
(2014) 01 MAD CK 0137
In the Madras High Court
Case No : Criminal Appeal No. 161 of 2012

Haroon Ismail

APPELLANT

Vs

State by The Additional Superintendent of Police, CB CID

RESPONDENT

Date of Decision : 07-01-2014

Acts Referred:

Explosive Substances Act, 1908 — Section 3 4 4(a) 4(b) 7
Penal Code, 1860 (IPC) — Section 120B 301 302 307

Citation : (2014) 1 MLJ(Cri) 271

Hon'ble Judges : S. Rajeswaran, J;A. Arumughaswamy, J

Bench : Division Bench

Advocate : A. Ramesh, S.C. for Mr. A.M. Venkatakrishnan in C.A. Nos. 141 and 161/2012, Mr. N.R. Elango, S.C. for Mr. S. Mathivanan in C.A. No. 171/2012 and Mr. R. Rajarathinam for Mr. V. Udayakumar in C.A. No. 312/2012, for the Appellant; V.M.R. Rajendran, Additional Public Prosecutor, for the Respondent

Final Decision : Allowed

Judgement

A. Arumughaswamy, J.—The Appellants are the Accused 1, 2, 3, 5 and 7. Offence charged against the accused are:

- (i) Offence u/s. 120B I.P.C. against A1 to A7
- (ii) Offence u/s. 4(a) and 4(b) Explosive Substances Act, 1908 (2 counts) against A1
- (iii) Offence u/s. 4(a) and 4(b) Explosive Substances Act, 1908 r/w Sec. 120B IPC (2 counts) against A2 to A7
- (iv) Offence u/s. 302 r/w 301 IPC against A1.
- (v) Offence u/s. 302 r/w 301 and 120B IPC against A1 to A7
- (vi) Offence u/s. 3 of Explosive Substances Act 1908 against A1
- (vii) Offence u/s. 3 of Explosive Substances Act 1908 r/w 120B IPC against A2 to

A7

(viii) Offence u/s. 307 IPC against A1

(ix) Offence u/s. 302 r/w 120B IPC against A2 to A7

The conviction and sentence imposed by the trial Court against the accused are:

Accused No. 1:

u/s. 120B of IPC

. .

7 years Rigorous Imprisonment

u/s. 4(a) and 4(b) of Explosive Substances Act, 1908 (2 counts)

. .

7 years Rigorous Imprisonment each

u/s. 302 r/w 301 IPC

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Imprisonment for Life

u/s. 3 of Explosive Substances Act, 1908

. .

10 years Rigorous Imprisonment

u/s. 307 IPC

. .

10 years Rigorous Imprisonment

Accused Nos. 2, 3, 5 and 7:- u/s. 120B of IPC

. .

7 years Rigorous Imprisonment

u/s. 4(a) and 4(b) of Explosive Substances Act r/w 120B IPC (2 counts)

. .

7 years Rigorous Imprisonment each

u/s. 302 r/w 301 and 120B IPC

. .

Imprisonment for Life

u/s. 3 of Explosive Substances Act, 1908 r/w 120B IPC

. .

10 years Rigorous Imprisonment

u/s 307 r/w 120B IPC

10 years Rigorous Imprisonment

A4 and A6 are found not guilty for the offences u/s. 120B IPC, Section 4(a) and 4(b) of Explosive Substances Act, 1908 r/w 120B IPC (2 counts) 302 r/w 301 and 120B IPC Section 3 of Explosive Substances Act 1908 r/w 120B IPC and they are acquitted as no evidence. While considering the prolonged incarceration of the accused, no fine amount is imposed. The substantive sentences imposed on all the charges are ordered to run concurrently.

