

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE : 07.02.2020

CORAM

THE HONOURABLE MR. JUSTICE M.DHANDAPANI

CRL. A. NO. 256 OF 2010

State, rep. By
The Deputy Superintendent of Police
Special Investigation Team
B4 Race Course Police Station,
CB-CID, Coimbatore.
CR No.1906 of 1997. Appellant

- Vs -

1. Santhu Mohammed @ Sait
2. Abdul Osir @ Osir
3. Mohammed Basith @ Basith
4. Jahangir @ Jahir
5. Yusuf @ Shajahan
6. Mohammed Alikhan @ Kutty
7. Samjith Ahamed
8. Mohammed Ansari @ Ansari
9. Navab Khan
10. Riyaz Ur Rahman ... Respondents

Criminal Appeal filed u/s 378 of the Code of Criminal Procedure, against the judgment dated 12.11.2009 passed by the learned Sessions Judge, Sessions Court for Exclusive Trial of Bomb Blast Cases, Coimbatore, in S.C. No.1/2007.

For Appellant : Mr. Iyyapparaj, APP

For Respondents : Mr. Xavier Felix for R-10
Ms. R.Nandhini for RR-1, 3 & 8
Mr. B.M.Subash for RR-4 to 6 & 9
Mr.B.Mohan
R4 to R6 & 9

JUDGMENT

The accused/respondents herein, along with one Mohammed Dastagir, who died pending trial, and two other accused, were charged and tried before the learned Sessions Judge, Sessions Court for Exclusive Trial of Bomb Blast Cases, Coimbatore, in S.C. No.1/07 for various offences under the Indian Penal Code and Explosives Substances Act, 1908 by framing five charges 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 5.30 p.m., the accused, by screening the bomb in a red rexine bag, planted the same at the car parking area of Classic Garden Apartment.

3. One Duraisamy, (not examined), was working as watchman at the Classic Garden Apartment. P.W.1 is a resident of the said apartment complex. On 1.12.97, at about 5.30 p.m., Duraisamy, the watchman of the said complex, came and reported to P.W.1 that he found a red rexine bag near the car parking area and it contained wires and switches and suspecting the said bag to contain bomb, he had removed the same and put it in the dustbin opposite the apartment complex. On enquiry, P.W.1 also came to know that the said Duraisamy had enquired with one other resident of the complex, Hazeera Begum, and had come to know about the existence of the bag at the car parking area. P.W.1 advised the said Duraisamy to go to the police station and lodge a complaint.

4. Thereafter, Duraisamy had gone to the police station and lodged the complaint, Ex.P-22 with P.W.33, the Sub-Inspector of Police, who on receipt of the said complaint, registered the same and prepared the printed FIR, Ex.P-23. He forwarded the printed FIR to the higher officials. P.W.33, thereafter went to the scene of occurrence and prepared observation mahazar, Ex.P-1 and drew rough sketch, Ex.P-24 in the presence of witnesses. He examined the witnesses and recorded their statements. The services of the bomb defusing expert was solicited, who came to the scene of occurrence and confirmed the presence of bomb in the rexine bag. The further investigation of the case was handed over to P.W.40 on the directions of the higher officials. P.W.33 submitted his special report, Ex.P-25 to P.W.40. The earth recovered from the scene of occurrence was sent to the court with a requisition to send the same for chemical analysis.

5. P.W.40, on taking up investigation from P.W.33, arrested some of the accused on various dates based on information

received as to the detention of those accused in respect of other crimes. P.W.40 examined the witnesses, who were residing in the said locality and recorded their statements. The accused came forward and gave voluntary confession statements, which were recorded into writing and have been marked in evidence. The arrest of some of the accused by P.W.40 led to their furnishing certain particulars relating to the crime, based on which P.W.40 prepared observation mahazars. Thereafter, the further investigation of the case was handed over to P.W.41.

6. P.W.41, taking up investigation from P.W.40, on receipt of information about the other accused, effected the arrest of some of the other accused on various dates. On their arrest, the accused gave voluntary confession statements, which were reduced into writing and the same have been marked in evidence. Further investigation of the case was taken up by P.W.42.

