

**IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION**

CRIMINAL APPEAL NOS.1943-1948 OF 2008

RAJ @ SUBRAMANIAN ETC.

Appellant(s)

VERSUS

**THE STATE REP. BY THE ADDITIONAL DEPUTY
SUPERINTENDENT OF POLICE**

Respondent(s)

WITH

CRIMINAL APPEAL NO.1954 OF 2008

CRIMINAL APPEAL NOS.1949-1950 OF 2008

CRIMINAL APPEAL NOS.1952-1953 OF 2008

CRIMINAL APPEAL NO.349 OF 2009

O R D E R

1. Heard the learned counsel for the parties.

2. There were total 41 accused persons, out of these 16 accused persons have preferred appeals before this Court.

3. The facts of the prosecution case are :
On 6.3.2002, the Assistant Commissioner of

Police, Flower Bazaar Police Station, Chennai and his police team have brought the accused persons viz., the first and second accused from Chennai Central Prison so as to produce them before the third Additional Sessions Court, Madurai in connection with Melur Police Station Cr. No.477/2001. Accused Nos.1 & 2 had been lodged in Central Prison, Palayamkottai on 7.3.2002 at about 4.40 hrs. and subsequently, they had been produced before the concerned court and the remand had been extended till 28.3.2002. Since they had to be produced before the Assistant Sessions Court, Kovilpatti in connection with Cr.No.1174/2002, once again they had to be taken back to Central Prison, Palayamkottai and on the way at Thirumangalam Taluk Police Station premise, accused Nos.1 & 2 had been provided with meals inside the escort vehicle. One tata Sumo Car bearing Regd. No.TN-67-A-1797 came there. Accused No.4 and other co-accused had thrown country made bomb and fired by using country made guns against the escort police. The Accused No.5 had opened the escort van bearing Regn. No.TN-01-

G-1083. Accused No.1 had snatched AK-47 rifle from a constable viz., Ganesan and caused injuries to the constables viz., Kesavan and Babu. The Accused Nos.1 and 2 had been taken away through the said Tata Sumo Car by the Accused No.4 and other co-accused. The police vehicle bearing Regn.No.TN-01-G-1083 had been damaged. The occurrence had been immediately communicated to various places and all check posts had been alerted. The Inspector of Police Silaiman chased the Tata Sumo Car. The police party and the accused shot at each other. The Accused Nos.1 & 2 and other co-accused managed to escape leaving the Tata Sumo Car, country made guns and 9 pistols etc. The said vehicle had been seized by Karuppayurani Police and registered a case in Criminal Appeal No.108/2002.

4. Upon completion of investigation, charge-sheet was filed against 41 accused persons. The trial Court has convicted 16 accused persons.

5. The trial Court has convicted the Jahubar Sathick Ali (A-3) and Shajakhan @ Thokka (A-12) under Section 120-B read with Sections 148, 149,

212, 224, 225, 307, 333, 342, 353, 395 r/w 397 and 506(2) of the Indian Penal Code, 1860 and Section 25(1-A), 25 (1-B) of the Arms Act, 1959 and Section 4 (a) of the Explosive Substances Act, 1980 and Section 3 of the TNPPDL Act, 1992 and High Court has confirmed the same. With respect to other accused-appellants, the High Court has modified the conviction/sentence and they were charged for the offence under Section 212 read with Section 114 of Indian Penal Code. The High court has acquitted the accused persons for the charge of criminal conspiracy under Section 120-B.

6. The High Court has confirmed the sentence of seven years to the accused-Jahubar Sathick Ali (A-3) in Criminal Appeal No.157 of 2007 and seven years to Shajakhan @ Thokka (A-12) in Criminal Appeal No.137 of 2007 filed by them respectively.

7. We find that A-3-Jahubar Sathick Ali has substantially undergone the sentence imposed upon him for seven years. Even otherwise no case for interference is made out.

