



Bail Slip

(1) S.Muthuramalingam, S/o. Subramani, (2) K, Murugapandi, S/o. Kottaisamy. Appellant/A2 & A3 were released on bail order of this court dated 14/03/2017 made in Crl MP(MD)No.1663 of 2017 in Crl A(MD).No.62 of 2017.

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON : 25.06.2021

DELIVERED ON : 28.01.2022

CORAM

HONOURABLE MR.JUSTICE SATHI KUMAR SUKUMARA KURUP

CRL.A.(MD)No.62 of 2017

1. S.Muthuramalingam
S/o. Subramani

2. K.Murugupandi
S/o. Kottaisamy

: Appellants/Accused 2 & 3

Vs.

State Represented by
The Inspector of Police,
"Q" Branch Crime Investigation
Department, Madurai City,
Madurai.
(Crime No.1 of 2008)

: Respondent/Complainant

PRAYER: Criminal Appeal filed under Section 374 of Criminal Procedure Code, to call for the records relating to the judgment in S.C.No.308 of 2010 dated 30.01.2017 on the file of the VI Additional District and Sessions Court, Madurai and set aside the same.

For Appellants : Mr.M.Subash Babu

For Respondent : Mr.T.Senthil Kumar
Government Advocate (Crl.side)



JUDGMENT

This Criminal Appeal has been filed against the judgment of conviction recorded by the learned VI Additional District and Sessions Judge, Madurai in S.C.No.308 of 2010, dated 30.01.2017.

2. The brief facts, which are relevant for consideration in this appeal as per the case of the prosecution in short, are as follows:

2.1. Q Branch Crime Investigation Department, Tamilnadu had been searching the activities of the supporters of LTTE. While so, they had come across a group of people involved in transporting explosives to Srilanka. The Q branch police had come across the first accused/Siva Krishnan herein talking to his counterpart regarding the transport of explosives. He was found with a black travel bag in his hand and speaking on his mobile phone. At that time, the second accused/Muthuramalingam herein came and received the black travel bag from the first accused. The first accused/Siva Krishnan was arrested near Madurai Railway Station and he was taken into custody by the Q branch. The witnesses namely., Mohamed Karif and Ramasamy were present near the Railway Station Bus Stand. In their presence, the first accused/Siva Krishnan confessed his involvement for the cause of LTTE. Further, he had stated that his acquaintance and friend requested for 5000 detonators. He brought them in the black travel bag containing 5000 detonators. It was brought to be handed over to one Ramesh, who had been sent by the acquaintance of the first accused/Siva Krishnan namely, Ravi. Previously on 03.01.2008, he had earlier handed over a bag containing 5000 detonators to the said Ramesh on the request of the said Ravi and the detonators that he had now brought and on instructions of Ravi, it was handed over to the first accused. P.W-1/Ambrose Jeyaraj, the Sub Inspector of Police, Q Branch Police Station, Madurai had arrested him. He had also handed over two mobile phones and an amount of Rs.840/-, which he carried with him along with the debit card of ING Vysia Bank. The same was seized under Ex.P-1 in the presence of Mohamed Karif and Ramasamy. M.O-1-Samsung Mobile Phone, M.O-2-Nokia Mobile Phone, M.O-3-black Colour Travel Bag, M.O-4-ING Vysia Bank debit card and 5000 detonators were seized from the first accused/Siva Krishnan and he was detained at Q Branch Police Station, Madurai. The first accused/Siva Krishnan and the second accused/Muthuramalingam were taken into custody by P.W-1 and his team of Officials accompanying him. Based on the confession statement of the first accused, P.W-1 prepared a special report under Ex.P-2. Further, based on the confession statements of the first accused and the second accused, P.W-1 along with Q branch officials had gone to ASV Lodge at Kattrapalayam, Madurai, where the first and second accused and their acquaintances, who are the supporters of LTTE used to meet often in Room No.107. When P.W-1 and officials of Q Branch Police were at the lodge and on entering Room No.107, the acquaintances of A-1 to A-7 namely Sivakrishnan,



Muthuramalingam, Murugupandi, Raja, Chandra, Senthil Murugan and Poo Murugan were present. They were arrested in the presence of the P.W-7- Receptionist and Room Boy of ASV Lodge. When they were arrested by P.W-1, each of the arrested persons offered their confession statement, which was separately recorded by the Sub Inspector of Police, Q Branch. A-1 to A-10 were arrested by P.W-1 along with his team of officials. The special report of Q branch Police was taken to Q Branch Police Station, Madurai and a case was registered against them.

2.2. P.W-33-Venkateswaran, the Inspector of Police, Q Branch Police Station, Madurai had registered the case, based on the special report of the P.W-1-Ambrose Jayaraj, Sub Inspector of Police, Q Branch who had arrested the A-1 and A-2 at Madurai Railway Station along with the seized materials viz., 5000 detonators and M.O-1 to M.O-4 and already obtained confession statement from A-1 & A-2 in the presence of P.W-6 and one Farith, the special report of P.W-1 along with the request for remand to the learned Judicial Magistrate. P.W-33 had also sent the A-1 to A-10.