7. P.W.42, on taking up investigation, after examining the witnesses and recording their statements, altered the section of offence under the Explosive Substances Act and sent the report to the Judicial Magistrate No.3. On 7.2.05, requisition, Ex.P-27, was given to the District Collector requesting permission for sanction of prosecution, which was granted vide the letter dated 15.5.05. After obtaining report about the death of one of the accused, viz., Mohammed Dastagir, in judicial custody, final report was filed against the remaining accused on 8.4.05 for various offences under the Indian Penal Code and Explosive Substances Act.

8. 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 6 r/w 4 (a) of the Explosive Substances Act. When questioned, the accused pleaded not guilty.

9. To prove the case, the prosecution examined P.W.s 1 to 42, marked Exs.P-1 to P-35 and M.O.1. 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. On the side of the defence, while no oral evidence was adduced, however, Exs.D-1 and D-2 were marked. The trial court, after hearing either side and after considering the materials, both oral and documentary, acquitted the accused/respondents herein as aforesaid, aggrieved by which the State/appellant has filed the present appeal against the said acquittal.

10. Learned Addl. Public Prosecutor, assailing the order of the trial court, submitted that the case revolves around

circumstantial evidence and that the prosecution, through cogent and convincing testimony has proved the conspiracy hatched by the accused for perpetrating the crime. It is the submission of the learned Addl. Public Prosecutor that it is not necessary for the prosecution to prove the act of each and every accused and their part in the criminal conspiracy. Suffice if the prosecution proves the criminal intent of the accused and in furtherance of the said intent, the happening of the incident would be enough to prove the meeting of minds of the accused. Once the meeting of minds is proved by the prosecution, the individual contribution of the accused in the commission of offence is not necessary to be proved. It is the further contention of the learned Addl. Public Prosecutor that insofar as the discrepancies in the evidence of witnesses relating to the incident, due to passage of time, there is prone to be certain discrepancies in the evidence of the witnesses and so long as the said discrepancies does not affect the substratum of the prosecution case, the Court is bound to accept the said evidence and convict the accused.

11. It is the further submission of the learned Addl. Public Prosecutor that the doctrine of estoppel, as found in Section 300 Cr.P.C. would not stand attracted to this case, as some of the accused involved in this case are accused in some other similar cases. Similarity in cases would not act as an estoppel in charging those accused, as the transaction is different and it is not one and the same. The trial court has totally misguided itself on this aspect and has invoked the doctrine of estoppel, which is per se impermissible.

12. It is the further submission of the learned Addl. Public Prosecutor that non-causing of photograph of the rexine bag, which contained the alleged bomb, non-drawing of seizure mahazar for the said bomb vitiates and casts a doubt on the prosecution theory, by itself, is totally incorrect. The whole city, being under the grip of fear and tension due to the alleged bombing, the act of the prosecution in removing the bomb, as spoken to by P.W.34, without causing a seizure mahazar and causing photograph of the bag, which held the bomb, cannot be held to the detriment of the prosecution. In fine, it is the submission of the learned Addl. Public Prosecutor that the trial court, on mere flimsy and synthetic reasoning, without appreciating the evidence tabled before it has acquitted the accused, which requires interference at the hands of this Court.

13. 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 chain of circumstance has not been proved properly by the prosecution. It is the further submission of

the learned counsel for the accused that the discrepancies in the evidence of witnesses are not minor discrepancies, but are material discrepancies, which totally demolish the prosecution version, which aspect has been correctly appreciated by the trial court in acquitting the accused. It is further submitted by the learned counsel for the accused that Duraisamy, the person, who gave the complaint and who had seen the bag and placed it in the dustbin had not been examined. Similarly, one Hazeera Begum, who had seen two persons allegedly placing the red rexine bag, from whom Duraisamy obtained the details for lodging the complaint has not been examined. Non-examination of those two witnesses, who are key to the link in the chain of circumstances, is not only detrimental to the prosecution version, but the chain of circumstance does not even get started without their evidence. All other evidence in regard to the retrieval of the rexine bag and seeing two persons in a motorcycle placing the rexine bag in the car parking area are hearsay evidence, which cannot be relied on for returning a conviction. It is the contention of the learned counsel for the accused that the doctrine of estoppel definitely arises in this case, as some the accused, who were shown as accused in other crime for the same issue, have been arrayed as accused in this case well and the trial court has properly appreciated the issue and had held in favour of the accused. On the totality of the materials available on record, the trial court has properly appreciated the evidence in proper perspective and rendered the acquittal and, therefore, no interference is warranted with the well considered findings arrived at by the court below.

