BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on	22.09.2025
Pronounced on	23.10.2025

CORAM :

THE HONOURABLE MR. JUSTICE P.VELMURUGAN
and
THE HONOURABLE MRS.JUSTICE L.VICTORIA GOWRI

Crl.A(MD)No.475 of 2019

The State Represented by,
The Additional Superintendent of Police,
Special Investigation Division,
Crime Branch CID,
Coimbatore. ... Appellant/Complainant

vs.

Mohammed Hanifa @ Tenkasi Hanifa ... Respondent/Accused

Prayer:-This Criminal Appeal is filed under Section 378(1) of Criminal Procedure Code, to set aside the judgment passed by the Principal Sessions Judge, Dindigul, in Session Case No.131 of 2014 dated 20.12.2018 acquitting the respondent/accused namely, Mohammed Hanifa @ Tenkasi Hanifa.

For Appellant : Mr.T.Senthil Kumar
Additional Public Prosecutor
For Respondent : Mr.S.M.A.Jinnah

JUDGMENT

(Judgment of the Court was made by **P.VELMURUAN, J.**)

This Criminal Appeal has been filed to set aside the judgment passed by the Principal Sessions Court, Dindigul, in Session Case No.131 of 2014 dated 20.12.2018 acquitting the respondent/accused namely, Mohammed Hanifa @ Tenkasi Hanifa.

2. The case of the prosecution is that the then Deputy Superintendent of Police of the Special Investigation Team, Madurai, who is also the investigating officer in Crime No.237/2011 on the file of Tirumangalam Taluk, registered a case concerning an attempt on the life of the then Home Minister, Mr.L.K.Advani, through a planted bomb. Non-bailable warrant issued by the competent court against the respondent/M.Mohammed Hanifa Tenkasi Hanifa was pending. Based on the intelligence sources, it was discovered that M.Mohammed Hanifa was hiding at Batlagundu, Dindigul District. On 08.07.2013, at about 10.00 a.m., while executing the warrant, the Deputy Superintendent of Police, along with the police personnel and the revenue personnel (VAO and Village Assistant), attempted to apprehend the said Mohammed

Hanifa. Sensing that he was about to be apprehended, the respondent/accused, attempted to murder the Deputy Superintendent of Police Mr.Karthikeyan by attacking him with a long knife. The DSP escaped from the said attack without sustaining injuries. The police personnel accompanying the DSP witnessed the attack and overpowered the accused, seizing the deadly weapon (long knife) to thwart the attempt on the DSP's life. Thereafter, the accused voluntarily confessed in the presence of the VAO and Village Assistant which led to discovery of two knives, two gel bags, two detonators, a copy of Daily Thanthi dated 05.07.2013 carrying an article by Mr.Baskaran of Dindigul, a piece of white paper with a hit list of prominent Hindu leaders and a small bag. All those material objects were seized under Mahazars. Furthermore, the accused identified a location where he had hidden explosive materials in a closed pit, from which 18 electronic detonators and 18 gel bags were seized under the cover of a Mahazar before the witnesses.

3. The DSP subsequently lodged a complaint at Batlagundu Police Station, where a case was registered in Crime No.

240/2013 against the respondent/accused along with two other co-accused. After completing the investigation, a final report was filed against the accused for the offences under Sections 353, 307, and 153(A) of the IPC, Section 16(1)(b) of the Unlawful Activities (Prevention) Act, 1967, and Sections 4(a)(i) and 4(b)(ii) of the Explosive Substances Act, 1908 and the same was taken on file in PRC.No.19/2014. After completing the formalities, the learned Magistrate committed the case to the Court of Session, since the offences are exclusively triable by the Court of Session. The Principal Sessions Judge, Dindigul, took the case on file in S.C.No.131/2014 and framed the charges for the commission of offences under Sections 353, 307, 153(A) of IPC, 16(1)(b) of Unlawful Activities (Prevention) Act, 1967 and Sections 4(b)(i) and 4(b)(ii) of Explosive Substances (Amendment) Act, 2001. In order to substantiate the case during trial, on the side of the prosecution, totally 21 witnesses were examined as PW1 to PW21 and 31 documents were marked as Exs.P1 to Ex.P31, besides 7 material objects were exhibited as MO1 to MO7. No oral and documentary evidence were let in on the side of the respondent/accused. After completion of the evidence of the prosecution side witnesses, the respondent/accused was questioned

