



Crl.A.Nos.716, 722 & 723 of 2023

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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 31.07.2025

CORAM

THE HONOURABLE Mr. JUSTICE **G.K.ILANTHIRAIYAN**

Crl.A.Nos.716, 722 and 723 of 2023

Jeeva (Jeevanandham) ... Appellant /Accused No.2
in Crl.A.No.716 of 2023

Gowtham (Kawataiyan) ... Appellant /Accused No.3
in Crl.A.No.722 of 2023

Gopal (Balan) ... Appellant /Accused No.1
in Crl.A.No.723 of 2023

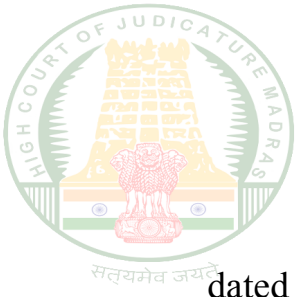
Vs.

State represented by
Inspector of Police
C-1, Kattoor L&O Police Station
Coimbatore.
(Crime No.294 of 2018)
Respondent/Complainant

...

in all the Crl.A's.

Common Prayer:- Criminal Appeals filed under Section 374 (2) of
Cr.P.C., to set aside the common judgment passed in S.C.No.62 of 2021



Crl.A.Nos.716, 722 & 723 of 2023

dated 12.06.2023 on the file of the Sessions Court for Trial of Bomb

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Blast Cases, Coimbatore.

For Appellant in

Crl.A.No.716 of 2023 : Mr.S.Doraisamy
for Mr.V.Elangovan

For Appellant in

Crl.A.No.722 of 2023 : Mr.S.Doraisamy
for Mr.KA.Prabaharan

For Appellant in

Crl.A.No.723 of 2023 : Mr.S.Doraisamy

For Respondent

in all Crl.A.'s : Mr.S.Raja Kumar
Additional Public Prosecutor

COMMON JUDGMENT

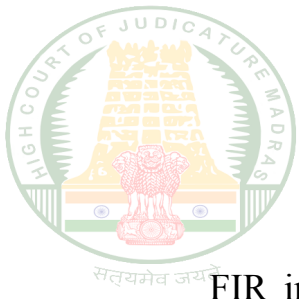
These criminal appeals are directed against the judgment passed in S.C.No.62 of 2021 dated 12.06.2023 on the file of the Sessions Court for Trial of Bomb Blast Cases, Coimbatore, thereby convicting the appellants for the offence punishable under Section 120(B) of IPC r/w 4(a) of Explosive Substances Act and Section 4(a) of Explosive Substances Act.



Crl.A.Nos.716, 722 & 723 of 2023

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2. The case of the prosecution was that the accused are members of Periyar Dravida Party and they used to participate in all the protest conducted by Periyar Dravida Party. While being so, after demolition of Lenin statue in Tirupura, a BJP leader announced that Periyar Statue in Tamil Nadu would be demolished. Therefore, Periyar Dravida Party preferred a complaint against him before the Commissioner of Police. Thereafter, a member of that state political party had demolished a statue and as such, the accused in that regard, conspired together to take revenge and they decided to manufacture petrol bombs and throw it on that political party office situated at in VKK Menon road to show their protest. In continuation of their conspiracy, on 07.03.2018, at about 03.15 a.m., the accused came by their two wheeler with petrol bombs and threw them in the office of the political party after lighting fire on them. The said petrol bomb was made up in a liquor bottle measuring 180 ml. It fell on the Tirupathi Travels Board and exploded. They also had thrown the petrol bombs on the road where an auto was standing and it was also exploded. Hence, the complaint. On the receipt of the said complaint, the respondent registered

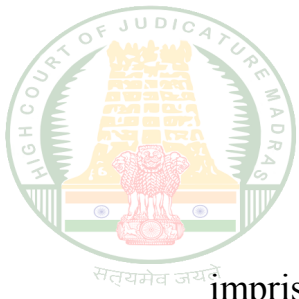


Crl.A.Nos.716, 722 & 723 of 2023

WEB COPY

FIR in crime No.294 of 2018. After completion of investigation, they filed final report and the same was taken cognizance by the trial court for the offence punishable under Section 120(B) of IPC r/w Section 4(a) of Explosive Substances Act and Section 4(a) of Explosive Substances Act.