2.3. P.W-3-Ashok Kumar serving as Head Constable in the team at Madurai, who had accompanied P.W-1 in arresting the accused.

2.4. P.W-4-Moorthy was serving as Head Constable, who had accompanied P.W-1 at Madurai Railway Station and secured the first and second accused.

2.5. P.W-5-Sanku was also serving as the Sub Inspector of Police, who had accompanied P.W-1 on the date of occurrence i.e., 08.01.2008 at Madurai Railway Station and secured the first and second accused.

2.6. P.W-6-Ramasamy was the witness to the arrest and confession statement of the first and second accused, by P.W-1- Sub Inspector of Police, Q Branch, Madurai along with P.W-2, P.W-5- Sub Inspector of Police, Q Branch and P.W-3 and P.W-4- Head Constables of Q Branch.

2.7. P.W-7-Nagarajan was the receptionist of ASV Lodge, Madurai, who was witness to the search and Seizure Mahazar by the Q Branch police officials at Room No.107 and the arrest of the A-3 to A-10.

2.8. P.W-8-Kasirajan was the witness for the observation mahazar and rough sketch prepared by P.W-1 at Madurai Railway Station.

2.9. P.W-9-Pandi was also a witness to the observation mahazar and rough sketch prepared by P.W-1 near the Madurai Railway Station Bus Stop.



2.10. P.W-10-Janagaraj was the witness to the confession statement recorded from the first and second accused regarding purchase of plastic materials from shop in South Masi Street.

2.11. P.W-11-Kalai Nesan, who was working in a Ganapathy Traders had stated that on 22.01.2008, the Police came to the Ganapathy Traders along with accused Murugu Pandi and Raja and he questioned the staff of the Ganapathy Traders.

2.12. P.W-12-Pandurangam is an employee of hardware store. He had deposed regarding the purchase of copper plate by the accused/Murugupandi and Raja on 03.01.2008. Ex.P-12 is the receipt.

2.13. P.W-13-Stephen was working as accountant in ASV Lodge, Madurai. He had deposed regarding the stay of the accused Nos.1 to 10, for which, the book maintained by the Lodge was seized under Ex.P-13 by the Q Branch Police officials.

2.14. P.W-14-Kumarasamy, who was the controller of Explosive, Hyderabad had stated that on 27.08.2008, he had received letter from the learned Judicial Magistrate No.V, Madurai, requesting him to inspect the explosives material seized by the Q Branch officials and retained them in safe custody. Accordingly, he had visited Q Branch Police Station, Madurai, where the detonators were kept in magazine of Meenakshi Sundara Nadar. He had inspected the same in the presence of Gandhi, who is the Sub Inspector of Police, Q Branch Police Station and Muthupandi, who is working as Constable in the said police station. On inspection, it was found that there were 35 boxes of carton boxes in marking SOD special ordinary detonators No.8, Explosive Division, Culf Oil Company, Ideal Industry, Hyderabad. He had issued the inspection report.

2.15. P.W-15-Raja was a witness to the arrest and recording of confession statements from Raguraj and Sivakrishnan.

2.16. P.W-16-Panchavarnam is the fisher man. He had stated that Q Branch officials secured transport of explosives by Srilankan and Indian Tamilians.

2.17. P.W-18-Deivandharan was also a witness to the arrest of accused from AVS Lodge, Madurai.

2.18. P.W-19-Sangarapani had stated that A-9-Raguraj had approached him regarding the availability of materials that was shown to him. At that time, he was not aware about that materials. Subsequently, he came to know that A-9 was enquiring about the purchase of detonators, which is used for breaking Rock. Subsequently, Q Branch Officials came to him and enquired him about the same.



2.19. P.W-23-Kumar is the handwriting expert who had issued the opinion regarding the handwriting and signature of Murugu Pandi and his report is marked as Ex.P-37.

2.20. P.W-24-Thiruvédi is the Controller of Explosives, Vellore. He had deposed regarding the license of A-9-T.S.Padmanathan to sell explosives in the name of M/s.Guru Explosives, Arjunapuram, Kadpadi Taluk, Vellore District.

2.21. P.W-27-Dhanushkodi who was working as the Revenue Inspector, Srilankan Refugee Camp, Puthupatti at Batlagundu, wherein Sivakrishnan and Sivaramakrishnan were staying as refugees in the said camp. The first accused/Siva Krishnan's identity proof is marked as Ex.P-40.