14. This Court heard the submissions of the learned Addl. Public Prosecutor appearing for the appellant and the respective learned counsel appearing for the respondents and perused the materials available on record to which its attention was drawn.

15. 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."

16. 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."

17. The Hon'ble Apex Court, in V.Sejappa - Vs - State by Police Inspector, Lokayukta, Chitradurga (2016 (12) SCC 150) reiterating the principles to be followed in an appeal against

acquittal, as has been laid down in a catena of judgments, held as under :-

"22. If the evaluation of the evidence and the findings recorded by the trial court do not suffer from any illegality or perversity and the grounds on which the trial court has based its conclusion are reasonable and plausible, the High Court should not disturb the order of acquittal if another view is possible. Merely because the appellate court on reappreciation and re-evaluation of the evidence is inclined to take a different view, interference with the judgment of acquittal is not justified if the view taken by the trial court is a possible view. In State v. K.Narasimhachary [State v. K. Narasimhachary, (2005) 8 SCC 364 : (2006) 1 SCC (Cri) 41] , this Court reiterated the well-settled principle that if two views are possible, the appellate court should not interfere with the acquittal by the lower court and that only where the material on record leads to an inescapable conclusion of guilt of the accused, the judgment of acquittal will call for interference by the appellate court. The same view was reiterated in T. Subramanian v. State of T.N. [T.Subramanian v. State of T.N., (2006) 1 SCC 401 : (2006) 1 SCC (Cri) 401]

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

"12. The approach of the appellate court in the appeal against acquittal has been dealt with by this Court in Tulsiram Kanu [Tulsiram Kanu v. State, AIR 1954 SC 1 : 1954 Cri LJ 225], Madan Mohan Singh [Madan Mohan Singh v. State of U.P., AIR 1954 SC 637 : 1954 Cri LJ 1656], Atley [Atley v. State of U.P., AIR 1955 SC 807 : 1955 Cri LJ 1653] , Aher Raja Khima [Aher Raja Khima v. State of Saurashtra, AIR 1956 SC 217 : 1956 Cri LJ 426], Balbir Singh [Balbir Singh v. State of Punjab, AIR 1957 SC 216 : 1957 Cri LJ 481], M.G. Agarwal [M.G. Agarwal v. State of Maharashtra, AIR 1963 SC 200 : (1963) 1 Cri LJ 235], Noor Khan [Noor Khan v. State of Rajasthan, AIR 1964 SC 286 : (1964) 1 Cri LJ

167], Khedu Mohton [Khedu Mohton v. State of Bihar, (1970) 2 SCC 450 : 1970 SCC (Cri) 479], Shivaji Sahabrao Bobade [Shivaji Sahabrao Bobade v. State of Maharashtra, (1973) 2 SCC 793 : 1973 SCC (Cri) 1033], Lekha Yadav [Lekha Yadav v. State of Bihar, (1973) 2 SCC 424 : 1973 SCC (Cri) 820], Khem Karan [Khem Karan v. State of U.P., (1974) 4 SCC 603 : 1974 SCC (Cri) 639], Bishan Singh [Bishan Singh v. State of Punjab, (1974) 3 SCC 288 : 1973 SCC (Cri) 914], Umedbhai Jadavbhai [Umedbhai Jadavbhai v. State of Gujarat, (1978) 1 SCC 228 : 1978 SCC (Cri) 108], K. Gopal Reddy [K. Gopal Reddy v. State of A.P., (1979) 1 SCC 355 : 1979 SCC (Cri) 305], Tota Singh [Tota Singh v. State of Punjab, (1987) 2 SCC 529 : 1987 SCC (Cri) 381], Ram Kumar [Ram Kumar v. State of Haryana, 1995 Supp (1) SCC 248 : 1995 SCC (Cri) 355], Madan Lal [Madan Lal v. State of J&K, (1997) 7 SCC 677 : 1997 SCC (Cri) 1151], Sambasivan [Sambasivan v. State of Kerala, (1998) 5 SCC 412 : 1998 SCC (Cri) 1320], Bhagwan Singh [Bhagwan Singh v. State of M.P., (2002) 4 SCC 85 : 2002 SCC (Cri) 736], Harijana Thirupala [Harijana Thirupala v. Public Prosecutor, (2002) 6 SCC 470 : 2002 SCC (Cri) 1370], C. Antony [C. Antony v. K.G. Raghavan Nair, (2003) 1 SCC 1 : 2003 SCC (Cri) 161], K. Gopalakrishna [State of Karnataka v. K. Gopalakrishna, (2005) 9 SCC 291 : 2005 SCC (Cri) 1237], Sanjay Thakran [State of Goav. Sanjay Thakran, (2007) 3 SCC 755 : (2007) 2 SCC (Cri) 162] and Chandrappa [Chandrappa v. State of Karnataka, (2007) 4 SCC 415 : (2007) 2 SCC (Cri) 325]. It is not necessary to deal with these cases individually. Suffice it to say that this Court has consistently held that in dealing with appeals against acquittal, the appellate court must bear in mind the following:

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

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

(iii) Though, the powers of the appellate court in considering the appeals against acquittal are as extensive as its powers in appeals against convictions but the appellate court is generally loath in disturbing the finding of fact recorded by the trial court. It is so because the trial court had an advantage of seeing the demeanour of the witnesses. If the trial court takes a reasonable view of the facts of the case, interference by the appellate court with the judgment of acquittal is not justified. Unless the conclusions reached by the trial court are palpably wrong or based on erroneous view of the law or if such conclusions are allowed to stand, they are likely to result in grave injustice, the reluctance on the part of the appellate court in interfering with such conclusions is fully justified; and

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

18. 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.

19. One of the contention raised challenging the acquittal of the accused is the question of estoppel. Learned trial judge has proceeded on the premise that with regard to the very same offence, some of the accused herein have been put on trial before two other courts and, therefore, the doctrine of estoppel stands attracted. True it is that criminal jurisprudence bars double jeopardy, in that an accused should not be tried for the same offence twice and only on that footing the doctrine of

estoppel finds place in Section 300 Cr.P.C. However, the case on hand is not one that falls under the head 'double jeopardy' to attract the provisions of Section 300 Cr.P.C. Some of the accused herein, who have been arrayed as accused in certain other sessions cases before certain other forums, were tried for similar offences, but not for the same offence. Doctrine of estoppel stands attracted only if the accused is tried for the very same offence and not a similar offence. In the case on hand, the accused, who were on trial, were tried before other forums for similar offences and not for the same offence. That being the case, the question of estoppel getting attracted does not arise. True it may be that the reason for the commission of the present offence may be the aftermath of the attacks on certain groups of people and that attacks have been planned to be perpetrated at various places. But that cannot be a ground to invoke the provisions of Section 300 Cr.P.C., when the offences have been perpetrated at various other places and each incident is a incident by itself and cannot be clubbed together as a single incident to attract the provisions of Section 300 Cr.P.C. The trial court has misdirected itself on this aspect and held that the provisions of Section 300 Cr.P.C. stands attracted. On the facts of the case, this Court is of the considered view that the provisions of Section 300 Cr.P.C. does not stand attracted to the case on hand.

20. The fulcrum of the prosecution case is the person, who lodged the complaint, viz., Duraisamy, who had retrieved the red rexine bag from the car parking area and thrown it in the dustbin. Admittedly, the said Duraisamy had not been examined. For all purposes, the starting point in the chain of circumstance is the said Duraisamy, the complainant, and his non-examination is fatal to the case, as the complaint, Ex.P-22 has not been established in a manner known to law. The scene of occurrence could be established only when the alleged bag, which is said to have been recovered from the particular place is established by the person who recovered it. However, the person, who recovered the said bag had not been examined and in the absence of examining him, the bag, which is said to contain bomb, does not stand established.