The facts in brief which are necessary for the disposal of these Criminal Appeals are follows:- P.W. 1 Thangamuthukrishnan is the husband of the deceased Smt. Thangam. He is residing at No. 953, Main Road, Nagoor, Nagapattinam District for the past 25 years. About 10 years prior to the occurrence he was in Hindu Front. In 1995 he was District Secretary of Hindu Front in Nagai District. There was a difference of opinion and enmity between Hindu Front and Muslim organization. There are several cases pending between them. On 1.7.1995 he attended a meeting of Hindu Front at Thiruparaithurai near Trichy and returned back to his house at 3.00 a.m. On 2.7.95 at 6.00 a.m. when he got up from the bed his wife told him that on the previous day a telegram was received by her. He had gone through the telegram. It is stated in the telegram that one G. Ravi wanted to meet him in his house on 3.7.95 regarding some urgent work and requested him to be in his house. He was in his house till 9.45 a.m. Ravi is not known to him. Since P.W. 1 has to appear before the Judicial Magistrate Court at Nagapattinam, he went to Court compound Nagapattinam. At 11.00 a.m. some known persons came to him and informed that there was a bomb blast in his house and his wife sustained fracture over her hand and she was admitted in General Hospital Nagapattinam. At 11.15 a.m. he rushed to General Hospital, Nagapattinam when he came near the hospital his brother-in-law P.W. 2 Nagaraj came over there and informed him that there was a bomb blast and his wife was injured in that. P.W. 2 also informed that a parcel was received by his wife and when it was opened it was blasted. P.W. 1 and P.W. 2 rushed to the hospital and his wife sustained injuries all over her body including her stomach and both the hands and both the hands were hanging. When he interacted with his wife, she told that postman gave the parcel and when she opened, a bomb exploded and she sustained injuries.

2. P.W. 36 Dr. Sangamitra was attached to Government Hospital, Nagapattinam and on 3.7.95, when she was on duty at casualty at 11.00 a.m. Smt. Thangam w/o Thangamuthukrishnan was brought by her brother P.W. 2 Nagaraj. She told that at 10.30 a.m. postman gave a tapal and when she opened it, it exploded, she was conscious and she answered all questions in one word and she was not able to know about her pulse and blood pressure status. She found the following

injuries all over her body.

(1) lacerated injuries over the face on the left close to the eyebrow. (2) lacerated injury in lower lip and chin (3) lacerated injury over right hand. Front arms were exposed, some parts of hand was missing (4) lacerated injury in right arm and bones were exposed and some parts in the hand are missing (5) lacerated injury on her left breast (6) lacerated injury in upper abdomen and skin was charring (7) lacerated injury on her right thigh exposing all the muscles and bones of thigh (8) lacerated injury in her right front leg, bones are protruded, nature of leg position changed (9) lacerated injury on her left thigh, bones and muscles are exposed in bottom portion (10) lacerated injury in left front arm and bones are exposed (11) lacerated injury in left front leg on proper middle portion. All the injuries are black in colour and cloth pieces were found in the injury. Rice and tin particles were found in the injury.

She was admitted in the hospital as an inpatient. She issued a Accident Register Ex. P32. She also sent a requisition to the Judicial Magistrate, Nagapattinam to record dying declaration.

3. P.W. 35 Manoharan was the Judicial Magistrate, Nagapattinam in the year 1997. On 3.7.95 at 11.30 a.m. he received the intimation from Nagapattinam General Hospital and went to the hospital and recorded dying declaration of Smt. Thangam W/o Thangamuthukrishnan and she told him that on that day at 10.30 a.m. postman gave a parcel and when she opened, it got exploded and since she had sustained injuries on her both hands, he did not obtain her signature. The statement was recorded and read over to her and it was accepted by her. Statement was recorded in the presence of duty Doctor Sangamitra. Statement of Smt. Thangam recorded by him is Ex. P31 and the endorsement of the duty Doctor is Ex. P33.

