



Crl.A(MD)No.960 of 2023

WEB COPY BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 31.07.2024

Delivered on : 23.09.2024

CORAM

JUSTICE N.SESHASAYEE

and

JUSTICE P.VADAMALAI

Crl.A(MD)No.960 of 2023

and Crl.M.P(MD)Nos.15195, 15196 and 15198 of 2023

1.Siva @ Sivalingam

2.Thangavel

3.Lakshmanan

... Appellants/Accused Nos.1 to 3

Vs

1. The State represented by
The Assistant Commissioner of Police,
Palayamkottai Sub-Division,
Palayamkottai Police Station,
Tirunelveli City
(Crime No.1521 of 2004

...1st Respondent/Complainant

2.Sivaperumal

..2nd Respondent/Defacto Complainant

3.Dr.K.Krishnasamy

..3rd Respondent / P.W.20

[R3 permitted to assist the prosecution in the above
Crl.A(MD) No.960 of 2023 vide order dated
20.06.2024 in Crl.M.P.(MD) No.16851 of 2023]



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PRAYER: Criminal Appeal is filed under Section 374(2) Cr.P.C as against the conviction and sentence passed by the II Additional District and Sessions Judge (PCR), Tirunelveli District in S.C.No.25 of 2005 vide judgment dated 04.10.2023.

For Appellants : Mr. Gopalakrishna Lakshmana Raju
Senior Counsel for Mr.S.G.L.Rishwanth
for 1st Appellant
Mr. R.Anand for 2nd & 3rd Appellants

For Respondents : Mr.R.Meenakshi Sundaram
Additional Public Prosecutor for R1
Mr.S.Ashok for R2
Mr.C.Vakeeswaran for R3
(for assisting the prosecution)

JUDGMENT

[Judgment was delivered by **N.SESHASAYEE, J.**]

This Criminal Appeal is preferred by A1 to A3 in S.C.No.25 of 2005 on the file of the Court of II Additional District Judge (PCR), Tirunelveli, challenging the conviction as well as the sentence imposed on them. The details are as below:



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A1 to A3	Conviction for offences	Sentence
	341 IPC	1 month SI - Fine Rs.500 default 2 weeks SI each
	307 r/w 34 IPC r/w 3(2)(v) of SC/ST (POA) Act (3 counts)	Life imprisonment – Fine Rs.500/- default 1 year SI each
	3(a) of Explosive Substance Act (3 Counts)	10 years RI – Fine Rs.500/- default 1 year SI each
	4 of TNPPDL Act	2 years RI – Fine Rs.500/- default 6 months SI each
	3(i)(x) of SC/ST (POA) Act	1 year RI – Fine Rs.500/- default 3 months SI each

2.1 The case of the prosecution will be narrated in two parts :

- a) that relates to the occurrence of a crime and the motive for it; and
- b) that which relates to investigation.

A. Occurrence & the Motive for the Occurrence:

3.1 The motive for the crime in which life of P.W.20 was targeted for the attack, is that P.W.20 and his associates (who were examined as witnesses) were *dalits*, and that the accused persons were caste-Hindus, and according to the prosecution, accused persons nurtured ill will against P.W.20, and shared a common objective to eliminate P.W.20, because he belongs to the Scheduled Caste community. The



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crime now unfolds as below:

- It was 26.07.2004. The time was around 2.30 p.m. in the afternoon. Thiru.Krishnasamy (P.W.20), the founder of a certain political party floated by him for the upliftment of the *dalits* came out of the District Court premises, Tirunelveli, after appearing in a sessions case where he was arraigned as one of the accused. P.W.20 was accompanied by few of his cadre, who, according to the prosecution were there to give protection to their leader. They are P.W.1 to P.W.4, P.W.7, P.W.10 to P.W.12, P.W.35 and a certain Prof. Veluchamy.
- All these men, chose to travel in two separate cars. In the first car was seated P.W.20 Krishnasamy in the front seat on the left, with P.W.35 on the wheels. Seated on the rear seat of this car were P.W.1 and Prof. Veluchamy. The first car was followed by the second car, of which P.W.2, P.W.3, P.W.4, P.W.7, P.W.10, P.W.11 and P.W.12 were the occupants. The second car was driven by one Chellathurai.
- Both the first car followed by the second car began to travel eastward in the Tirunelveli-Tiruchendur highway, and when they weree crossing Government Law College (which according to Google is to the north of the



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road) and Thuthiyankottai Church (which is to the left of the road), a group of men with billhooks and country bombs blocked the first car in which P.W.20 was travelling. Three country bombs were thrown on the first car, one each by A1, A2 and A3. The first car took the optimum heat of the explosion, but its driver, P.W.35, negotiated those nerve-chilling moments with tremendous balance of mind and courage, as he chose not to stop the car but outmanoeuvred the attempts of the assailants, and continued to proceed eastwards.

- One of the assailants, whom, the prosecution later identified as A6 threw a two wheeler on the way of the second vehicle which, to repeat, was coming behind the first car, but the driver of the second vehicle too acted smartly, negotiated it, and continue to follow the first car.
- Both the cars were safely driven to the Church street at Arockianathapuram. (According to Google, Arockianathapuram is about 4 kms. from the scene of occurrence (SOC).
- In the occurrence, both P.W.35, the driver of the first car, P.W.20 Krishnasamy, and Professor Veluchamy (who as stated earlier was seated in the rear seat of the first car) suffered injuries, which fortunately were minor



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injuries. They were later shifted to the Government Medical College Hospital for treatment.

Here concludes the first part.

B. Investigation

3.2 The investigation part of the crime unfolds as below:

- After both the cars reached Arokianathapuram, P.W.3 (traveler of the first car) chose to come back towards west, to be precise, towards the direction of the SOC. He was heading towards Thendral Nagar, a locality which is close to SOC at about right-angle to it. There the office of the political party of P.W.20 is situate.
- Right at the time P.W.3 encountered P.W.11, one of the party-cadre of P.W. 20, (and one was among those who had accompanied P.W.20 to the District Court earlier in the day) on his way in an new, unregistered motorcycle which belonged to P.W.3, and he was stated to be heading for his lunch. P.W.3 would now obtain the said motorcycle and proceeded towards Thendral Nagar. To repeat, Thendral Nagar is not far away from the SOC. When P.W.3 took a turn from the highway to the road which leads to



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Thendral Nagar, he saw eight men boarding a State Transport bus heading for Ramanujampudhur. And, he also saw an official police car coming towards him, in which was travelling P.W.44, the Additional Deputy Superintendent of Police (henceforth ADSP). P.W.3 would soon stop the car and informed the ADSP about the occurrence.