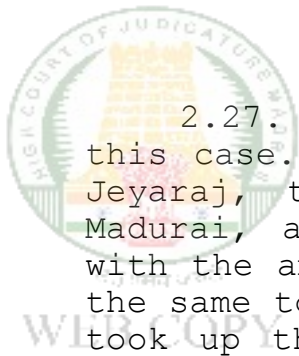
2.22. P.W-28 is the former Manager of Madurai Collectorate in Criminal Section. He had issued sanction to prosecute A-1 to A-10 under Sections 5 and 6 of the Indian Explosives Act by the District Collector, Madurai. The said sanction letter is marked as Ex.P-41.

2.23. P.W-29 is the Head Clerk of the learned Judicial Magistrate No.V, Madurai, who had forwarded the materials recovered by the Q Branch Officials to the Forensic laboratory and to the explosives expert.

2.24. P.W-30-Gunasekaran is working as Deputy Secretary to Home Department, Chennai. He deposed regarding the request of Q Branch Police officials in Crime No.1 of 2008 against A-1 to A-10 under Unlawful Activities (Prevention) Act, 1967 and seeking imposition of the Act to detain A-1 to A-10. Based on the letter of the Superintendent of Police, Q Branch Police Station, Madurai, dated 05.03.2009, the record sent by the Q Branch police was forwarded to the learned Public Prosecutor of the Madras High Court for his opinion. Based on the opinion, the Government of Tamil Nadu, Public Department had issued notification under Ex.P-43 to detain A-1 to A-10.

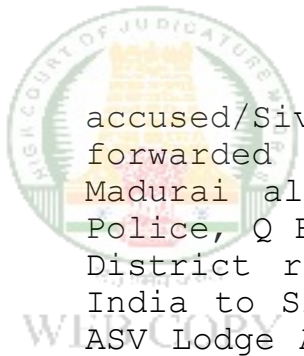
2.25. P.W-31-Seetharaman was the Collector of Madurai. He had issued sanction to prosecute the accused under Ex.P-41 under Explosives Substance Act, based on the request of the Inspector of Police, Q Branch Police Station.

2.26. P.W-32-Jothi Jegarajan was the Home Secretary to Government of Tamil Nadu between 04.09.2009 to 02.12.2009. He had granted sanction to prosecute the accused Nos.1 to 10 based on the opinion of the learned Public Prosecutor of the Madras High Court and also imposition of Unlawful Activities (Prevention) Act against the Accused Nos.1 to 10.



2.27. P.W-33-Venkateswaran is the Investigation Officer in this case. Based on the special report of Q Branch, P.W-1-Amborse Jeyaraj, the Sub Inspector of Police, Q Branch Police Station, Madurai, arrested the first accused and the second accused along with the amount of Rs.5,000/- in a black travel bag and handed over the same to the Inspector of Police, Q Branch/P.W-33. Thereupon, he took up the investigation in Crime No.1 of 2008 for the offence under Sections 120(B) and 120 of I.P.C., Sections 10(a) (5) (b) and 30 (2) of Unlawful Activities (Prevention) Act, 1967, Sections 5 and 6 of Explosives Substance Act, Section 9(b) of Indian Explosives Act, 1988 and Section 14 of Foreigners Act, 1956. Based on the confession statements, the investigation proceeded. P.W-33 had seized the mobile phone of the first accused/Siva Krishnan and he had proceeded along with the first and second accused to ASV Lodge at Madurai and entered Room No.107, from where, the other accused, namely, Murugu Pandi, Raja, Chandra, Senthil Murugan and Poo Murugan were arrested. P.W-33 obtained confession statement from each of them in the presence of witnesses. Based on the confession statement of Murugu Pandi, P.W-33, the Investigation Officer had gone to Gowtham Poly Bag Store at Madurai and seized the bill book regarding purchase of waterproof plastic bags by the accused/Murugu Pandi under Ex.P-47. Similarly, they went to the store from where the accused secured copper plate was also enquired and bill books were seized under Ex.P-45 and Ex.P-46 in the presence of the witnesses. The identity card issued by the Village Administrative Officer, Pachalam, Srilanka was seized under Ex.P-60. The order list of Blackening Salt which was printed in the computer recovered from the accused/Murugu Pandi was marked as Ex.P-51. The chemicals, namely., Potassium Hydroxide, Potassium Nitrate, Sodium Nitrite and Potassium Di Chromate were seized under Ex.P-52. Sony Ericsson Mobile Phone was seized under Mahazer (M.O-12). The sim card of the mobile phone as well as the currency of Rs.5,200/- and fixed deposit receipt of Rs.1,50,000/- were also recovered from the accused. The mobile phone seized from first accused/Siva Krishnan was marked as M.O-12 under mahazer Ex.P-1. The mobile phone surrendered by the accused/Chandra was seized under Ex.P-54. The Nokia phone bearing Model No.2626 with Aircel sim card was marked as M.O-14.