4. P.W. 43 Prasannakumar was the Inspector of Police, Velipalayam Police Station in Nagapattinam District during 1995 and he was doing additional charge of Nagapattinam District. On 3.7.95 at 11.30 a.m. when he was in Velipalayam police station he received intimation from Government Hospital, Nagapattinam and went to the Hospital. Smt. Thangam, the injured was totally unconscious. Therefore, he could not put any question. Thereafter, he went to Nagoor Police Station, after 12.00 Noon he received a complaint Ex. P1 from P.W. 1 and registered a case in Nagoor P.S. Cr. No. 637/95 u/s. 307 IPC r/w Sec. 3 and 7 of Explosives Substances Act 1908. Printed FIR is Ex. P41. At 2.30 p.m. he received intimation that Smt. Thangam died and therefore, Section of law was altered to Section 302 IPC r/w Section 3 and 7 of Explosives Substances Act. From 2.00 p.m. to 5.30 p.m. he conducted inquest upon the body of the deceased. Inquest report is Ex. P50. He examined P.Ws. 1 and 2, Thangavelu and Regina. The body was sent to Thanjavur Medical College Hospital for postmortem through Head Constable P.W. 46. Thereafter, P.W. 43 went to P.W. 1s house and in the presence of P.W. 10 and P.W. 12 prepared observation mahazar Ex. P51 and rough sketch Ex. P52 and recovered the material objects found in the place of occurrence by a

recovery mahazar Ex. P12 in the presence of the said witnesses and sent the same to the Court by Form 95 for sending chemical examination by Form 95. He examined P.W. 4, P.W. 5 and other witnesses. On 5.7.95 he examined P.W. 3 and sent a requisition Ex. P38 to the Court for sending the properties for chemical examination.

5. P.W. 33 Dr. Ravisankar was the Principal of Thanjavur Medical College. P.W. 34- Head Constable identified the body to the Doctor for postmortem. On 4.7.95 when he was working as Professor as per the requisition of Velipalayam Inspector of Police he conducted postmortem on the body of the deceased Smt. Thangam on 4.7.95 at 10.30 a.m. He noticed the following external injuries.

Whole of face except the back halves of both the cheeks and both the ear. Punctured laceration over the front upper arm. Irregular laceration in right hand in the area between middle and index finger and whole of palmer aspect with total absence of skin, sub cutaneous tissue, muscles, tendons, the entire right thumb and all the phalanges and fracture dislocation of all the carpo-meta carpal joints. The skin and sub cutaneous tissues at the meta carpo phalanges joints where found blackened with rice particles seen in the substance of the wound with one rice particle and the small area in the middle finger region were stained violet. Both the bone fracture in the left elbow, knee, the entire left elbow was cut and hanging with multiple laceration. There is a laceration in the quadrants of left breast with muscle deep with extensive blackening of the muscles and soft tissues. On dissection aluminium pieces were taken out and sent to forensic lab. There is a laceration on the right side of breast surrounded by abraded contusion measuring 3 cm length and partial burnt explosive material was found, printed paper pieces were also found. On inner examination of the parts all parts were pale and in the stomach 250 gram undigested food was found. He opined that the deceased was died due to bomb blast. On 21.8.95 he received a report from forensic science department (explosives) that exploded materials are Nitroglycerine and Nitrocellulose and therefore she died. Nitroglycerine and Nitrocellulose explosives which exploded near to her. She could have died 8 to 12 hours prior to postmortem. Postmortem Report is Ex. P30. Those injuries were caused when she was alive.

6. P.W. 44 Chinnathambi was the Inspector of Police, District Crime Branch in the year 1997. As per the directions of his superiors, on 12.9.95 he went to Hassan Hussain Enterprises Co., Thambu Chetty Street, Chennai and examined its partner Ahmed Dhahir Basha regarding the bomb blast case accused. He told that accused Siddique went abroad. He recovered the Air Ticket Register Ex. P53 and the Company Selection Register Ex. P54. On 13.9.95 he went to Selvajothi Lodge at Kuddappah Rengaiya Chetty Street and examined its manager Selvaraj. He produced a register Ex. P55, stating that accused Siddique stayed in that lodge. He prepared his Special Report Ex. P56 and handed over all the documents along with Special Report to the Inspector of Police CBCID, Trichy.

