



BAIL SLIP

The Appellant/Accused namely P.Dharamchand S/o. Late. Sri.J.D.Pannalal, 2.Sundar S/o.Dass, 3.Anbu@Chinna Boopalan S/o.Arjunan was directed to be released on bail as per order of this court dated 24.04.2017 in CRL.M.P.Nos.5570 of 2016 and 8944 and 5880/2017 in CRL.A.No.367 of 2016 on the file of this Court.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 01.07.2021
PRONOUNCED ON : 16.07.2021

CORAM:

THE HON'BLE MR. JUSTICE P.N. PRAKASH

and

THE HON'BLE MR. JUSTICE R. PONGIAPPAN

Crl.A. Nos.180 of 2017, 367, 642 and 760 of 2016

Crl.A. No.180 of 2017:

State represented by
The Public Prosecutor
High Court, Madras 600 104
(E-1, Mylapore Police Station)
(Cr. No.1139 of 2001) .. Appellant/Complainant

vs.

1.Sundar (A.1)
2.Anbu @ Chinna Boopalan (A.2)
3.Dharamchand (A.3) .. Respondents/ Accused (A1 to A3)

Crl.A. No.367 of 2016:

P. Dharamchand .. Appellant / Accused 3

vs.

State represented by
the Inspector of Police
E-1 Mylapore Police Station
Chennai 600 004 .. Respondent/Complainant

Crl.A. No.642 of 2016:

Sundar .. Appellant/Accused No.1
vs.



State represented by
the Inspector of Police
E-1 Mylapore Police Station
Chennai 600 004
(Cr.No.1139 of 2001)

.. Respondent/Complainant

Crl.A. No.760 of 2016:

Anbu @ Chinna Boopalan

.. Appellant/Accused

vs.

State represented by
the Inspector of Police
E-1 Mylapore Police Station
Chennai 600 004
(Cr.No.1139 of 2001)

..Respondent/Complainant

Prayer in Crl.A. No.180 of 2017:

Criminal Appeal filed under Section 377 Cr.P.C. seeking to enhance the punishment imposed on the respondents/A.1 to A.3 vide judgment and order dated 09.05.2016 passed in S.C. No.7 of 2004 for offences under Sections 120-B, 452, 506(II) IPC, 307 r/w 34 IPC, 332 r/w 34 IPC, Section 3 of the Explosive Substances Act, 1908 r/w 34 IPC, 452 r/w 109 and 506 (II) IPC r/w 109 IPC and Section 6 of the Explosive Substances Act, 1908 by the Additional District and Sessions Court for Exclusive Trial of Bomb Blast Cases, Chennai at Poonamallee.

Crl.A. No.367 of 2016:

Criminal Appeal filed under Section 374 Cr.P.C. seeking to call for the records and to set aside the judgment and sentence dated 09.05.2016 passed in S.C.No.7 of 2004 on the file of the Sessions Court for Exclusive Trial of Bomb Blast and POTA Cases, Poonamallee.

Crl.A. No.642 of 2016:

Criminal Appeal filed under Section 374(2) Cr.P.C. seeking to call for the records in S.C. No.7 of 2004 on the file of the Additional District and Sessions Court for Exclusive Trial of Bomb Blast Cases, Poonamallee and to set aside the judgment and order dated 09.05.2016 of conviction under Section 120-B IPC and consequently to acquit the appellant.

Crl.A.No.760 of 2016:

Criminal Appeal filed under Section 374 Cr.P.C. seeking to call for the records and set aside the conviction and sentence



imposed against the appellant on 09.05.2016 in S.C. No.7 of 2004 on the file of the Sessions Court for Exclusive Trial of Bomb Blast Cases, Poonamallee, Chennai and acquit the appellant.

Crl.A. No.180 of 2017:

For appellant	Mr. R. Muniyapparaj Govt. Advocate (Crl. Side)
For R1	Mrs. Vedavallikumar for Mr. S. Murugan
For R2	Mr. V. Gopinath, Sr. Counsel for Mr. Swami Subramanian & Mr. P. Pugalenth
For R3	Mr. N. Manokaran

Crl.A. No.367 of 2016:

For appellant	Mr. N. Manokaran
For respondent	Mr. R. Muniyapparaj Govt. Advocate (Crl. Side)

Crl.A. No.642 of 2016:

For appellant	Mrs. Vedavalli Kumar for Mr. S. Murugan
For respondent	Mr. R. Muniyapparaj Govt. Advocate (Crl. Side)

Crl.A. No.760 of 2016:

For appellant	Mr. V. Gopinath Sr. Counsel for Mr. Swami Subramanian and Mr. P. Pugalenth
For respondent	Mr. R. Muniyapparaj Govt. Advocate (Crl. Side)

COMMON JUDGMENT

Since all the instant four criminals have been preferred challenging the judgment and order dated 09.05.2016 passed in S.C. No.7 of 2004 on the file of the Additional District and Sessions Court for Exclusive Trial of Bomb Blast Cases, Chennai at Poonamallee, they are considered and decided by this common judgment.

2 The prosecution story reads thus:



2.1 Premchand (P.W.4) is a Marwari businessman and was residing with his wife Kamala (P.W.6), son Bikamchand (P.W.5) and daughter-in-law Rajkumari (not examined) at Door No.3/7, Muthuraman Street, Mylapore, Chennai, which is the place of occurrence. Apart from being a financier, Premchand (P.W.4) was also into real estate business. Premchand (P.W.4) had a dispute with another Marwari businessman Dharamchand (A.3) in connection with the purchase of a huge property viz., Mandaveli market that belonged to one Janakaiya Chettiayar.

2.2 While that being so, on 07.06.2001, around 9.40 p.m., Premchand (P.W.4) parked his two wheeler outside his house and entered the house. At that time, four persons barged into his house from behind and bolted the front door from inside. While two of them brandished knives, the remaining brandished country bombs. They entered into a conversation with Premchand (P.W.4) saying that if they eliminate him, they would get a huge amount from Dharamchand (A.3). Saying so, they went into the rooms of Premchand's (P.W.4's) house as if looking for a suitable place to plant the bombs. At that time, Premchand's (P.W.4's) son Bikamchand (P.W.5), who was sitting in another portion of the house, came to the hall and he was also made to sit on the sofa. Similarly, Premchand's (P.W.4's) wife Kamala (P.W.6), who was in the house, was also detained in the hall.

2.3 While these were happening, Bikamchand (P.W.5), in the guise of going to the kitchen for drinking water, alerted his wife Rajkumari in Rajasthani language and asked her to call for help. Rajkumari, who was in another room, contacted her brother Chandraprakash (P.W.7), who was residing about 10 kms. away in Kilpauk area. Chandraprakash (P.W.7), in turn, alerted the police and simultaneously rushed to Premchand's (P.W.4's) house. Chandraprakash (P.W.7) came to Premchand's (P.W.4's) house around 10.40 p.m. on 07.06.2001.

2.4 In the meanwhile, Mani (P.W.1), Sub-Inspector of Police, E-1, Mylapore Police Station, who was on rounds in his police jeep driven by Sekar (P.W.2), accompanied by Ravindran (P.W.3), Head Constable, received information by wireless that there was some trouble in Door No.3/7, Muthuraman Street, Mylapore, Chennai. Therefore, Mani (P.W.1) reached the place of occurrence by 10.45 p.m. After Chandraprakash (P.W.7) gained entry into the house, Mani (P.W.1) and his police team also gained entry into the house and there, the police party saw four persons with deadly arms.

2.5 When the police started questioning and were attempting to herd them into the police jeep that was parked outside, the foursome tried to escape and one of them hurled a bomb, which exploded in the street. In that explosion, Mani (P.W.1) and



Ravindran (P.W.3) sustained splinter injuries. However, with the help of public, the police were able to apprehend one person, who disclosed his name as Jagan @ Jagadeesan (for short "Jagan"). The other three escaped in the melee. The neighbours gathered there and one Dr.Moorthy (P.W.11), who has a clinic in that area, gave first aid to the injured policeman.

2.6 On a written complaint (Ex.P.1) given by Mani (P.W.1), Isaac Paulraj (P.W.22), Inspector of Police, registered a case in E-1, Mylapore Police Station Cr.No.1139 of 2001 at 23.00 hours for the offences under Sections 448, 307, 332 and 506(II) IPC and Section 3(1) of the Explosive Substances Act, 1908 (for brevity "the ES Act"). He prepared the printed FIR (Ex.P.15) and sent the same to the jurisdictional Magistrate.

2.7 Isaac Paulraj (P.W.22) went to the place of occurrence and in the presence of two witnesses, viz., Anil Kumar (P.W.12) and Sunil Kumar (P.W.13), prepared the observation mahazar (Ex.P.19) and rough sketch (Ex.P.18). He also collected clue materials from the place of occurrence under mahazar (Ex.P.20) and sent the same to the Tamil Nadu Forensic Sciences Department (for short "TNFSD") through the XVIII Metropolitan Magistrate Court, Saidapet, for examination and report.

