of the occurrence, no incriminating materials against the Appellants/ accused, were disclosed by the witnesses. It was admitted by PW.50, Investigating Officer that till the date of handing over the case to CBCID, i.e. 17.03.1997, he did not know the accused persons and the investigation was not done on that aspect and that the witnesses examined by him did not know the accused persons and the complainant PW.1 also did not know about them. It was also stated by PW.50 that in the complaint and in the statement given to PW.50, PW.1 has not spoken anything about him watching the Dance Programme and while watching, two unknown and different persons were sitting on the tables in the Dance Hall, which is contradictory to the statement made by PW.1 in his deposition that he was watching the Dance Programmes and

two such persons were sitting on the tables. PW.50 has also stated that though PW.29, Sub Inspector of Police, Bomb Squad handed over the material objects, he did not prepare any seizure mahazar in the presence of the witnesses. PW.51 has also deposed that there are no details about the accused persons in the First Information Report. These would go to show that the investigation was not done properly, thereby making the case of the Prosecution, highly doubtful.

42. Now coming yet another ground of delay, it is the case of the Appellants/A2 and A3 that there was also long delay in submitting the complaint, First Information Report, the statement of the witnesses, documents and material objects to the Court.

43. The date and time of the occurrence was 27.09.1996 at 21.50 hours. Admittedly, the 1st Appellant/A2 was arrested under the PT Warrant on 27.07.1999 and the 2nd Respondent Appellant/A3 was arrested on 03.03.1998 and that on 17.03.1997, after nearly six months, PW.50, after examining the witnesses and recording their statements, handed over the case papers to the Higher Officials for further investigation. PW.51, who conducted further investigation, had sent the papers on 14.11.1997 for further investigation. PW.52, Investigating Officer, who conducted further investigation, has sent the case papers to the Deputy Superintendent of Police, for further investigation. PW.53, Investigating Officer handed over the case papers on 26.12.1998. Necessary applications were filed before the District Collector on 12.04.2000 and 05.07.2000 to prosecute the accused. Thereafter, in the year 2001, the final report was filed before the Court concerned, after nearly more than five years of the occurrence. Such an enormous delay in implicating the accused and in sending the First Information Report to the Court concerned creates a grave doubt about the veracity of the case of the Prosecution.

44.

45. As stated above, the case of the Prosecution mainly rests on the circumstantial evidence. The factors to be taken into account in adjudication of the circumstantial evidence laid down by the Honourable Supreme Court in its decisions rendered in the cases of Sharad Birdhichand Sarda Vs. State of Maharashtra (1984 4 SCC 116: AIR 1984 SC 1622) and M.G. Agarwal Vs. State of Maharashtra (AIR 1963 SC 200), are as follows:-

- 1) The circumstances, from which the conclusion of guilt is to be drawn should be fully established. The circumstances concerned "must" or "should" and not "may be" established.
- 2) The facts so established should be consistent only with the hypothesis of the guilt of the accused, that is to say, they should not be explainable on

any other hypothesis except that the accused is guilty.

3)The circumstances should be of a conclusive nature and tendency.

4)They should exclude every possible hypothesis except the one to be proved; and

5)There must be a chain of evidence so complete as not to leave any reasonable ground for the conclusion consistent with the innocence of the accused and must show that in all human probability the act must have been done by the accused.

46.In order to base conviction of the Appellants/A2 and A3 based on circumstantial evidence, the Trial Court, has relied on the testimonies of PW.41 and PW.45 regarding the stay of A1 and A2 and the evidence of PW.15 and PW.16 regarding the letting out a shop premises to A3.

47.The contention of the Appellants/A2 and A3 is that the circumstance as brought on record would not go to prove their guilt. There are series of decisions holding that no one can be convicted on the basis of mere suspicion, however, strong it may be.

48.As analysed above, the evidence, both oral and documentary evidence, neither there is any direct oral/ocular and documentary evidence nor any circumstantial evidence against the Appellants, which conclusively proved the case of the Prosecution beyond any reasonable doubt. There was no eye witness to the occurrence to implicate the Appellants/A2 and A3 to have planted the bomb and exploded it.

49.In AIR 1984 SC 1622, (Sharad Birdhichand Sarda Vs. State of Maharashtra), it was held as follows:-

"175. This now brings us to the fag end of our judgement. After a detailed discussion of the evidence, the circumstances of the case and interpretation of the decisions of this Court the legal and factual position may be summarised thus:

(1) That the five golden principles enunciated by this Court in Hanumant's decision (supra) have not been satisfied in the instant case. As a logical corollary, it follows that it cannot be held that the act of the accused cannot be explained on any other hypothesis except the guilt of the appellant nor can it be said that in all human probability, the accused had committed the murder of Manju. In other words, the prosecution has not fulfilled the essential

requirements of a criminal case which rests purely on circumstantial evidence.

(2) That, at any rate, the evidence clearly shows that two views are possible—one pointing to the guilt of the accused and the other leading to his innocence. It may be very likely that the appellant may have administered the poison (potassium cyanide) to Manju but at the same time a fair possibility that she herself committed suicide cannot be safely excluded or eliminated. Hence, on this ground alone the appellant is entitled to the benefit of doubt resulting in his acquittal.