7. P.W. 46 Shanmugam was the Inspector of Police, District Crime Branch during

the year 1997. As per the directions from DSP, Crime Branch, Trichy, he had taken up the case for further investigation. On 9.9.1995 at 5.30 a.m. he arrested A1 Haroon Ismail near Nagoor Vettaru Bridge and examined him and he gave a voluntary confession statement in the presence of P.W. 9 and Suresh. Admissible portion of the confession statement is Ex. P10. A1 had taken them to his house and he produced 22 properties and the same were recovered by a recovery mahazar Ex. P11 at 10.00 a.m. A1 had taken them to Karaikkal and from his aunt's house taken out 13 properties and the same were recovered by a recovery mahazar Ex. P12.

He had taken them to Karaikkal and identified A2 Rifayee and he was arrested and his confession statement Ex. P13 was recorded. A2 produced TVS Champ TN 51 Z 2690 and also RC book and the same were recovered by a recovery mahazar Ex. P14. Thereafter A1 had taken them to Moongilkudy village to the house of Senguttuvan at 2.00 p.m. and produced 8 properties. All the documents and properties were recovered by a recovery mahazar Ex. P15. Thereafter, A1 and A2 were taken to District Crime Branch Thiruvarur and the case properties and accused were sent to the Judicial Magistrate's Court. On 10.9.95 he examined Thahira Banu, Mariappan, Suresh, Victor Arokiaraj and Mohammed Yahiya. At 4.00 p.m. he went to Abubacker Siddique's sister's house and she produced a letter dated 8.10.94 written by Mohammed Siddique to the British High Commissioner and also telegram forms with receipt M.O. 15 series and M.O. 16 series and these documents were recovered by a recovery mahazar Ex. P. 16. He examined P.W. 9 Krishnamurthy and P.W. 12 Gnanasekaran on 11.9.95. He examined the witnesses Mukthan Marakair, Nameed Nachiar, Mohammed Sherif Ali, Aasath and recorded their statements. He also sent a requisition through Motor Vehicle Inspector, Thiruvarur regarding TVS Motor Cycle particulars. That requisition is Ex. P18. On 13.9.95 he examined P.W. 15 Elumalai and P.W. 16 Prabakaran. On 16.9.95 P.W. 14 Chinnathambi produced some documents along with Special Report Ex. P56, Air Ticket Register Ex. P53, Hassain and Hussain Enterprises Co., Selection Register Ex. P54. He also produced P.W. 45 Selvaraj's statement along with register. He examined P.W. 45 Selvaraj and other witnesses. On 28.9.95 he went to Karaikkal and examined P.W. 18 Renganathan. He had produced rental agreement Ex. P19 and it was recovered by a recovery mahazar Ex. P66. He examined the witnesses Ramanathan, Navaneetham, Gnanasekaran and Saminathan. Both the accused were remanded in respect of Mayiladuthurai P.S. Cr. No. 1297/95.

8. P.W. 47 Wesly Ebinezar was working as a Inspector of Police (L and O) Mayiladuthurai during the year 1995. On 4.7.95 when he was in the police station P.W. 19 Vaidyanathan Sub-Postmaster of Kaveri Nagar Post Office Mayiladuthurai at 12.00 noon given a complaint Ex. P20. He registered a case in Mayiladuthurai P.S. Cr. No. 1297/95 u/s. 4(a) of Explosives Substances Act 1908. Printed FIR is Ex. P67. He informed the same to Nagapattinam Superintendent of Police through V.H.F. message. He informed to BDDS Squad. Police photographer and Forensic Science Department person came to the station at 4.00 p.m. The

book parcel was taken on the north side of the Kumarappa Udayar Primary School near Pazahangkaveri channel and it was diffused at 4.30 p.m. and observation mahazar Ex. P21 and rough sketch Ex. P68 were prepared. Book parcel was photographed. Photos taken in the place of occurrence are M.O. 26 series. Negatives are M.O. 27 series. After blast at 5.30 p.m. Ex. P22 observation mahazar was prepared. On 4.7.95 at 5.45 p.m. paper pieces of Bagavatgita is recovered by a recovery mahazar Ex. P23. Battery and metal sheets are M.O. 31. Yellow colour thread is M.O. 25, debris of the book is M.O. 132 series, waste material M.O. 30 series and the same were recovered by a recovery mahazar Ex. P24 at 6.00 p.m. Thereafter he examined the witnesses P.W. 19, P.W. 27, P.W. 29, P.W. 24, P.W. 26 and other witnesses. On 5.7.95 he went to Thanjavur West Post Office and examined stamp vendor Smt. Subbulakshmi and Sub-Postmaster Ramamurthy and Thiruvarur Telegraph Office Messenger Ganapathy, Telegraph office worker Tamilselvan. Thereafter, he handed over the file to P.W. 48 DSP, CBCID, Trichy.

