



Crl RC No.96/2015 and Crl.A.Nos.375 of 2015 & 835 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 14.09.2023

CORAM:

THE HON'BLE MR. JUSTICE SATHI KUMAR SUKUMARA KURUP

Criminal Revision Case No.96 of 2015
and
Criminal Appeal No. 375 of 2015
Criminal Appeal No. 835 of 2022

Crl.R.C.No.96 of 2015

Parameshwari

.. Appellant

Versus

1.State rep. by,
Inspector of Police,
Namakkal Police Station,
(Crime No.459 of 2011)

2.Boys Ramesh @ Ramesh

.. Respondents

Crl.A.No.375 of 2015

Parameshwari

.. Appellant

Versus

1.State rep. by,
Inspector of Police,
Namakkal Police Station,
(Crime No.459 of 2011)

2.Karuppu @ Sivakumar

3.Shankar @ Udhaya Shankar

4.Kumar

...Respondents



Crl RC No.96/2015 and Crl.A.Nos.375 of 2015 & 835 of 2022

Crl.A.No.835 of 2022

Boys Ramesh @ Ramesh

.. Appellant

Versus

State by Inspector of Police,
Namakkal
(Crime No.459 of 2011)

.. Respondent

Crl.R.C.No. 96 of 2015:- Criminal Revision Case filed under Section 397 read with 401 of Cr.P.C against the judgment of conviction and order of sentence passed in S.C.No.8 of 2012 dated 05.11.2014, on the file of the learned Chief Judicial Magistrate-cum-Assistant Sessions Judge, Namakkal, convicting 2nd Respondent and prays for enhancement of sentence.

Crl.A.No.375 of 2015:- Criminal Appeal filed under Section 372 of the Criminal Procedure Code, 1973, to set aside the judgment of acquittal passed in S.C.No.8 of 2012 dated 05.11.2014 on the file of the learned Chief Judicial Magistrate-cum-Assistant Sessions Judge, Namakkal acquitting Respondents 2 to 4 from all charges.

Crl.A. No. 835 of 2022:- Criminal Appeal filed under Section 372 of the Criminal Procedure Code, 1973, to set aside the judgment of the learned Chief Judicial Magistrate-cum-Assistant Sessions Judge, Namakkal, in S.C.No.8 of 2012 dated 05.11.2014.

Crl.R.C.No.96 of 2015:

For Petitioner	:	Mr. M.Palanivel
For R1	:	Ms. G.V. Kasthuri
		Additional Public Prosecutor
For R2	:	Mr.R.John Sathyan, Senior Advocate
		for Mr. A.P. Venkatesh Kannan

Crl.A.No.375 of 2015:

For Appellant	:	Mr. M. Palanivel
For R1	:	Mrs. G.V. Kasthuri
		Additional Public Prosecutor
For R2 to R4	:	Mr. R. John Sathyan, Senior Advocate
		for Mr.A.P.Venkatesh Kannan



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Crl.A.No.835 of 2022:

For Appellant : Mr. R. John Sathyan, Senior Advocate
for Mr.A.P.Venkatesh Kannan
For R1 : Mrs. G.V. Kasthuri
Additional Public Prosecutor

COMMON JUDGMENT

The Criminal Revision Case No. 96 of 2015 as well as the Criminal Appeal Nos. 375 of 2015 and 835 of 2022 have been filed questioning the correctness and validity of the Judgment dated 05.11.2014 passed in Sessions Case No. 8 of 2012 on the file of learned Chief Judicial Magistrate-cum-Assistant Sessions Judge, Namakkal.

2. Criminal Revision Case No. 96 of 2015 has been filed by the *De-facto Complainant* seeking enhancement of the sentence imposed on the first Accused in S.C.No.8 of 2012.

3. Criminal Appeal No. 375 of 2015 is filed by the *De facto Complainant* Parameswari seeking to set aside the judgment of acquittal passed against the Accused No.2 to 4 in S.C.No. 8 of 2012 on the file of the learned Chief Judicial Magistrate-cum-Assistant Sessions Judge, Namakkal.

4. Criminal Appeal No. 835 of 2022 is filed by the first Accused



seeking to set aside the judgment of conviction dated 05.11.2014 in Sessions Case No. 8 of 2012 recorded by the learned Chief Judicial Magistrate-cum-Assistant Sessions Judge, Namakkal, sentencing him to undergo three years of rigorous imprisonment and to pay a fine of Rs.5,000/- and in default, to undergo three months simple imprisonment.