2.28. After securing the accused Nos.1 to 10, they were forwarded along with remand request and along with the seized materials from them to the Court of the learned Judicial Magistrate, Madurai. P.W-1 had prepared observation mahazar and rough sketch in the presence of the witnesses, namely, Pandi and Kasirajan. The detonators seized from the A-1 and A-2 was safely handed over to Sundaram Nadar Explosives for safe custody. Later, P.W-33 had gone to Srilankan Tamil Refugee Camp, Batlagundu and arrested the accused near Batlagundu Government Hospital. Accused/Siva Krishnan had voluntarily gave confession statement and it was recorded in the presence of the witnesses namely., Chinnadurai and Raja. Likewise, the accused/Raguraja also gave confession statement. The mother of Siva Krishnan was informed about the arrest of her son



accused/Siva Krishnan. The arrested accused Nos.1 to 10 were forwarded to the Court of the learned Judicial Magistrate No.V, Madurai along with request letter for remand. The Inspector of Police, Q Branch Police Station went to Muthupatti in Ramanathapuram District regarding enquiry regarding transport of explosives from India to Srilanka by the supporters of LTTE. He had also examined ASV Lodge Accountant, Receptionist and Room boy, who were witnesses to the arrest of Accused Nos.3 to 10 from ASV Lodge and for their confession statements. He had also examined the Inspector of Explosives, Hyderabad and recorded his statement. The Inspector of Explosives, Chennai was examined regarding grant of explosive license to one Padmanabhan, Katpadi and recorded his statement. After recording the statements of all the witnesses, he had laid the final report under Section 173 of Criminal Procedure Code before the Court of the learned Judicial Magistrate No.V, Madurai.

2.30. On taking cognizance of the offence under Sections 120(b) of I.P.C., Sections 10(a)(iv)(b) and 13(2) of Explosive Substances Act, Section 9(b)(1)(b) of Explosive Substance Act, 1884 and Section 6 r/w. 5 of Explosive Substance Act, 1908, the learned Judicial Magistrate had committed the case to the Court of Sessions at Madurai. The learned Principal Sessions Judge, Madurai had taken cognizance of the case in S.C.No.308 of 2010 and transferred the case to the Court of the learned VI Additional Sessions Judge, Madurai for trial.

2.31. The learned VI Additional Sessions Judge, Madurai, after hearing the arguments of the learned Public Prosecutor and the learned counsel for the A-1 to A-10, and on perusal of the materials available along with the case records had framed charges under Section 120(B) of I.P.C. and Sections 10(a)(iv)(b) and 13(2) of Unlawful Activities (Prevention) Act, against the accused Nos.1 to 10 and Section 9(b)(1)(b) of Explosive Substance Act, 1884, as against accused Nos.1, 8 and 9 under Section 5 of Explosive Substance Act, 1908, under Section 6 r/w. 5 of Explosive Substance Act, 1908, as against accused Nos.2 to 7, under Section 419 of I.P.C., as against third accused and under Section 14(2) of Foreigners Act, 1946, as against first accused. All the Accused denied the charges against them and claimed to be tried. Therefore, the learned VI Additional Sessions Judge, Madurai had ordered trial.

2.31-A. During trial to prove the charges against the A-1 to A-10 the Prosecution had examined witnesses P.W-1 to P.W-33, marked Ex.P-1 to Ex.P-65 and Material Objects under M.O-1 to M.O-15. After closing of the evidence of the Prosecution the Accused 1 to 10 were examined under Section-313(1) of Cr.P.C regarding the incriminating evidences against them A-1 to A-8 and A-10 denied the incriminating evidence against them.

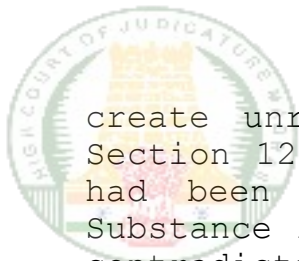


2.32. After hearing the prosecution and the defence and on assessment of the evidence before the learned VI Additional Sessions Judge, the learned VI Additional Sessions Judge had acquitted the first accused from the charges under Sections 13(2) and 10(a)(iv)(b) of Unlawful Activities (Prevention) Act and Section 14(2) of the Foreigners Act, as against the second accused Sections 13(2) and 10(a)(iv)(b) of Unlawful Activities (Prevention) Act, as against the third accused Sections 13(2) and 10(a)(iv)(b) of Unlawful Activities (Prevention) Act and Section 419 of I.P.C., as against the accused Nos.4 to 7 under Section 120(B) of I.P.C., Sections 13(2) and 10(a)(iv)(b) of Unlawful Activities (Prevention) Act and Section 6 r/w. Section 5 of the Indian Explosives Substance Act, 1908, as against eighth accused under Section 120(B) of I.P.C., Sections 13(2) and 10(a)(iv)(b) of Unlawful Activities (Prevention) Act and Section 5 of the Indian Explosives Substance Act, 1908, as against ninth accused under Section 120(B) of I.P.C., Sections 13(2) and 10(a)(iv)(b) of Unlawful Activities (Prevention) Act and Section 9(b)(a)(b) Explosives Substance Act, 1884 and Section 5 of Explosive Substance Act, 1908, as against the tenth accused Section 120(B) of I.P.C., Sections 13(2) and 10(a)(iv)(b) of Unlawful Activities (Prevention) Act.