2.8 Mani (P.W.1) and Ravindran (P.W.3), who sustained splinter injuries, were sent to St. Isabel's Hospital, Mylapore, where, they were treated as outpatients by a doctor and the Accident Register copies issued by Dr.Kandiah (P.W.18) of St.Isabel's Hospital were marked as Exs.P.11 (Mani) and P.12 (Ravindran). The accident register copies show that the injuries were simple in nature.

2.9 Isaac Paulraj (P.W.22), Inspector of Police, arrested Jagan, who was apprehended at the place of occurrence and recorded his statements. From the information provided by Jagan, the involvement of Sundar, Murugan @ Nondi Murugan (for short "Murugan") Anbu @ Chinna Boopalan (for short "Anbu"), Hussain, Dharamchand and Appu @ Krishnasamy (for short "Appu") came to light.

2.10 In the explosion, one of the accused, viz., Hussain had also sustained injuries and he had got himself admitted in the Government Royapettah Hospital, for treatment. On getting information about that, Isaac Paulraj (P.W.22) rushed to the Government Royapettah Hospital, found Hussain there and placed him under arrest. Dharamchand was arrested on 08.06.2001 and was placed in judicial custody.



2.11 Isaac Paulraj (P.W.22) was transferred on 09.06.2001 and so, he handed over the investigation of the case to his successor.

2.12 Murugan and Anbu surrendered before a Magistrate in Aruppukkottai who was far away from Madurai and was not the jurisdictional Magistrate. We reliably understand that only in this State, an accused wanted in one district, goes and surrenders in a Magistrate Court which is far away and creates a red herring. To the best of our knowledge, this obnoxious practice does not obtain in other States.

2.13 Ravichandran (P.W.21), Scientific Assistant, Tamil Nadu Forensic Science Laboratory (for short "TNFSL") examined the clue materials that were sent to him by the Court and gave his report (Ex.P.14), wherein, he has stated that sulphur, potassium, nitrate, sulphate and thio-sulphate were detected in the materials that were examined by him, based on which, he gave the following opinion:

"1. The constituents detected in item (1) was the explosion residue of improvised Explosive Device (country bomb) containing Gun Powder.

2. Gun powder is a low explosive.

3. When Low explosives explode, they may endanger human life."

2.14 Since the police were dragging on the investigation, on a petition in CrI.O.P.No.4780 of 2003 filed by Premchand (P.W.4) under Section 482 Cr.P.C., a learned Single Judge of this Court, by order dated 20.02.2003, directed the police to complete the investigation within 30 days.

2.15 Abdul Salam, I.A.S. (P.W.19), District Magistrate and Collector of Chennai, by order dated 27.02.2003, granted consent under Section 7 of the ES Act to prosecute seven accused.

2.16 Accordingly, the police completed the investigation and filed a final report before the XVIII Metropolitan Magistrate, Saidapet, Chennai, in P.R.C.No.36 of 2003 against seven accused, viz., Jagan (A.1), Sundar (A.2), Murugan (A.3), Anbu (A.4), Hussain (A.5), Dharamchand (A.6) and Appu (A.7), for the offences under Sections 452, 307, 332, 506(II), 120-B and 109 IPC and Sections 3, 6 and 4(a) of the ES Act.

2.17 On appearance of the accused, the provisions of Section 207 Cr.P.C. were complied with and the case was committed to the

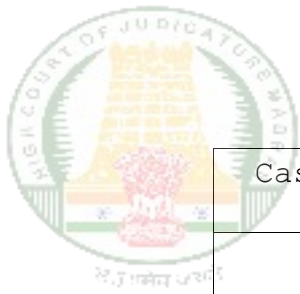


Court of Session in S.C.No.7 of 2004 and was made over to the Additional District and Sessions Court for Bomb Blast Cases, Chennai, for trial.

2.18 From 2004-2015, the trial Court was not able to proceed with the trial, reasons for which, have been given by the trial Judge in paragraph no.6 of his judgment, which deserves to be extracted ad verbum:

"6. Then there were a lot of proceedings initiated by A.6-Dharamchand (A.3 in this case) before the Hon'ble High Court of Madras, the Hon'ble Supreme Court of India and also before this Court one after the other petition from the year 2004 to 2014. One or the other aspect this case has not been proceeded in an effective manner for a decade plus two years period for the reasons one after the other petition was filed by the accused Dharamchand from June, 2004 to September, 2015. A brief details of the available petitions, prayers, and the results of the same has been extracted in a tabular column given below for easy understanding and reference:

Case No. & Forum	Relief	Result
Crl.O.P.No. 29340/2004 - High Court	Transfer the case in S.C.No.7 of 2004 on the file of this Court to the Principal Sessions Judge or Addl. Sessions Judge of City Civil Court, Chennai on the ground of territorial jurisdiction.	Originally, stay was granted on 31.08.2004, and the stay was continued. The main petition was dismissed on 19.01.2005 holding that this Court has jurisdiction to dispose the case.
SLP (Crl) No. 947/2005 - Supreme Court	Special Leave against the dismissal of Crl.O.P.No. 29340/2004	Dismissed on 25.04.2005



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Case No. & Forum	Relief	Result
Crl.O.P.No. 9547/2005 - High Court	Direction to the Inspector of Police, E1 Mylapore Police Station to produce the original sale agreement dated 08.06.1995 in between R.K.Janakaiah Chetty and H.Premchand to this Court	Dismissed as withdrawn on 21.06.2005
Crl.O.P.No. 10199/2005 - High Court	To accept and consider the charge sheet in C.C.Nos.5041/2003 and 2017/2004, on the file of the XI Metropolitan Magistrate Court, Saidapet at the time of filing discharge petition in this case.	Dismissed as withdrawn on 21.06.2005
Crl.M.P.No. 198/2005 in S.C.No.7/2004 - This Court	U/s 309 of Cr.P.C. to adjourn the proceedings till the disposal of Crl.O.P.Nos.9547/2005 and 10199/2005 on the file of High Court	Dismissed on 05.05.2005
Crl.R.C.No. 661/2005 - High Court	To set aside the order dt.05.05.2005 passed in Crl.M.P.No.198/2005 in S.C.No.7/2004	Initially, stay was granted on 07.06.2005, and thereafter the case was dismissed as withdrawn on 19.07.2007.
W.P.No. 556/2005 - High Court	Mandamus directing the Commissioner of Police, Chennai to produce the report dated 18.12.2003 for further investigation in Crime No.1139/2001 to this Court.	Dismissed on 23.06.2005 holding tat effective remedy under the Cr.P.C. may be worked out if the petitioner has any grievance.



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Case No. & Forum	Relief	Result
Crl.O.P.No. 17321/2005 - High Court	Direction to produce the records of further investigation to this Court by the Inspector of Police E1 Mylapore Police Station.	Initially, stay was granted on 04.08.2005, and finally petition was closed on 23.12.2005 by common order along with Crl.O.P.No.33169/2005 with direction to this Court to dispose the case within 6 months from the date of receipt of the said order.
Crl.O.P.No. 33169/2005 - High Court	Direction to this Court to permit him to file certified copy of three cases in C.C.Nos. 5041/2003, 2017/2004 on the file of XI MM Court, a petition in Crl.O.P.No.641/2005 along with discharge petition.	On 23.12.2005 the petition was dismissed by common order along with Crl.O.P.No.17321/2005.
SLP.No. 1159/2006 - Supreme Court	Special Leave Petition against the common order passed in Crl.O.P.Nos.17321/2005 & 33169/2005	Dismissed
Sec.91 of Cr.P.C. Petition - This Court	Summons to produce the document.	Dismissed



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Crl.R.C.No. 65/2007 - High Court	Revision against the order dated 02.12.2006 in Crl.M.P.No.478/2006 in S.C.No.7/2004, for the relief of further investigation u/s 173 (8) of Cr.P.C. petition filed by the IO, was dismissed by this Court. A.6 preferred the revision.	Initially, an interim stay was granted on 25.04.2007 and finally, the revision was dismissed on 09.11.2011 with direction to this Court to dispose the case within six months.
Crl.O.P.No. 9373/2012 - High Court	Direction to forward copy of enquiry report dated 19.12.2006 addressed to the Collector, Chennai to this Court.	Petition was allowed on 19.04.2012.
Case No. & Forum	Relief	Result
Crl.O.P.No. 3959/2006 - High Court	Direction to transfer the C.C.No.2017/2004 from the file of XI MM Court to this Court to be tried along with S.C.No.7/2004.	On 12.09.2002, petition was dismissed as withdrawn by common order with Crl.O.P.No.3961/2006 with direction to this Court to dispose the case within 9 months.
Crl.O.P.No. 3961/2006 - High Court	Direction to transfer the C.C.No.5041/2003 from XI MM Court to this Court to be tried along with S.C.No.7/2004.	On 12.09.2002, the petition was dismissed as withdrawn by common order with Crl.O.P.No.3959/2006 with direction to this Court to dispose the case in nine months.
SLP Crl.No. 1114/2012 - Supreme Court	Special Leave Petition against the dismissal order in Crl.R.C.No.65/2007 dated 09.04.2011.	SLP was dismissed on 21.02.2012.
Crl.M.P.No.49 2/2014 in S.C.No.7/2004 - This Court	To discharge him from the case.	Petition was dismissed on 17.10.2014.