5. Thus, the Criminal Revision Case as well as the Criminal Appeals centered around the correctness and validity of the Judgment dated 05.11.2014 in Sessions Case No. 8 of 2012. As the pleadings are common and the learned Counsel on both sides advanced common argument, the Criminal Revision Case as well as the Criminal Appeals are disposed of by this common Judgment.

6. The Prosecution was kick-started on the basis of the complaint given by P.W-1, who is the wife of P.W-4 in this case. According to P.W-1, on 21.03.2011, her husband (P.W-4) Thiru. Sampath Kumar, was nominated as the candidate to contest the election for Tiruchengode Legislative Assembly Constituency. On hearing the news, P.W-4 went to Chennai on 22.03.2011. On that day, when P.W-1, her son and daughter were in the house, around 9.15 p.m., P.W-1, heard a loud explosion. On hearing it, she rushed to the portico of her house where she saw plastic chairs and two-wheelers were burnt. She



also saw scattered glass pieces in her house. On seeing the place of occurrence, she raised an alarm. Hearing her cries, P.W-2 and P.W-3, who are her neighbours, rushed to the house of the *De facto Complainant*. P.W-1. P.W-2, P.W-3 with the help of the employees of nearby petrol pump, defused the fire.

7. In connection with this incident, P.W-1 informed the Namakkal Town Police Station. The Police Officials rushed to the house of P.W-1, inspected the scene of crime and obtained written complaint from P.W-1. Based on the complaint of P.W-1, P.W-12, Special Sub-Inspector of Police, Namakkal Town Police Station, registered a case in Crime No. 459 of 2011 for the offences under Section 3 (a) of The Explosive Substances Act and Section 436 of the Indian Penal Code. Ex.P-8 is the First Information Report.

8. On receipt of the same, the Inspector of Police, P.W-16, commenced the investigation. In the course of the investigation, he came to know about the involvement of Accused-1 to Accused-4. P.W-16 arrested them and seized M.O-1 to M.O-9 in the presence of the witnesses, including P.W-2 and P.W-3. After completing the investigation, he laid the final report before the learned Judicial Magistrate No.I, Namakkal.



9. The learned Judicial Magistrate No.I, Namakkal had taken cognizance of the offences under Section 3(a) of the Explosive Substances Act, 1938 r/w. Section 120-B of IPC for which the charge sheet was laid. Since the offence under Section 3 of the Explosive Substances Act, 1938, is to be tried exclusively by a Court of Sessions, the learned Judicial Magistrate No.I, Namakkal had taken cognizance of the offence and taken the case on file, numbered the case as P.R.C.No.10 of 2011. The learned Judicial Magistrate No.I, Namakkal had issued summons to the Accused. On appearance of Accused No.1 to 4, the learned Judicial Magistrate No.I, Namakkal, furnished copies under Section 207 of Cr.P.C. and committed the case to the learned Principal Sessions Judge, Namakkal. The learned Principal Sessions Judge, Namakkal, on receipt of the records in P.R.C.No.10 of 2011 had taken the case on file and numbered it as S.C.No. 8 of 2012 and made over the case to the file of the learned Chief Judicial Magistrate-cum-Assistant Sessions Judge, Namakkal and bound over the Accused to the Court of the learned Chief Judicial Magistrate-cum-Assistant Sessions Judge, Namakkal. The learned Chief Judicial Magistrate as Assistant Sessions Judge, on receipt of records in S.C. No. 8 of 2012 after hearing the Prosecution and the learned Counsel for the defence had framed the charges against the Accused 1 to 4 under Section 3(a) of the Explosive Substances Act, 1938 r/w. Section 120-B



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of the Indian Penal Code and explained in Thamizh. Since the Accused 1 to 4 denied the charges and claimed to be tried, the learned Chief Judicial Magistrate, Namakkal, ordered trial.

10. During trial, the Prosecution had examined 16 witnesses as P.W-1 to P.W-16 and marked 13 documents as Ex.P-1 to Ex.P-13 and M.O-1 to M.O-9 were projected. After completion of the trial, the learned Chief Judicial Magistrate-cum-Assistant Sessions Judge, Namakkal, by judgment dated 05.11.2014, convicted Accused-1 alone for the offence under Section 3 of the Explosive Substances Act, 1938, as mentioned above and acquitted Accused-1 from the charge under Section 120(B) of IPC and also acquitted the Accused-2 to Accused-4 from all the charges.