9. P.W. 48 Sengamalai was the DSP, District Crime Branch, Trichy District. He had taken up the case for further investigation. He has sent requisition for sending the Exhibits and Material Objects to Forensic Sciences Department for chemical examination. On 22.5.96 he was transferred and therefore investigation was taken by P.W. 50 DSP, shanmugam. P.W. 50 taken up the case for further investigation on 18.6.1996. For tracing the absconding accused, three teams under the head of Subramanian Inspector of Police, Planichamy, Inspector of Police and Mahalingam, Inspector of Police were working. From 7.7.95 to 3.8.95 DSP Chelliah investigated both the cases. P.W. 50 was worked under him. DSP Chelliah re-examined P.W. 1 Thangamuthukrishnan and P.W. 2 Nagaraj and P.W. 3 Selvaraj. On 7.7.95 he went to Tiruvarur Telegraph office and recovered Ex. P3 to P8 and sent the same to Judicial Magistrate Court. He examined the witnesses. He went to Thanjavur West post office and examined the witness Ramalakshmi, Subbulakshmi, Ramaiah and Jeyagopalan. Recovered documents were sent for chemical examination through Court. On 29.9.95 and 30.9.95 he examined P.W. 10, P.W. 11, P.W. 22. On 1.7.96 P.W. 50 taken up the case for investigation. On 6.7.96 he examined the witnesses and after completion of investigation filed charge sheet against A1 to A7 u/s. 120B, 302, 301, 307 IPC and Sec. 3 and 4 of Explosive Substances Act 1908 and filed final Report before the J.M. No. II, Nagapattinam on 22.2.1997. At the time of filing charge sheet accused Abubacker Siddique, Zahir Hussain, Abdul Azeez and Zubaire were shown as absconding accused. Thereafter, Zubaire, Zakir Hussain and Abdul Azeez were arrested on various dates and sent to Judicial Custody. Abubacker Siddique only was shown as an absconding accused.

10. Upon committal, the proceedings were made over to the court of the Sessions Court for Exclusive Trial of Bomb Blast Cases, Poonamallee, Chennai-56. The trial Court framed charges under Sections Offence u/s. 120B I.P.C. against A1 to A7, u/s. 4(a) and 4(b) Explosive Substances Act, 1908 (2 counts) against A1, u/s. 4(a) and 4(b) Explosive Substances Act, 1908 r/w Sec. 120B IPC (2

counts) against A2 to A7, u/s. 302 r/w 301 IPC, against A1, u/s. 302 r/w 301 and 120B IPC against A1 to A7, u/s. 3 of Explosive Substances Act 1908 against A1, Sec. 3 of Explosive Substances Act 1908 r/w 120B IPC against A2 to A7, Sec. 307 IPC against A1, u/s. 302 r/w 120B IPC against A2 to A7. Following the framing of charges the accused were explained about the charges and they have pleaded not guilty and expressed their willingness to contest the case of the prosecution.

11. During trial on the side of prosecution P.Ws. 1 to 50 have been examined and Exs. P1 to P68 and M.Os. 1 to M.O. 44 and one Court Document Ex. C1 have been marked. On behalf of the Accused no witness has been examined and no document has been marked. The trial Court on appreciation of oral and documentary evidence and upon hearing the arguments advanced by the learned counsel appearing for the accused and the learned Public Prosecutor, ultimately found the accused 1, 2, 3, 5 and 7 guilty of the offences and convicted and sentenced them as stated above. A4 and A6 are found not guilty of the offences and they were acquitted for want of evidence. While considering the prolonged incarceration of the accused, no fine amount has been imposed. The substantive sentences imposed on all the charges are ordered to run concurrently. Aggrieved over the judgment of conviction and sentence passed by the trial Court, the accused have come forward with the present appeal.