under Section 313(1)(b) CrPC with regard to incriminating circumstances made out against him in the evidence rendered by the prosecution witnesses and he denied it as false. On conclusion of the trial and hearing of the arguments on either side, the trial Court by impugned judgment dated 20.12.2018, acquitted the respondent/accused of all the charges. Aggrieved over the acquittal, the prosecution has filed the present appeal before this Court.

4. The learned Additional Public Prosecutor appearing for the appellant/police would submit that the trial Court has erroneously emphazised the prosecution's failure to examine all the occurrence witnesses which is untenable in view of the judgment of the Hon'ble Supreme Court in Takdir Samsuddin Sheikh vs. State of Gujarat reported in AIR 2012 SC 37, where it has been held that it is not the number of witnesses matters but the quality matters and the test is whether the evidence as ring of truth is cogent, credible and trustworthy. In this case, the evidence of the occurrence witnesses is cogent and therefore, non examination of all the witnesses to the occurrence is not fatal to the prosecution case. He would further submit that the trial

Court has erroneously misconstrued the procedural corrections in the seizure mahazar thereby undermined the credibility of the prosecution case, holding that the prosecution has not offered any explanation or clarification in this regard thereby completely ignored the evidence of PW15-investigating officer who has given a clear and cogent explanation that corrections were made after consultation with higher officials. Therefore, the said finding of the trial Court is against the judgment of the Apex Court in Dr.Sunil Kumar Sambhudayal Gupta vs. State of Maharashtra reported in AIR 2012 SC 3311, wherein, it has been held that procedural irregularities when properly clarified, cannot form the basis for rejecting credible evidence.

5. The learned Additional Public Prosecutor appearing for the appellant/police would further submit that the trial Court has erroneously concluded that the witnesses are unclear about the vehicles used by the officials for travelling from Madurai to Batlagundu to arrest the accused, ignoring the fact that the entire evidence unequivocally shows that PW1 travelled in his official jeep while PWs 2 and 3 travelled in a tempo van with other police personnel and PW5-VAO was picked

up at Batlagundi and subsequently travelled in PW1's jeep. In support of this contention, the learned Prosecutor has relied upon the judgment of the Apex Court in Ganapat vs. State of Haryana reported in 2011 Crl.J 701 SC, where it has been held that minor contradictions should not be given undue importance when the core facts remain consistent. The learned Prosecutor would further submit that the trial Court's focus on the absence of arms among the police personnel reflects a fundamental misunderstanding of operational protocols, since the mission at hand was the execution of a non-bailable warrant not a riot control or public harmony maintenance. In this regard, decision of the Apex Court in Anil Kumar vs. State of UP reported in AIR 2004 SC 4662 is relied upon, wherein, the Supreme Court has emphasized that the nature of duty being performed should take precedence over peripheral factors, such as armament. Further, the trial Court's inference that the absence of a phone or money with the accused casts doubt on the prosecution's case is speculative and unsupported by evidence.

6. Adding further, learned Prosecutor would submit that the trial Court's finding that PW2 and PW5 were unable to identify the

author of the confession is erroneous and a mis-appreciation of evidence especially when the Apex Court has clarified in Aghnoo Nagewia vs. State of Bihar reported in AIR 1966 SC 119 that while confessions made to police officers are generally inadmissible, any material evidence derived from such confessions is admissible if it leads to discovery of relevant facts. In this case, the trial Court has failed to apply settled legal principle instead, placed undue emphasis on the technical aspect of authorship.