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Crl.R.C.No. 1118/2014 - High Court	To set aside the order dated 17.10.2014 in Crl.M.P.No.492/2014 in S.C.No.7/2004 and discharge him.	Initially, an interim stay was granted, and thereafter, stay was extended. Finally on 09.07.2015, the revision was dismissed with direction to this Court to dispose the case within six months from the date of receipt of order copy. This Court received the said order on 03.09.2015.
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2.19 In this confusion created by Dharamchand (A.3), one or the other accused absconded and one accused Appu (A.7) even died on 11.08.2015. The accused who have jumped bail and who are absconding are Jagan (A.1), Murugan (A.3) and Hussain (A.5). Thus, only three persons faced trial, viz., Sundar (A.2), Anbu (A.4) and Dharamchand (A.6). Though in the charge sheet, they were arrayed as AA 2, 4 and 6, respectively, on account of abscondence and death of the co-accused, Sundar, Anbu and Dharamchand eventually became A.1, A.2 and A.3, respectively. Therefore, hereinafter, we will refer to their ranking as A.1, A.2 and A.3 respectively, after their names.

2.20 The trial Court framed the following charges against Sundar (A.1), Anbu (A.2) and Dharamchand (A.3):

Charge 1	Criminal conspiracy - u/s 120-B of IPC - Against A.1 & A.2
Charge 2	House trespass - u/s 452 of IPC - Against A.2
Charge 3	Abetment to house-trespass - u/s 452 r/w 109 of IPC - Against A.3
Charge 4	Criminal intimidation - u/s 506 (II) of IPC - Against A.2
Charge 5	Abetment to criminal intimidation - u/s 506 (II) r/w 109 of IPC - Against A.3
Charge 6	Attempt to murder with common intention - u/s 307 r/w 34 of IPC - Against A.2



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Charge 7	Causing explosion endangering life with common intention - u/s 3 of the Explosive Substances Act, 1908 r/w 34 of IPC - Against A.2
Charge 8	Keeping explosive with intent to endanger life with common intention - u/s 4(a) of the Explosive Substances Act, 1908 r/w 34 of IPC - Against A.2
Charge 9	Abetment - u/s 6 of the Explosive Substances Act, 1908 - Against A.3
Charge 10	Voluntarily causing hurt to deter public servant from his duty with common intention - u/s 332 r/w 34 of IPC - Against A.2

2.21 When questioned, the accused pleaded "not guilty".

2.22 To prove their case, the prosecution examined 25 witnesses and marked 27 exhibits and 5 material objects.

2.23 When the accused were questioned under Section 313 Cr.P.C. on the incriminating circumstances appearing against them, they merely denied the same. From the side of the accused, no witness was examined. However, 6 exhibits were marked in the cross-examination of the prosecution witnesses.

2.24 After hearing either side and considering the evidence on record, the trial Court, by judgment and order dated 09.05.2016 in S.C.No.7 of 2004, convicted and sentenced the accused as follows:

Names of accused	Provision under which convicted	Sentence
Sundar (A.1)	S.120-B IPC	10 years rigorous imprisonment and to pay a fine of Rs.500/-, in default to undergo 3 months simple imprisonment.



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Anbu (A.2)	S.120-B IPC	10 years rigorous imprisonment and to pay a fine of Rs.500/-, in default to undergo 3 months simple imprisonment.
	S.452 IPC	4 years rigorous imprisonment and to pay a fine of Rs.500/-, in default to undergo 3 months simple imprisonment.
	S.506(II) IPC	3 years rigorous imprisonment.
	S.307 r/w 34 IPC	10 years rigorous imprisonment and to pay a fine of Rs.500/-, in default to undergo 3 months simple imprisonment.
	S.332 r/w 34 IPC	2 years rigorous imprisonment.
	S.3 of the ES Act r/w 34 IPC	10 years rigorous imprisonment.
Dharamchand (A.3)	S.452 r/w 109 IPC	Four years rigorous imprisonment and to pay a fine of Rs.500/-, in default to undergo 3 months simple imprisonment.
	S.506 (II) r/w 109 IPC	3 years rigorous imprisonment.
	S.6 of the ES Act	10 years rigorous imprisonment.

2.25 Assailing the aforesaid conviction and sentences, while the accused have preferred Crl.A.Nos.642, 367 and 760 of 2016, the State has preferred Crl.A.No.180 of 2017 seeking enhancement of their sentences.



3 Heard Mr. N. Manokaran, learned counsel for Dharamchand (A.3), Mrs. Vedavallikumar, learned counsel representing Mr.S. Murugan, learned counsel on record for Sundar (A.1), Mr. V. Gopinath, learned Senior Counsel representing Mr.Swami Subramanian and Mr.P.Pugalenathi, learned counsel on record for Anbu (A.2) and Mr.R.Muniyapparaj, learned Government Advocate (Crl. Side) appearing for the State.

4 The lead arguments in this batch of cases were advanced by Mr.N.Manokaran, learned counsel for Dharamchand (A.3).

5 At the outset, Mr.N.Manokaran, learned counsel for Dharamchand (A.3) submitted that pursuant to the order passed by the earlier Division Bench in Crl.M.P.No.4646 of 2017 in Crl.A.No.367 of 2017, Sankaralingam, Assistant Commissioner of Police and Mohandass, Inspector of Police, D-1 Police Station, Triplicane, should be examined as additional witnesses in order to mark the materials that were collected by them during further investigation of the case. It is his further contention that in the evidence of Premchand (P.W.4), he has stated that he had purchased the Mandaveli market from Janakaiya Chettiyar on payment of Rs.50,00,000/- in June 1995 and that he had entered into an oral agreement with Dharamchand (A.3) to sell the property for a higher amount, out of which, Dharamchand (A.3) had paid only Rs.52,00,000/- and the balance of Rs.1,19,00,000/- remains to be paid and in order to avoid this payment, Dharamchand (A.3) had set upon the goons to liquidate him. Whereas, according to Mr.N.Manokaran, a further investigation was conducted by one Sankaralingam, then Inspector of Police (now Assistant Commissioner of Police), in which, a report dated 19.12.2006 was addressed by him to the District Collector, which shows that the Mandaveli market transaction is not as was projected by Premchand (P.W.4).

6 According to Mr.N.Manokaran, Dharamchand (A.3) and his brother Shanti Lal had entered into an agreement with Janakaiya Chettiyar on 20.05.1996, in which, Premchand (P.W.4) and his son Bikamchand (P.W.5) were witnesses and that Janakaiya Chettiyar has received full consideration for the property, however, Dharamchand (A.3) and Premchand (P.W.4) had entered into an agreement on 22.05.1996, in which, a sum of Rs.52,00,000/- was paid to Premchand (P.W.4) for evicting the tenants; therefore, the materials collected and submitted by Sankaralingam, Assistant Commissioner of Police, would show the falsity in the case projected by Premchand (P.W.4). Mr.N.Manokaran further submitted that the documents collected by Sankaralingam, Assistant Commissioner of Police, would show the litigations between Dharamchand (A.3) and Premchand (P.W.4).



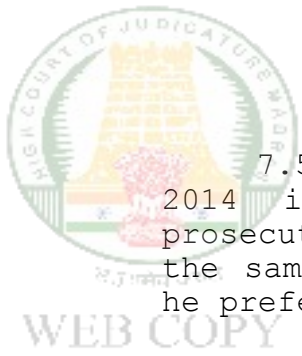
7 For better understanding of Mr.N.Manokaran's grievance, it may be necessary to state certain facts that appear from the trial Court records.

7.1 Dharamchand (A.3) filed Crl.M.P.No.478 of 2006 in S.C.No.7 of 2004 under Section 173(8) Cr.P.C. for further investigation. The said petition was dismissed by the trial Court, aggrieved by which, Dharamchand (A.3) filed Crl.R.C.No.65 of 2007 before this Court, in which, an order of interim stay of the trial was granted on 25.04.2007. The revision case was finally dismissed by a learned Single Judge on 09.11.2007 with a direction to the trial Court to dispose of the case within six months.

7.2 In the meanwhile, Dharamchand (A.3) gave a petition to the Government enclosing some documents relating to the Mandaveli market deal and prayed for exonerating him from the prosecution. Those documents were sent by the Government to the Inspector of Police, Law and Order, E-1, Mylapore Police Station, for enquiry.