2.33. The first accused was convicted and sentenced to two years of rigorous imprisonment for the offence under Section 120(B) of I.P.C., for six months rigorous imprisonment for the offence under Section 9(b)(1)(b) of Explosives Substance Act, for three years rigorous imprisonment for the offence under Section 5 of Explosive Substance Act, 1908.

The second and third accused were convicted and sentenced to two years rigorous imprisonment each under Section 120(B) of I.P.C., and imposed fine of Rs.1,000/- each, in default, to undergo simple imprisonment for a period of three months and for three years rigorous imprisonment each under Section 5 of Explosive Substance Act, 1908 and imposed fine of Rs.1,000/- each, in default, to undergo simple imprisonment for a period of three months. Aggrieved against the Judgment of conviction and sentence of imprisonment, the accused Nos.2 and 3 had preferred this appeal.

3. During the course of the arguments, the learned counsel for the Appellants/Accused 2 and 3 submitted that totally there were ten accused in the case. A-4 to A-10 were acquitted. A1 to A3 were convicted for the offence under Section 120 (B) of IPC and Section 9 (b) (1) (b) of Explosive Substances Act. A-2 and A-3 are the appellants herein. The case was registered by Q Branch Police officials and the witnesses are mainly police officials and no independent witnesses were examined. Those who were examined as independent witnesses turned hostile. The charges under Section 120 (B) of I.P.C., cannot be tried separately. Conspiracies had to be

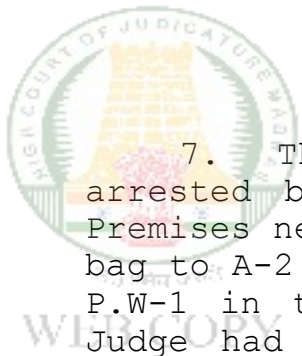


create unrest or attack on a person. Therefore, independently, Section 120(B) will not stand trial before any Court. A-2 and A-3 had been convicted under Section 120 (B) of IPC, Explosive Substance Act and Unlawful Activities (Prevention) Act. There are contradictions between each and every witnesses regarding the charges levelled against each of the Accused. While so, the learned VI Additional Sessions Judge failed to consider the fact that each of the witnesses deposed evidence contradicting other witnesses. Instead of appreciating the evidence in the light of the Indian Evidence Act, the learned VI Additional Sessions Judge had ignored the provisions of law and convicted the accused which resulted in miscarriage of justice. Therefore, the learned counsel for the Appellants/A-2 & A-3 seeks indulgence of this Court to acquit the Appellants/A-2 & A-3 from the charges.

4. The learned counsel for the appellants invited the attention of this Court to the portions of the evidence let in by P.W-1 and others. There are contradictions between the evidence of each and every witness. It is the further submission of the learned counsel for the Appellant that in light of the above, the learned trial Judge failed to appreciate the evidence in proper perspective.

5. The learned Government Advocate (Crl. Side) submitted that the learned trial Judge had appreciated the evidence as per the Indian Evidence Act and based on appreciation of evidence had acquitted the Accused 4 to 10. Since A-8 was absconding, the case against A-8 was split up and it was numbered as S.C.No.50 of 2014. Since A-1 was not granted bail and had been in Prison by that time the judgment was pronounced, the period of remand of A-1 to A-3 were set off under Section 428 of Cr.P.C. Therefore, the conviction of A-2 and A-3 are perfectly as per law. The arguments on behalf of the Appellants/A-2 and A-3 has no merits and is to be rejected. The learned trial Judge had in Paragraph No.25 of the Judgment stated that based on the evidence of Mohammed Farith and Ramasamy and P.W-10, the Accused 1 and 2 holding the Explosive Substances knowing well the same is explosive.

6. The witness P.W-1 to P.W-5 were serving in Q-Branch, CID branch which is an Intelligence Unit. Hence, they are not expected to maintain pocket diary since as per Police Standing Order, pocket diary is mandatory only in cases of Police personnel serving in law and order and crime units. A-1 was caught red-handed with gelatin sticks in his bag. Therefore, that was banned under Section 25 of Indian Evidence Act, will not be applicable as per the ruling of the Hon'ble Supreme Court reported in **2011 Cr1.L. J 1738 (SC)**. The evidence of P.W-6 to P.W-11 and P.W-19 are all independent witnesses whose evidences supported the Prosecution case apart from official witnesses. The District Collector had accorded sanction to prosecute the accused under the Explosives Substances Act and that no aspersions can be cast on a Magistrate exercising his magisterial



7. There is sufficient evidence that the first Accused was arrested by Q Branch Police at Madurai Junction Railway Station Premises near the Bus Stand. He was arrested while handing over the bag to A-2 containing detonators were seized under Mahazar Ex.P-6 by P.W-1 in the presence of witnesses. Therefore, the learned trial Judge had not erred in convicting the Accused 1 to 3 under the Explosive Substances Act and Section 120 (B) of IPC. This appeal lacks merits and is to be dismissed.