12. Heard the submissions of Mr. A. Ramesh, the learned senior counsel appearing for the appellants/accused 1 and 2 in C.A. Nos. 161 and 141 of 2012, Mr. N.R. Elango, the learned senior counsel appearing for the appellant/accused No. 3 in C.A. No. 171 of 2012 and Mr. R. Rajarathinam, learned counsel appearing for the appellants/accused No. 5 and 7 in C.A. No. 312 of 2012 and Mr. M.R. Rajendran, the learned Additional Public Prosecutor, appearing for the respondents.

13. The point arises for our consideration is:

Whether the conviction and sentence passed by trial Court against the appellants/accused are sustainable?

14. The learned senior counsel appearing for the appellants contended that as per the case of prosecution the accused joined together and hatched the conspiracy about the occurrence and it has been followed as per the conspiracy. In order to prove the conspiracy hatched by the accused, the prosecution has examined P.W. 10 Rajakannan, P.W. 11 Rengaiyyan, P.W. 13 Thagira Banu, P.W. 177 Navaneetham, P.W. 21 Sathyamoorthy, P.W. 22 Ganesan and P.W. 49 Jagafar Sadique. It is the evidence of P.W. 10 that in the garden of Thadi Jabbar many Muslims along with one Thadi Jabbar were talking to put an end of P.W. 1 and P.W. 28. However, in the cross-examination P.W. 10 would depose that:

It is the evidence of P.W. 11 that Thadi Jabbar was talking with A4 Raja Husain, A5 Zahir Hussain, A6 Suber in Ammu Javuli Kadai. P.W. 11 in his cross-examination would depose that:

P.W. 17, P.W. 21, P.W. 22 and P.W. 49 were turned hostile. From this it is very clear that the alleged conspiracy hatched between the accused to do away P.W. 1 and P.W. 28 has not been proved by the prosecution beyond reasonable doubt.

15. The next contention put forth by the learned senior counsel appearing for the appellants is that as per the case of the prosecution P.W. 6-Ramaiyya, working as a clerk in the Post Office at Thanjavur (West) had identified the accused in the Identification Parade conducted by P.W. 32-Judicial Magistrate, Mannargudi. The identification of accused by P.W. 6 is untenable for the reasons that P.W. 6 would not have dealt with the accused persons at the Post Office on that particular day since he has not given any description of the accused during Police Investigation. Furthermore, the Identification Parade was conducted in a court room, well after two years from the date of crime, arrest and release of the accused i.e. the date of occurrence is 03.07.95, date of arrest of the accused is 09.09.1995, whereas the identification parade was conducted only on 22.07.1997. It is also a mandate that the dummy persons standing along with the accused must be of the same religion as that of the accused whereas the accused persons are Muslims and the dummy persons belonging to Hindus. Thus, according to the learned senior counsel for the appellants the prosecution has not proved its case beyond reasonable doubt and hence, he prays that the Criminal Appeals have to be allowed.

16. The learned Additional Public Prosecutor appearing for the Respondents contended that to prove the conspiracy hatched between the accused independent witnesses have been examined and later on the occurrence has been followed and as per the conspiracy two book post parcels have been dispatched to P.W. 1 and P.W. 28 and following the same telegrams have also been sent to P.W. 1 and P.W. 28 intimating them to make available in their residence on 3.7.95. The said telegrams have been received by P.W. 1 and P.W. 28 and the book parcel sent to P.W. 1 has been received by his wife since P.W. 1 has gone out to attend the Court proceedings and when it was opened by his wife it was exploded which resulted in P.W. 1's wife sustaining severe burn injuries and thereafter she died in the Government Hospital. The book parcel sent to P.W. 28 has been returned as door locked and after the book parcel bomb blast on 3.7.95. Thereafter, the book parcel bomb addressed to P.W. 28 has been inspected by Bomb Squad and it has been diffused. Further, there is also evidence to speak about the custody of the parcel from the accused since the accused was having all the raw materials at his residence and the same was recovered in the presence of the witnesses P.W. 9 and two others. The arrest of the accused No. 1 and 2 and recovery of material objects was also made in the presence of the said witnesses.

