



WEB COPY



CRL.A.No.561 of 2016

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 08.03.2024

CORAM

THE HONOURABLE MR.JUSTICE **SATHI KUMAR SUKUMARA KURUP**

CRL.A.No.561 of 2016

The State Rep. By
The Public Prosecutor,
High Court, Madras.
(B-1 North Beach P.S.
Crime No.453/1998)

: Appellant/Complainant

Vs.

Mohammed Kasism @
Erwadi Kasim @
Syed @ Syed Meeran

: Respondent/Accused

PRAYER: Criminal Appeal filed under Section 378 of Criminal Procedure Code, to set aside the Judgment of acquittal of the Respondent/Accused passed by the Additional District & Sessions Court for Exclusive Trial of Bomb Blast Cases, Chennai @ Poonamallee in S.C.No.8 of 2010 dated 27.10.2015 and convict the Respondent/Accused for the charges framed against him.

For Appellant : Mr.G.V.Kasthuri
Additional Public Prosecutor
For Respondent : Mr.P.Pugalenth

J U D G M E N T

This Criminal Appeal has been filed by the State against the Judgment of acquittal passed by the learned Additional District & Sessions Judge, Court for Exclusive Trial of Bomb Blast Cases, Chennai @ Poonamallee in S.C.No.8



CRL.A.No.561 of 2016

of 2010, dated 27.10.2015.

WEB COPY

2. The learned Additional Public Prosecutor for the Appellant/Complainant invited the attention of this Court to the Charges framed against the Accused by the learned trial Judge, which are as follows:

No. of Charges	Charges framed
I Charge	Under Section 120 B of IPC, 4 (a) of the Explosive Substances Act, 1908.
II Charge	Under Section 4 (b) of the Explosive Substances Act, 1908
III Charge	Under Section 307 of IPC

3. The learned Additional Public Prosecutor for the Appellant invited the attention of this Court to the following brief facts of the case:

3.1. The Appeal is filed against the acquittal of Accused-1, namely, Mohammed Kasim @ Erwadi Kasim @ Syed @ Syed Meeran, who is alleged to have formed an organization by name, Islamic Defence Force (IDF) along with the absconding Accused. They were secured in a different crime involving Coimbatore. At that time, P.W-19 was serving as Assistant Commissioner of Police, Coimbatore City. Subsequently, he was promoted and transferred to Chennai as Deputy Commissioner of Police, Headquarters at Commissioner of Police Office, Egmore, Chennai-8. Accused-1 and the



CRL.A.No.561 of 2016

absconding Accused are alleged to have shifted their place of residence from Coimbatore and taken up a house for rent where P.W-16 is the landlord.

3.2. Both Accused-1 and the absconding Accused are alleged to have sent a letter bomb from the address in the name of Subbulakshmi Jagatheesan, MA, Chennai-2 to the address of the Deputy Commissioner of Police, Headquarters at Commissioner of Police Office, Egmore, Chennai – 8 and the letter was received in the Office of the General Post Office (GPO). While sorting out the letters, P.W-1 found a suspicious wire hanging from the letter. Therefore, he picked it out and saved it. Subsequently, P.W-1, the Staff of the General Post Office, had informed B-1, North Beach Police Station, from where P.W-1 came to the General Post Office and found out that it was a suspicious letter bomb. He had informed the CBCID near the Secretariat. From where the other Officials of the Bomb Disposal Squad came. The letter bomb was safely diffused and the content of the letter was sent for forensic examination.

4. The learned Additional Public Prosecutor for the Appellant invited the attention of this Court to the deposition of the Witnesses examined before the trial Court viz., P.W-1 to P.W-28 and Ex.P-1 to Ex.P-34. The learned trial Judge, on appreciation of evidence, had misdirected himself and ignored the



CRL.A.No.561 of 2016

materials placed by the Witnesses, particularly, P.W-1 to P.W-6, P.W-16, P.W-17 and P.W-21 to P.W-28 and had acquitted Accused-1 as though the charges were not proved by the Prosecution.

5. The learned Additional Public Prosecutor for the Appellant contended that there are sufficient materials to convict Accused-1, but the learned trial Judge failed to appreciate those evidences. Therefore, the learned Additional Public Prosecutor seeks to set aside the Judgment of acquittal recorded by the learned trial Judge and convict the Accused.