8. Point for Consideration

Whether the Judgment of Conviction passed by the learned VI Additional District and Sessions Judge, Madurai is perverse warranting interference by this Court as appellate Court?

9. On perusal of the Judgment of the learned trial Judge and on perusal of the evidence of witnesses under P.W-11 to P.W-33 and Ex.P-1 to Ex.P-65, it is found that no materials available before the Court regarding the claim that the Accused 2 and 3/Appellants herein are supporting LTTE, banned organization under the Unlawful Activities Prevention Act or being the member of the same. Therefore, the learned trial Judge had acquitted A2 and A3 from the charges under Sections 13 (2) and 10 (a) (iv) (b) of Unlawful Activities Prevention Act.

10. Regarding the possession of Explosive Substances Act, the case emanated on detention of A-1-Siva Krishnan at Madurai Railway Station by the Q-Branch Police Officers on suspicion. On such detention, they found out that he was carrying a bag with 5000 detonators which he had handed over to A-2-Muthuramalingam. On the confession of A-2, A-3-Murugupandi who was there in AVS Lodge was also arrested.

11. From the evidence of Prosecution witnesses P.W-1 to P.W-33, except Police Officials P.W-1, P.W-2 and P.W-5 are the Sub Inspector of Police, P.W-3 and P.W-4 are the Head Constables and P.W-6 and P.W-7 are the witnesses to the confession statement of A-1 at the Madurai Railway Station at the time of his arrest by P.W-1. P.W-6 is the witness to seizure of 5000 Detonators from A-1 by P.W-1 and the Seizure Mahazar under Ex.P-1 prepared by P.W-1. He had admitted his signature under Ex.P-4 in the Seizure Mahazar under Ex.P-1. He is also witness to the confession from A-2 and the Seizure Mahazar under Ex.P-6 prepared by P.W-1 and the seizure of cellphone under M.O-5 from A-2, nothing elicited from him, favouring the Accused and against the Prosecution. P.W-7-Nagarajan, Receptionist of the Lodge at Madurai, in his evidence, he had deposed that the third Accused by name Murugupandi had booked the room in the Lodge under the name "Ramesh". Only when Q-Branch Police took him under custody and when he gave confession statement



to the Police that he know that the person by name "Ramesh" is Murugupandi as was informed by Police, since he did not support entire case of the Prosecution regarding confession of A-3, he was treated as hostile by the Prosecution.

12. Even though P.W-7 was treated hostile, he has admitted the fact of arrest of A-3 from AVS Lodge and the fact he is the Receptionist of that Lodge and also to the fact that a room was booked in the name of Ramesh by A-3-Murugupandi.

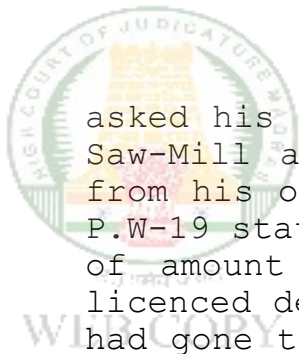
13. Except the confession of A-2 regarding the seizure of mobile phone and the possession of detonators from A-1, the other part of confession is not admissible in evidence before the Court of law. Therefore, the learned Additional Sessions Judge had rightly convicted the A-1 and A-2 under Section 5 of Explosive Substances Act.

14. The learned Judge had convicted the Accused 1 to 3 for the offences under Section 120 (B) of IPC. Except the evidence of the Police Officials, there is no evidence through the independent witnesses in the claim of the Prosecution regarding the conspiracy. Not only that conspiracy had to be proved along with the other offences that are likely to have been committed by the Accused or having been attempted to be committed by the Accused. Conspiracy cannot be proved independent of other charges. The learned Sessions Judge had erred in convicting the Accused 2 and 3 under Section 120 (B) of IPC. Therefore, the arguments of the learned counsel for the Appellants/Accused 2 and 3 regarding the error committed by the learned Sessions Judge in convicting the Accused/Appellants herein for the offence under Section 120 (B) of IPC is found acceptable and reasonable. Therefore, the conviction of Accused 2 and 3 for the offence under Section 120 (B) of IPC is set aside.

15. Regarding the arguments of the learned counsel for the Appellants/Accused 2 and 3 that Accused 2 and 3 cannot be convicted for the possession of 5000 Detonators cannot at all be accepted in the light of the confession of A-1 and in the light of evidence of P.W-6 regarding the Seizure of Detonators by P.W-1 and his team of officials (P.W-1 to P.W-5) at Madurai Railway Station.