7.3 Sankaralingam, then Inspector of Police, conducted an enquiry and submitted a report dated 19.12.2006 to the District Collector, wherein, he has stated that the documents submitted by Dharamchand (A.3) show that he had purchased the property, whereas, Premchand (P.W.4) had not produced any documents to show that he had purchased the property. However, in the final paragraph of the report, he has clearly stated that the evidence collected in the bomb blast case clearly implicates Dharamchand (A.3) in the offence and therefore, he has forwarded those documents back to the District Collector.

7.4 Dharamchand (A.3) filed Crl.O.P.No.9373 of 2012 under Section 482 Cr.P.C. for a direction to send the report dated 19.12.2006 to the trial Court and the said petition was allowed on 19.04.2012. Therefore, Sankaralingam, Inspector of Police, submitted the report dated 19.12.2006 along with the copies of the documents relating to Mandaveli market property deal that was submitted by Dharamchand (A.3), as if he was filing them as supplementary charge sheet under Section 173(8) Cr.P.C. in the trial Court. Pertinent it is to mention here that neither in the report dated 19.12.2006 nor in the supplementary charge sheet purported to be under Section 173(8) Cr.P.C., Sankaralingam has exonerated Dharamchand (A.3).



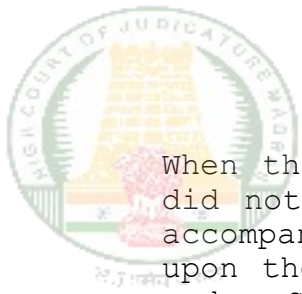
7.5 Dharamchand (A.3) filed a petition in Crl.M.P.No.492 of 2014 in S.C.No.7 of 2004 for discharging him from the prosecution on the strength of the report dated 19.12.2006 and the same was dismissed by the trial Court, aggrieved by which, he preferred Crl.R.C.No.1118 of 2014 before this Court.

7.6 A learned single Judge of this Court, by a detailed order dated 09.07.2015, dismissed Crl.R.C.No.1118 of 2014 with the following observation qua the report dated 19.12.2006:

"11. This is how the document dated 19.12.2006 came to be produced before the trial court by the prosecution and on the basis of this report dated 19.12.2006, the revision petitioner is seeking to discharge him from the criminal case. It is also to be mentioned that in spite of the order dated 09.11.2011 passed in Crl.R.C. No. 65 of 2007 as well as the order dated 19.04.2012 passed by this Court in Crl.OP No. 9373 of 2012, the trial Court not proceed with the trial in view of the fact that the petitioner has repeatedly approached this Court and stalled the trial court from proceeding further with the trial. In fact, in the earlier order passed by this Court on 09.11.2011 in Crl.R.C. No. 65 of 2007, this Court, in para No.10 has observed that "...As is reflected in the order of the Court below, the petitioner taking recourse to one petition after another has resulted in the case remaining at the stage of framing charges since the year 2003. (emphasis supplied)" This Court is also of the considered opinion that the petitioner has stalled the criminal trial from being proceeded with by filing one petition or the other, with the result, the trial Court could not comply with the directions issued by this Court to expeditiously dispose of the criminal trial. When this Court had already observed that the prosecution shall produce the document dated 19.12.2006 and also directed the trial Court to look into the relevancy or otherwise of the document at the time of framing of charges or at any later stage strictly in accordance with the provisions of the Evidence Act or the Code of Criminal Procedure, the grievance of the petitioner for discharge from the criminal prosecution is unfounded."

Only thereafter, the charges in this case were framed on 06.11.2015 and the examination of witnesses began on 09.12.2015.

7.7 Premchand (P.W.4) and Bikamchand (P.W.5) were examined in the trial Court on 28.12.2015 and 06.01.2016 respectively.



When these witnesses were in the witness box, Dharamchand (A.3) did not confront them with the documents that are said to have accompanied the report dated 19.12.2006. He did not even rely upon the said report and the documents as part of his statement under Section 313 Cr.P.C. However, after he was convicted and sentenced and when he filed Crl.A.No.367 of 2017 before this Court, he preferred Crl.M.P.No.4646 of 2017 to mark these documents as additional evidence.

7.8 It appears that Dharamchand (A.3) did not disclose to the earlier Division Bench of this Court about the order dated 09.07.2015 that was passed in Crl.R.C.No.1118 of 2014. However, the earlier Division Bench, has passed the following order in Crl.M.P.No.4646 of 2017 in Crl.A.No.367 of 2017 on 14.03.2018:

"5. We have heard the learned Additional Public Prosecutor.

6. This Court has considered it appropriate that the enquiry report dated 19.12.2006 be taken on file and as a corollary, it becomes necessary for this Court to allow this petition towards recording of additional evidence. Accordingly, the Crl.M.P.No.4646 of 2016 in Crl.A.No.367 of 2016 shall stand allowed. The case is posted on 26.03.2018 for recording of additional evidence.

7. Registry is directed to issue summons to Thiru.Sankaralingam, Assistant Commissioner-Intelligence, VI floor, No.132, Commissioner Office Building, E.V.K.Sampath Road, Vepery, Periamet, Chennai - 600 007 and Thiru. Mohandoss, Inspector of Police D-1, Triplicane Police Station, Wallahjah Road, Anna Salai, Triplicane, Chennai - 600 005 to be present before this Court on 22.03.2018 at 10.30 am. Copies of such summons shall be forwarded to the office of the Public Prosecutor, High Court, Madras, towards timely service."

7.9 We explained to Mr.N.Manokaran that neither in the report dated 19.12.2006 nor in the supplementary report under Section 173(8) Cr.P.C., the police have exonerated Dharamchand (A.3) from the prosecution. The police case is, on account of a land dispute between Premchand (P.W.4) and Dharamchand (A.3), goons were set up by Dharamchand (A.3) to liquidate Premchand (P.W.4) and at that time, when the police party went into Premchand's (P.W.4's) house, the goons hurled a country bomb.



7.10 The scope of the police investigation was not as to who had purchased the Mandaveli market property, who is its ostensible owner, etc. That is beyond the scope of criminal investigation, because, those are facts to be determined in a Civil Court. Even in the charge that was framed against the accused, the title to the property was not shown as an issue.

7.11 We further explained to Mr.N.Manokaran that the earlier Division Bench of this Court had directed, vide order dated 14.03.2018 passed in CrI.M.P. No.4646 of 2017, the marking of the report dated 19.12.2006 and for maintaining judicial discipline, we would mark it as Ex.C.1 and accordingly, we mark it as Ex.C.1.

7.12 The Government Advocate (CrI.Side) informed us that Premchand (P.W.4) died on 14.07.2020. We also explained to Mr.N.Manokaran that though Premchand (P.W.4) was there in the witness box and was subjected to such a lengthy cross-examination, he (P.W.4) was not confronted with any documents then. Be it noted that additional evidence under Section 391 Cr.P.C. can be adduced in a case, in which, a piece of evidence, which were not available during trial, surfaces thereafter and which is capable of tilting the outcome of the case. That is not the case here. The report dated 19.12.2016 and the copies of the documents that were filed along with the report, which was, in fact, submitted by Dharamchand (A.3) to the Government, were available on the file of the trial Court when Premchand (P.W.4) was in the witness stand. Premchand (P.W.4) should have been confronted with those documents if they are indeed favourable to Dharamchand (A.3). This was not done. Now, Premchand (P.W.4) is no more. Marking of the documents through Sankaralingam, Inspector of Police, is not tantamount to proof of it. That apart, the documents, which Mr.N.Manokaran wants to mark, would only show that there were serious disputes between Premchand (P.W.4) and Dharamchand (A.3) with respect to the Mandaveli market deal. Therefore, it would only be detrimental to the case of Dharamchand (A.3) than improving his case in his appeal in CrI.A. No.367 of 2016. Motive is a double edged weapon and it can cut either way.

8 The learned counsel for the defence submitted in unison that no incident, as alleged by the prosecution, had ever taken place on 07.06.2001 and that the prosecution story is a charade. We propose to keep aside the evidences of the injured witnesses, viz., Mani (P.W.1) and Ravindran (P.W.3) and also the direct victims of the alleged intimidation, viz., Premchand (P.W.4), Bikamchand (P.W.5), Kamala (P.W.6) and Chandraprakash (P.W.7) and propose to examine the evidence of the other witnesses.



9 Lakshmanan (P.W.8), Chandran (P.W.9), Dr. Chandrika (P.W.10) and Dr. Moorthy (P.W.11) were residents of Muthuraman Street and they have stated that on 07.06.2001, around 10.00 to 10.45 p.m., they heard a sound of explosion in their street and when they went to see what it was, they found a cloud of smoke near the Marwari's house. Of course, none of them had identified any accused.