6. The learned Counsel for the Respondent/Accused vehemently objected to the submission of the learned Additional Public Prosecutor, stating that the learned trial Judge had, on proper appreciation of evidence, acquitted Accused-1. The learned Counsel for the Respondent submitted that the Respondent was also secured and was in custody. He was produced in this case on PT warrant and subsequently remanded in this case. All along he is co-operating with the pending investigation. The suspicious letter was sent to forensic examination, but the Investigation Officer had obtained the admitted handwriting and signature of Accused-1 and the Respondent from the open Court and it was sent for forensic examination.



7. The learned Counsel for the Respondent invited the attention of this Court to Ex.P-10 wherein the forensic expert had pointed out that **“four items were examined but explosives or explosion residues were not detected in any of them”**. Regarding handwriting in Ex.P-8 wherein they had stated **“it is not possible to offer any reliable opinion”**. Further, the learned Counsel for the Respondent invited the attention of this Court to the FIR under Ex.P-17 to elicit the fact that the alleged occurrence is on 12.03.1998 by 16.30 hrs and the FIR is alleged to have been registered on 13.03.1998 by 17.30 hrs., but the seal of the Court is found to be on 16.03.1998. Therefore, it is the contention of the learned Counsel for the Respondent that there had been prior discussion even before registering the Complaint. Therefore, it is a delayed Complaint and the delayed FIR, which is a irrelevant document. Therefore, the learned trial Judge had, on proper appreciation of evidence, had acquitted Accused-1 from the charges.

8. Further, the learned Counsel for the Respondent submitted that this Court cannot reverse the finding of fact recorded by the learned trial Judge, who had the opportunity of observing the demeanour of the witnesses, which advantage is not available to this Court. Therefore, this Court, on perusal of the materials before the trial Court, cannot reverse the finding when



CRL.A.No.561 of 2016

the finding given by the learned trial Judge is based on proper appreciation of the evidence placed before him as per the Provisions of the Explosive Substances Act, 1908. Therefore, the learned Counsel for the Respondent seeks to dismiss this Appeal as having no merits.

Point for Consideration:

Whether the Judgment of acquittal recorded by the learned Additional District & Sessions Judge, Court for Exclusive Trial of Bomb Blast Cases, Chennai @ Poonamallee in S.C.No.8 of 2010 dated 27.10.2015 is to be set aside as perverse?

9. Heard the learned Additional Public Prosecutor for the Appellant and the learned Counsel for the Respondent. Perused the evidence before the trial Court through P.W-1 to P.W-28, Ex.P-1 to Ex.P-34 and the Judgment of the learned Additional District and Sessions Judge, Chennai at Poonamallee in S.C.No.8 of 2010 dated 27.10.2015.

10. On consideration of the rival submissions and on perusal of the Judgment of the learned Sessions Judge, it is found that nothing is found perverse. The learned trial Judge in paragraph. No.85 of his Judgment observed that the forensic report under Ex.P-10 clearly states that the sample did not contain explosives or explosion residue. Also, the forensic report under Ex.P-8 regarding hand writing states as follows:



CRL.A.No.561 of 2016

“On the basis of the present standard material it is not possible to offer any reliable opinion on the red enclosed writings stamped and marked Q1 to Q6 on a comparison with the red enclosed writings similarly stamped and marked S1 to S5.”

11. Added to that, the alleged occurrence is on 12.03.1998 by 16.30 hrs. The FIR was registered on 13.03.1998 at 17.30 hrs. The seal of the Court is found to be on 16.03.1998. The seal of the Court was received on 16.03.1998 as per the Judgment of the learned Sessions Judge.

12. In the copy furnished as typed set, the Staff of the Court had not taken the emblem fully, it was mischievously hidden and photostat copy taken. Therefore, this Court is unable to consider the seal. The learned Sessions Judge had the advantage of perusing the original records and arrived at a conclusion that the FIR reaches the Court by 16.03.1998. Considering the seriousness of the case, letter bomb sent to the Police Officer by the Accused intending to cause murder or to cause danger to his life and limb is a grave charge. In such cases, FIR reaches the Court in the shortest time. The alleged occurrence is on 12.03.1998 at 16.30 hrs. FIR registered on 13.03.1998 at 17.30 hrs and it reaches the Court on 16.03.1998. That shows, it is suspected to have been prepared after much discussion by the prosecuting agency. As per the reported ruling of the Hon'ble Supreme Court, when the FIR is delayed, it is to be considered as there is a scope for embellishment. The case of the



CRL.A.No.561 of 2016

Prosecution is that the Accused is running a movement i.e., Islamic Defence Force and he is under the watch of the State Police. They targeted the then Assistant Commissioner of Police from Coimbatore who was promoted and transferred to Chennai as Deputy Commissioner. The Accused is alleged to have sent letter bomb with an intention to kill P.W-1/defacto-Complainant. The finding given by the learned Sessions Judge in Para 85 to 95 is found proper. On assessment of the evidence, when the forensic expert is unable to give opinion on the letter alleged to have been written by Accused-1 that it was written by Accused-1, the allegation that the Accused threatened to kill Police Officer will not hold good.