16. The evidence of P.W-1 to P.W-5, who are Police Officials, are accepted as such based on the evidence of P.W-6 and the Seizure Mahazar under Ex.P-1 regarding the possession of Explosive Substances by the Accused 1 and 2 at Madurai Railway Station.

17. On perusal of the entire evidence available before the Court through P.W-1 to P.W-33, it is found that there is no independent witness except P.W-6 and P.W-7. P.W-19-Sarangapani had in his evidence, deposed that the Accused-8-Raguraj had shown a piece of Detonator to him. At that time he was not aware of

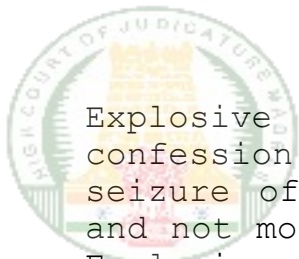


asked his friend viz., P.W-20-Kalianna Gounder who was working in a Saw-Mill as a broker. P.W-20 helped A-8 to trace out the object from his own sources, accordingly. After some months, he contacted P.W-19 stating that he will be able to procure such items on payment of amount to one Padmanaban who is arrayed as A-9 who was the licenced dealer of Explosive Substances. Accordingly A-8 and P.W-19 had gone to Vellore to meet Kalianna Gounder and he took them to A-9. Afterwards the Q-Branch came in search of P.W-19 and they enquired him, P.W-19 had informed them about the same as now deposed before the Court. Also, P.W-19 had in his deposition stated that the Investigation Officer in this case had taken him as a witness and recorded the statement before the Court of the learned Judicial Magistrate under Section 164 of Cr.P.C. Accordingly, he had given statement under Section 164 of Cr.P.C., before the Court of the learned Judicial Magistrate which was marked under Ex.P-60.

18. P.W-19 was cross-examined on behalf of the Accused. In the cross-examination, he had admitted that he was arrested by Q-Branch and detained at Guindy Police Station. Therefore, the cross-examination of P.W-19 does not support the Prosecution case. The Court can consider that he had a role along with the other Accused that much alone, but he was transposed as a witness to strengthen the Prosecution case. He had accordingly given a statement under Section 164 of Cr.P.C., under Ex.P-60. Subsequently, he reconciled from his deposition in his cross-examination admitting to the suggestion that he was detained at Guindy Q-Branch Police Station, Chennai and later on, he was detained at Q-Branch Police Station at Madurai. Therefore, the statement of witnesses under Section 164 of Cr.P.C., has no weightage before the Court.

19. Regarding the possession of Explosive Substances, the evidence of witnesses confirmed possession of explosive substances by A-1 and A-2. Regarding the conspiracy, on perusal of the evidence of P.W-1 to P.W-33 and Ex.P-1 to Ex.P-65, no materials are available regarding the theory of the Prosecution that the Accused 1 to 10 had conspired in procuring explosive substances being transported for a cause of the banned Terrorist Organization (LTTE of Srilanka) attracting the Provision of Sections 13 (2) and 10 (a) (iv) (b) of Unlawful Activities Prevention Act. Had there been materials seized from the Lodge regarding the banned organization LTTE, then conspiracy under Section 120 (B) of IPC can be accepted and accused can be convicted. In the absence of any materials presented by the Prosecution regarding the ingredients of Sections 13 (2) and 10 (a) (iv) (b) of Unlawful Activities Prevention Act, the charge under Section 120 (B) of IPC cannot be independently tried by the Court. Therefore, the same is set aside.

20. There are sufficient materials to convict A-2 under Explosive Substances Act, but the confession of A-3 and the evidence of P.W-6 regarding the confession of A-3 cannot at all be considered

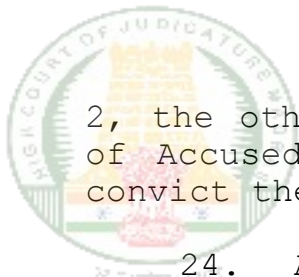


Explosive Substances by A-3. The evidence of P.W-2 regarding the confession of A-6 admitted by the Court only with regard to the seizure of mobile phone under Ex.P-7 only that much is admissible and not more than that. Therefore, the confession of A-3 under the Explosive Substances Act cannot be accepted and therefore, the Judgment of Conviction against A-3 under Sections 13 (2) and 10 (a) (iv) (b) of Unlawful Activities (Prevention) Act is set aside.

21. On perusal of the entire materials available before the learned trial Judge under P.W-1 to P.W-33, Ex.P-1 to Ex.P-65 and M.O-1 to M.O-15, the conviction of A-2 alone under the Explosive Substances Act is accepted by this Court. The arguments regarding the Judgment of conviction of A-2 and A-3 by the learned trial Judge is rejected regarding A-2 alone. The arguments of the learned counsel for the Appellant/Accused 2 regarding conviction of the Explosive Substances Act is accepted and the conviction of A-3 under the Explosive Substances Act is set aside.

