



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
RESERVED ON : 24.02.2020
PRONOUNCED ON : 19.11.2020

CORAM

THE HONOURABLE MR.JUSTICE **M.NIRMAL KUMAR**

Cr1.A(MD)No.194 of 2014

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State represented by:
The Public Prosecutor,
High Court, Madras.
(Rameswaram Town P.S
Crime No.76/2002).

... Appellant/Complainant

Vs.

1.Shahul Hameed
2.Saveriyar Pitchai
3.Christi @ Christhuraraj,
4.Miltos
5.Ramar
6.Senthooran
7.Balasubramanian
8.Balasingh
9.Kannan

... Respondents

Prayer: Criminal Appeal filed under Section 377 of Cr.P.C., praying to allow the appeal, to set aside the order and to enhance the punishment imposed on the respondents / accused (A-1 to A-9) in S.C.No.75 of 2007, dated 12.03.2014 by the Chief Judicial Magistrate Court / Assistant Sessions Court, Ramanathapuram.

For Appellant : Mr.K.Suyambulinga Bharathi,
Government Advocate (Criminal Side)

For Respondents : Mr.K.Balasundaram

JUDGMENT

This Criminal Appeal is preferred by the State seeking enhancement of punishment imposed on the respondents in S.C.No.75 of 2007, dated 12.03.2014 by the Chief Judicial Magistrate Court / Assistant Sessions Court, Ramanathapuram.

2. The respondents herein along with another were charged for the offence under Section 10 of Unlawful Activities (Prevention) Act, 1967, Section 120(b) of IPC and Section 5 of the Explosive Substances Act, 1908. The prosecution examined its witnesses as P.W.1 to P.W.72 and marked Exs.P1 to P59 and M.O.1 to M.O.13. On the defence side, no witness was examined and no document was marked. During the proceedings under 313 Cr.P.C, on 10.03.2014, A1 to A9 filed an written submission admitting their guilty.



3. The Trial Court, on considering the admission petition found that the respondents A1 to A9 were guilty and sentenced them as follows:

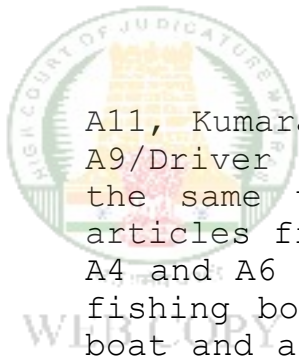
(i) For the offence under Section 10 of Unlawful Activities (Prevention), Act, 1967, sentenced A1 to A9, to undergo imprisonment for one month and to pay a fine of Rs.100/- each, in default to undergo one week Simple Imprisonment.

(ii) For the offence under Section 120(b) of IPC sentenced them to undergo Simple Imprisonment for one month.

(iii) For the offence under Section 5 of the Explosive Substance Act, 1908, sentenced them to undergo Simple Imprisonment for one month and all the sentence to be run concurrently.

4. The gist of the case is that on 08.04.2002, A11 who is an absconding accused met A5/Ramar and A7/Balasubramanian at Madurai Sessions Court hatched a conspiracy to illegally transport explosive articles from Rameswaram to Eranatheevu, Srilanka to the banned outfit organisation LTTE. In furtherance to the conspiracy, on 12.04.2002, A8/Balasingh the owner of the Maruthi Van, A9/Kannan, who is the driver of the Maruthi Van came to Rameswaram Seashore in the Maruthi Van bearing Registration No.TN-09-7218 along with the parcels to be illegally transported to LTTE and handed over the articles to A5 and thereafter, A6 unloaded the articles from the van and concealed the same near the Murugan Temple. On 13.04.2002, at about 10.00 a.m, A3 to A6 loaded the articles in the boat RMS.No.3287, which belongs to A2. On 13.04.2002 at early hours, A1, A3, A4 and A6 proceeded in the boat along with a parcel smuggled, to be handed over to the LTTE. As the boat proceeded near Sangumal beach, the Indian Navy found a boat moving suspiciously in a wrong direction and while they asked to stop the boat, the accused failed to stop the boat and thereafter, it was chased and intercepted and the boat got stuck in the rock. At that time, A3, A4 and A6 jumped in to the sea and escaped. A1 alone was caught by the Navy. The Navy Personnel found 1376 Audio Cassette, 1376 Photos of LTTE leader Prabhakaran, 1500 meters of Explosive wire in the boat and seized the articles along with the boat. Later, the Navy handed over the accused along with articles to the Rameswaram Police, who registered the case in Crime No.76 of 2002 for the offence under Section 120(b) of IPC, Section 10 of Unlawful Activities (Prevention) Act, 1967 and Section 5 of the Explosive Substances Act, 1908. Thereafter, the investigation was handed over to the 'Q' Branch Police, CID, Ramanathapuram and during the investigation, the conspiracy and involvement of the accused came to light.