3. In order to bring the charges to home, the prosecution had examined PW1 to PW22 and marked Ex.P1 to Ex.P26. The prosecution also produced ten material objects as MO.1 to MO.10. On the side of the accused, they had marked Ex.D1. On perusal of oral and documentary evidences, the trial court found the accused guilty for the offence punishable under Section 120(B) of IPC r/w Section 4(a) of Explosive Substances Act and they have been sentenced to undergo seven years rigorous imprisonment and to pay fine of Rs.1,000/- each, in default, to undergo six months simple imprisonment. They were also convicted for the offence punishable under Section 4(a) of Explosive Substances Act and were sentenced to undergo seven years rigorous imprisonment and to pay a fine of Rs.1,000/- each, in default, to undergo six months simple



Crl.A.Nos.716, 722 & 723 of 2023

WEB COPY

imprisonment. Aggrieved by the same, the present criminal appeals have been filed.

4. The learned counsels for the appellants submitted that the prosecution failed to prove the charges beyond any doubt and as such, the benefit of doubt goes in favour of the appellants. The alleged occurrence took place on 07.03.2018 at about 03.15 a.m., and FIR was registered at about 04.15 a.m., but FIR reached the court of Judicial Magistrate-II, Coimbatore only at about 1.45 pm., on 07.03.2018 and there was a delay of nine hours. There is no explanation by the prosecution for the delay in sending the FIR to the court. Further, PW11 deposed that CCTV was opened only at 6.15 a.m., but PW1 who had seen the occurrence, deposed that he had seen the footage in CCTV at about 5 a.m., itself. Though prosecution produced CCTV footage, it is not clear and the appellants were not identified in the CCTV footage. According to the prosecution, on seeing the CCTV footages, they identified the appellants, But even according to them, the appellants were neither familiar nor known to them. Therefore, identification of the



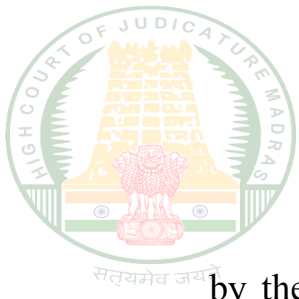
Crl.A.Nos.716, 722 & 723 of 2023

WEB COPY

accused itself is doubtful and the prosecution failed to prove any charge.

Further, PW1 deposed that after bombing, the accused ran on the western side. But PW2 deposed that the appellants ran on the eastern side direction. These contradictions are fatal to the case of the prosecution.

4.1 The learned counsels for the appellants further submitted that the photographs of the appellants were published in the newspaper by the respondent. Only thereafter, the identification parade was conducted by the respondent. Therefore, it was not in accordance with law and the so called identification parade cannot be legitimate. Even according to the case of the prosecution, the appellants used liquor bottle by filling petrol and lit fire on its thread wick and threw in the office of the political party. However, it fell down on the board of one Tirupathi Travels. Therefore, it cannot be considered as explosive substance and it never exploded. One of the accused also had thrown two other bottles, one after other, and both fell down on the road and got fired. Therefore, the bottles never exploded and as such, no explosive material was used