- Both P.W.44 ADSP and P.W.3 began to chase the bus (in which the assailants were alleged to have been travelling) in their respective vehicles. Eventually at 2.55p.m. the ADSP intercepted the bus near Srinivasapuram junction. He would position his driver Pushparaj in the front entrance of the bus and entered the bus through the rear door. The eight men who boarded the bus at Thendral Nagar were identified by the bus conductor (P.W.16), and on search ADSP found each of these eight men were carrying a separate billhook. Besides he also found A2 and A3 possessing a bag with a tiffin box in which he found live country bombs. ADSP would now divert the bus to Palayamkottai Police Station.
- Even as P.W.3 and ADSP were chasing the bus, P.W.1, one of the inmates of the first car proceeded to the respondent Police to prefer his oral complaint. The time was around 3.30 p.m. The said complaint was



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recorded into Ext.P35 complaint-statement, based on which P.W.46, the Inspector of Police, registered Ext.P36 FIR against 13 named accused persons for offences under Sec. 147,148, 341,435, 307 IPC, Sec.3(a), 4(a) and 5(a) of the Explosives Substance Act, 1908, Sec.3(1)(x), 3(2)(v) of the SC/ST (POA)Act, 1989, and Sec.4 of the TNPPDL Act, 1992.

- Within about 15 minutes of the registration of the FIR, the ADSP entered the police station with the eight men he had nabbed from the bus and handed them over to P.W.46 along with his Ext.P29 Special Report. They were formally arrested by P.W.46. The weapons they carried (M.O.6 and M.O.17 series of bill hooks, M.O.18 knife, and M.O.7 and M.O.16 recksin bags) were separately seized under Ext.P30, Form 95 (series).
- In the meantime, P.W.20 Krishnaswamy, Veluchamy, and P.W.35 Selvaraj, the driver of the car, all of who were injured in the occurrence, got themselves admitted in the Govt. medical College Hospital, where P.W.37 the doctor, who examined them issued Exts. P19 to P21 Accident Register. These documents show that these three victims of the occurrence were examined by the physician between 3.15 and 3.25 p.m. Later in the night, at 11.35 p.m. A2 was taken to the hospital where P.W.34 examined him and



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3.3 Thiru. John Nicholson, was the DSP at the relevant time, and he commenced the investigation. His procedure are now narrated:

- He visited the SOC, prepared Ext.P37 observation mahazar at 4.45 p.m.in the presence of P.W.13 and one Arputham, and Ext.P 38 rough sketch. He also collected broken glass pieces and certain cloth pieces and broken parts of the car (marked M.O.24 to M.O.32) from the SOC under Ext.P 39 seizure mahazar in the presence of the same set of witnesses. He also caused the SOC to be photographed through P.W.38 who came up with M.O.22 series (of photographs plus the negative).
- He also recorded the statements of A1 to A8, (but they are of no use, as it did not lead to any recovery).
- On the following morning (27.07.2004) he proceeded to Arockianathapuram where the car was damaged, and prepared Ext.P40 observation mahazar in the presence of P.W.14 and one Maria Anthony, and Ext.P 41 rough sketch, and also seized M.O.1 car (on which country bombs were thrown) M.O.34 to 42 (of which few are collected with the help of



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P.W.45, the scientific officer of the mobile forensic lab) under Ext.P42 seizure magazar in the presence of the same set of witnesses.

3.4 On 30.07.2004, P.W.47 took over the investigation from John Nickolson and continued the investigation. He arrested A10, A13, A14 and A15. In between A9 (Selvakrishnan), A11 (Muthu) and A12 (Sankar) opted to surrender respectively before the Judicial magistrate Court, Ambasamudram, Valliyoor and Cheranmahadevi.

3.5 The seized articles from the SOC as well as from Arokiyanathapuram were forwarded for forensic chemical examination, and P.W.39 analysed the same and gave his Exts.P23 and P24 forensic chemical reports.

The Trial

4.1 Before framing charges, A15 died and Charges were framed against A1 to A14. During trial, prosecution examined P.W.1 to P.W.47, marked Exts P1 to P57 and M.O.1 to M.O45, of which references have already been made to some of the



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witnesses, documents and material objects in the narration above. During trial, P.W.1, the defacto complainant, P.W.2, P.W.5, P.W.6, P.W.8, P.W.9, P.W.11, P.W.13 to P.W.19, P.W.22 to P.W.29, and P.W.31 and P.W.32 turned hostile. The prosecution did not examine Veluchamy, one of the injured witnesses, since he had become immobile due to certain health issues when the trial was on. Of the witnesses who had turned hostile included P.W.1 (the complainant), P.W.2, P.W.11 were the party-cadres of P.W.20, and P.W.17, P.W.18, P.W.31 and P.W.32 who according to the prosecution were passengers of the bus in which A1 to A8 were alleged to have travelled after the occurrence, besides the crew of the P.W.16 (conductor) and P.W.19 (driver).

4.2 After trial, and on appreciating the evidence before it, the learned Sessions Judge has entered a finding that the prosecution has not been able to establish the guilt of A4 to A14 and acquitted them. So far as A1 to A3 are concerned, the trial Court found them guilty only for offences under Sec. 341, Sec.307 r/w 34 IPC r/w Sec.3(2)(v) (three counts), Sec.3(a) of the Explosives Act (3 counts) and Sec. 4 of the TNPPDL Act r/w Sec.3(1)(x) of the SC/ST (POA) Act, and sentenced them as stated in the opening paragraph. As to the rest of the charges, A1 to A3



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4.3 The line of reasoning of the trial court is based on the testimony of the witnesses which associated A1 to A3 to the charges that they faced. So far as identification of A1 to A3 were concerned the Court was satisfied with their identification before court. And A4 to A14 were acquitted essentially because none of the eye-witnesses who spoke in aid of the prosecution, identified them.