7. The learned Additional Public Prosecutor appearing for the appellant/police would further submit that the trial Court has erroneously given undue weightage on trivial and irrelevant factors namely, the manner in which the police surrounded the accused to nab him, omission of picking up PW5 and non submission of photographs taken, which had led to a flawed judgment. Further, the trial Court has overreached in its findings by emphasizing lack of prior permission from the local police which is baseless and not mandated under law. The trial Court has given undue weightage on minor inconsistencies in the evidence of the witnesses contrary to the verdict of the Supreme Court in

State of U.P vs. M.K.Anthony reported in AIR 1985 SC 48, where the Apex Court held that minor contradictions or inconsistencies in the statements of the witnesses should not lead to outright rejection of the prosecution's case. The learned Prosecutor would also submit that the evidentiary value of the accused's confession leading to recovery of explosives is completely overlooked by the trial Court.

8. It is further submitted that PW8's testimony directly relates to threats and actions surrounding the accused and provides crucial context for understanding the environment of hostility and the motivations behind the alleged offence. When the evidence of PW8 speaks about the accused's involvement in several heinous criminal activities and also highlights the hardcore fundamentalist mindset of the accused which is crucial for establishing the broader narrative of the case, the trial Court disregarding the probative value of PW8's evidence, disbelieved the testimony of PW8.

9. The learned Additional Public Prosecutor would further submit that the trial Court has erred in holding that PW21-

investigating officer has not narrated the origin of explosives and the Court suggested that the explosives were not self-made but manufactured by the Government recognised companies. This observation completely reflects non application of mind, but that does not affect the substantive merits of the prosecution case. The trial Court has also lost sight of the fact that procedural irregularities do not vitiate a case when the substantive evidence is sufficient to establish the guilt. The nature of the explosives and their potential to endanger life and property were conclusively established by PW12-Scientific Officer of Explosives Division rendering the trial Court's observation as immaterial. Further, when the prosecution has conclusively established the nature of explosives through the report of PW12 where it is clearly stated that the explosives are high-grade and if they are detonated, there will be a significant threat to life and property, the trial Court has disbelieved the explosives report-Ex.P16 and has erroneously focused on the manufacturing source of explosives disregarding the corroborated evidence of the expert which carries significant probative value.

10. The learned Prosecutor would further contend that the trial Court has failed to discuss the charge framed against the accused under Section 16(1)(b) of the Unlawful Activities (Prevention) Act, 1967 when the prosecution has established the accused's possession of explosives and his confession affirms his intent to commit a terrorist act. Under Section 43E of the Unlawful Activities (Prevention) Act, 1967, the burden of proof is shifted to the accused when the prosecution establishes a reasonable belief based on the material evidence. In this case, though the prosecution has proved the reasonable belief based on the documentary evidence, the trial Court failed to advert to the abovesaid provision of law and disbelieved the case of the prosecution. He would further contend that the trial Court has failed to give due weightage to the circumstantial evidence put forth by the prosecution which was consistent, corroborative and sufficient to establish the guilt of the accused beyond reasonable doubt, whereas, by misinterpreting the procedural aspects, it has undermined the diligent efforts of the investigation. The acquittal of the accused by the trial Court not only undermines the deterrent purpose of anti-terror laws but also sends a dangerous signal that such grave offenders will be left scot-free which

will take away the public confidence in the justice delivery system. It is also submitted that even the Apex Court has affirmed in several cases that in cases involving crimes against the nation, the judiciary must adopt a strict approach to uphold law and order to preserve public confidence, whereas, the trial Court harping on procedural infirmities, acquitted the respondent/accused who committed grave offences against the nation. Thus, he would pray for setting aside the impugned judgment of the trial Court and convict the respondent of all the charges framed.

11. The learned counsel for the respondent/accused would submit that Exs.P2 and P4-Mahazars contain some corrections and there are corrections in the corresponding Form-95s under Exs.P7 and P8. It was the consistent evidence of PW1, PW3, PW5 and PW15 that they do not know as to who made corrections in the seizure mahazars and the prosecution has not offered any explanation or clarification which creates a doubt in the prosecution case. He would further submit that PWs.1 to 4 are not clear about the vehicles in which they travelled from Madurai to Batlagundu to arrest the accused.