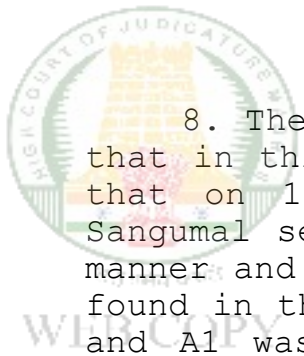
5. During the investigation it was found that on 08.04.2002, A11 had approached A5 and A7 at Madurai Sessions Court and engaged them to transport the illegal articles to LTTE from Rameswaram to Eranatheevu, Srilanka and promised to pay Rs.30,000/- for the same, out of which Rs.10,000/- was given as advance to A5. On 12.04.2002,



A11, Kumaran, A8/Balasingh, who is the owner of the Maruthi Van and A9/Driver of the Maruthi Van had loaded the parcel and handed over the same to A5 on the Seashore of Rameswaram. A6 unloaded the articles from the van. On 13.04.2002, during the early hours A1, A3, A4 and A6 proceeded towards Srilanka with the articles of LTTE in a fishing boat of A2. At that time, the Indian Navy intercepted the boat and all the four accused jumped into the sea and A1 was caught by the Navy and other three persons escaped. Thereafter, A5, A2, A8, A7 and A6 were arrested on 24.04.2002, 02.05.2002, 04.05.2002, 12.05.2002 and 22.05.2002 respectively. On 22.05.2002, A9 surrendered before the Judicial Magistrate No.VII, Madurai and On 02.12.2003, A10 surrendered before the Judicial Magistrate No.I, Ramanathapuram. A11, a Srilankan had escaped from the country and he could not be arrested. Thereafter, charges were framed against the accused and the Trial Court on completion of trial convicted the accused /respondents as stated above.

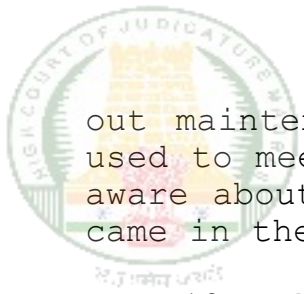
6. The learned Government Advocate appearing for the State submitted that the judgement of the Trial Court in giving lesser punishment to the respondents/accused are contrary to law, improper and incorrect. The Trial Court committed grave error by accepting the case solely on the admission petition filed by the respondent and ignoring the evidence of prosecution witnesses. The Trial Court had not considered the evidence produced by the prosecution. He further submitted that the Trial Court on the admission of the respondent had given lenient sentence and the sentence is inadequate for the grave nature of the offence committed by the accused. The Trial Court ought to have appreciated the plea of the prosecution along with the admission petition filed by the respondent, but in this case, it had not done so. The Trial Court, without going into the merits of the case and the material evidence available on record, failed to consider the gravity of the offence committed by the respondents and merely on the admission petition filed by the respondent convicted the accused and imposed a lesser sentence.

7. He further submitted that the Trial Court had swayed away by the sentiment plea of the accused that they were facing trial for nearly 10 years and the imprisonment undergone by them as under Trial Prisoners. Except the admission petition, there is no supporting material filed to prove the same and the Trial Court could not give such leniency by considering the admission petition alone. The Trial Court had not considered and analysed both oral and documentary evidence produced by the prosecution and had glossed over the same. The Trial Court on coming to conclusion that the prosecution had proved the case against the respondents and accepting the admission of the respondents, imposed minimum sentence. Hence, the prosecution has filed this appeal seeking enhancement of punishment.