Arguments:

(a) For the Appellants:

5.1 Heard Mr. Gopala Krishna Lakshmana Raju, the learned Senior Counsel appearing on behalf of the 1st appellant and Mr.R.Anand, learned counsel appearing for the appellants 2 and 3. They submitted:

- a) The investigation into the alleged crime had left gaping holes which are hard to fill up with the evidence made available by the prosecution. Indeed, it is with the same set of witnesses, the prosecution came out with its strategy prove the charge against A4 to A14, but it could not succeed even in establishing that A4 to A14 were part of an unlawful assembly.



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b) The very registration of Ext.P.35 (FIR) appears to be an unbelievable script.

Which is the first information which the police had actually received?

There at least three versions: (i) P.W.3's narration to P.W.44; (ii) P.W.1's oral statement to P.W.46; P.W.20's information to a certain Gopalakrishnan, the friend cum the DIG of Police at the relevant time. P.W. 20 admits to it in his cross examination. P.W.3 corroborates this statement in his cross-examination when he concedes that soon after the occurrence P.W.20 had called the DIG, Gopalakrishnan and he arrived within 10 minutes. He further says he also gathered information from P.W.20 and others. This implies this should have been the first statement made by the very victim of the occurrence. But the DIG, Gopalakrishnan, was not examined and it is not known what had happened to the statements he had recorded. Now this has to be correlated to two facts:

- According to P.W.47, Mr. John Nickolson, the DSP, who first investigated into the occurrence, had commenced the investigation only at 4.45 p.m. However, going by the prosecution version, by 3.45 p.m., P.W.44 had brought A1 to A8 to the police station and handed them over to P.W.46. And, the FIR too had been registered



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some 15 minutes earlier at 3.30 p.m. What then was happening between 3.30 p.m. and 4.45 p.m.

- that the FIR had been dispatched to the concerned Judicial Magistrate only at 2 a.m. on 27.04.2004, more than 10 hours after it was registered. And, according to P.W.46, the Judicial Magistrate's quarters was barely 1.5 k.m from the police station. What the entire sequence signifies is that the FIR should have been prepared much later by timing it backwards.

5.2 Moving further, they argued that:

- a) Firstly, the prosecution version of the case unfolds with Ext.P.35 complaint-statement attributed to P.W.1, recorded by P.W.46 on the basis of which the FIR was registered. During trial P.W.1 has only admitted his signature in Ext.P-35. He has testified in his chief examination that his signature was obtained in a blank paper by the police. True to the same, the complaint was not in the handwriting of P.W.1, but it was a recording of an alleged oral complaint. This will probabilise the fact that Ext.P35 should have been prepared using a blank paper with the signature of P.W.1.



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- b) Secondly, except P.W.1 and P.W.2 who accompanied P.W.20, rest of the witnesses (P.W.3, P.W.4, P.W.7, P.W.10, P.W.12 or P.W.35) including P.W. 20, have conceded during their deposition that they did not have any earlier familiarity or acquaintance to any of the accused persons. And, going by the prosecution version of the crime, even though the occurrence had taken place in a broad day light, yet, it was a sudden attack by an unfamiliar assembly of men, and hand happened when the witnesses travelling in the two cars were least prepared for it. Even when the bombs were hurled at the car neither of the two cars stopped but sped away to a place of safety. This implies, that the entire occurrence could not have taken more than few seconds and hence not even one inmate of any of the car could have had a reasonable opportunity to notice the identity of their unacquainted assailants. And, despite securing A1 to A8 within about an hour since the occurrence, the investigating officer did not consider it fit to organise an ID parade.
- c) Thirdly, it is not explained from where P.W.11 Michael arrived in a motorcycle to Arockinathapuram. Secondly, it is inexplicable as to P.W.3 should return towards the SOC? Here, P.W.11 Michael had turned hostile



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and if that is so, then there is nothing to corroborate the testimony of P.W.3, for, but for P.W.3 obtaining the motorcycle from P.W.11, he could not have travelled to the road leading to Thendral Nagar, and if that so, he could not have had an occasion to see either P.W.44's car on the way or A1 to A8 boarding the bus. And, there are no more whisper about the unregistered motorcycle in which P.W.3 had arrived at Thendral Nagar.

- c) Fourthly, P.W.44, (ADSP) came to know of the occurrence only from P.W. 3. But when P.W.44 intercepted the bus, he did not require P.W.3 to identify the accused persons, but required P.W.16, the conductor of the bus, to identify them. But P.W.16 had not seen any of these men at the SOC, and fairly during trial P.W.16 turned hostile. Therefore, the evidence of P.W.44 is self serving, and is not corroborated by any independent witnesses, including P.W.17, P.W.18, P.W.31 and P.W.32, who were alleged to be the passengers of the bus in which A1 to A8 were said to have travelled, as they too had turned hostile.
- d) Fifthly, P.W.44 is said to have seized M.O.6 and M.O.17 series of billhooks or knife, as the case may be, and M.O.7 and M.O.16 rexin bags in which live bombs were kept. But he seized them under Form 95 in which no



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accused persons have signed, nor any independent witnesses have attested.

Are they not suggestive of a fact that the investigating agency might have scripted a story rather than investigated an offence?

- e) Sixthly, according to the prosecution version it was A14 who had manufactured the country bombs and handed them over to the prime accused persons, but he was acquitted of all charges. If so, the bomb could not have come to the hands of A1 to A3, which in turn would probabilise the defence version that the same might have been planted by the prosecution to aid its version of the case.