Crl.A.Nos.716, 722 & 723 of 2023

WEB COPY

by the appellants to manufacture the alleged petrol bomb. As such, no charge is sustained under the Explosive Substances Act. Further, the forensic science expert was not examined who stated that the petrol filled bottle is an explosive bomb. Forensic expert's reports were marked as Ex.P17 to Ex.P19 through investigation officer. However, the prosecution failed to examine the author of the report. Therefore, the appellants could not cross examine with regards to the forensic expert report. Further, the prosecution marked consent letter as Ex.P26 by the District Collector, that too through investigation officer PW22. It was not produced along with the charge sheet. Though it was obtained before filing the final report, it was introduced only through PW22, the investigation officer, that too after examination of the prosecution witnesses. Therefore the appellants could not cross examine the person who had given consent for prosecution. As per the Explosive Substances Act, consent should be given by the District Magistrate. There is no definition for the District Magistrate under the Explosive Substances Act. It is defined under the Explosives Act. Accordingly, the District Magistrate means “ The Commissioner of Police”. Therefore, the same



Crl.A.Nos.716, 722 & 723 of 2023

WEB COPY

definition can be construed for the Explosive Substances Act as well and accordingly, the District Collector has no authority / jurisdiction to give consent for prosecution. Therefore, the entire prosecution itself is void and non est in the eyes of law. In support of their contentions, they relied upon the following judgments:

- (i) ***Palanisamy and two others Vs. State***
reported in **1992 L.W (Crl) 105**
- (ii) ***Bablu @ Raj Kishore Gupta Vs. State of M.P.***
reported in **2012 (1) MPWN 27**
- (iii) ***Uchit Mahto Vs. State of Birch***
reported in **2015 4 East CrC 420**

5. Per contra, the learned Additional Public Prosecutor appearing for the respondent submitted that immediately after registration of FIR, the entire investigation was handed over to one, Sivakumar, the then Inspector of Police for investigation. During the investigation, he altered the offences into Sections 427, 285 of IPC and Section 4(a) of Explosive Substances Act and 120(b) of IPC and filed final report. In the scene of crime, PW1 was very much present and he lodged complaint. He deposed about the occurrence and also lodgment of



Crl.A.Nos.716, 722 & 723 of 2023

WEB COPY

complaint before the respondent. The auto driver who had also seen the occurrence, deposed as PW2. He corroborated the evidence of PW1. Another constable was examined as PW3. He deposed that he was on duty in the said political party head office and he had seen that PW1 was chasing someone. He suspected that someone had thrown petrol bomb. The mahazar witness was examined as PW7 who is the building manager and he also categorically deposed that the particles of the bottles were recovered from the scene of crime. CCTV footage was produced through PW10 in the form of CD (compact disk). He deposed that three persons after throwing the petrol bomb, ran away from the scene of crime. The articles which were seized from the scene of crime were sent to forensic science laboratory. It was tested and a report was submitted which was marked as Ex.P25 through PW21 who is Assistant Director of Forensic Science Department. Finally, investigation officer was examined as PW22. Therefore, the prosecution categorically proved the case beyond any doubt and as such, the trial court rightly convicted the appellants and it does not warrant any interference by this Court.



Crl.A.Nos.716, 722 & 723 of 2023

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6. Heard, the learned counsel appearing on either side and perused, all the materials placed before this Court.

7. There are three accused and all the appellants are arrayed as A1 to A3. They were convicted for the offences punishable under Sections 120(b) of IPC r/w 4(a) of Explosive Substances Act and 4(a) of Explosive Substances Act. The specific case of the prosecution was that on 07.03.2018 at about 03.15 a.m., all the appellants came with petrol bomb in which the second accused drove the vehicle and the first and third accused were the pillion riders. The first and third accused went near the political party head office and gave signal to the second accused to get petrol bombs which were kept in the tank cover of the two wheeler. Thereafter, the first accused lit fire on the petrol bomb and had thrown in the head office of the political party. It fell on Tirupathi Travels Board and the third accused had thrown two petrol bombs and both fell on the road near auto. After seeing the same, PW1 chased them. However, they ran away from the scene of crime by their two wheeler. Even according to the case of the prosecution, the petrol bomb was made



Crl.A.Nos.716, 722 & 723 of 2023

WEB COPY

up of liquor bottles with the capacity of 180 ml filled up by petrol with thread wick. Thereafter, the wick was lighted and was thrown. The glass bottle broke and led to spreading of the fire. Therefore, whether it is construed as bomb to attract the offences under Section 4(a) of Explosive Substances Act is to be seen.