8. The contention of the learned counsel for the respondents is that in this case, P.W.1 is the Havildar of Indian Navy. He state that on 13.04.2002, P.W.1 and others were an patrol duty near Sangumal sea. At that time, a boat was proceeding in a suspicious manner and thereafter, the boat was intercepted. Four persons were found in the boat and three persons jumped into the sea and escaped and A1 was apprehended. In the boat, audio cassette, explosive substances and photos of Prabhakaran, leader of LTTE were found. The occupant in the boat A1/ Shahul Hameed, the boat and the articles were produced by him to the Commander of the Navy. P.W.15 was along with P.W.1. Thereafter, the commandant lodged a complaint to the Rameswaram Police. Later, the case was transferred to the 'Q' Branch, Ramanathapuram, who conducted the investigation.

9. P.W.2, is the Diver attached to the Indian Navy who was instructed by the commandant to immediately reach the scene and find whether any articles were available in the sea. P.W.3, observation mahazar witness. P.W.4 and P.W.5, are the witnesses to the confession of A1. P.W.6, is the witness to the confession of A4. P.W.7, is the witness to confession of A4. P.W.8, is the witness to the confession of A8. P.W.9, is the witness to the confession of A9. P.W.10 and P.W.11, are the witnesses to the confession of A3. P.W.12, P.W.13 and P.W.14 are the witnesses to the confession of A7. P.W.16 and P.W.36, are the witnesses for the happenings on 13.04.2002. P.W.17, is the jailer of the Central Prison, Madurai. P.W.18, is the Assistant Director of Fisheries Department states that A2 is the owner of the boat RMS No.3287. P.W.19 and P.W.22, are the divers engaged by the 'Q' Branch to find out whether any articles were found in the sea. P.W.20, is the confession witness for A6. P.W.21, is the fisherman who deposed that he saw some wires floating in the sea. P.W.22, is the diver who on a latter date retrieved yellow colour wire from the sea. P.W.23, P.W.25 and P.W.26, are the witnesses from the Fisheries Department, they were examined to the fact that A2 is the owner of the boat RMS 3287, which was taken for the fishing on 13.04.2020 and issuance of token for diesel. P.W.24, is the observation mahazar witness. P.W.27 to P.W.32, have not supported the case of the prosecution. P.W.34 is the tea shop owner, who had seen the accused proceeding towards the sea. P.W.36 and P.W.37 are the witnesses to state about the happenings on 13.04.2002. P.W.39, P.W.41 and P.W.43 has stated that they were engaged for repair and maintenance of A5 boat, at that time they saw a person coming in the Maruthi vehicle and speaking to A5. P.W.53 is the owner of the Maruthi Van, who sold the vehicle to one Selvaraj father of A8. P.W.52 is the broker who acted as middleman for the sale. P.W.55 who employed to collect toll fee in the Pamman bridge toll-gate. P.W.57 to P.W.62 and P.W.64 are the witnesses, who are the explosive dealer and purchaser of explosive from A10. P.W.63 is the witness from the Office of the Controller of the Explosives who spoke about the procedure. P.W.65 and P.W.66 are the forensic expert officers who examined the articles forwarded to

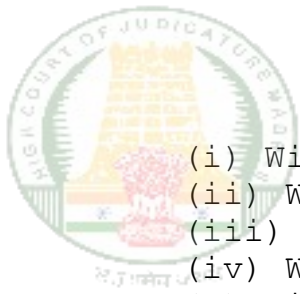


out maintenance work of boat of A5 were examined to show that A5 used to meet some persons who came in Maruthi van and they were not aware about the conversation, and could not identify the person who came in the Maruthi Van, their evidences is of no consequence.