Though the prosecution alleges the accused as a hardcore criminal, the police officers have not taken any weapon with them which creates doubt over the prosecution case. He would further submit that though there are 12 occurrence witnesses as per the prosecution, the prosecution has chosen to examine only 4 of them namely, PW1 to PW3 and PW5 and no cell phone or money was recovered at the time of arrest though the accused is not a resident of Batlagundu. It is further submitted that though PW2 and PW5 have admitted that they were present at the occurrence place throughout, their inability to mention the author cum writer of the confession statement by the accused itself creates a doubt regarding their presence and their witnesses to the occurrence. Further, it is doubtful as to whether the team of police officials had indeed surrounded the accused after the alleged attack attempted on PW1 or even before that attempt they have surrounded the accused and overpowered him and thus there is a material contradiction regarding surrounding of the accused for arrest. Though PW3 stated that after reaching Batlagundu, the vehicle was stopped and PW1 went to the office of PW5-VAO and Village Assistant and then all of them proceeded to the scene of occurrence, but the evidence of PWs.1, 2 and 5 are not so,

as such, there is an omission of the material fact. PW5 who is stated to be the witness for arrest, confession and recovery, has not seen the recovered material objects.

12. The learned counsel for the respondent/accused would further submit that there are material contradictions with regard to recovery in between the evidence of PWs.1 to 3 and 5 and therefore, the prosecution's case relating to recovery itself is doubtful. Though the prosecution has produced two rough plans namely, Exs.P22 and P26, while Ex.P26 mentions the second recovery place, Ex.P22 does not show the place of second recovery. He would further submit that regarding the sealing, packing and numbering the material objects, there are contradictions in the evidence of PWs.1, 2, 3 and 5 which creates doubt over the prosecution case regarding seizure. For many suggestions put forth in the cross-examination, PW2 has answered that 'she did not know' and 'she did not remember' which creates doubt over her presence in the scene of occurrence itself. PW5 in her evidence would state that she does not know who had written the confession statement and the mahazars at the occurrence place which creates doubt whether really

PW5 accompanied PW1 and his team at the occurrence place. Further, local police were not informed before or during the visit of the appellant.

13. The counsel for the accused would further submit that PW3 in his evidence has stated that PW1 deputed Inspectors Justine Raj and Chakaravarthi to take the accused and the case properties to the Judicial Magistrate Court, Thirumangalam, and PW3 accompanied them and they produced the accused at about 06.00 p.m before the Judicial Magistrate Court and that the remand work was over at 09.00 p.m. Thus, it is highly doubtful as to how PW16 had examined the Inspector Chakaravarthi and PW3 Saravanakumar between 07.30 and 09.00 p.m on 08.07.2013 at Batlagundu police station as alleged by the prosecution. Despite the objection raised by the defence, the prosecution had not produced the incoming and outgoing records from the toll office. He would further submit that as per Rule 128(2) of Explosives Rules 2008, if any officer seizes, detains or removes any explosives or ingredients thereof, he shall forthwith report the said factum to the Chief Controller and the Controller under whose jurisdiction the place where the explosives were seized falls. In the present case, PW21-investigating

officer in his cross examination has admitted that they have not sent any information regarding seizure of explosives to the Chief Controller or Controller of Explosives and the prosecution also has not offered any explanation in this regard.

14. The learned counsel for the accused would further contend that the trial Court has noticed the following defects in the investigation which were not explained by the prosecution:

a) Non production of C.D file maintained in the office of CBCID, SID office, Madurai.

b) Non production or non-summoning of toll records.

c) Failure to send MO3 and MO4 knives to finger print expert.

d) Failure to conduct proper investigation regarding the person or the place from whom or where the recovered explosive materials were supplied.

e) Non production of bills and vouchers of private tempo van hired for the travel of PW2 and PW3 and others.

f) Non examination of tempo van driver.

g) Non production of photographs taken at the time of

occurrence and non sending of intimation to the Chief Controller or Controller of Explosives as required under Rule 128(2) of Explosives Rules 2008.