5.3 From proving the motive for the crime to fixing the SOC to connecting the critical dots, the prosecution efforts have been inadequate to establish the guilt of A1 to A3 beyond all reasonable doubts, argued the counsel. They submitted:

- a) According to the prosecution, the motive for the attack on the vehicle in which P.W.20 was travelling was communal enmity. When P.W.20 was confronted that there was no personal enmity between him and the accused persons, he would state that there was enmity between the communities. P.W.4 would also vouchsafe it. This would imply that both P.W.20 and



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P.W.4 had previous communal enmity vis-a-vis the community of the accused persons. The prosecution would now examine P.W.25 and P.W.26, both belonged to certain Chatrampudhukulam Village, to speak about the murder of one Suresh of that village for establishing the motive for the attack of P.W.20, but both of them had turned hostile. Therefore, beyond the inimical deposition of P.W.20 and P.W.4 vis-a-vis the community of the accused persons, there is no other fact established to prove that the accused persons had a motive to attack P.W.20. Indeed it was the other way around since the accused persons were planted in this case due to ill will of P.W.20 and his associates towards the community of the accused persons.

b) Turning to fixing the SOC, the prosecution case is bristled with multiple inconsistencies :

- In Ext.P19 accident register of P.W.20, the place of attack was stated as 'next to Law College, Tirunelveli' and this was repeated in Ext.P20 Accident Register of Veluchamy. Both these documents were even earlier to the registration of FIR. But P.W.3 in his evidence has testified that the occurrence had taken place when the cars which the witnesses were travelling reached Thuthiyankottai Church. P.W.35 would say that



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the occurrence had taken place before the Church, to the east of Law College. This implies according to these documents and the witnesses, the occurrence had taken place near the Law College and the Church, but in Ext.P 37 Mahazar and Ext.P38 Rough plan, neither the Law College nor the Church were shown. Instead, it only indicates that the occurrence had taken place in front of T.N. Medical Warehouse. This is made clear in Ext.P39 seizure mahazar and also in Ext.P37 observation mahazar.

- What complicates the issue for the prosecution is that M.O.24 front windshield of the M.O.1 (the first car (in which P.W.20 was travelling) and glass pieces were lying on the main road in front of the warehouse. And the front windshield of the said car was seized under Ext.P.39. But P.W.46, who registered the case, has testified that P.W.44 had produced M.O.24. This contradicts the case of the prosecution. Here P.W.45, the Scientific Assistant attached to the Forensic Lab states that on 27.07.2004, he went to Church street in Arockianathapuram and saw M.O.1, the damaged car of P.W.20. According to him, the SOC was Arockianathapuram, and he would state that the front windshield was



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fully broken and was lying on the ground. According to P.W.47, on 26.07.2004, Thiru.John Nicholson had already seized the various material objects under Ext.P42.

- If the testimony of P.W.38, the police photographer, is considered he would testify that he had gone to the SOC at around 3.30 p.m., but his photographs show the damaged car in multiple angles. But according to the prosecution, M.O.1 had been driven to Church street at Arockianathapuram, which implied that the occurrence should have happened only at Arokiyanathapuram. Therefore, where actually the occurrence had taken place - Was it before the Law College or before the Warehouse or at the Church Street at Arockianathapuram? The prosecution case leaves serious doubts.

- c) Another aspect of the investigation which does not fit in with the prosecution scheme of things is about the articles seized under Ext.P42 and chemical analysis report of those articles. These articles are collected with the help of the forensic scientific officer. They included M.O.29, half burnt rexin cloth, and M.O.42 grey colour cotton pant with the smell of the explosives. If bombs were thrown from outside on moving cars, it is



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inexplicable to find a grey colour cotton pant with the smell of explosives should be found at Arokiyanathapuram. And, how could half burnt rexin cloth could be found not at the SOC but at Arokiyanathapuram. And, the prosecution did not care to identify to whom the grey colour cotton pant belong. Who is the person with the grey colour cotton pant with the smell of explosives, whom the prosecution attempts to conceal?

- d) And, the articles seized under Ext.P42 were subjected forensic chemical analysis by P.W.40, the senior scientific officer of the forensic department, and he came out with a revelation vide Ext.P25 report that three black cotton swabs collected by P.W.45 from the very spot identified by the prosecution as bomb-hit spots in M.O.1 car do not contain any trace of explosive substance and also finds that the grey colour cotton pant “with grey stains” contains explosive substance such as '*Arsenic Sulphide, Potassium Chlorate and chloride*’ indicating that this grey pant contains explosives substance.
- e) P.W.20, P.W.35, Veluchamy were said to have taken to the Government Hospital at around 3.15 p.m and their respective Accident Registers (Ext.P19 to P21) was said to have been prepared in five minutes gap by the



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same doctor (P.W.37). Of them Ext.P19, P20 were prepared in successive printed forms from the same printed book, but the printed form in which Ext.P21 which relates to P.W.35 was prepared is from an entirely different book. And surprisingly P.18, the Accident Register of A2 is seen to have been issued at 11.35 p.m. but its printed form is from the same book in which ExtP.19 and P20 were prepared. Therefore, when was P.W.35 taken to hospital.

7. Summing up their arguments the learned counsel for the appellants contended that when once the prosecution realised that P.W.20 is a popular *Dalit* leader, they needed to be seen in action to avoid political backlash, and hence they needed some non-dalit members to be framed in the case. They knew that some of the accused persons have some criminal cases over some incident that had earlier taken place vis-a-vis crime against *dalits*. They knew the names, filtered them, fixed few men, and developed a script implicating them in this case.