8. It is relevant to extract the definition of 'explosive substance' under the Explosive Substances Act hereunder:

2(a). Definition of "explosive substance".- In this Act the expression "explosive substance" shall be deemed to include any materials for making any explosive substance; also any apparatus, machine, implement or material used, or intended to be used, or adapted for causing, or aiding in causing, any explosion in or with any explosive substance; also any part of any such apparatus, machine or implement.

9. In the case on hand, allegedly the appellant used 180 ml liquor bottle filled up with petrol with thread wick. Only after lighting the wick, it was thrown by the accused. The petrol bottle filled with petrol cannot be construed as bomb since it cannot be exploded. It causes



Crl.A.Nos.716, 722 & 723 of 2023

WEB COPY

only ablaze. Further, even according to the case of the prosecution, after throwing the bottle, it caught fire. It is not the case of the prosecution that it got exploded. In fact, forensic laboratory report which was marked as Ex.P25 through PW21, revealed that, one 180 ml capacity glass bottle with cloth wick with partially burnt end was found on the sunshade. On the road, two wheelers were found parked in front of the office. Near the two wheelers, smoke deposit and broken glass pieces were found. Broken pieces of a 650 ml capacity glass bottle with black deposit were found on the road. Burnt tip cloth wick lid was found near the scene of crime. Fire evidence like smoke deposit was seen on the sunshade and on the road. Usage of inflammable liquid most probably petrol was observed due to the odour and stain on the ground and broken glass pieces and burnt wick were also found. The bottle which was thrown on the political party office was not broken. So damage seems to be less. Finally, it was concluded that all three bottles might have been thrown after filling inflammable liquid and lighting the thread wick. Since glass bottle, wick and inflammable liquid were present with smoke deposit, it was presumed to be a type explosive bomb. Therefore, it cannot be stated that



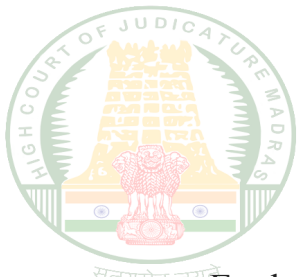
Crl.A.Nos.716, 722 & 723 of 2023

WEB COPY

instruments of that type is an explosive. It causes only fire. Therefore, the charge itself under Section 4(a) of Explosive Substances Act is not attracted against the appellants. Even assuming that the petrol bomb was used for explosion, no such occurrence took place and there was only a spread of fire, that too on the road. Hence, the prosecution failed to prove the charge under Section 4(a) of Explosive Substances Act. Insofar as identifying the appellants is concerned, the prosecution produced CCTV footages through PW10. However, the appellants were not identified from CCTV footages. But on the next day of the alleged occurrence, the appellants' photographs were published in the newspapers and also in the television news. Thereafter, PW1 was called to identify the appellants, that too in the police station. Therefore, the prosecution has also failed to conduct identification parade in accordance with law.

10. The learned counsels for the appellants vehemently contended that in order to prosecute the accused for the Explosive Substances Act, they ought to have obtained consent.

11. It is relevant to extract the provisions under Section 7 of



Crl.A.Nos.716, 722 & 723 of 2023

Explosive Substances Act hereunder:
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7. Restriction on trial of offences:

No court shall proceed to the trial of any person for an offence against this Act except with the consent of the District Magistrate.

12. Thus it is clear that no person can be prosecuted except with the consent of the District Magistrate. However, the word “District Magistrate” is not defined under the Explosive Substances Act, 1908. However, it is defined under the Explosives Act.