11. The learned Senior Counsel Thiru.R. John Sathyan appearing for the Accused-1/Appellant in Crl.A.No.835 of 2022, submitted that except P.W-2, none of the witnesses had identified Accused-1 to Accused-4. P.W-1/*De facto Complainant* had deposed only regarding the manner in which the occurrence had taken place and lodging of the complaint under Ex.P-1. In the complaint under Ex.P-1 and in her deposition, she stated that Accused-1 to Accused-4 are not known to her (அடையாளம் தெரியாது). The learned

Senior Counsel for the Appellant also invited the attention of this Court to the



evidence of P.W-1, P.W-2, P.W-3 and P.W-6, who is the Revenue Inspector. It is his submission that P.W-6 had been introduced by the Police Officials to give authenticity to the investigation, as though it was a fair investigation.

12. The learned Senior Counsel for the Appellant also invited the attention of this Court to the cross-examination of P.W-2, P.W-3 and P.W-6. If the Prosecution version is to be believed, immediately after the occurrence, Accused-1 to Accused-4 had to be surrendered before Village Administrative Office and the Village Administrative Officer ought to have taken Accused-1 to Accused-4 to P.W-6 to the Revenue Inspector. In this case, the complaint was received from P.W-1, who is the wife of P.W-4. The so-called eyewitnesses, P.W-2 and P.W-3, had in their evidence deposed that they had seen some people rushing out. P.W-2 and P.W-3 were admittedly talking outside the shop of P.W-3 and they could not have seen any of the Accused. Only upon hearing an explosion, they rushed to the place of occurrence. The statements of P.W-2 and P.W-3 did not contain the name or identity of the Accused. None of the witnesses had spoken about the identity of Accused-1 to Accused-4 or they were in the place of occurrence. On the other hand, Accused-1 alone was identified before the Court. The Investigation Officer had not conducted test identification parade to identify Accused-1 to Accused-

4. The evidence available before the Trial Court is restricted to the occurrence,



as none of the witnesses had spoken about the involvement of Accused-1 to Accused-4 in the crime. The learned Trial Judge misdirected himself and convicted Accused-1 based on the weak evidence of P.W-2 and P.W-6 and it is legally not sustainable.

13. The learned Senior Counsel also invited the attention of this Court to the evidence of the Investigation Officer, P.W-16. In his cross-examination P.W-16 had stated that the description of the persons seen in the place of occurrence was not mentioned by any of the witnesses. The pamphlets under M.O-6 seized from the scene of the occurrence was compared with the signature of Accused-1 by the forensic expert. P.W-14 and P.W-15 or the Investigation Officer had not obtained the admitted signatures or handwriting of Accused-1 by approaching the learned Judicial Magistrate by filing application at the earliest point of the investigation or during the period of remand of Accused-1. Therefore, the evidence of P.W-14 and P.W-15 regarding identification of handwriting and signatures of Accused-1 is inadmissible. The learned Trial Judge had ignored the provisions of law regarding admissibility of document, admissibility of Forensic Experts and the role of the Investigation Officer. The investigation has been conducted in a shoddy manner. The evidence made available are not sufficient to convict the

<https://www.mhc.triaappellant/accused-1>. Therefore, the learned Senior Counsel for the



Appellant/Accused No.1 seeks to set aside the judgment of conviction and sentence imposed on the first Accused.

14. On the other hand, the learned Counsel for the Appellant in Crl.A.No.375 of 2015 submitted that the *De facto Complainant* had lodged the complaint under Ex.P1 immediately after the occurrence. The neighbours of P.W-1 viz., P.W-2 and P.W-3 had specifically stated in their evidence that immediately after hearing the explosion they saw some people rushing out from the front portion of the house of P.W-1 and those persons were seated in the driver seat of the vehicle. P.W-2 had specifically identified the person who was seen on the date of occurrence on the driver seat. Therefore, the presence of the Appellant/Accused-1 has been identified by P.W-2 and it is sufficient for the Court to arrive at the conclusion that it was Accused-1 who is involved in the offence. Further, the learned Counsel for the Appellant/*De facto Complainant* invited the attention of this Court to the evidence of P.W-2, P.W-3, P.W-6, P.W-14 and P.W-15, Handwriting Experts. They stated in their evidence that the handwriting found on M.O-6 pamphlets was written by persons whose handwriting was obtained by the Investigation Officer and it was the same person. Therefore, there are sufficient materials available before the trial Court to convict the Appellant/Accused-1. The conviction of the Appellant/Accused-1 is proper and it does not call for any interference by this



Court. However, the sentence imposed on the Appellant/Accused-1 is contrary to the provisions of the Explosive Substances Act. When the statute prescribes a minimum of 10 years of imprisonment or the offence under Section 3 of the Explosive Substances Act, 1938, the learned Trial Judge is legally incompetent to impose sentence of only three years and fine of Rs.5,000/-.