Arguments for the Prosecution and for the 3rd -- Respondent (PW 20)

8.1 Their submissions are as below:



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- a) The prosecution has established the crime not through any circumstantial evidence but through the eye witnesses to the occurrence, of whom two are injured witnesses namely P.W.20 and P.W.35, and out of these two, one was the prime target – P.W.20. They speak cogently about the identity of the accused persons, more particularly A1 to A3, the appellants herein and the specific overt act attributed to them.
- b) The occurrence had taken place in the broad day light, and the eye witnesses could not have missed the identity of the accused persons, nor what they did. P.W.20, P.W.35 are the two injured witnesses and they have, identified their assailants and their version was ably corroborated by the testimony of P.W.3, P.W.4, P.W.7, P.W.10 and P.W.12. Therefore the appellants insistence on the necessity to hold an identity parade is inconsequential.
- c) Here the role of P.W.3 is crucial. The occurrence had taken place at around 2.30 in the afternoon. And, as providence could have it, P.W.3 thought it fit to return to SOC to see what best that he could do to nab the assailants. Just about the time P.W.11 brought the motorcycle of P.W.3, and P.W.3 rode his motorcycle towards the SOC. There he saw A1 to A8 boarding the bus



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at Thendral Nagar bus stop. And, P.W.3 had a reason to come to the Thendral Nagar, a locality near the SOC, since the office of his political party was there. And, it is on his tip-off that P.W.44 had an occasion to chase the bus in which A1 to A8 were traveling, intercepted them, and brought them to the police station. It may be that P.W.11 might have turned hostile and did not assist the prosecution, but his role is limited to handing over the motorcycle to P.W.3 and not to prove any other aspects of the crime. The fact which is established is that P.W.44 had nabbed A1 to A8 which could not have happened but for P.W.3 informing him about the occurrence. This necessarily implied that P.W.3 had arrived at near the Thendral Nagar bus stop from where he could adequately identify A1 to A8. And according to P.W.44, he was alerted by P.W.3 at around 2.45, which was barely some 15-20 minutes after the occurrence, which implied that P.W.3 could not have lost the time to forget their assailants, notwithstanding the fact that he did not have any earlier acquaintance with any of A1 to A8.

- d) This is further corroborated by the fact that Ext.P36 FIR came to be registered at the instance of P.W.1 at 3.30 in the afternoon, and at the point



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of time neither P.W.1 nor P.W.46 knew about P.W.44 chasing the bus and nabbing A1 to A8. They come to know of it only some 15 minutes thereafter, at 3.45 when P.W.44 arrived at the police station with A1 to A8. But even before P.W.44 arrived at the police station with A1 to A8, P.W.1 had listed 13 accused persons including A1 to A8 in his complaint. It may be that P.W.1 as well as P.W.2, both of who alone knew the accused persons even prior to the occurrence, and might have also turned hostile during trial, but that is of very little consequence. This is because the factum of P.W.3 spotting A1 to A8 boarding the bus and P.W.44 nabbing them had happened independent of what was happening in the police station. That the names of the accused persons in the FIR matches with those who P.W. 44 brought to the police station itself would indicate that it was neither a coincidence nor could it be accidental. Therefore, there is hardly any need for an identity parade. And, when the victims of the crime were able to identify their assailants before the court, it makes redundant the need for conducting an identification parade. At any rate the results of an identification parade is not a substantive piece of evidence.

e) Another aspect highlighted was about the FIR. P.W.1 arrived at the police



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station to prefer a complaint about the occurrence, and it was duly recorded and the FIR came to be registered. What P.W44 has done is only in aid of the investigation parallelly but without the knowledge of a FIR being registered. The offence was a cognizable offence, and it would be imprudent on the part of the police to let the accused escape, then register a FIR and then to search for the same set of accused persons who they had allowed to escape. There indeed was two independent events – one at the police station and another organised by P.W.44 and P.W.3 combo pertaining to the same occurrence. And, the latter was in aid of the former. Therefore, the FIR can never be suspected. Secondly, the FIR has been registered within about an hour after the occurrence. So far as the allegation of Thiru.Gopalakrishnan, the then IG of Police visiting P.W.20 is concerned, the witnesses has testified that the IG had visited him in the hospital. On this aspect there is some inconsistencies about the IG's visit in the testimony of P.W.3, but that needs to be discounted since all the witnesses have testified to the occurrence after several years since its happening. There definitely will be lapses in memory and that cannot be counted much. And, lastly to the alleged delay of few hours in forwarding the copy



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And the FIR was received by the Judicial Magistrate at 2 am on the following morning, and the alleged delay was barely about ten hours, and it can never be considered as inordinate. After all, the top priority of the investigating team in circumstances such as this would be to collect the evidentiary material from the SOC before they are lost, and hence a little delay in arranging for the dispatch of the FIR to the Judicial Magistrate cannot be taken exception to.

8.2 The prosecution case as projected connects all the dots which corroborates the facts to establish the commission of the crime. They are:

- a) In the occurrence, not only P.W.20, P.W.35 and Veluchamy were injured, but also A2. He was treated by P.W.34, through Ext.P18 Accident Register which P.W.34 had issued, the prosecution was able to establish that the said injury was caused in the occurrence, whereas A2 could not explain that it was not caused in the occurrence.
- b) P.W.44 had seized at least two live country bombs from A2 and A3 when he nabbed them in the bus and seized them under Form 95 (which formed part of



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Ext.P30. These country bombs were later defused by PW 36, the Sub Inspector of Police from the Bomb Squad with the help of PW45 Scientific Officer RFSL, Tirunelveli. Unless P.W.44 had nabbed A1 to A8 as he claims, and unless he had seized the bombs in the manner that he claims, how there could be bombs at all for them to be diffused.

- c) The testimony of PW39 (Deputy Director of Forensic Department) and P.W. 40 (Assistant Director of Forensic Department), have spoken about their findings based on the examination of the materials collected from the bomb-hit car (in which P.W.20 was travelling) as well as from the site where the bombs were diffused) though Exts.P24 and P25 reports. They corroborate the prosecution case on the occurrence.

Reliance was placed on the ratio of the authorities in ***Mukesh Vs State of NCT Delhi*** [AIR 2017 SC 2161], ***Bhagwan Jagannath Marked Vs State of Maharashtra*** [2016 (10) SCC 537] ***Ravasaheb alias Ravasahebgouda & Others Vs State of Karnataka*** [2023(5) SCC 391] ***Chunthuram Vs State of Chhatisgarh*** [AIR 2020 SC 5495] and ***Vinoth Kumar Garg Vs State of NCT Delhi*** [(2020)2 SCC 88]

8.3 The arguments of the appellants' counsel suspecting the SOC reflects the spark of their ingenuity, argued the counsel for the respondents. They submitted:



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a) Ext.P39 (seizure magazar) shows part of the damaged front windshield was recovered from SOC and this is supported by Ex.P38 rough sketch where it is denoted. And, on 27.07.2004, PW45, the Forensic Lab Scientific Assistant went to Arokiyanathapuram and found the front windshield of M.O.1 car was lying on the floor. He had also found that the car bore at least two marks where the bombs had hit the car. It is not in dispute that there was a bomb attack and that the bomb-hit cars had sped to safety at Arokiyanathapuram. Necessarily, the damaged parts of the car would be both at the SOC and at Arokiyanathapuram, where M.O.1 found a shelter. And it stands to reason.

b) None of the eye witnesses who spoke in aid of the prosecution case, namely PW3, PW4, PW7, PW10, PW20 and PW35 had very little confusion when they had deposed that the attack was near the law college, which is not far away from the SOC as marked in Ext.P38 rough plan of the SOC. And it was not even suggested to the them that the SOC was not where they claimed that the occurrence had happened.