8. We have considered accused Shajakhan @

Thokka (A-12) who had also undergone 6 years, 7 months, 10 days, the period undergone would be sufficient as he was sentenced to seven years imprisonment. Accused Hasan @ Sundarapandi (A-21) had already undergone 2 years, 8 months and 17 days against the sentence of 2 years imposed on him. Remaining accused had already undergone more than one year of sentence except Sultan Batcha (A-36) who had undergone 11 months, 29 days and Ibrahim (A-40) who had undergone 11 months and 21 days, both had completed approximately one year.

9. Thus after considering the facts and circumstances, we find that no case for interference is made out in their conviction recorded under Section 212 IPC except in case of Sallaudin and they are sentenced to the period of sentence already undergone by them

10. Learned counsel appearing on behalf of the appellant-Sallaudin has pressed the matter on merits and prays for his acquittal. There are three witnesses for proving the offence under Section 212 of the IPC. It was charge of

harbouring of A-1. The evidence adduced consists of five witnesses namely Jalaludeen (PW-174), Mohd. Basheer (PW-175), Jaleel (PW-176), Vellappan (PW-177) and Ramlakshmanan (PW-179).

We have gone through and examined the evidence of the aforesaid witnesses so as to find out whether they prove the charge under Section 212 of the IPC against the appellant-Sallaudin. He had also been acquitted for the charge of the conspiracy by the High Court. The trial Court convicted him on the ground that since the charge of conspiracy had been proved against him, thus it is inconsequential that witnesses with respect to the harbouring of the Accused No.1 had turned hostile. The High Court has acquitted him on the ground that there was no evidence to prove the charge of conspiracy.

11. When we consider the statement of Jalaludeen (PW-174) he has clearly stated that no one came to the house and stayed there. He did not see anybody in the house of Mohd. Basheer (PW-175) who has also turned hostile and nothing could be elicited in his cross-examination. He

has stated that he is the owner of the house, he had not rented it to anybody. Thus, he has not supported the case of the prosecution that house was taken on rent by accused. Jaleel (PW-176) has also stated that he knew Mohd. Basheer and nobody stayed in the house of Mohd. Basheer. The deposition of these witnesses fails to prove that the Accused No.1 has committed the offence of harbouring. Thus, we find that charge has not been established. The evidence furnished by the translator-Vellappan (PW-177) is of no value. Since what was stated by the aforesaid witnesses PW-174 to 176 was translated by him from Malyalam to Tamil, he has no personal knowledge of any fact. Statement of Ram Laxman (PW-179) is only of investigating the case and in the course of investigation he has recorded the statement of aforesaid witnesses.

12. In the facts and circumstances of the case, no case is made out to convict the aforesaid appellant-Sallaudin for commission of offence under Section 212 of the Indian Penal Code. Thus his appeal is allowed. The period of

sentence in respect of other accused-appellants is reduced to the period already undergone and the appeals *qua* them accordingly stand disposed of.

....., J.
(ARUN MISHRA)

....., J.
(VINEET SARAN)

NEW DELHI
NOVEMBER 1, 2018

ITEM NO.104

COURT NO.7

SECTION II-C

S U P R E M E C O U R T O F I N D I A
R E C O R D O F P R O C E E D I N G S

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Date : 01-11-2018 These appeals were called on for hearing today.

CORAM : HON'BLE MR. JUSTICE ARUN MISHRA
HON'BLE MR. JUSTICE VINEET SARAN

For Appellant(s) Mr. A. Venayagam Balan, AOR
Mr. Karpaga Vinayagam, Sr. Adv.
Mr. B. Rangunath, Adv.
Mr. Sriram P. Adv.
Mr. Vijay Kumar, AOR
Mr. Pankaj Gupta, AOR

For Respondent(s) Mr. M. Yogesh Kanna, AOR
Mr. S. Partha Sarathi, Adv.
Mr. Raja Rajeshwaran S., Adv.

UPON hearing the counsel the Court made the following
O R D E R

The appeal in respect of appellant-Sallaudin is allowed and in respect of other accused-appellants is disposed of in terms of the signed order.

Pending application (s), if any, shall stand disposed of.

(POOJA ARORA)
COURT MASTER

(JAGDISH CHANDER)
BRANCH OFFICER

(Signed order is placed on the file)