21. Secondly, one of the residents of the apartment complex, Hazeera Begum, is said to have seen two persons, who had allegedly come in a motorcycle carrying a red rexine bag and placing the same in the car parking area. Further, the said Duraisamy is alleged to have enquired with the said Hazeera Begum before reporting the incident to P.W.1, whereinafter the complaint has been lodged with P.W.33. The said Hazeera Begum has also not been examined. She is alleged to have seen the accused, viz., two persons who had come in the motorcycle.

Curiously, she has not been examined. Therefore, the first two links in the chain of circumstance has not been proved.

22. Thirdly, in respect of the rexine bag, which is alleged to have contained the explosive, no seizure mahazar has been prepared. Though the prosecution takes shelter under the pretext that the safety of the community warranted its immediate removal by the bomb defusing expert, however, the arrival of the bomb defusing expert would have consumed some time by which time, a photographer could have been summoned and photographs caused to be taken of the rexine bag found in the dustbin. Further, a seizure report ought to have been prepared by the expert, who seized the rexine bag, so as to establish its authenticity. It is not open to the prosecution to take shelter under the garb of safety and security of the residents of the area, giving a go-by to the well established procedures under the criminal procedure, when equally the life and liberty of the accused are at stake. The non-drawal of seizure mahazar coupled with non-establishing the rexine bag in accordance with law is definitely detrimental to the prosecution case.

23. It is the case of the prosecution that Hazeera Begum, who has not been examined, has seen two persons, who had dropped the rexine bag in the car parking area in the apartment complex. Definitely prudent investigation warrants a test identification parade to be conducted to enable the said Hazeera Begum to identify those two persons. 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.

24. 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."

25. 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.

26. In the case on hand, neither the person, who had seen the two persons placing the rexine bag been examined, nor the person, who recovered the rexine bag and deposited the same in the dustbin been examined. Non-examination of those two persons coupled with the non-conduct of test identification parade so as to enable the said Hazeera Begum to identify the two persons definitely vitiates the prosecution case. It is the case of the prosecution that Hazeera Begum is said to have told Duraisamy, that she had seen two persons coming in a motorcycle and dropping the rexine bag near the car parking area. Such being the circumstance, the prosecution, in all earnestness, to find the actual culprit, ought to have conducted test identification parade to enable Hazeera Begum to identify the two persons and equally called Hazeera Begum and Duraisamy to the witness stand to testify on behalf of the prosecution.

27. Though non-conduct of test identification parade, by itself cannot be said to be fatal, however, in the case on hand non-conduct of test identification parade coupled with the non-examination of Duraisamy and Hazeera Begum definitely scuttles the prosecution case from moving any further.

28. In *Deonandan Mishra - Vs - State of Bihar* (AIR 1955 SC 801), the Supreme Court held that if the prosecution had to rely upon circumstantial evidence, it must establish all the links in the chain of circumstance and even if one link in the chain of circumstance is found missing, then the prosecution case has to be thrown overboard. The Supreme Court further held that where there is no eyewitness to the murder and the case against the accused depends entirely on circumstantial evidence, the standard of proof required to convict the accused on such evidence is that the circumstances relied upon must be fully established and the chain of evidence furnished by these circumstances should be so far complete as not to leave any reasonable ground for a conclusion consistent with the innocence of the accused. For better clarity, the relevant portion of the order is extracted hereinbelow :-

"It is true that in a case of circumstantial evidence not only should the various links in the chain of evidence be clearly established, but the completed chain must be such as to rule out a reasonable likelihood of the innocence of the accused. But in a case like this where the various links as stated above have been satisfactorily made out and the circumstances point to the appellant as the probable assailant, with reasonable definiteness and in proximity to the deceased as regards time and situation, and he offers no explanation, which if accepted, though not proved, would afford a reasonable basis for a conclusion on the entire case consistent with his innocence, such absence of explanation or false explanation would itself be an additional link which completes the chain."

29. In the case on hand, as pointed out above, the circumstances, which are vital to the prosecution has been given a go-by, in that the requisite witnesses have not been examined to prove the case projected by the prosecution. Though it is within the realm of the prosecutor to decide which witnesses he wishes to examine before the Court, however, non-examination of the witnesses, who are the links in the chain of circumstances definitely derails the prosecution case, since the case of the prosecution is predicated upon circumstantial evidence.