Discussion & Decision



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9. If the submissions made on either side are carefully weighed for their respective merit, that which emerges without a scintilla of doubt is that on 26.07.2004 at around 2.30 in the afternoon, an attempt was made on the life of P.W.20 when country bombs were thrown on the car in which he was travelling. As has been stated a few times, there were two cars, of which M.O.1 car was on the front, in which were travelling P.W.20 with P.W.35 on the wheels and P.W.1 and Veluchamy were seated on the rear seat. This was followed by another car driven by a certain Selvaraj, in which were travelling P.W.2, P.W.3, P.W.4, P.W.7, P.W.10 and P.W.12.

10. Of the various aspects raised by the learned counsel for the appellants to attack the believability of the prosecution case, those suspecting SOC do not require a great deal of attention as it was not pointedly challenged during trial. With bits and pieces of evidence, the argument suspecting the SOC has been developed during the appellate stage, but not when the witnesses were examined. Similarly, the argument on the time of preparation of Ext.P19 to P21 based on their serial numbers are also dropped from being considered since P.W.37, the doctor who was responsible for the preparation of the Accident Register was not



pointedly cross examined on this aspect.

11. The occurrence of the crime can never be disputed. That M.O.1 was damaged in the attack also cannot be disputed. The larger issue is, whether A1 to A3 were involved in it? It needs to be underscored that the allegation of the prosecution was that A1 to A3 constituted themselves into an unlawful assembly along with A4 to A13, but the trial Court had acquitted A4 to A13 since there was no evidence to establish their presence during the occurrence of the crime. And, the State had not preferred any appeal against their acquittal. It could now be derived that none of the eye witnesses (passengers of the two cars) could pinpoint to the presence of A4 to A13 at the SOC at the relevant time. But had these witnesses identified A1 to A3 beyond all doubts?

12. Here there are two versions. The prosecution version is straight forward, but the appellant's version though a bit strained, yet it is not an impossibility. According to the prosecution after the occurrence, P.W.1, who was seated on the rear seat of the M.O.1 car (that came under the bomb attack), came to the police station and preferred Ext.P35 complaint-statement leading to the registration of



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the Ext.P36 FIR. The defence would argue that the investigation did not start with the FIR, but the FIR was prepared for a pre-scripted prosecution story. If, with the available evidence the defence could establish the probability of what it suggests, then it would be bad times for the prosecution. The endeavour now would be to ascertain the probability of the defence version.

13.1 Why should the prosecution be tempted to implicate the appellants and 12 others in this case? According to the appellants, even the prosecution case is built on a motive of communal enmity as the reason for the crime, and since P.W.20 was the founder of a political party for the *dalits*, and was the prime target, the police might have anticipated some backlash which might upset the rhythm of law and order, and hence they were in a hurry to fix the responsibility for the crime on non-dalits, and since there were earlier cases against some of the accused persons, their knowledge about the accused persons came in handy, and it wrote a script very conveniently. Is this version of the defence probalised by evidence?

13.2. To re-state the defence version differently, the police has hurried to paint



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the crime with a communal colour too early, and when once the motive is pre-fixed thus, then the police only needed few men from a non-dalit community who are believed not to have comfortable social co-existence with the dalits, and accordingly it picked these men and fixed them as the accused persons and spun a story around them. This allegation of the defence is closely associated with their allegation that the very identity of the accused persons as attempted to be established by the prosecution is suspect. To establish it, the appellants place reliance on few facts whose merit and effect are now required to be considered.

- a) First to the occurrence per se. There were two cars on the highway. One on the front and the other following it. The attack was on the car on the front. Indeed, according to prosecution there was an attempt to isolate the car coming in the front, as it alleges that A6 threw a two wheeler on the way of the second car, something it failed to prove during trial. The attack was sudden when the inmates of both the cars were least prepared for it. But in spite of the bomb attack, both the cars were in motion and sped to safety to Arokiyanathapuram, a locality some 4 k.m. from the SOC. Neither of the two cars ever paused or stopped. When life is exposed to grave danger such as that, and when the inmates of the cars see death stretching its arms



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to embrace them, will any reasonable man with his instinct for survival intact, ever be counting the heads of his assailants and noticing their identity, or will he be rushing to safety? The answer is too obvious to state. P.W.35, the driver of the car which took the bomb attack, showed immense presence of mind to negotiate an unexpected, life-threatening assault and drove the car smartly to a safer place, saving in the process his own life and the lives of other inmates of his car. Selvaraj, the driver of the second car that followed the first car also deserves to be appreciated for showing extraordinary grit in negotiating those critical moments. Now, if the entire sequence were to be visualized, the scene should have given both the inmates of the two cars as well as the onlookers, a real time experience of what otherwise would have only been a cinematic experience. It is a moment which will test even a Zen monk, but the inmates of the two cars were no monks, but are ordinary men, and they hardly would have the mind to do the extraordinary thing of identifying as many as 12 accused persons in a flicker of a second, something the prosecution expects this court to believe.

b) Secondly, even according to the prosecution, except P.W.1 and P.W.2, none



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To sum up the situation, according to the prosecution, of the inmates/witnesses of the two cars, except P.W.1 and P.W.2 none had any prior familiarity with their



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assailants, and the two who are credited with earlier knowledge about the assailants did not support it. If the reasonable man of law who inhabits the consciousness of this court were to guide this court, there will be little hesitation in concluding that the inmates/witnesses of the two moving cars who were fiercely in fear, could at the best have had a fleeting opportunity to notice some features of some of the assailants but that would not be reliable. How then to rely on the testimony of P.W.3, P.W.4, P.W.7, P.W.10, P.W.12, P.W.20 and P.W.35 to associate A1 to A3 with the crime?