22. As per the case of the Prosecution, A-3 is alleged to have occupied a room in AVS Lodge at Madurai with a false name as, "Ramesh" for which his signature was obtained by the Police Officials on white sheet for comparison of his signature under Ex.P.-59 which was sent to the Forensic Department. Based on this, P.W-23-Kumar, the Forensic Expert had given opinion under Ex.P-37. Even if the evidence of P.W-7 is to be accepted, the Receptionist of the Lodge had stated in his deposition that A-3-Murugupandi had booked room in the name of "Ramesh". The victim of cheating/impersonation is not before the Court in order to punish the Accused - 3 for occupying Lodge with a false name. His conduct has not led to loss suffered by all the contacts of A-3 or being indulged by him to prove loss of money or valuables to A-3 to attract punishment under Section 419 of IPC. Therefore, the same is condoned. Except the conduct of A-3 in booking room in the Lodge with false name, the conduct of A-3 regarding conspiracy under Section 120 (B) of IPC is not attracted based on the evidence available through the witnesses. Further, the evidence of P.W-1 to P.W-5 are official witnesses whose evidence can be accepted only to the limited extent of arrest of A-1 and A-2 at Madurai Railway Station Bus Stop, in suspicious movement, they carrying explosive substances and that much of evidence is accepted.

23. As rightly pointed out by the learned counsel for the Appellants/A-2 and A-3, the witnesses are mainly Police Officials. It is true that the Accused 1 and 2 were arrested at Madurai Railway Station for possessing gelatin sticks based on suspicion. On interrogation of Accused 1 and 2 either of the Accused in this case was arrested on interrogation of Accused 1 and 2. Only the Madurai Q Branch Police had registered the case in Cr.No. 1 of 2008 and subsequently, the investigation proceeded. Therefore, the case registered on unlawful possession of Explosive Substances by the



2, the other Accused in this case were implicated. The confession of Accused 1 and 2 is relied upon by the Prosecution seeking to convict the Accused 1 to 10.

24. As per Section 25 of Indian Evidence Act, the confession made to the Police Officer is inadmissible in evidence before the Court of law. Here in this case, the Prosecution relied on the confession of A-1 and A-2 to strengthen its case against the Accused. Other than that, no materials are available before the learned trial Judge.

25. As per the case of the Prosecution, the Accused in this case had conspired together to procure Explosive Substances to transport it to Srilanka for their activities in supporting the activities of banned organization viz., Liberation Tigers of Tamil Ezham. Therefore, their activity attracts the Provision of Unlawful Activities (Prevention) Act along with Provisions of Indian Explosive Substances Act and the Provision of Indian Penal Code. Based on the materials placed before the learned trial Judge by the Prosecution, the learned trial Judge had framed charges against the Accused.

26. The entire evidence of the Prosecution regarding the conspiracy and supporting of Liberation Tigers of Tamil Ezham by A-1 to A-11 and procuring explosives for the said cause is found to be without proper evidenciary materials before the Court of law. The Q-Branch Police is appreciated with regard to arresting the Accused based on suspicion, rest of the story cannot at all be appreciated. For carrying explosive substances, A-1 and A-2 is found to be punishable under the Explosive Substances Act. Therefore, the conviction of A-1 and A-2 by the learned trial Judge is found to be acceptable as per law. The conviction of A-3 is found to be erroneous and the same is set aside.

The Criminal Appeal is partly allowed.

The judgment of conviction and order of sentence imposed by the learned VI Additional Sessions Judge, Madurai, as against **A-2** under Section 120(B) of IPC is set aside and Section 5 of Indian Explosive Substances Act is confirmed. The learned VI Additional Sessions Judge, Madurai, is directed to issue warrant against the first appellant/**Accused 2** so as to undergo the remaining period of conviction for the offence under Section 5 of Indian Explosive Substances Act.

The judgment of conviction and order of sentence imposed by the learned VI Additional Session Judge, Madurai, as against **A-3** under Section 120(B) of IPC and Section 5 of Indian Explosive Substance Act are set aside. The bail bond executed by the second



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appellant/A-3, if any, shall stand discharged. Fine amount, if any paid, shall be refunded to the second appellant/A-3.

Sd/-

Assistant Registrar (W)

// True Copy //

/ /2022

Sub Assistant Registrar(CS)

ias/dh

To

- 1.The Judicial magistrate No.V, Madurai.
- 2.The VI Additional District and Sessions Judge,
Madurai.
- 3.The Inspector of Police,
"Q" Branch Crime Investigation
Department, Madurai City,
Madurai.
- 4.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.

+1 CC to M/s.M.SUBASH BABU, Advocate (SR-3256[F] dated 31/01/2022)

CRL.A.(MD)No. 62 of 2017

28.01.2022

RK(25/02/2022) 15P 8C