30. 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. 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. Though in cases where the prosecution is on the basis of circumstantial evidence, the circumstances, including the conspiracy theory should be so very complete so as to fasten the crime on the accused. The prosecution cannot, on mere surmises and conjectures, plead that the conspiracy hatched by the accused resulted in the incident. 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.

31. It is the contention of the prosecution that the part of each and every conspirator and the overt act of each and every conspirator in the conspiracy need not be established and it is suffice if the conspiracy as a whole is established along with the meeting of minds of the conspirators to commit a particular offence. True it is that it is not necessary for the prosecution to establish the part played by each and every conspirator in the conspiracy to its minutest detail, as it is not expected of the prosecution to be with them to know the part played by each and every conspirator. But, it is incumbent on the prosecution to prove the meeting of minds of the accused in relation to the conspiracy hatched, as meeting of mind is concomitant to establishing a charge of conspiracy. Without there being meeting of minds, the charge u/s 120 (B) IPC would not survive.

32. Conspiracy consists of an agreement between two or more persons formed for the purpose of committing, by their joint efforts, some unlawful or a criminal act or to do a lawful act by unlawful means. The agreement may be express or implied, or in part express and in part implied. Therefore, for an offence to fall under this section, bare engagement and association to break the law is the requirement and the methods employed should be illegal. However, the onus is on the prosecution to prove the charge of conspiracy by cogent evidences, direct or circumstantial.

33. The Hon'ble Supreme Court in V.C. Shukla - Vs - State (Delhi Admn.) (1980 (2) SCC 665 : 1980 SCC (Cri) 561), held as under :-

"8. Before we proceed further, we might indicate that it is well settled that in order to prove a criminal conspiracy which is punishable under Section 120-B of the Penal Code, 1860, there must be direct or circumstantial evidence to show that there was an agreement between two or more persons to commit an offence. This clearly envisages that there must be a meeting of minds resulting in an ultimate decision taken by the conspirators regarding the commission of an offence. It is true that in most cases it will be difficult to get direct evidence of an agreement to conspire but a conspiracy can be inferred even from circumstances giving rise to a conclusive or irresistible inference of an agreement between two or more persons to commit an offence.

(Emphasis Supplied)

34. From the ratio laid down above, it is emphatically clear that to bring home a charge u/s 120 (B) IPC, it is necessary for the prosecution to show, either through direct or circumstantial evidence that there was an agreement between two or more persons to commit an offence. The necessary ingredient here is the meeting of minds between the conspirators.

35. As discussed above, the prosecution has miserably failed to prove the conspiracy charge by proving the meeting of minds of the conspirators with cogent and convincing evidence. Mere surmises and conjectures relating to conspiracy cannot take the place of evidence, which is a mandatory requirement to bring home the charge u/s 120 (B) IPC. To say the least, the prosecution, has not proved the charge of conspiracy. Bereft of any circumstantial evidence relating to the conspiracy, and there being no link in the circumstantial chain having been established by the prosecution, the charges framed against the accused, in the considered opinion of this Court, have not been proved and the chain is a broken chain in all respects and, therefore, this Court is not inclined to accept the version projected by the prosecution.

36. The next limb of the prosecution contention is that minor discrepancies in the evidence could not be the basis for the acquittal, as the witnesses, who are normal persons and cannot be expected to give deposition without there being minor contradiction or embellishments after a long passage of time.

37. Definitely, minor contradictions in the evidence of the witnesses will not weaken the case of the prosecution. But a careful analysis of the deposition of the various witnesses equally reveal that their testimony does not corroborate with each other. It is to be pointed out that P.W.16 has been projected as one of the person, who has seen the accused in the motorcycle dropping the bag and going away from the scene of occurrence. P.W.16, as is evident from his deposition is a chance witness. Though there is no embargo placed on this Court to rely on his testimony, however, in the absence of examination of Duraisamy and Hazeera Begum, who are the complainant and the person, who had seen the accused placing the rexine bag, definitely their testimony is a corroborative piece of evidence with the testimony of P.W.16. Though they are said to have been shown in the list of witnesses, curiously they have not been examined for reasons best known to the prosecution and in the absence of their evidence, no corroboration is available to the evidence of P.W.16, in which event, the deposition of the chance witness relegates to the back seat. In fact, a doubt even arises in the mind of the court with regard to the testimony of P.W.16 vis-a-vis the evidence that would have been tendered by Duraisamy and Hazeera Begum, had they been examined. However, this Court is not venturing into such an analysis except to state that this court is not inspired with the testimony of the witnesses, which galore with discrepancies, which, by no stretch of imagination, could be said to be minor discrepancies. Further, the other evidence available on record, in no way, furthers the case of the prosecution and are in no way helpful to interfere with the order of acquittal.