14.1 Moving further, the prosecution next relies on P.W.3 – P.W.44 combo to establish the identity of the accused persons. According to the prosecution, barely after reaching a place of safety at Arokiyanathapuram, P.W.3 thought it fit to return to SOC, for he was contemplating how to nab the accused persons. An extraordinary mind that P.W.3 might be possessing, for he was seen more worrying about nabbing the accused persons at a time when P.W.20, his political leader, was in need of medical intervention for his bleeding injuries. Let it be believed that this man possessed the mind of a Sherlock Holmes but how this investigator found it possible to return to Thendral Ngar, for which he had to



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travel a few kilometers towards the SOC? According to the prosecution P.W.3 travelled in his unregistered motorcycle, which P.W.11 had brought from nowhere. The prosecution line of the narrative is that on approaching Thendral Nagar, P.W.3 saw two things: (a) A1 to A8 boarding a bus; and (b) P.W.44 ADSP coming on his way. The rest of the story line has been stated a few times earlier, and hence it is not repeated. But P.W.11, the one who provided the motorcycle for P.W.3 to travel to Thendral Nagar, has turned hostile. It must be added here that P.W.11 was also one of the men who accompanied P.W.20 when the latter appeared before the District Court earlier in the day. So according to P.W.11 he had not handed over the motorcycle to P.W.3. How did P.W.3 then return to Thendral Nagar at the appointed time? It now appears to be a trivial fact, and therefore, consideration of its effect is deferred to a later stage. Let it be presumed that P.W.3 had arrived at the road leading to Thendral Nagar. After all he has testified thus. And, on his tip-off, P.W.44 chased the bus which A1 to A8 had boarded at the Thendral Nagar bus stop. P.W.44 had managed to intercept and enter the bus. According to P.W.3 he had followed the bus. And, P.W.44 had not seen any of A1 to A8 boarding the bus, and so far he is concerned only P.W.3 had seen A1 to A8 not only boarding the bus, but also involved in the crime. But



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when P.W.44 entered the bus, despite the availability of P.W.3, he did not require P.W.3 to identify A1 to A8, but asked P.W.16, the conductor of the bus to do the job. And, P.W.16 was not an eye witness to the crime. What a phenomenal way to seek identification of the accused persons by the one who had not seen them committing the offence. Knowing perhaps that P.W.16 was not an eye witness, P.W.44 did not want to embarrass him, and hence he had asked P.W.16 to show the men who had boarded the bus at Thendral Nagar bus stop. This will baffle any sensible mind when P.W.44 had the advantage of P.W.3 to identify A1 to A8, but still he was seen looking not to the latter but to the conductor of the bus to do the job. What an extraordinary way to probe a crime of this gravity? Are there only eight men who boarded the bus at Thendral Nagar? There is no way to ascertain it except through the trip sheet of the bus, but the prosecution did not consider it necessary to produce the same.

14.2 If this analysis is taken to the next level, does not the procedure which P.W. 44 had adopted to identify A1 to A8 throw open a possibility that the presence of P.W.3 itself is suspicious? And, this possibility is strengthened by the fact that P.W.11, who according to the prosecution has provided the motorcycle to P.W.3



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(no matter whose vehicle it is), also chose not to support the prosecution version.

What could therefore be logically deduced is that P.W.44 had not taken the assistance of P.W.3 to identify A1 to A8 because P.W.3 was not physically present, and P.W.3 was not physically present because he did not have a motorcycle to travel (but for which he could not arrived at the most opportune time to spot A1 to A8 boarding the bus) which in turn leads to an inference that P.W.11 had spoken the truth when he did not support the prosecution version. With P.W.16 and P.W.19 the conductor and the driver of the State run transport bus respectively, turning hostile along with P.W.17, P.W.18, P.W.31 and P.W.32, who had travelled in the said bus, the prosecution is left stranded in a no-man's land for identifying the accused persons, due to its failure to connect the dots logically and sequentially for establishing the identity of A1 to A8.

14.3 If the conclusion drawn above is taken to its next logical level, the believability of the prosecution case of even P.W.44 intercepting the bus and nabbing A1 to A8 along with the weapons that they were alleged to be carrying, becomes extremely doubtful, for when the link between P.W.3 and P.W.44 is broken by the very strategy of the prosecution, then the occasion for P.W.44 to



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know about A1 to A8 travelling in the bus itself gets falsified. If so, how did the investigating agency zeroed in on A1 to A8? The investigative strategy to unravel a crime thriller now stands exposed to answer ancillary mysteries of its own creation. However, the burden is on the investigative agency to establish the guilt of the accused persons beyond all reasonable doubts, and here the strategy as adopted by it and hitherto discussed only establishes that it does not show the character to withstand a logical scrutiny, both inductive and deductive. And, now arrives the climax. P.W.44 claims that he had seized the weapons from A1 to A8, not under any seizure magazar, but under Form 95 (Ext.P30 series), signed only by him and the IO, and not by any independent witnesses. When the prosecution theory of P.W.44 nabbing A1 to A8 itself is found trapped in a wobbling plane, the alleged seizure of weapons by P.W.44 under Form 95 can only be appreciated as stretching an illogical fiction which the prosecution requires this court to believe. Where the court is in search of proof beyond reasonable doubt, every fact that creates a reason for doubting the narration of the prosecution deserves not to be ignored.