15. Further, the learned Counsel for the Appellant submits that when Accused-1 to Accused-4 had been identified in Court by P.W-2 and P.W-3, the learned Trial Judge ought not to have acquitted Accused-2 to Accused-4. Therefore, the acquittal of Accused-2 to Accused-4 is improper and perverse. When there are enough evidence made available to convict the Accused 2 to 4, acquitting them is improper and it has to be set aside.

16. The Learned Additional Public Prosecutor appearing for the State submitted that the evidences of P.W-2, P.W-3, P.W-6, P.W-12, P.W-13, P.W-14, P.W-15 and P.W-16 are sufficient for the trial Court to arrive at a conclusion that the Accused in this case were identified by P.W-2 and P.W-3. Further, the learned Additional Public Prosecutor submitted that Accused-1 to Accused-4 had given confession statement based on which M.O-5 had been seized by the Investigation Officer. The confession statement of the Accused



led to the recovery of the Material Objects in this case, which would go to show the participation of the Accused in this case in the crime. The finding leading to recovery of the vehicle in which pamphlets were found clinchingly proved the involvement of the Appellant/Accused-1. The learned Additional Public Prosecutor invited the attention of this Court to the discussion of the evidence by the learned Chief Judicial Magistrate-cum-Assistant Sessions Judge, Namakkal, in paras 27 to 50 and submitted that the learned Trial Judge had convicted Accused-1, based on proper appreciation of evidence. The judgment of the learned Chief Judicial Magistrate-cum-Assistant Sessions Judge, Namakkal is a well-reasoned judgment and it does not warrant any interference by this Court. The Appeal in Crl.A.No.835 of 2022 has no merit and it has to be dismissed.

17. Heard the learned Counsel for the *De facto Complainant*/Revision Petitioner, the learned Senior Counsel appearing for the Appellant/Accused and the learned Additional Public Prosecutor appearing for the State and perused the material records made available in the Criminal Revision Case as well as the Criminal Appeals.

(i) ***Point for consideration in Crl. R.C. No. 96 of 2015:***

Whether the sentence imposed by the learned Chief



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Judicial Magistrate-cum-Assistant Sessions Judge, Namakkal, in S.C.No.8 of 2012 dated 05.11.2014, sentencing the Accused-1/Respondent-2 to undergo rigorous imprisonment of three years for the offence under Section 3 of the Explosives Substances Act, 1938 is proper, as per the provisions of Explosive Substances Act, 1938 or it requires interference by this Court to enhance the sentence?

(ii) ***Point for consideration in Crl. A. No. 375 of 2015:***

Whether the judgment of acquittal recorded by the learned Chief Judicial Magistrate-cum-Assistant Sessions Judge, Namakkal, in S.C.No.8 of 2012 dated 05.11.2014, acquitting the Accused-2 to Accused-4 is to be set aside as perverse?

(iii) ***Point for consideration in Crl. A. No. 835 of 2022:***

Whether the judgment of conviction recorded by the learned Chief Judicial Magistrate-cum-Assistant Sessions Judge, Namakkal, in S.C.No.8 of 2012 dated 05.11.2014 is to be set aside as perverse?

18. On appreciation of the evidence, the finding of the learned Trial Judge, based on the evidence of P.W-2, P.W-3, P.W-4 and P.W-6 in Paragraph Nos. 27 to 50 of the impugned judgment, is found unacceptable, particularly when there is no mention of specific details of identification by P.W-2 and P.W-3, who have stated that they were present in the place of occurrence at the time of occurrence. The identification of Accused-1 to Accused-4 before the



Court during trial had been admitted as evidence. There was no such statement to the Investigation Officer during the investigation by the witnesses who identified Accused-1 to Accused-4. Under those circumstances, merely placing reliance on P.W-2 and convicting the Appellant/Accused-1 is not proper. The discussion regarding the evidence of P.W-6 is also inadmissible.