12. The further contention is that the one set of witnesses have been examined to show that A10 was dealing with explosive wires and the wires found in the boat and in the sea were supplied by A10. A10 is a licensed explosive dealer which is not in dispute. A10 purchasing the explosives under Form 37 and selling the same to others is a part of his business and is not an offence. The Controller of the Explosives admitted that such purchase and selling of explosives are to be reported to them every month and A10 had never came under adverse notice to the Controller of the Explosives Substance. Further, the Forensic Scientific Officers have opined that the wires forwarded to them contained explosives and there is nothing to show from whom and where the wire was collected and the wire forwarded for the forensic study does not bear any distinct mark. There is no clear link in the evidence. The investigation in this case have proceeded on a pre-conceived motion. Thus, the reasons given by the witnesses in the case have not supported the case of the prosecution.

13. The Trial Court finding is that there is no direct evidence in this case and the circumstantial evidence is in bits and pieces. Considering all the aspects and on the submissions made by the respondents before the Trial Court, reveals that for a period of 10 years, they were appearing before the Court and due to which, they underwent both physical and psychological trauma and their health conditions got deteriorated. Since they are all daily wagers and unable to continue with their avocation and considering that the respondents were in the prison during investigation for a period of two months and without going into merits of the case the Trial Court have given clemency. The Trial Court on considering the materials available and the plea of the respondents while examining them under Section 313 Cr.P.C had convicted and sentenced them to undergo one month imprisonment for all the three charges. As far as A10 is concerned, he had not sought any clemency, the Trial Court found no materials against A10 to convict him and acquitted him from the case. Further, it is to be noted that no appeal was filed against the acquittal of A10. Thus, on the merits of the case and on parity, the respondents/ A1 to A9 are to be acquitted from the case and hence, the appeal filed by the appellant is liable to be dismissed.

14. Considering the rival submissions and on perusal of the materials it is seen that in this case the prosecution had examined P.W.1 to P.W.72 and marked Exs.P1 to P59 and M.O.1 to M.O.13. The witnesses can be classified as follows:



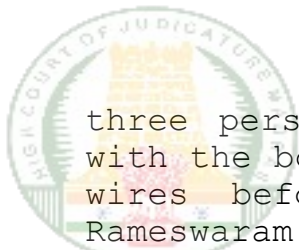
- (i) Witness to the Conspiracy
- (ii) Witness to the occurrence and confession
- (iii) Witness to the recovery and seizure
- (iv) Witness to the arrest
- (v) Witness to the explosives
- (vi) Witness to the forensic study
- (vii) Witness for the investigation and others

(i) Witness to the Conspiracy :

14.1 The case of the prosecution is that on 08.04.2012, A11 met A5 and A7 at Session Court, Madurai, hatched conspiracy to illegally transport explosive articles from Rameswaram to Eranatheevu, Srilanka for LTTE. There is nothing to show that the contents of the parcel box was revealed to the other accused by A11. To prove that a conspiracy was hatched on 08.04.2002, there is no material whatsoever. Thereafter, the second incident was on 12.04.2002. On that day, it is stated that A8 and A9 had come in Maruthi Van transporting the parcel box which was unloaded by A6 and kept in a secluded place. To prove this aspect, P.W.30, P.W.35, P.W.38 to P.W.44, P.W.46 to P.W.51 are examined. Of these witnesses, except P.W.35, P.W.39, P.W.41 and P.W.43 all the other witnesses have not supported the case of the prosecution and therefore, they are treated hostile. The witness of the P.W.35 is in the nature of hearsay. The evidence of P.W.39, P.W.41 and P.W.43 is of no consequence, on the fact that A5 used to speak to the person who came in Maruthi Van other than that they do not know what was the conversation, who are the persons came in the Maruthi Van and no materials were produced to connect the accused. Added to it vehicle belonging to A8 has not been proved. P.W.53, the owner of the vehicle bearing Registration No. TN-09-7218, sold the vehicle to one Selvaraj and he has not been examined. P.W.53 stated that on 15.11.2000, he sold the vehicle to one Selvaraj and he handed over all the documents. P.W.54 is the broker for the sale and he has also stated that the Madurai van was sold to one Selvaraj. No documents have been produced for sale of the van. Further, none from the RTO office have been examined as witness in this case. Thus the ownership of the vehicle has not been proved. Admittedly, in this case, the said Selvaraj is not an accused and A8 cannot be said as the owner of the vehicle. Likewise, A9 driver of the vehicle is also not proved. Added to it, P.W.55 the person who was working in Pamban bridge toll-gate had not stated anything about the Maruthi Van passing over the bridge on the relevant date. Thus, the vital link has not been proved in this case.