17. According to the prosecution to prove the second link against the accused is that on 1.7.1995 at 10.30 a.m. two book post parcels had been sent from Thanjavur Post Office to P.W. 1 Thangamuthukrishnan and P.W. 28 Jagaveerapandian respectively by A1 Haroon Ismail and Abubackkar Siddique

(absconding accused) and on 02.07.95 at 6.00 a.m. P.W. 1 received the Telegram (Ex. P3) from his wife Thangam (deceased) and on 03.07.95 at 10.00 a.m. P.W. 3 Selvaraj delivered the Parcel at P.W. 1's house and it was received by the wife of P.W. 1. The book parcels sent by the accused through the post office has been spoken to by the P.W. 6 Ramaiah and the officials of the post office and the delivery of the Book parcel to P.W. 1's wife was also spoken to by P.W. 3. After delivery it was blasted was also spoken to by the witnesses. P.W. 36-postmortem doctor has given his opinion that the reason for the death of P.W. 1's wife is due to the burn injuries sustained by her in a bomb explosion. The undelivered book parcel bomb diffused by the Bomb Squad was also spoken to by the P.W. 19-Postmaster. Arrest of the accused, confession recorded by the I.O. and the recovery of material objects at the residence of the accused and two other places has been spoken to by P.W. 9-Village Menial. Identification parade was conducted by P.W. 32 and identification of the accused has been spoken to by P.W. 6. Thus according to the learned Additional Public Prosecutor, all these happenings have a chain of link to prove the case of the prosecution. Hence, he prays that the conviction and sentence imposed on the accused by the trial Court has to be confirmed and the Criminal Appeals have to be dismissed.

18. We have considered the rival submissions carefully and also perused the materials available on record including the evidence adduced by the prosecution witnesses and the judgment of the trial Court.

19. According to the case of the prosecution P.W. 1 Thangamuthukrishnan was in Hindu Front and he was the District Secretary of Hindu Front in Nagai District. P.W. 28 is the President of BJP Myladuthurai and because of anti Islamic Organization speeches delivered by him there was a difference of opinion and enmity between Hindu Front and Islamic Organization. There are several cases pending between them. The Appellants being Muslims sympathisers of JAQH Organization hatched a conspiracy to do away P.W. 1 and P.W. 28 as they were actively in anti Islamic principles. P.W. 10 and P.W. 11 have been examined to speak about the conspiracy hatched among the accused in a Coconut Thoppu of Accused No. 3 from April to July 1995 to cause death of P.W. 1 and P.W. 28 by sending parcel bomb in the form of book and in pursuant to the said conspiracy the book parcel containing bomb were sent from Thanjavur West Post Office and they came to Thiruvavur Telegraphic Office and sent two telegrams to P.W. 28 and P.W. 1 respectively, intimating them as if some new person is coming to meet them at their residence anticipating that they will be available at the time of the delivery of the parcel. On 2.7.95 at 6.00 a.m. P.W. 1 received the Telegram from his wife. On 3.7.95 at 10.00 a.m. P.W. 3 delivered the parcel at P.W. 1's house, since P.W. 1 was out of home, unfortunately, P.W. 1's wife who was in the house of P.W. 1 received the book parcel bomb and when she made an attempt to open the parcel it was exploded and she sustained fatal injuries and succumbed to death at 2.10 p.m. and the parcel bomb sent to P.W. 28 was returned undelivered by the Postman as P.W. 28 was not available in his house when the book parcel bomb was about to be delivered to him and thereafter with

the help of bomb squad the same was diffused.