13. The report of the forensic expert regarding bomb blast, there is no explosive or explosion residue is found in the sample clearly indicates that there is no involvement of such activities. Under those circumstances, the alleged Complaint under Ex.P-1 and the FIR under Ex.P-17 which was received in Court belatedly after three days creates lot of suspicion in the minds of the Judge. It is natural. Therefore, under those circumstances, the benefit of doubt had to be extended to the Accused. When the Appeal is heard, the Appellate Court also considered the entire materials before the trial Court. The Appellate Judge did not have the advantage of observing the demeanour of the witnesses and the Accused.



14. In the reported decision in **2016 (12) SCC 150 [V.Sejappa - Vs - State]**, the Hon'ble Supreme Court has laid down the following guidelines for dealing with an appeal against acquittal :-

“23.....

Suffice it to say that this Court has consistently held that in dealing with appeals against acquittal, the appellate court must bear in mind the following:

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

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

(iii) Though, the powers of the appellate court in considering the appeals against acquittal are as extensive as its powers in appeals against convictions but the appellate court is generally loath in disturbing the finding of fact recorded by the trial court.

It is so because the trial court had an advantage of seeing the demeanour of the witnesses. If the trial court takes a reasonable view of the facts of the case, interference by the appellate court with the judgment of acquittal is not justified. Unless the conclusions reached by the trial court are palpably wrong or based on erroneous view of the law or if such conclusions are allowed to stand, they are likely to result in grave injustice, the reluctance on the part of the appellate court in interfering with such conclusions is fully justified; and

(iv) Merely because the appellate court on reappreciation and re-evaluation of the evidence is inclined to take a different view, interference with the judgment of acquittal is not justified if the view taken by the trial court is a possible view. The evenly balanced views of the evidence must not result in the interference by the appellate court in the judgment of the trial court.” Thus, when there are two views possible, the view favourable to the accused deserves acceptance.”



CRL.A.No.561 of 2016

15. In the above decision, the Hon'ble Supreme Court, had given guidelines regarding re-appreciation of evidence by the learned Appellate Judge. The finding of fact recorded by the learned trial Judge if found to be on proper appreciation of evidence, the finding by the learned trial Judge shall not be disturbed. This is due to the fact that the learned trial Judge had the advantage of observing the demeanour of the witnesses and Accused whereas the learned Appellate Judge does not have the said benefit. Further, on the same set of evidence, even if the learned Appellate Judge arrives at a different conclusion, it shall not be disturbed if the finding of fact recorded by the learned trial Judge, if it is found on proper appreciation of evidence. Also, when there is possibility of acquittal, the trial Court has to lean towards acquittal. In the light of the guidelines issued by the Hon'ble Supreme Court, the acquittal recorded by the learned Additional District and Sessions Judge, Court for Exclusive Trial of Bomb Blast Cases, Chennai @ Poonamallee is found to be well-reasoned Judgment and it does not warrant interference of this Court by exercising the power under Section 378 of Cr.P.C.

16. In the light of the above discussion, the point for consideration is answered in favour of the Respondent and against the State. The Judgment of acquittal recorded by the learned Additional District & Sessions Judge, Court for Exclusive Trial of Bomb Blast Cases, Chennai @ Poonamallee in S.C.No.8



CRL.A.No.561 of 2016

of 2010, dated 27.10.2015 is found proper.

WEB COPY

In the result, *this Criminal Appeal is dismissed.* The Judgment of acquittal recorded by the learned Additional District & Sessions Judge, Court for Exclusive Trial of Bomb Blast Cases, Chennai @ Poonamallee in S.C.No.8 of 2010 dated 27.10.2015 is confirmed.

08.03.2024

Index: Yes/No

Internet: Yes/No

Speaking Order/Non-speaking Order

dh

To

1. The Additional District & Sessions Court for Exclusive Trial of Bomb Blast Cases, Chennai @ Poonamallee.
2. The Inspector of Police, B-1 North Beach Police Station, Chennai.
3. The Public Prosecutor, High Court, Madras.



WEB COPY



CRL.A.No.561 of 2016

SATHI KUMAR SUKUMARA KURUP, J.

dh

Judgment made in
CRL.A.No.561 of 2016

08.03.2024