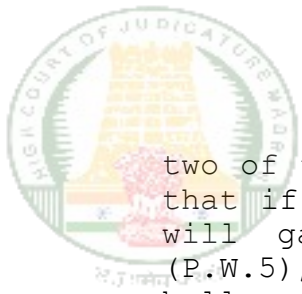
10 Chandran (P.W.9) who was declared hostile, has also stated that he is a resident of No.7, Muthuraman Street and on 07.06.2001, around 10.45 p.m., he heard a sound and when he came out of the house, he found a cloud of smoke near Premchand's (P.W.4's) house.

11 Dr. Chandrika (P.W.10) who was residing in No.3, Muthuraman Street, has stated that on 07.06.2001, around 10.45 p.m., she heard a terrifying sound and when she came out to look what it was, she observed smoke near Premchand's (P.W.4's) house. She has also stated that glass pieces were strewn near the place and one policeman was injured; Dr. Moorthy (P.W.11), who was nearby, gave first aid to the injured policeman and since her 5 year old child was frightened, she went back to her house after about five minutes.

12 Dr. Moorthy (P.W.11), in his evidence, has stated that he is residing in Muthuraman Street; on 07.06.2001, around 9.00 p.m. or so, he heard a noise; some persons told him that the inmates of Premchand's (P.W.4's) house had sustained injuries; he saw a policeman in uniform with injuries and he gave him first aid; when he asked him to come to his clinic, he replied that he would take care of himself and left. In the cross-examination, he has stated that he was not acquainted with Premchand (P.W.4), but, he knows him as a resident of the same street.

13 We have no reason to disbelieve the evidences of these independent witnesses who have no personal axe to grind in this matter at all. In the background of the evidences of these witnesses, if we analyse the evidence of Premchand (P.W.4), Bikamchand (P.W.5) and Kamala (P.W.6), it is perspicuous that they have all stated that four persons armed with knives and country bombs gained entry into their house on 07.06.2001 around 9.45 p.m. and thereafter, started intimidating them by referring to the name of Dharamchand (A.3); the four intruders bolted the house from inside and were roaming inside the house looking out for an appropriate place to plant the bombs.

14 Premchand (P.W.4), in his evidence, has clearly stated that when he questioned them, they told him that Dharamchand (A.3) of R.K. Mutt Road, has sent them to liquidate them and brandished their weapons, viz., knives and country bombs; while



two of them occupied the chair in the hall, the other two stated that if he (Premchand -P.W.4) is finished off, Dharamchand (A.3) will gain in crores; while this was happening, Bikamchand (P.W.5), who was in another portion of the house, came to the hall and he was also made hostage by the foursome; likewise, Kamala (P.W.6), wife of Premchand (P.W.4), was also detained in the hall.

15 Premchand (P.W.4) and Bikamchand (P.W.5) have, in their evidences, stated about the financial dealings they had with Dharamchand (A.3), according to which, they had paid Rs.50 lakhs to one Janakiah Chettiar for the purchase of the Mandaveli market and they entered into a deal with Dharamchand (A.3) for a higher rate by entering into a memorandum of understanding on 25.05.1996; they received a sum of Rs.52 lakhs from Dharamchand (A.3) and a sum of Rs.1.19 crores was due from Dharamchand (A.3).

16 It is not the case of Dharamchand (A.3) that Premchand (P.W.4) was a stranger to him and that he has had no dealings with him at all. Contrarily, it is his case that he had given them a sum of Rs.52 lakhs for evicting the tenants, but, they had not done that. Thus, both Premchand (PW.4) and Dharamchand (A.3) agree on the payment of Rs.52 lakhs by Dharamchand (A.3) to Premchand (P.W.4), but, the dispute is, one says that the other should give him the balance money.

17 Bikamchand (P.W.5), in his evidence, has stated that he went into the kitchen in the guise of drinking water and told his wife who was in the first floor to inform her parents and the police. The advent of Chandraprakash (P.W.7), brother-in-law of Bikamchand (P.W.5), has been spoken to by Premchand (P.W.4), Bikamchand (P.W.5) and Kamala (P.W.6) in addition to the evidence of Chandraprakash (P.W.7) himself.

18 The learned counsel for the defence submitted that non examination of Rajkumari, wife of Bikamchand (P.W.5) is fatal to the prosecution case. According to Bikamchand (P.W.5), Rajkumari was in the first floor and she continued to be in the first floor and did not come down. The evidence of Bikamchand (P.W.5) that he spoke to her in Rajasthani language asking her to alert her parents and the police appears natural. It is nobody's case that Chandraprakash (P.W.7) had a premonition that there was something wrong in his sister's house and therefore, he went there at 10.45 p.m.

19 The learned counsel for the defence took this Court meticulously through the Section 161 Cr.P.C. contradictions in the evidence of Premchand (P.W.4) and Bikamchand (P.W.5) and contended that their evidences are not worthy of acceptance. We carefully analysed those alleged contradictions and we find that



those contradictions do not, in any way, affect the kernel of their evidence that on 07.06.2001, four persons armed with deadly weapons, gained entry into their house and started threatening them by referring to the deal with Dharamchand (A.3). It must be borne in mind that the incident in question took place on 07.06.2001 and Premchand (P.W.4) was examined on 28.12.2015, i.e., after a period of 14 years. He was aged 68 years when he deposed about the incident which took place in his house in 2001. The delay was not on account of the prosecution at all, but, on account of the accused adopting dilatory tactics at every stage of the case by either filing one application or the other or by going into abscondence. Further, Premchand (P.W.4) who was examined-in-chief on 28.12.2015 was not cross-examined on the same day and he was recalled only on 15.02.2016 and was cross-examined. Similar is the case with Bikamchand (P.W.5) and Kamala (P.W.6) too. This procedure is very much against the directions given by the Supreme Court in Vinod Kumar vs. State of Punjab [(2015) 3 SCC 220]. Premchand's (P.W.4's) cross-examination was on two dates, viz., 15.02.2016 and 24.02.2016 and it runs to 19 pages. Of course, we cannot put fetters upon the right of the defence counsel to cross-examine a witness, but, we find that he has been asked about the matrimonial dispute between his daughter-in-law and his son that is said to have occurred in 1998 for which he has patiently given his replies. He also accepted that in 2014, on the complaint given by his daughter-in-law, a case was registered under Sections 406 and 498-A IPC. Let us assume that Premchand (P.W.4) became a bad father-in-law in 2014. But, we are unable to fathom as to what relevance it has for the incident that took place in 2001.

20 The main attack of the defence on the evidence of Premchand (P.W.4) is with regard to the intricate details of the Mandaveli market deal. As set out by us above, the Criminal Court was not required to decide that dispute, but was required to decide whether Dharamchand (A.3) had set up goons to intimidate Premchand (P.W.4). By cross-examining Premchand (P.W.4) and Bikamchand (P.W.5) extensively on the deal, the defence themselves have demonstrated that there was a strong animosity between Dharamchand (A.3) and Premchand (P.W.4) as a fall out of the Mandaveli market deal. It appears that Premchand (P.W.4) addressed a representation dated 10.12.2002 to the Chief Minister stating that after Dharamchand (A.3) was released on bail, when he asked him and his uncle Mohanmull Parasmal Chordia for the return of the money, they started abusing him. He has also stated in that representation that Jawantmull Mohanmull Chordia and Mohanmull Parasmal Chordia, uncles of Dharamchand (A.3), should also be made as accused in the case. Dharamchand (A.3) has obtained this representation from the Chief Minister's Cell under the Right to Information



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Act and has marked the same as Ex.D.2 in the cross-examination of Premchand (P.W.4). In that representation, Premchand (P.W.4) has lamented about his financial position and how Dharamchand (A.3) and his group have made him bankrupt. In the cross-examination of Premchand (P.W.4), he has even stated that while Dharamchand (A.3) was in jail, a panchayat was held on 11.06.2001 by Mohanmull Parasmal Chordia and Jawantmull Mohanlal Chordia, in which, it was agreed that Dharamchand (A.3) will give Rs.60 lakhs and to show his bona fides, a sum of Rs.10 lakhs was given in cash to Premchand (P.W.4). We do not understand as to why the defence had to invite this answer in the cross-examination. Notwithstanding the above, in the cross-examination, Premchand (P.W.4) has stated that still a sum of Rs.1.19 crores was due to him and when the defence started putting further questions on the Mandaveli market deal, Premchand (P.W.4) has stated that he wants to state several details, for which, the defence counsel has retorted "You answer only the questions put to you in cross". This has been recorded by the trial Court in the deposition and thereafter, Premchand (P.W.4) has stated that he is unable to give any further evidence because he has not even slept and is unwell. Therefore, the cross-examination which began at 10.30 a.m. on 15.02.2016 was stopped at 5.05 p.m. and the witness was directed to appear again on the next hearing date. We really find it hard to understand as to why the defence had to mark such documents and put questions to the witness and thereby commit hara-kiri.