(3) The prosecution has miserably failed to prove one of the most essential ingredients of a case of death caused by administration of poison, i.e., possession of poison with the accused (either by direct or circumstantial evidence) and on this ground alone the prosecution must fail.

217. In view of the fact that this is a case of circumstantial evidence and further in view of the fact that two views are possible on the evidence on record, one pointing to the guilt of the accused and the other his innocence, the accused is entitled to have the benefit of one which is favourable to him. In that view of the matter I agree with my learned brothers that the guilt of the accused has not been proved beyond all reasonable doubt. "

50. In the case on hand, the inferences drawn by the Trial Court are not based on any conclusive evidence placed on record. In *Bansari Dass and State of Haryana* (2010-4-SCC-450) the Honourable Supreme Court held as below:-

"20. It is settled canon of criminal jurisprudence that the conviction of an accused cannot be founded on the basis of inference. The offence should be proved against the accused beyond reasonable doubt either by direct evidence or even by circumstantial evidence if each link of the chain of events is established pointing towards the guilt of the accused. The Prosecution has to lead cogent evidence in that regard. So far as it satisfies the essentials of a complete chain duly supported by appropriate evidence."

51. In *AIR 2013 SC 3817 (Sujit Biswas Vs. State of Assam)* it was held thus:-

"6. . Suspicion, however grave it may be, cannot take the place of proof, and there is a large difference between something that `may be proved,

and something that `will be proved. In a criminal trial, suspicion no matter how strong, cannot and must not be permitted to take place of proof. This is for the reason that the mental distance between `may be and `must be is quite large, and divides vague conjectures from sure conclusions. In a criminal case, the court has a duty to ensure that mere conjectures or suspicion do not take the place of legal proof. The large distance between `may be true and `must be true, must be covered by way of clear, cogent and unimpeachable evidence produced by the prosecution, before an accused is condemned as a convict, and the basic and golden rule must be applied. In such cases, while keeping in mind the distance between `may be true and `must be true, the court must maintain the vital distance between mere conjectures and sure conclusions to be arrived at, on the touchstone of dispassionate judicial scrutiny, based upon a complete and comprehensive appreciation of all features of the case, as well as the quality and credibility of the evidence brought on record. The court must ensure, that miscarriage of justice is avoided, and if the facts and circumstances of a case so demand, then the benefit of doubt must be given to the accused, keeping in mind that a reasonable doubt is not an imaginary, trivial or a merely probable doubt, but a fair doubt that is based upon reason and common sense. (Vide: Hanumant Govind Nargundkar & Anr. v. State of M.P., AIR 1952 SC 343; State through CBI v. Mahender Singh Dahiya, AIR 2011 SC 1017; and Ramesh Harijan v. State of U.P., AIR 2012 SC 1979)."

52. In AIR 1973 SC 2773 (Kali Ram Vs. State of Himachal Pradesh), the Honourable Supreme Court has observed as under:-

"Another golden thread which runs through the web of the administration of justice in criminal cases is that if two views are possible on the evidence adduced in the case one pointing to the guilt of the accused and the other to his innocence, the view which is favourable to the accused should be adopted. This principle has a special relevance in cases where in the guilt of the accused is sought to be established by circumstantial evidence."

53. In view of the above, in the case on hand, it can be summarised that the the Prosecution has failed to link the chain of circumstances so as to dispel the cloud of doubt about the culpability of the Appellants/ accused. It is well settled principle that suspicion, however grave it may be, cannot take place of proof i.e. there is a long distance between, "may be" and "must be", which must be traversed by the Prosecution to prove its case beyond reasonable doubt.

54. In 2012 2 SCC 34 (Kailash Gour Vs. State of Assam), it was held in paragraph 44 as follows:-

"44. The Prosecution, it is axiomatic, must establish its case against the accused by leading evidence that is accepted by the standards that are known to criminal jurisprudence regardless of whether the crime is committed in the course of communal disturbances or otherwise. In short, there can only be one set of rules and standards when it comes to trials and judgement in criminal cases unless the statute provides for anything specially applicable to a particular case or class of cases."

55. The inferences to be drawn by the Trial Court should be based on conclusive evidence placed on record. It is a settled principle of law that an accused can be punished, if he is found guilty even in cases of circumstantial evidence provided that the Prosecution is able to prove beyond reasonable doubt the complete chain of events and circumstances, which definitely points towards the involvement and guilt of the suspect or accused, as the case may be. The accused will not be entitled to acquittal merely because there is no eye witness in the case. It is also equally true that an accused can be convicted on the basis of circumstantial evidence subject to satisfaction of accepted principles in that regard.