15. Thus, the learned counsel for the accused would contend that the above infirmities and discrepancies did not inspire the confidence of the trial Court and hence, it has held that the prosecution has failed to prove the charges beyond reasonable doubt and accordingly acquitted the accused. Hence, the impugned judgment of the trial Court does not require interference.

16. Heard both sides and perused the records.

17. PW1 is the complainant. Admittedly, he was the investigating officer in Crime No.237/2011 on the file of Tirumangalam Taluk Police Station, conducted the investigation and laid charge sheet which was taken on file in PRC.No.37/2012. Pending PRC, the respondent was absconded and a non-bailable warrant was issued. Since PW1 came to know from the reliable sources that the respondent

was hiding in Batlagundu, a hill area, he formed a team of officers in order to execute the non-bailable warrant and went along with PW5-Village Administrative Officer, Kanavaipatti Village, Nilakottai Taluk on 08.07.2013. When PW1 about to apprehend the respondent/accused, the respondent attempted to murder PW1 by attacking him with a long knife. PW1 escaped from the said attack without sustaining any injury and the team of the officers surrounded the respondent and seized the deadly weapon-knife from the respondent and thereafter, the respondent voluntarily made a confession in the presence of PW5 and pursuant to the same, the materials namely, two knives, two gel bags, two detonators, a copy of Daily Thanthi dated 05.07.2013 carrying an article by Mr.Baskaran of Dindigul, a piece of white paper with a hit list of prominent Hindu leaders and a small bag, were recovered. Thereafter, PW1 made a complaint to the Inspector of Police, Batlagundu Police Station who registered the case in Crime No.240/2013, investigated the matter, laid charge sheet on the file of the Judicial Magistrate, Nilakottai, and the same was taken on file in PRC.No. 19/2014 and after completing the formalities, the same was committed to the Principal District and Session Judge, Dindigul, who had taken the

case on file in S.C.No.31/2014. In order to substantiate the case on the side of the prosecution, totally 21 witnesses were examined and 31 documents were marked.

18. It is not in dispute that the case was registered against the appellant in Crime No.237/2011 on the file of Tirumangalam Taluk Police Station and also not in dispute that during the PRC stage, NBW was issued against the respondent and the same was pending. The offence is also a heinous crime i.e., to take away the life of the former Home Minister, Mr.L.K.Advani, through a planted bomb. Since the respondent was absconding in that case, NBW was issued and then team of officers was formed to execute NBW. Once the Court issued NBW, it is the duty of the police to execute NBW. Since PW1 was the investigating officer in that case and he received a secret information from the reliable sources regarding the place of hiding of the respondent, he formed a team of officers including PW5-VAO, independent witness and secured the accused. Since the team of officers are only officials went on official duty to execute NBW and arrested the respondent who absconded in order to escape from the clutches of law in a pending

criminal case, it cannot be expected that prior intimation should be given to the local police. If the respondent knows about the movement of the police, he will escape and therefore, naturally the police will maintain secrecy in such cases.

19. Perusal of record shows that PW5-VAO, who is an independent witness with prior permission of his superior accompanied PW1, has clearly deposed about the occurrence and recovery. PW10-Village Administrative Officer, B.B. Kulam, Madurai, who also accompanied PW1 with prior permission of his superior, has also spoken about the confession made by the respondent. Though confessions made before the police officers are generally inadmissible, however, under Section 27 of the Indian Evidence Act, 1872, if such confessions led to recovery of any material evidence, that recovery portion is admissible. Therefore, from the evidence of PW5 and PW10, the prosecution has proved the recovery. Though the trial Court taking note of certain contradictions in the evidence of the prosecution witnesses, disbelieved the case of the prosecution on the ground that no independent witness was examined, weapons were not sent for forensic opinion, vehicle