21 Guidance offered by the Supreme Court via its judgments as to how the evidence of witnesses should be appreciated by Courts are a legion and we do not want to load this judgment with such authorities. However, the following sapient passages from the judgment of the Supreme Court in Pargan Singh vs. State of Punjab and another [(2014) 14 SCC 619] are worth extracting:

"18. Before entering upon the discussion on this aspect specific to this case, we would like to make some general observations on the theory of "memory". Scientific understanding of how memory works is described by Geoffrey R. Loftus while commenting upon the judgment dated 16-1-2002 rendered in Javier Suarez Medina v. Janie Cockrell [Case No. 01-10763, decided on 16-1-2002 (5th Cir 2002)] by the United States Court of Appeals. He has explained that a generally accepted theory of this process was first explicated in detail by Neisser (1967) and has been continually refined over the intervening quarter-century. The basic tenets of the theory are as follows:

18.1. First, memory does not work like a video recorder. Instead, when a person witnesses some



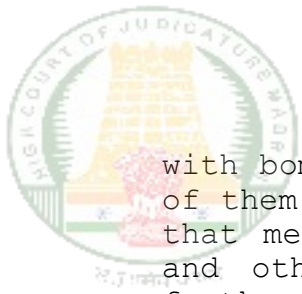
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complex event, such as a crime, or an accident, or a wedding, or a basketball game, he or she acquires fragments of information from the environment. These fragments are then integrated with other information from other sources. Examples of such sources are: information previously stored in memory that leads to prior expectations about what will happen, and information—both information from external sources, and information generated internally in the form of inferences—that is acquired after the event has occurred. The result of this amalgamation of information is the person's memory for the event. Sometimes this memory is accurate, and other times it is inaccurate. An initial memory of some event, once formed, is not "cast in concrete". Rather, a memory is a highly fluid entity that changes, sometimes dramatically, with the passage of time. Every time a witness thinks about some event—revisits his or her memory of it—the memory changes in some fashion. Such changes take many forms. For instance, a witness can make inferences about how things probably happened, and these inferences become part of the memory. New information that is consistent with the witness's beliefs about what must have happened can be integrated into the memory. Details that do not seem to fit a coherent story of what happened can be stripped away. In short, the memory possessed by the witness at some later point (e.g. when the witness testifies in court) can be quite different from the memory that the witness originally formed at the time of the event."

22 In the light of the above discussions, we have no reasons to disbelieve the testimonies of Premchand (P.W.4), Bikamchand (P.W.5), Kamala (P.W.6) and Chandraprakash (P.W.7).

23 Now, coming to the evidence of Mani (P.W.1-Sub Inspector of Police), Sekar (P.W.2-Police Jeep Driver) and Ravindran (P.W.3-Police Constable), they have stated that they were on patrol duty from 9.00 p.m. to 7.00 a.m. on 07.06.2001 - 08.06.2001 and at that time, they received a wireless message around 10.35 p.m. that there is some trouble in No.7, Muthuraman Street and they were directed to proceed there.

24 Mani (P.W.1) has stated that he entered the house of Premchand (P.W.4) along with Ravindran (P.W.3); at that time, Premchand (P.W.4), the house owner, told him that he has a problem with one Dharamchand who is residing in No.238, R.K. Mutt Road in connection with purchase of Mandaveli market and he showed four persons and stated that they were threatening him



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with bombs; when he tried to herd them into the police jeep, two of them ran out and one of them hurled a bomb which exploded; in that melee, all the four escaped, but, with the help of public and others, he was able to apprehend one of them. He has further stated that he sustained injuries and his uniform suffered burn tears. He has stated that the person who was apprehended by him gave his name as Jagan; his pant with holes was marked as M.O.4; he identified Sundar (A.1) and Anbu (A.2) in the dock as the persons who ran away in the melee. He has further stated that he took treatment in St. Isabel's Hospital as an inpatient for a day. The evidence of Mani (P.W.1) stands corroborated by his complaint (Ex.P.1), wherein also, it is stated that when he went to the house of Premchand (P.W.4), he was told by him that the four intruders have been sent by Dharamchand (A.3) in connection with the Mandaveli market deal.

25 Ravindran (P.W.3-Head Constable) has corroborated the evidence of Mani (P.W.1) and has identified Sundar (A.1) and Anbu (A.2) as the persons who ran away after the bomb exploded. He has further stated that they caught hold of Jagan.

26 The learned defence counsel attacked the evidence of Ravindran (P.W.3) by saying that his eyesight was poor and that is why, he was unable to see the accused from the witness stand and hence, his identification of Sundar (A.1) and Anbu (A.2) should be rejected. In our opinion, this argument requires to be rejected for the simple reason that in the Designated Bomb Blast Court at Poonamallee which is where the Rajiv Gandhi assassination trial took place, the dock is a little away from the witness stand. That is why, the trial Judge has recorded that the witness went near the dock and identified Sundar (A.1) and Anbu (A.2) by referring to their names, which cannot be faulted. The incident had taken place in 2001 and at the age of 56 years, Ravindran (P.W.3) had come to the Court to give evidence in 2015 and therefore, his request to the Court to permit him to go near the dock and see the accused for proper identification, cannot be a subject matter of criticism. Concededly, the police had rounded up all the seven accused, out of whom, three are in abscondence and one is dead and therefore, the witness wanted to be sure that he gives the name of the accused correctly while deposing.

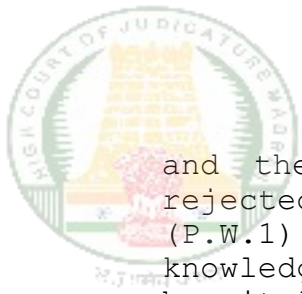
27 The learned defence counsel attacked the evidence of Mani (P.W.1) and Ravindran (P.W.3) by stating that they were not treated at St. Isabel's Hospital as there are naked discrepancies in the accident registers (Exs.P.11 and P.12) that were issued by Dr. Kandiah (P.W.18). The learned defence counsel, taking this Court to Exs.P.11 and P.12, submitted that the accident register number qua Mani (P.W.1) is 517, whereas, the accident register number qua Ravindran (P.W.3) is 579. They contended that no police memo was issued for giving treatment to



these two policemen and that they should have gone to the Government Royapettah Hospital and not to St. Isabel's Hospital. We carefully perused Exs.P.11 and P.12 as well the evidence of Dr. Kandiah (P.W.18). At this juncture, it may be relevant to state here that Dr. Chandrika (P.W.10) and Dr. Moorthy (P.W.11), residents of Muthuraman Street, have stated that first aid was given to an injured policeman after the bomb blast. Dr. Kandiah (P.W.18) has stated that on 07.06.2001, Mani (P.W.1) and Ravindran (P.W.3) came to St. Isabel's Hospital and they were examined by a doctor in the O.P. ward and that he (P.W.18) had not treated them; he had prepared the accident registers based on the records. In the cross-examination, Dr.Kandiah (P.W.18) has stated that he has prepared Exs.P.11 and P.12 after 45 days and not on 07.06.2001. For this, he has given an explanation to the effect that in their hospital, the patients may not ask for the copy of the accident registers immediately and that as and when a request is made, they would prepare the accident register copy and issue it based on the record of treatment. This procedure obtaining in St. Isabel's Hospital may run counter to the procedure that obtains in the Government Hospitals where the accident register copies are prepared contemporaneously. But, be it noted that a wrong procedure that is being adopted in a particular private hospital cannot be a reason to discredit the evidence of the medical practitioner of the said hospital. In the instant case, Dr. Kandiah (P.W.18) has truthfully stated what he did and did not try to side the prosecution by saying that he prepared the accident registers contemporaneously. The argument that the injured witnesses should have gone to the Government Royapettah Hospital and not to St. Isabel's Hospital does not cut ice with us, because, St. Isabel's Hospital is a hospital of renown in Chennai city run by missionaries and is located more proximate to E-1 Mylapore Police Station than the Government Royapettah Hospital.

28 The learned defence counsel contended that no wound certificate was issued by St. Isabel's Hospital and that only accident register copies were furnished. On examination of the accident register copies (Exs.P.11 and P.12), it can be inferred that the injuries sustained by Mani (P.W.1) and Ravindran (P.W.3) are only splinter bruises and not marked wounds. It is common knowledge that wound certificate will be issued by the examining doctor only where there are visibly appreciable injuries and not otherwise. In other words, all wounds are injuries, but, it is not necessary that all injuries should be wounds for the doctor to issue a wound certificate.

29 The learned defence counsel contended that Mani (P.W.1) has stated that he was admitted as an inpatient for a day, whereas, Dr. Kandiah (P.W.18) has stated that Mani (P.W.1) was not admitted as an inpatient, but was treated as an outpatient



and therefore, the evidence of Mani (P.W.1) requires to be rejected. It is true that the medical records show that Mani (P.W.1) was not admitted as an inpatient. However, it is common knowledge that when a person with such injuries goes to a hospital for treatment, the doctors would examine him and would keep him in observation for some time, lest, he should develop any complication. Mani (P.W.1) has not stated that he was an inpatient for more than a day.