13. It is relevant to extract the provisions under Section 4(c) of Explosives Act hereunder:

4(c) “District Magistrate”, in relation to any area for which a Commissioner of Police has been appointed, means the Commissioner of Police thereof and includes

(a) any such Deputy Commissioner of Police, exercising jurisdiction over the whole or any part of such area, as may be specified by the State Government in this behalf in relation to such area or part: and



Crl.A.Nos.716, 722 & 723 of 2023

(b) an Additional District Magistrate;

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14. Accordingly, it can be understood that the “District Magistrate” means the “Commissioner of Police” and Additional District Magistrate means, Deputy Commissioner of Police. When there is no definition for District Magistrate under the Explosive Substances Act, the definition for the District Magistrate under the Explosives Act can be taken into consideration. Therefore, the concerned Commissioner of Police ought to have given consent to initiate prosecution, that too before the commencement of trial. The prosecution should have produced the consent letter at the beginning of the trial. Therefore, without consent obtained from the competent person, the trial cannot be proceeded. Therefore, the trial court ought not have proceeded with the trial without the consent, as contemplated under Section 7 of Explosive Substances Act, against the appellants.

15. In the case on hand, though the consent for prosecution was obtained by the prosecution to prosecute the appellants even during the



Crl.A.Nos.716, 722 & 723 of 2023

WEB COPY

investigation, on 12.03.2020 it was obtained from the District Collector.

Nowhere in the Act, the consent for prosecution by the District Collector is recognised and it is nowhere stated that the District Collector has the capacity of Magistrate under the Explosive Substances Act. As stated supra, the District Magistrate is defined under the Explosives Act and the District Magistrate means Commissioner of Police concerned. The consent letter was marked as Ex.P26 that too through the investigation officer who was examined as PW22. It was not furnished along with the charge sheet as mandated under Section 207 of Cr.P.C. It was marked at the fag end of the trial through investigation officer. Therefore, the appellants had lost their opportunity to defend their case with regards to consent issued by the District Collector. That apart, on perusal of Ex.P26, it is revealed that it does not contain any seal of the signing authority. Though the District Collector can act as District Magistrate as defined under the Explosives Act, the District Magistrate means 'the Commissioner of Police'. The respondent wrongly construed that the District Magistrate means the District Collector and obtained consent to prosecute the appellants under the Explosive Substances Act. Therefore,



Crl.A.Nos.716, 722 & 723 of 2023

WEB COPY

the consent itself was not issued by a competent authority and the initiation of prosecution itself is vitiated.

16. In criminal jurisprudence, the burden is always on the prosecution to prove its case beyond reasonable doubt. When two views are possible and the one favourable to the accused is equally plausible, the benefit of doubt must necessarily go to the accused. In the present case, the prosecution has failed to discharge its burden convincingly, and the trial Court failed to properly appreciate the infirmities in the prosecution case. Therefore, the conviction and sentence awarded by the trial Court in respect of all the charges against the appellants cannot be sustained and are liable to be set aside.

17. Accordingly, the impugned judgment passed in S.C.No.62 of 2021 dated 12.06.2023 on the file of the Sessions Court for Trial of Bomb Blast Cases, Coimbatore, is set aside and all the criminal appeals stand allowed. The appellants are acquitted of all the charges for the offences under Section 120(B) of IPC r/w 4(a) of Explosive Substances



Crl.A.Nos.716, 722 & 723 of 2023

WEB COPY

Act and Section 4(a) of Explosive Substances Act. The bail bond, if any executed by the appellants, shall stand cancelled. Fine amount, if any paid, shall be refunded to the appellants forthwith.

31.07.2025

Index : Yes/No
Neutral Citation : Yes/No
Speaking/Non Speaking order
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To

Page 18 of 20



Crl.A.Nos.716, 722 & 723 of 2023

WEB COPY

1. The Sessions Judge

Sessions Court for Trial of Bomb Blast Cases, Coimbatore.

2. The Inspector of Police

C-1, Kattoor L&O Police Station
Coimbatore.

3. The Public Prosecutor

High Court of Madras.

G.K.ILANTHIRAIYAN, J.



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Crl.A.Nos.716, 722 & 723 of 2023

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Crl.A.Nos.716, 722 and 723 of 2023

31.07.2025