numbers, in which, the team of officers travelled, were not mentioned, the driver of the tempo van was not examined, there was alteration in Form-95s and all the witnesses shown in the charge sheet were not examined, it is seen from the records, the appellant was accused in Crime No.237/2011 and he was an absconding accused in that case and the evidence of PW1 clearly shows that in order to execute NBW, he formed a team of officers and went along with PW5-VAO for securing the respondent and based on the respondent's confession, he recovered the explosives and sent it to scientifical expert-PW12. The evidence of PW1 is also corroborated by the evidence of PW5 who is an independent witness. Therefore, this Court is of the view that the prosecution has established the case beyond reasonable doubt. However, the defects pointed out by the learned counsel for the respondent as well as the trial Court will not be fatal to the case of the prosecution.

20. In cases of this nature, one cannot expect total independent or public witnesses and the accused was absconding and hiding in a secret place and the officials in order to execute NBW, formed a team of officers and went to the place secretly to secure the

respondent. Since because of the witnesses are only officials of the police department and revenue officials, the Court cannot simply throw the evidence of the witnesses, unless the Court finds that their evidence is not reliable. Once the Court finds that the evidence of the witnesses is reliable, cogent, consistent and inspiring the confidence of the Court, the Court can record the conviction and further it is a settled proposition of law that the case can be proved through competent witnesses. The appellant/CBCID police officials are indisputably competent witnesses. Though Section 162 of the Criminal Procedure Code says that any statement recorded by the police officials are not admissible in evidence, but however in the cases of this nature, the police officials themselves have been shown as witnesses to the occurrence. If their evidence inspires the confidence of the Court and the defence has not established that their evidences have to be discarded, the Court can rely on the evidence of the police officials. Through the consistent and cogent evidence of Pws.1 to 5, the prosecution has proved the occurrence and recovery beyond reasonable doubt.

21. No doubt, in appeal against the order of acquittal, the accused has got double presumption and when two views are possible, the appellate court cannot interpret and substitute its own views and interfere with the decision of the trial Court. If the appellate court finds that there is only one view which is the appellant who has committed the charged offences, the appellate court without any hesitation shall record the conviction. In this case also, though the learned counsel for the respondent and also the trial Court pointed out certain contradictions and discrepancies, on a careful perusal of the entire records, oral and documentary evidence more so the antecedents of the respondent, this Court finds that the contradictions as pointed by the learned counsel for the respondent are not material contradictions go to the root of the prosecution case. The contradictions pointed out are not only minor contradictions, but also immaterial contradictions which will not go to the root of the case of the prosecution.

22. A careful reading of the evidence of PWs.1, 2, 3, 5, 10 and 12 and the Mahazar witnesses and also the expert opinion and reports, this Court finds that the recovery is proved and as per the expert

opinion, the recovered materials are explosive substances. Therefore, this Court finds that the prosecution has proved its case beyond reasonable doubt and the evidence of the prosecution witnesses also inspires confidence of the court and there is no reason to discard the evidence of PWs.1, 2, 3, 5 and 10 and 12.

23. For all the foregoing reasons, the impugned judgment of the trial Court in Session Case No.131 of 2014 dated 20.12.2018, is set aside and the Criminal Appeal is allowed. In order to question the respondent before imposing the sentence, the respondent is directed to appear before this Court on 28.10.2025.

[P.V, J.] [L.V.G, J.]
23.10.2025

Index : Yes / No
Neutral Citation : Yes / No
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To

1. The Principal Sessions Judge,
Dindigul.

2. The Additional Superintendent of Police,
Special Investigation Division,

Crime Branch CID,
Coimbatore.

3.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

4. The Section Officer
Criminal (Records) Section,
Madurai Bench of Madras High Court,
Madurai.

P.VELMURUGAN, J.
AND
L.VICTORIA GOWRI, J.

bala

PRE-DELIVERY JUDGMENT MADE IN
Crl.A(MD)No.475 of 2019

DATED : 23.10.2025