(ii) Witness to the occurrence and confession, (iii) Witness to the recovery and seizure and (iv) Witness to the arrest:

14.2 With regard to the occurrence on 13.04.2002, the evidence of P.W.1 and P.W.15 is that a boat was moving in a suspicious manner and the same was intercepted. Four persons jumped from the boat,



three persons escaped and A1 was arrested and was produced along with the boat, audio cassette, picture of Prabhakaran and explosives wires before Commander Chakaravarthy attached to Indian Navy, Rameswaram. The said Chakaravarthy lodged a complaint to the Rameswaram Police Station and produced A1 and the articles to the Police. In this case, the said Chakaravarthy has not been examined as witness. The prosecution has given an explanation that the said Chakaravarthy is not available. But no materials was produced to substantiate the same. Likewise, Mr.Boominathan, Sub-Inspector of Police, who registered the FIR was not examined as witness in this case. Explanation given was that Mr.Boominathan has died and no death certificate was produced. In this case, Exs.P2 to Exs.P9 are Mahazars for seizure of audio cassettes, Pictures and Cordtex wires, confession of A1, confession of A5 leading to recovery and Mahazar for seizure boat bearing No. RMS 3287, To prove that A4 and A5 are the mahazar witnesses, P.W.4 and P.W.5, officials from the Revenue Department have not supported the case of the prosecution. In view of the same, the very foundation of the case becomes shaky, doubtful. The date of occurrence i.e 13.04.2020, was not proved in the manner known to law. The subsequent confession during Police custody and recovery of A5 are not proved with proper evidence.

14.3 The other aspect is that P.W.2/diver of the Navy admitted that he had gone to the seen of occurrence as directed by his commandant and he could not find any articles on that day. The subsequent recovery of wires by the 'Q' Branch a month later is of no consequence and in no way connected with the accused. Added to it, none of the witnesses have stated about A1, A3, A4 and A6 were the persons travelling in the boat on 13.04.2002. The available evidence of the tea shop owner and others near Seashore that they saw the accused near the seashore is of no relevance. Further they admitted that they only heard the news, that the boat in which accused travelled was carrying articles, which was chased by Navy and caught, is in the nature of hearsay evidence. It is not in dispute that the accused are the fisherman. Therefore, they proceeding in the sea cannot be doubted and found fault with. Hence, for the occurrence, there is no acceptable evidence leading to conclusion. The arrest, confession and recovery from the other accused are also highly doubtful. The witnesses who are from Revenue Department admitted that they signed the documents in the Police Station at the instance of Police and they also admitted that in most of the places, the public witnesses were available, but the respondent Police failed to call any independent person to be a witness. Investigating Officer admitted that he had not called any independent person available there. The witnesses are in the nature of stock witnesses. The arrest, confession and recovery from the other accused are also doubtful. As regards A2, it is an admitted fact that A2 is a fisherman who was owing fishing boat. The evidence of fisheries department to the effect that the owners of the boat giving their boat to the fisherman and permitting to sail in the sea



for fishing is a common practice. Their evidences are noway connected to implicate A2 or any other accused.