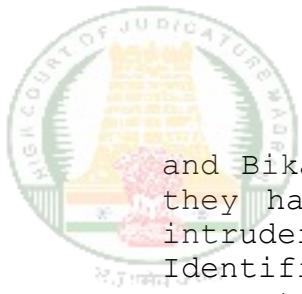
30 Therefore, in the light of the evidence of Dr. Chandrika (P.W.10), Dr. Moorthy (P.W.11) and Dr. Kandiah (P.W.18), we have no hesitation in holding that Mani (P.W.1) and Ravindran (P.W.3) suffered minor bruises and they were treated as outpatients in St. Isabel's Hospital in the night of 07.06.2001.

31 The learned defence counsel submitted that the FIR and the police statements reached the Court belatedly and therefore, the entire prosecution case stands vitiated. We perused the F.I.R. (Ex.P.15) in which the Magistrate has written the date as 08.06.2001 but has not written the time of receipt. The incident had taken place around 10.45 p.m. on 07.06.2001 and according to the police, the F.I.R. was registered at 11 p.m. on 07.06.2001. The Section 161 Cr.P.C. statements of the principal witnesses, viz., P.Ws.1 to 5, which were recorded on 07.06.2001, have reached the Court on 08.06.2001 and hence, it cannot be said that there is any delay. Just because the Magistrate has failed to state the time of receipt in the F.I.R., the entire prosecution case cannot be thrown overboard lock, stock and barrel.

32 The learned counsel for the defence contended that Ravindran (P.W.3) has stated in the cross-examination that he saw the Investigating Officer at the place of occurrence till 11.45 p.m.; if that is so, the registration of the FIR at 11.00 p.m. cannot be true. We find that this piece of evidence by Ravindran (P.W.3), by itself, will not vitiate the FIR, inasmuch as, it is the specific case of Mani (P.W.1) that he gave the complaint, based on which, Isaac Paulraj (P.W.22) registered the FIR at 11.00 p.m. Thus, the stray statement in the cross-examination by Ravindran (P.W.3) in respect of an incident which took place 14 years ago that he was there with the Investigating Officer till 11.45 p.m., cannot have the effect of vitiating the prosecution case.

33 Coming to the evidence of Sekar (P.W.2), he has substantially corroborated the evidence of Mani (P.W.1) in respect of the place and explosion that occurred when one of the accused hurled the country bomb.

34 As regards the identification of the accused, the learned counsel for the accused caviled that Premchand (P.W.4)



and Bikamchand (P.W.5) have stated in the cross-examination that they had not given any identification particulars of the four intruders and in that backdrop, the failure to conduct Test Identification Parade would make their dock identification suspect. When Premchand (P.W.4) and Bikamchand (P.W.5) have interacted with the accused for about 45 minutes, where is the need for them to give the identity particulars of the accused, more so, when the police and public had caught Jagan red-handed and he spilled the beans by giving the names of all the others involved in the crime? On the disclosure of Jagan, the police were able to pick on the other accused in this case. Therefore, in the facts and circumstances of the present case, there was no requirement to conduct Test Identification Parade.

35 The learned defence counsel contended that in the absence of clear proof as to who had hurled the country bomb, the conviction and sentence of Sundar (A.1) and Anbu (A.2) stand vitiated. They also stated that one of the witnesses have stated that two bombs were hurled, whereas, the prosecution case is that only one bomb was hurled. In the opinion of this Court, this discrepancy is not very significant, especially in the light of the evidence of the independent witnesses, viz., P.W.8 to P.W.12, who are neighbours and who have stated that they heard an explosion in their street and when they went and saw, thick smoke was emanating and a policeman was found injured. The three accused in this case who faced the trial are not charged for hurling of bomb. It is the specific case of the prosecution that the bomb was hurled by the absconding accused.

36 The specific case of the prosecution is that at the instance of Dharamchand (A.3), Jagan, Murugan, Anbu (A.2) and Hussain, went in the autorickshaw driven by Sundar (A.1) to the residence of Premchand (P.W.4), armed with knives and country bombs; 4 accused, viz., Jagan, Murugan, Anbu (A.2) and Hussain trespassed into the house of Premchand (P.W.4) and held the inmates hostage until the police arrived; when the police arrived and tried to put them in the jeep, Jagan and Murugan were involved in the hurling of the bomb.

37 Now, the cases against Jagan and Murugan have been split up since they have absconded. The presence of Anbu (A.2) inside the house has been clearly spoken to by Premchand (P.W.4), Bikamchand (P.W.5) and Chandraprakash (P.W.7). That apart, the policemen, viz., Mani (P.W.1), Sekar (P.W.2) and Ravindran (P.W.3) also have identified Sundar (A.1) and Anbu (A.2) as the persons who fled apart from the others. As stated above, one of them, viz., Jagan was caught by the police and the public immediately. The hurling of the bomb had taken place outside the house of Premchand (P.W.4) and therefore, the evidences of Mani (P.W.1), Sekar (P.W.2) and Ravindran (P.W.3), who were outside, are more relevant than the evidence of the



inmates of the house, viz., Premchand (P.W.4), Bikamchand (P.W.5), Kamala (P.W.6) and Chandraprakash (P.W.7) with regard to hurling of the bomb. Mani (P.W.1), Sekar (P.W.2) and Ravindran (P.W.3) have not stated that Sundar (A.1) and Anbu (A.2) had hurled the bomb. Mani (P.W.1) has stated that it was Jagan who had hurled the bomb. Therefore, just because Bikamchand (P.W.5) who is an inmate of the house, has stated that Anbu (A.2) had thrown the bomb, it will not vitiate the entire prosecution case.

38 The learned defence counsel took this Court through the evidence of Ravichandran (P.W.21) Scientific Assistant-TNFSL, and his report Ex.P.14 and contended that in the absence of detection of charcoal, the opinion of the expert that the materials examined by him were gun powder cannot be accepted. In this connection, during trial, Shanthilal, brother of Dharamchand (A.3) made an application under the Right to Information Act to the TNFSD and obtained literature which were marked as Exs.D.4 to D.6, which show that charcoal is an ingredient for making gun powder. In this regard, Ravichandran (P.W.21) has stated that charcoal is an ingredient for making gun powder and he has explained that until 2007-2008, it was a practice in the TNFSD not to mention about the presence of charcoal in their report and only thereafter, the practice of referring to carbon in the report was followed. Factually, all the prime witnesses have stated that there was an explosion. Two policemen were injured in the explosion. In this background, with the explanation given by Ravichandran (P.W.21), the failure to state about the presence of carbon in the report that was issued in the year 2001, cannot, by itself, impeach the evidence of Ravichandran (P.W.21) that the items detected by him were residues of an improvised explosive device (country bomb) containing gun powder.

39 The learned defence counsel took this Court through the seizure mahazar (Ex.P.20) and submitted that the Investigating Officer has referred to only paper pieces, glass pieces and small stones, but, there is no reference to cloth pieces which find place in the report of the expert (Ex.P.14). In bomb explosion cases, the Investigating Officer will adopt the sweep procedure for collecting the clue materials from the ground. In this case, it was done in the midnight around 1.00 a.m. Therefore, the presence of cloth pieces along with paper pieces, glass pieces and small stones at the time of examination by the expert in the laboratory cannot lead to the inference that these items were planted by the police. It must be borne in mind that these items were sent via the Magistrate, to the expert, for examination and report.

40 Mr. Manokaran, learned counsel for Dharamchand (A.3) contended that there is no sufficient evidence to show that



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Dharamchand (A.3) had abetted the offence, inasmuch as, even according to the prosecution, he was not in the place of occurrence and therefore, there is no possibility of him instigating the other accused. This submission lacks legal force. Section 107 IPC contemplates three species of abetments, viz., instigation, conspiracy and intentional aiding. When there is an instigation of one person of another to do a crime and when the latter agrees to do the crime, a consensus ad idem between them comes into being, thereby attracting the ingredient of conspiracy also. To put it in plain terms, conspiracy is an agreement between two or more persons to commit a crime. Prior to the introduction of Section 120-A IPC by Criminal Law (Amendment) Act, 1913, conspiracy was a part of abetment. The distinction between conspiracy as a specie of abetment in Section 107 IPC and conspiracy, as a substantive offence defined under Section 120-A IPC and punishable under Section 120-B IPC has been elaborated by the Supreme Court in *Pramatha Nath Talukdar vs. Saroj Ranjan Sarkar* [AIR 1962 SC 876] and hence, requires no further reiteration. Either for instigation or for conspiracy, as a specie of abetment, the presence of the abettor in the place of offence is not always necessary. If the abettor is present in the place of offence, Section 114 IPC will be added as an additional charge. Illustration (b) in the explanation to Section 108 IPC provides the complete answer for this issue. Very recently, a 3 Judge Bench of the Supreme Court, in *Somasundaram @ Somu vs. State* [(2020) 7 SCC 722], has expatiated on the law of abetment as follows:

"56. As far as the last part of the Explanation to Section 109 IPC is concerned, which speaks about an act or offence being committed in consequence of abetment being committed with the aid which constitutes abetment, it is relatable to thirdly under Section 107 IPC. Section 107 IPC under this head requires intentional aiding by the act or illegal omission. Instigation takes place in terms of Explanation 1 to Section 107 IPC when (i) a person by wilful representation; (ii) by wilful concealment of a material fact which he is bound to disclose, voluntarily causes or procures or attempts to causes or procure a thing to be done and he would be guilty of instigating the doing of that thing. Explanation 2 to Section 107 declares that whoever, either prior to or at the time of the commission of the act, does anything in order to facilitate the commission of that act and thereby facilitate its commission, is said to aid the doing of that act. Thus, anything done which facilitates the commission of the criminal act and promotes the commission of the act, would bring the



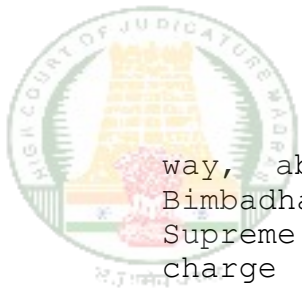
person within the scope of abetment"

(emphasis supplied)

The accused who went to the house of Premchand (P.W.4) had no animosity against Premchand (P.W.4). They were despatched by Dharamchand (A.3) and as his minions, they went there and committed the offences in question. Hence, Dharamchand (A.3) cannot escape criminal liability in the light of the categorical and cogent evidence against him.

41 Coming to the role of the accused who faced trial, viz., Sundar (A.1) and Anbu (A.2), it is the specific case of the prosecution that Sundar (A.1) drove the autorickshaw bearing Regn. No. TN 07 X 9025 to the place of occurrence and thereafter, he was waiting outside when Jagan, Murugan, Anbu (A.2) and Hussain trespassed into the house of Premchand (P.W.4) with knives and bombs. That is the reason why Premchand (P.W.4) clearly stated he does not know Sundar (A.1) but, identified Anbu (A.2) as one of the persons who came inside. Likewise, Bikamchand (P.W.5) has also not identified Sundar (A.1), but has identified Anbu (A.2). Chandraprakash (P.W.7) has clearly identified Anbu (A.2). However, the policemen, viz., Mani (P.W.1), Sekar (P.W.2) and Ravindran (P.W.3) have clearly identified both Sundar (A.1) and Anbu (A.2) as the persons who ran aftermath the bomb blast. It is not the case of the police that after the bomb blast, the accused got into the autorickshaw and escaped. The autorickshaw was seized by the police in the house of Sundar (A.1) after his arrest. From this, one can infer that Sundar (A.1) being an autorickshaw driver, would have innocently ferried the other four accused in his autorickshaw and after the bomb exploded, he would have fled the place with his autorickshaw fearing the serious consequences that would befall him. Therefore, we give the benefit of this doubt to Sundar (A.1) and acquit him of the charge under Section 120-B IPC, the sole charge against him for which he was convicted and sentenced, though we are morally convinced that he is not as innocent as a lamb. Suspicion, however grave it is, cannot take the place of proof.

42 While acquitting Sundar (A.1), we hasten to add that his acquittal by us will not, in any way, enure to the advantage of Anbu (A.2) qua the charge of conspiracy. It is settled law that if only two persons were charged for conspiracy and if one of them is acquitted, the other cannot be convicted of the charge of conspiracy [See Topandas vs. State of Bombay [AIR 1956 SC 33]. However, in this case, Anbu (A.2) has been charged for conspiracy along with Sundar (A.1) and three absconding accused, viz., Jagan, Murugan and Hussain and one deceased accused, viz., Appu. Therefore, the acquittal of Sundar (A.1) by us will, in no



way, absolve Anbu (A.2) of the charge of conspiracy. In *Bimbadhar Pradhan vs. State of Orissa* [AIR 1956 SC 469], the Supreme Court has gone to the extent of holding that if the charge under Section 120-B IPC had added the words "other persons known or unknown", then, the sole accused can have no ground for any grievance.

43 As regards Anbu (A.2), he accompanied his companions in crime who were possessing bombs and therefore, he is liable under Section 3 of the ES Act read with Section 34 IPC for exploding the bomb with the intent to endanger life. There is clear evidence that Anbu (A.2) knew that his two companions were carrying bombs and not bouquets to offer to Premchand (P.W.4). When one of them hurled the bomb at the police, it cannot be stated that it was done for fun. It is normally presumed that a man committing an imminently dangerous act like hurling a bomb, would have the knowledge that his act could cause death or such bodily injuries as are likely to cause death. Therefore, the conviction of Anbu (A.2) under Section 307 read with Section 34 IPC is justified. He is liable under Section 332 IPC also for causing hurt to two public servants, viz., Mani (P.W.1) and Ravindran (P.W.3) deterring them from discharging their lawful duties.

44 Anbu (A.2), along with three others, armed with bombs and knives, trespassed into the house of Premchand (P.W.4) and criminally intimidated the inmates and therefore, the conviction of Anbu (A.2) for the charge under Sections 452 and 506(II) IPC is sustained.

45 Likewise, the conviction of Dharamchand (A.3) for abetment of criminal trespass and criminal intimidation under Section 452 read with Section 109 IPC and Section 506(II) IPC read with Section 109 IPC, respectively, is also sustained.

46 Now, coming to the charge under Section 6 of the ES Act against Dharamchand (A.3), we may profitably refer to the speech of Sir Harvey Adamson who moved the ES Bill on 08.06.1908 in the Legislative Council. Referring to Clause 6 in the Bill, presently Section 6, he said:



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"The sixth clause is one which is perhaps partly covered by the permanent law of abetment. But it is desirable that public attention should be called to the fact that it is not only the man who makes an explosive or the man who places it where an explosion takes place, who is guilty of a crime, but that every man who supplies money or solicits money for the purpose or in any way procures, counsels, aids, abets or is accessory to the commission of an offence under this Act is liable to suffer exactly the same penalty as if he had been guilty as a principal."

47 Section 6, *ibid.*, is an omnibus provision which fixes liability on a whole array of persons who get involved directly or indirectly in the commission of a crime with explosives. In this case, the hirelings sent by Dharamchand (A.3) carried with them knives and bombs which were used by them in the occurrence and therefore, Dharamchand (A.3) cannot be absolved of the liability under Section 6, *ibid.*

48 Coming to the sentences imposed on the accused, the learned Public Prosecutor pleaded that the sentences imposed by the trial Court are insufficient and deserve to be enhanced. As Lord Macaulay pointed out, it is not the enormity of sentences that would control crimes but the certainty of punishment. Further, in our opinion, there is no good reason to reduce the sentences imposed by the trial Court, inasmuch as, a stern message that the Courts will not treat such crimes that affect public tranquility and peace with kid glove. Tamil Nadu which is otherwise a peaceful State should not suffer bomb culture. However, we feel that it may not be just to enhance the sentences imposed by the trial Court on the two accused, viz., Anbu (A.2) and Dharamchand (A.3).

49 In the result:

- CrI.A. No.642 of 2016 preferred by Sundar (A.1) is allowed. Bail bond is discharged and fine amount, if any, paid by him shall be refunded;
- CrI.A.No.760 of 2016 preferred by Anbu (A.2) is dismissed;
- CrI.A. No.367 of 2016 preferred by Dharamchand (A.3) is dismissed; and
- CrI.A. No.180 of 2017 preferred by the State is dismissed.



The police are directed to take Anbu (A.2) and Dharamchand (A.3) into custody and produce them before the trial Court for committing them to prison for undergoing the sentences.

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Sd/-
Assistant Registrar(CS V)

//True Copy//

Sub Assistant Registrar

cad

To

- 1.The Inspector of Police,
E-1 Police Station, Mylapore,
Chennai 600 004.
- 2.The Additional District and Sessions Judge
for Exclusive Trial of Bomb Blast Cases,
Poonamallee, Chennai.
- 3.The Public Prosecutor,
High Court of Madras,
Chennai 600 104.
- 4.The Superintendent,
Central Prison,
Puzhal, Chennai.
- 5.The XVIII Metropolitan Magistrate,
Chennai.

Copy to
The Section Officer,
Criminal Section (records)
High Court, Madras.

+2ccs to M/s.N.Manokaran, Advocate Sr No.33814,33815
+2ccs to M/s.S.Murugan, Advocate Sr No.33771
+2ccs to M/s.P.Pugalenth, Advocate Sr No.34261

CrI.A. No.180 of 2017
&
CrI.A. Nos. 367, 642 and 760 of 2016

VSNII (CO)
PR (03/09/2021)