56. The present case being a case of circumstantial evidence, as discussed above, the Prosecution has miserably failed to establish each and every instance of incriminating circumstances, by way of reliable and clinching evidence and the circumstances so proved must form a complete chain of events, on the basis of which, no conclusion other than one of guilt of the accused can be reached. The Trial Court failed to prove its inference by established facts. The impugned judgement of conviction and sentence, passed by the Trial Court is contrary to the evidence on record and well settled principles, in respect of circumstantial evidence. The Prosecution has miserably failed to establish each and every link in the chain of circumstantial evidence and hence, the Prosecution cannot be said to be successful, in establishing the guilt of the accused. Further, when it is established that there are two views possible on the evidence on record, one pointing to the guilt of the accused and the other their innocence, in the light of the decisions cited supra, the Appellants /A2 and A3 are entitled to have the benefit of doubt, which is favourable to them. Though it is a serious nature of case of planting bombs in a Hotel, the Prosecution having failed to prove its case beyond all reasonable doubts, the Appellants A2 and A3 are entitled for acquittal.

57.Further, the confessions said to have been recorded from the accused, while they were in custody, cannot be relied upon to base conviction. The case of A1 and the Appellants/A2 and A3 stand on a different ground. A1, in this case, has been identified in the test identification parade. Whereas, in respect of the Appellants/A2 and A3, no test identification parade has been conducted. As stated above, the procedure adopted by the Respondent, by taking the 1st Appellant/A2 to the premises of PW.1 and showing him and obtaining his signature in the photograph, cannot be relied upon. Since because A1 has been identified, it will not be suffice to hold that the 1st Appellant/A2 is also guilty for the offence, when no cogent or reliable evidence had been let in to prove that the 1st Appellant/A2 went along with A1 to the scene of occurrence.

58.The Trial Court has placed reliance on the evidence of PW.41, PW.44, PW.15 and PW.16, to base conviction of the Appellants. Based on the reasonings as stated above, this Court finds that their evidence is not reliable and do not inspire confidence and thereby, the Trial Court had erred and is not justified in convicting the Appellants/A2 and A3, placing reliance on the evidence of the above said witnesses.

59.The resultant effect of the above reasoning and conclusions is that the impugned judgement of conviction and sentence cannot be sustained.

60.In the result, this Criminal Appeal is allowed. The impugned judgement of conviction and sentence is set aside. The Appellants/A2 and A3 are acquitted of all the charges levelled against them. The bail bond if any executed by the Appellants shall stand cancelled.

s/d-

Assistant Registrar(CS-III)

True Copy

Sub-Assistant Registrar

Srcm

To:

1.The Special Court for Exclusive Trial of Bomb Blast Cases at Poonamallee.

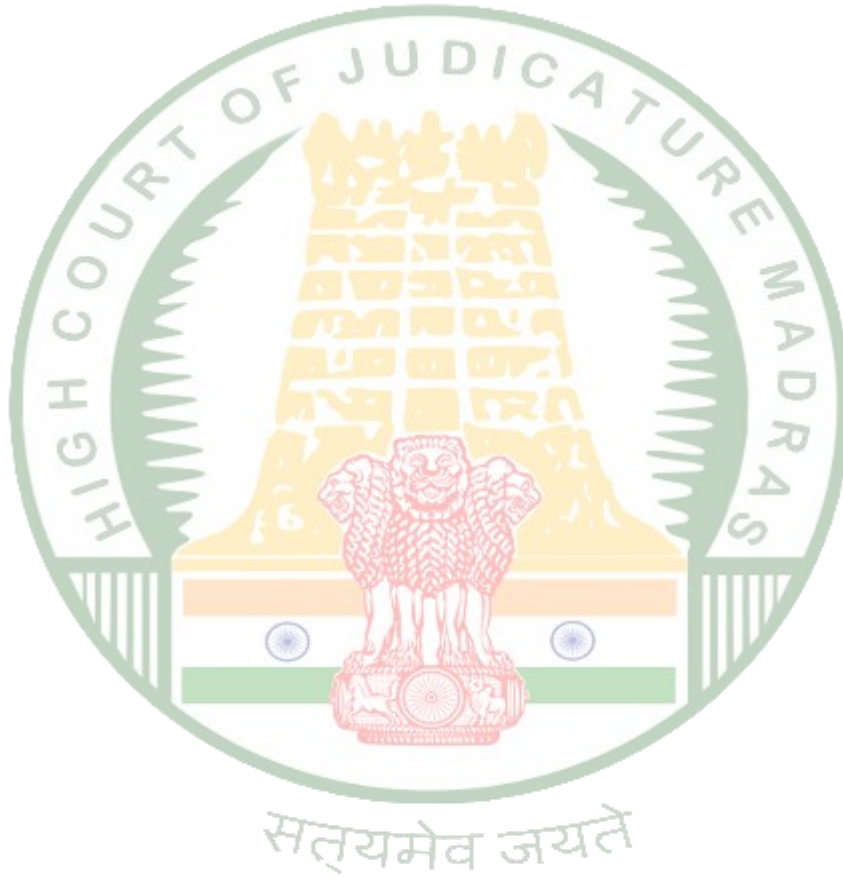
2.Inspector of Police, Special Investigation Team, CBCID, Chennai-2

3. The Superintendent, Central Prison, Vellore.

4.The Public Prosecutor, High Court, Madras

Cr1.A.No.1049 of 2006

PPA (CO)
SP(09/05/2019)



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