15.1 It is true that P.W.3, P.W.4, P.W.7, P.W.10, P.W.12, P.W.20 and P.W.35 have



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referred to the names of A1 to A3 in their testimony, and also have attributed specific overt acts to them before the Court, more in line with the prosecution case. These three appellants however, stood before the Court during trial along with 11 others (total number of accused who faced trial being 14). Have they pointedly specified to any particular person as A1 to A3 in the group of 14? The recorded testimony does not disclose it. Indeed, a proactive sessions court could have even required the accused persons standing in the accused-box to shuffle and stand, and required these witnesses to identify each of them specifically, and if anything of that sort had been done, then that may at least lend some degree of credibility to the testimony of these witnesses in associating A1 to A3 to the crime. It should not be forgotten here that these are the very witnesses who could not speak a word associating A4 to A14 with the crime. And the testimony of all these witnesses discloses that not one among them knew any of the accused persons before the occurrence. They have even testified in the cross examination that they had not given any specific physical features of any of the accused persons to the IO, which, it must be stated, is consistent with their stated position that none of the accused persons were known to them prior to the occurrence. Therefore, how did these witnesses identify only A1 to A3 among all?



15.2 If the testimony of these witnesses is scrutinized, they have only seen mentioning the names of A1 to A3, but so far as identification of these accused persons goes, it is necessary that these witnesses should be able to fit the specific names they knew with the specific persons who carry those names. Indeed, they need not even know their names but should be definitely able to identify them by their appearance or looks. Therefore, merely reference to A1 to A3 by their names by these 8 witnesses have mentioned the names of A1 to A3 in their testimony can never be conclusive to fix culpability on them. It is also necessary to state that the prosecution did not choose to prefer an appeal against the acquittal of A4 to A14.

15.3 The prosecution line of the case is founded on a motive – one of communal difference between the community of the eye witnesses and that of the accused persons. P.W.20 makes a categorical statement that it has been there for very long. If motive as an angle alone is scrutinized, then the present case throws open a possibility that even that very motive could have driven these eight witnesses to settle some communal scores when they named just three out of 14 accused



persons during trial.

16. Now, to the larger question. What prevented the Investigating Officer to hold a ID parade, when substantial number of eyewitnesses had zero knowledge about their assailants previously. If at all any of them had noticed some among the assailants, at the very best it could have been no more than a passing glimpse, since they were passengers of moving cars. Indeed P.W.35, the driver of the car which suffered the bomb hit, states that the assailants were paraded before him in the hospital. And P.W.4 states that he was shown the accused at Perumalpuram Police Station, and P.W.7 states that he was shown the assailants at Palayamkottai Police Station. This Court could not fathom the strategy of the Investigating Officer to parade A1 to A8 from police station to police station and also to the hospital when everybody could have been easily identified before the Judicial Magistrate in ID parade. Was the Investigating Agency nervous about holding an identity parade?

17. Now this Court takes up the contention for the appellants that the FIR is but a farcical expression of a pre-scripted story of the prosecution, and hence the police



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has chosen not to obtain a written complaint from P.W.1, but filled up a signed blank paper with few names which it knew and spun a story around it, gains credence. It is not an impossibility that two parallel events could not have happened such as the one the prosecution projected in this case - where some policeman on duty nabbing some criminals even as the FIR was being prepared. However, before the Court of law, the prosecution must establish an unbreakable association between the two events and should establish the involvement of those who are nabbed by one without knowledge about the FIR, and those whom the Investigating Agency was looking for pursuant to the registration of the FIR are the same. It is here the prosecution story failed. And it is hence even a delay of about 10 hours in dispatching the FIR to the Judicial Magistrate becomes significant.

18. The next point that increases the distance between Prosecution version of the crime and its proof relates to the grey colour cotton pant with the smell of explosives which P.W. 40 in his Ex. P25 report affirms as containing explosive substance and this pant was seized at Arokiyanathapuram and not at the SOC. It is nobody's case that the car had



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stopped to pick up a grey colour cotton pant at SOC and taken in to Arokiyanathapuram. To whom does this pant belong? And why should this pant carry the smell of explosives? The Prosecution did not explain it.

19. Another point that further deepens the doubt on the Prosecution version is that the Prosecution would state that A2 had suffered an injury and this is noted in Ext.P18 Accident Register marked by P.W.34, the doctor who treated A2. P.W.34 in his testimony says that A2 has suffered abrasions of 0.5x 0.5 cm on his left nose and right fore head and another abrasion of 0.5x0.5cm on the coastal margin area of his right stomach. Coastal margin area is but the lower edge of the rib cage. The defence case is that these injuries were caused when the police assaulted A2 and it is also their line of cross-examination. The nature of the injury and the size of the injury does not *prima facie* suggest that it could have been received in a bomb attack. And, the bomb used for the attack apparently had nails as its splinters and this is fortified by the fact that Investigating Officer had collected some nails from the SOC. When bomb containing nails as splinters explode, it will not leave scratches as that of finger nails , but will cause serious wounds. The statement of the Prosecution explaining the injury to A2 hardly



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satisfies its case. It should not be forgotten that A2 was nabbed at 2:55 pm, but was brought to the hospital at 11:35 pm, after about 9 hours. And, policemen are policemen and they cannot be presumed to be angels respecting the human rights.

20. There indeed are unbridgeable, logically unexplainable island-facts in this case, the significant among it being the inability of the prosecution to fix the identity of the appellants to the satisfaction of this Court that their involvement in the alleged crime is beyond any reasonable doubt.

21. The conclusion of this appeal is to state the obvious: this appeal is allowed and the appellants are acquitted of the charges for which they were convicted by the trial court and are set free. If the appellants had deposited any amount towards fine imposed on them at the time of conviction, the same is directed to be refunded to them. The miscellaneous petitions are closed.

(N.S.S.,J.)

(P.V.M.,J.)

23 .09.2024



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Index : Yes / No

Neutral Citation : Yes / No

Speaking order / Non-speaking order

CM / ds

Note: Issue order copy on 24.09.2024

To:

- 1.The Judge (PCR),
II Additional District and Sessions Court
Tirunelveli District.
- 2.The Assistant Commissioner of Police
Palayamkottai Sub-Division
Palayamkottai Police Station
Tirunelveli City.



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**N.SESHASAYEE,J.
and
P.VADAMALAI,J.**

CM

Pre-delivery Judgment in
Crl.A(MD)No.960 of 2023
and Crl.M.P(MD)Nos.15195, 15196 and 15198 of 2023

23.09.2024