20. Now, the contention of the learned senior counsel for the appellants is that the witnesses have not identified the person who has dispatched the book parcels. The specific features of the accused has not been mentioned by the witness. P.W. 6 Ramaiah working as a Clerk in Thanjavur West Post Office was examined to speak about the identification of the accused. In his evidence he would depose that two persons came over there and one person has given two heavy weighty books for sending the same by post and thereafter he picked up two book post tapals and placed on the table. As per the case of the prosecution the age of the accused is 21 whereas P.W. 6 would say the age of the accused is 35 and even if it is correct the occurrence had taken place in the year 1995 and the identification parade was conducted in the year 1997 after a period of two years, long after the release of the accused, that too in the court premises and in an identification parade conducted before the Judicial Magistrate Court at Mayiladuthurai P.W. 6 identified the person viz., A1 Haroon Ismail who sent the book post. During the cross-examination P.W. 6 would depose as follows:

21. P.W. 13-was examined to speak that before sending the book parcel bomb it was kept in the house of the accused and when P.W. 13 attempted to touch the parcel the person who is the inmate of the house of P.W. 13 warned her not to touch since it will be exploded. From the evidence of P.W. 13 the prosecution did not elicit anything about the presence of all the accused. According to A3 is concerned, conspiracy is spoken to by P.W. 13. Except few sentences implicating A3 she has boldly stated about the conspiracy on two occasions. But the evidence P.W. 13 is not sufficient to fix the accused. She has deposed that:

P.W. 9-the Village Menial was examined to speak about the arrest of the accused and recovery of the material objects on the basis of the confession made by the accused. From the evidence of P.W. 9 the prosecution has not elicited anything about the arrest and seizure as expected by law. P.W. 9 in his cross examination would depose that:

22. P.W. 46-is the Investigating Officer and he was examined to speak about the investigation conducted by him, by preparing the observation mahazar and rough sketch in the place of occurrence in the presence of the witnesses, Inquest conducted on the body of the deceased in the presence of the witnesses, inquest report prepared by him, arrest of the accused and recovery of the material objects on the basis of the confession statement given by the accused in the presence of the witnesses. But he could not mention the details as to how he was able to fix the accused.

23. Furthermore, P.W. 50 during cross examination admitted that the witnesses have given wrong description about the accused regarding the age of the accused also and that would clearly show that the fixation of the accused is a doubtful one. P.W. 6-Ramaiah working in the post office also wrongly describing about the person who has despatched the registered parcel. He has wrongly

mentioned the age of the accused. Therefore, from this cumulative effect the evidence adduced by the witnesses regarding the role played by the accused creates suspicion in the mind of the Court.

24. Other witnesses also turned hostile. Identification parade conducted by P.W. 32, Thiru. Jaganathan, Judicial Magistrate, Mannargudi would reveal that the identification parade has been conducted in the Court which is also be depreciated. Except P.W. 1 is Hindu Activism, there is no sequence to show that the accused also having Muslim Activism and to connect with this person there is no evidence. Generally in these type of cases the complainant as well as the accused persons may not know each other considering their aim alone as they are working for the cause of their religion be able to be appreciated by this Court. But still there must be some connectivity in this case and the role played by the accused has to be seen in this case. The prosecution has miserably fails to establish before this Court regarding the role played by each and every accused. Even though the case is arising out of the circumstantial evidence, the proposition rendered by the Apex Court as well as by this Court repeatedly insisting the chain of links has to be connected with each other and thereafter only one can be convicted based on the circumstantial evidence. In this case there is no direct evidence or linking evidence for the conspiracy hatched among the accused and preparation of explosive bomb and then sending it to the person concerned and thereafter identifying the accused by those witnesses. These chain of links have to be proved. But in this case, the prosecution fails to prove this aspect.

25. For the foregoing reasons, we are of the view that the prosecution has not proved its case beyond reasonable doubt and hence, the benefit of doubt has to be given in favour of the appellants/accused. Accordingly, the appellants/accused are entitled for acquittal from all the charges. In the result, all these Criminal Appeals are allowed and the conviction and sentence imposed upon the appellants by the Court of Sessions for Exclusive Trial of Bomb Blast Cases, Poonamallee, Chennai in S.C. No. 6 of 2004 dated 1.2.2012 are set aside. The appellants/accused are acquitted from all the charges. Fine amount if any paid by the appellants are ordered to be refunded to them and the bail bonds are ordered to be cancelled.