19. Considering the fact that at the earliest point of time, P.W-2 and P.W-3, who were stated to be eyewitnesses to the occurrence, had not mentioned the description of the vehicle, colour and registration number or identified the vehicle. Under those circumstances, the attempt of the Investigation Officer by introducing P.W-6, Revenue Inspector, as though Accused-1 to Accused-4 surrendered before P.W-6 and given confession statement cannot be accepted. The testimony of P.W-6 is found unacceptable, unbelievable and inadmissible. If that be so, the complaint ought to have been emanated from the Village Administrative Officer concerned and the complaint ought not to have been received from P.W-1/*De facto Complainant*. Further, the Investigation Officer in this case had himself obtained the handwriting of Accused-1 and got it compared for the purpose of implicating him, whereby he had by-passed the established procedures contemplated under the law. Had it been obtained in the first spell of remand when Accused-1 to



Accused-4 was in the custody through the Court of law in the presence of learned Judicial Magistrate No.I, the evidence of P.W-14 and P.W-15/Forensic Experts regarding the handwriting found on the pamphlets under M.O-6 could have been taken for granted as acceptable evidence. But such a course has not been adopted by the Investigation Officer in this case. Considering the evidence in the cross-examination of P.W.16, the Investigation Officer, this Court is of the view that it is unsafe to record a judgment of conviction against the Appellant/Accused-1 as also the other Accused. Therefore, the reliance placed by the learned Chief Judicial Magistrate-cum-Assistant Sessions Judge, Namakkal, on the evidence of P.W-2, P.W-3 and P.W-6 to convict Accused-1 for grave charge of Section 3 of the Explosive Substances Act, 1938, which attracts the minimum punishment of 10 years and maximum life sentence, is not proper. Therefore, as rightly pointed out by the learned Senior Counsel for the Appellant/Accused-1, the judgment of the learned Chief Judicial Magistrate-cum-Assistant Sessions Judge, Namakkal, is found to be perverse.

20. In the light of the above discussion, the point for consideration in Crl.R.C.No.96 of 2015 is answered against the Petitioner and in favour of the first Accused/Respondent No.2. The judgment of sentence imposed by the learned Chief Judicial Magistrate-cum-Assistant Sessions Judge, Namakkal, in S.C.No.8 of 2012 dated 05.11.2014, sentencing the Accused-1/Respondent-2



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to undergo rigorous imprisonment of three years for the offence under Section 3 of the Explosives Substances Act, 1938 is found perverse and the same is to be set aside. Therefore, the Criminal Revision seeking enhancement of sentence is to be rejected.

21. In the light of the above discussion, the point for consideration in Crl.A.No.375 of 2015 is answered against the Appellant and in favour of the Respondents. The judgment of acquittal recorded by the learned Chief Judicial Magistrate-cum-Assistant Sessions Judge, Namakkal, in S.C.No.8 of 2012 dated 05.11.2014, acquitting the Accused-2 to Accused-4 is found proper and the same is to be confirmed.

22. In the light of the above discussion, the point for consideration in Crl.A.No.835 of 2022 is answered in favour of the Appellant and against the Prosecution. The judgment of conviction recorded by the learned Chief Judicial Magistrate-cum-Assistant Sessions Judge, Namakkal, in S.C.No.8 of 2012 dated 05.11.2014 is found perverse and the same is to be set aside.

In the result,

(i) **Crl.R.C.No.96 of 2015 is dismissed.** However, the judgment of

sentence imposed by the learned Chief Judicial Magistrate-cum-Assistant



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Sessions Judge, Namakkal, in S.C.No.8 of 2012 dated 05.11.2014, sentencing the Accused-1 for the offence under Section 3 of the Explosives Substances Act, 1938 and sentencing him to undergo rigorous imprisonment for three years is set aside.

(ii) **Crl.A.No.375 of 2015 is also dismissed.** The judgment of acquittal recorded by the learned Chief Judicial Magistrate-cum-Assistant Sessions Judge, Namakkal, in S.C.No.8 of 2012 dated 05.11.2014, acquitting the Accused-2 to Accused-4 is found proper and the same is confirmed.

(iii) **Crl.A.No.835 of 2022 is allowed.** The judgment of conviction recorded by the learned Chief Judicial Magistrate-cum-Assistant Sessions Judge, Namakkal, in S.C.No.8 of 2012 dated 05.11.2014 is set aside. The Appellant/Accused-1 is acquitted under Section 235 of Cr.P.C. The Appellant/Accused-1 is directed to be released, if he is in prison and if his detention is not required in connection with any other case. The bail bond executed by Appellant/Accused-1 is cancelled and the fine amount, if any paid, is directed to be refunded to the Appellant/Accused-1.

14.09.2023

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Internet : Yes / No

Index : Yes / No

Speaking/Non-speaking order



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SATHI KUMAR SUKUMARA KURUP, J

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To

- 1.The Assistant Sessions Judge
(Chief Judicial Magistrate),
Namakkal.
- 2.The Inspector of Police,
Namakkal Police Station,
- 3.The Public Prosecutor,
High Court, Madras.
- 4.The Section Officer, VR Records,
High Court, Chennai.

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