(v) Witness to the explosives

14.4 It is seen that in this case A10 is the licensed explosive dealer. P.W.56 is the Manager of Vetrivel Explosive, who has not supported the case of the prosecution and he was treated hostile. P.W.57 is the Managing Director of Vetrivel Explosive, he has stated about the supply of explosive substance to A10. He further stated that the wires supplied by them are of Blue, White and red colour wires and tubes. He is very certain that they don't manufacture yellow colour wires. P.W.58 is the Manager of Siva Shakthi Explosives, Salem, who has stated about A10 purchasing explosive from them and P.W.59 is the Industrial Mining Service Dealer who has stated about selling explosives to A10. P.W.60 is the Manager of Parvathi Explosives. All these witnesses has stated about the sale of explosives to A10. They had admitted that A10 is a licensed dealer dealing in explosive and only on submission of Form 37, the explosives would be supplied by them and copy of Form 37 will be submitted to the the Controller of Explosives. It is admitted that sale of explosive is made under Form 37. These forms to be sent to the Controller of Explosives P.W.63. The employees of Murugan Enterprises, P.W.62 and P.W.64 has stated that they purchased explosives from A10. P.W.63, the Deputy Controller of Explosives, Chennai has stated that the explosives have to be dealt only by a licensed person through prescribed forms. P.W.65 and P.W.66 are the Scientific Officers from Forensic Department, who found explosives in the article forwarded to them. It is seen that none of the dealer who supplied explosives to A10, produced any document to show that the supply of explosives to A10 and there is no material to show that the explosives supplied to A10 reached other accused more particularly the explosives which were seized from the boat. P.W.63 admitted that all sale and transaction are made through Form 36 and 37 and a copy of the same will be submitted to them monthly and no adversity was found against A10. In view of the same and nothing could be stated that A10 had received explosives and diverted the same and smuggled to LTTE by the other accused. The prosecution had miserably failed to prove this vital link.

(iv) Witness for the Investigation and Others.

14.5 Initially the case was came to be registered by Rameswaram Police by Mr.Boominathan, Sub-Inspector of Police on receipt of complaint, seized articles and took custody of A1 from the Commander of Navy. Both Mr.Boominathan and Mr.Chakaravarthy were not examined as witness in this case. As stated earlier, the reason given for non-examination of both the officers are not supported with any document and no proper explanation was given. P.W69, the Inspector of Rameswaram Police Station conducted investigation till 20.04.2002 and thereafter on the direction of the Director General



of Police, case was handed over to 'Q' Branch Police. P.W.70, Inspector of Police, 'Q' Branch, assisted P.W.71, the Deputy Superintendent of Police, who conducted investigation from 20.04.2002 to 18.11.2002. P.W.72 is the subsequent Investigation Officer who took up investigation. P.W.72 after obtaining sanction opinion filed charge sheet in this case. The Investigating Officer admitted that no public were present during arrest, confession and recovery. None were examined as the witness though they were present in the place where mahazars were prepared. It is also seen that there is no link to show that the explosives were found in the boat were the explosives which were supplied by A10 and the same was smuggled out. On the contrary, arrest of A1, his confession, seizures of articles and boat is not proved in this case. There is nothing to show that the explosives was removed and handed over by A10 to other accused, and took those explosives with other articles and attempted to smuggled out. The Trial Court has given a finding that the case against A10 was not proved and acquitted A10 from the case. Admittedly, the prosecution had not preferred any appeal against the acquittal of A10. It is a case of direct and circumstantial evidence. The major part of the case is based on the circumstantial evidence. From the above materials, it is seen that the prosecution had miserably failed to link each of the circumstances by cogent evidence. The link between each circumstance leading to irresistible conclusion that the accused alone had committed the offence is not satisfactorily proved. Taking this into consideration and the petition filed by A1 to A9 while they were examined under Section 313 Cr.P.C seeking clemency, the Trial Court had convicted them for the above stated offence and sentenced them to one month imprisonment. In view of the same this Court finds that there is no perversity or illegality is found to interfere with the finding of the Trial Court.

15. In the result, the appeal filed by the prosecution is dismissed, confirming the judgment and sentence rendered by the Chief Judicial Magistrate Court / Assistant Sessions Court, Ramanathapuram in S.C.No.75 of 2007, dated 12.03.2014.

Sd/-

Assistant Registrar(CS-I)

// True Copy //

/ /2020

Sub Assistant Registrar(CS)

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To

1.The Chief Judicial Magistrate Court / Assistant Sessions,
Ramanathapuram.



2. The District munsif cum judicial magistrate, rameswaram.
3. The Inspector of Police, Q Branch CID, Ramanathapuram.
4. The Inspector of Police, Rameshwaram Town Police Station, Ramanathapuram.
5. The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

Copy to
The Section Officer, Criminal Section,
Madurai Bench of Madras High Court, Madurai. (2 copies)

JUDGMENT IN
Crl.A(MD) No.194 of 2014
19.11.2020

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TR(07.12.2020) 11P 8C