38. Once the charge of conspiracy fails as stated above, 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. Further, the contradictions pointed out by the defence hits at the substratum of the prosecution case and ruptures the whole of the prosecution case and this Court is in concurrence with the contradictions pointed out by the respondent. In spite of persuasive arguments, the prosecution is not able to point out any 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. The trial court, on proper appreciation of the materials available before it, has come to the right conclusion to acquit the accused/respondents herein and, therefore, this Court is not inclined to interfere with the same.

39. 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.

40. 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 12.11.09 passed by the learned Sessions Judge, Sessions Court for Exclusive Trial of Bomb Blast Cases, Coimbatore, in S.C. No.1/07.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

GLN

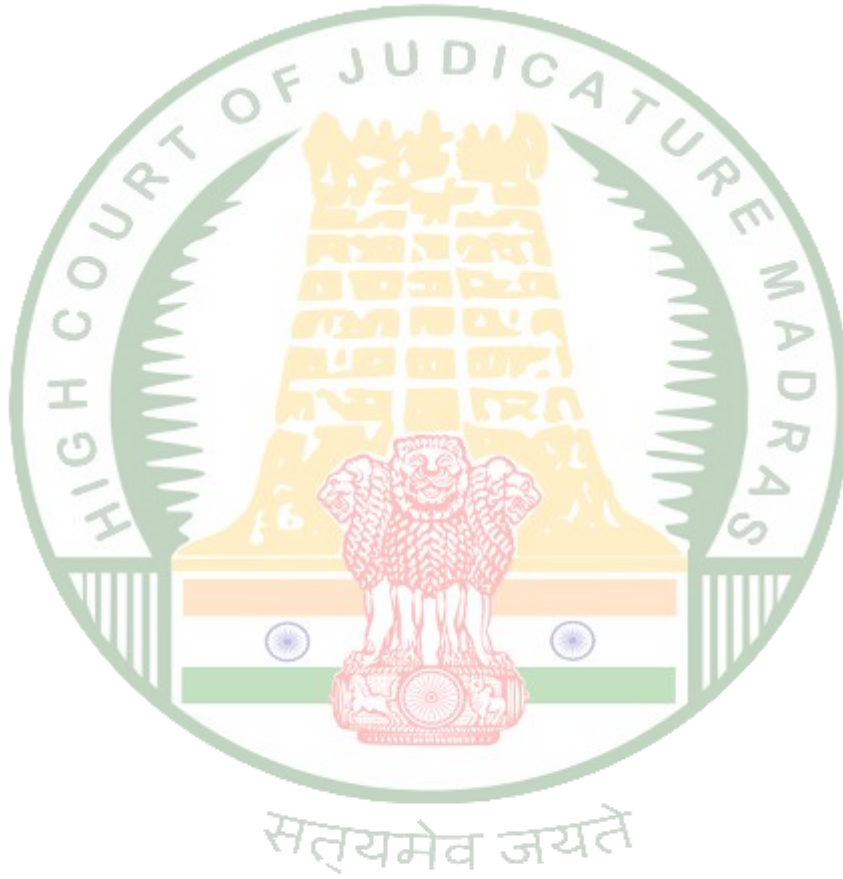
To

- 1) The Sessions Judge
Sessions Court for Exclusive Trial
of Bomb Blast Cases, Coimbatore.
- 2) The Deputy Superintendent of Police
Special Investigation Team
B4 Race Course Police Station,
CB-CID, Coimbatore.
CR No.1906 of 1997.

3) The Public Prosecutor,
High Court,
Madras.

CRL. A. NO. 256 OF 2010

mg[co]
srg 03/06/2020



WEB COPY