

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 09.04.2019

Coram:

The Honourable Dr. Justice G. Jayachandran

Crl.A.No.5 of 2014

State rep.by

The Inspector of Police,

"Q" Branch C.I.D.,

Chennai-5.

(Crime No.1/2008)

.. Appellant / Complainant

/versus/

Chandrakumar @ Chiranjeevi Master

@ Bala @ Raj @ Arulselvam

.. Respondent / Accused

Criminal Appeal filed under Section 378 of the Criminal Procedure Code to set aside the judgment of acquittal of the respondent/accused passed in S.C.No.116 of 2011 dated 09.10.2013 by the Assistant Sessions Court, Tambaram.

For Appellant : Mrs. Kritika Kamal, G.A.

For Respondent : Mr. R. Sankara Subbu for
Mr. R. Rajiv Gandhi

J U D G M E N T

It is the case of acquittal by the trial Court where the respondent was found not guilty of offence under Section 120 (B) IPC and Section 10, 13(1)(2) of the Unlawful Activities (Prevention) Act, 1967. सत्यमेव जयते

2. The charge against the respondent is that he being a Srilankan citizen and a Member of banned Organisation called Liberation Tigers of Tamil Eelam (in short "LTTE") to procure explosive materials has conspired with others and in pursuant to the conspiracy, arranged with other conspirators to procure Iron balls, plastic granules, laptops, motor vehicles for clandestinely transport to Sri Lanka. Further, he was involved in collecting information about the rival group of Srilankan leaders in order to follow their movement and eliminate them. For the said purpose, he has deputed one Nathan to enter India and with assistance of him and others, collected information about the places, where the explosive substances could be

procured and the movement of one Isnover @ Anolet leader of EPRLF. For the said purpose, he has arranged finance and procured a Tavera car bearing Reg.No.TN 07 AV 1957 in the name of Pushparani, mother of Nilavan.

3. Initially, the other co-conspirators were prosecuted in S.C.No.108 of 2009 before the Assistant Sessions Court, Tambaram with the same set of facts wherein this respondent was shown as an absconding accused. Later, based on the information given by Reagan(A7), E-mail communication from Reagan (A7) to this respondent was retrieved, which has disclosed certain incriminating evidence against the respondent. As a consequence, a further investigation with the leave of the Court was effected by PW-13[Chelladurai] and based on the information given by Reagan(A7), this respondent was formally arrested by PW-13. From the confession statement of this respondent, the resident of the respondent was searched two fake passports and a voter ID card with different names but carrying the photograph of the respondent were recovered in the presence of the house owner [PW-7, Ramar] and his wife PW-11[Jayananthini]. The trial Court assigning his own reason has acquitted the respondent.

4. Aggrieved by that, the present appeal against the order of acquittal is preferred on the ground that the judgment of the trial Court acquitting the respondent is contrary to law, weight of evidence and probabilities of the case. The LTTE organization was declared as banned organization under Prevention of Unlawful Activities Act. The respondent being a member of it, mobilizing funds and sponsoring the activities of the banned Organization. This fact has been proved through the evidence collected during the course of investigation. The E-mail retrieved from Reagan(A7), which was addressed to the respondent and the confession statement of the accused leading to recovery of fake passport which indicate that the respondent has entered India through fake passport and has travelled to Sri Lanka using the fake passport suffice to convict him for the offence of Financing the banned Organization and sponsoring its illegal activities. Even if the other co-conspirators have been acquitted in the connected case, the culpability of this respondent for executing the unlawful act in agreement with others being established through the evidence, the trial Court ought not to have acquitted the accused. The intention of the accused to smuggle material from India to Sri Lanka for the use of banned organization is well found through the evidence of the witnesses, who were the members of the conspiracy. The said conspiracy has been hatched in secrecy, so the trial Court ought not to have expected more evidence to hold the accused guilty.

5. The learned counsel appearing for the respondent would submit that the respondent, who was tried for the offence under Section 120(B) of IPC and Section 10, 13(1)(2) of the Unlawful Activities [Prevention] Act, 1967 was in detention camp during the relevant point of time. Some statement alleged to have been given by the other accused in a case this respondent not tried can not be used against him. The recovery of alleged fake passports from his wife [PW-11] has not been proved in the manner known to law. While there is no iota of evidence to implicate this respondent in the act of funding or mobilising material for use of banned organization, the finding of the trial Court is unassailable. Pointing out that there is no charge regarding the possession of fake passport or using forged passport as a genuine one and travelling abroad, the respondent cannot be held guilty for the said act.

6. Countering the contention of the learned Government Advocate that though the accused was not specifically charged, he was put about the incriminating evidence of possessing fake passport against him in the process of questioning him under Section 313 of the Cr.P.C, so to remand the matter back for re-trial, the learned counsel for the respondent would submit that such an attempt will amount to miscarriage of justice.

7. Heard the learned Government Advocate (crl.side) appearing for the appellant and the learned counsel appearing for the respondent.

8. After anxious consideration to the rival submissions, this Court finds that the trial Court ought not to have held against the complainant stating that the non production of Government Order of declaring LTTE as unlawful association is as one of the ground to acquit the respondent. The Court ought to have taken judicial notice of the Government Order. However, that it is not a sole ground for acquitting the respondent.

9. As far as the charge of Section 120(B) of IPC is concerned, there must be agreement between two or more persons to do a legal act or any act through illegal means. The conspiracy in which the respondent was involved with other co-conspirators were tried by the competent Court and all other co-conspirators were not found to be guilty and acquitted.

10. As far as this respondent is concerned, from the evidence, this Court is able to see that except the statement of A7(Reegan), there is no other material to prove that the e-mail was sent to the respondent herein and received by him and there was some illegal act or pursuant to the receipt of the e-mail he financed the banned organization.

11. This Court takes judicial notice of the fact that the LTTE has now lost its identity, after the third Eelam War in 2009. While so, the Sri Lankan Tamils, who were either members of LTTE or sympathies of it or who have come to India as refugees are in the process of resettlement. Therefore, at this point of time, remanding the matter back for re-trial for possessing fake passport will be a futile exercise and against the spirit of justice.

12. Further more, even to try the respondent for possessing fake passport, from the records, this Court finds that except recovery of the same from the possession of his wife, the investigation has not been made any further regarding the genuineness of the passport and the source of the passport. For that reason also, the request of the learned Government Advocate to remand the matter back is unsustainable.

13. The accused herein has been acquitted by the trial Court for the reason that the prosecution has failed to prove the guilt of the accused beyond reasonable doubt, since the accused has now availed benefit of innocence as well as acquittal and when there is no perversity or illegality on the face of the trial Court judgment, this Court is not inclined to interfere with the order of acquittal. Hence, this criminal appeal is liable to be dismissed.

14. In the result, this Criminal Appeal is dismissed. The order of acquittal passed by the Assistant Sessions Judge, Tambaram in S.C.No.116 of 2011 dated 09.10.2013 is confirmed. Consequently, connected Miscellaneous Petitions are closed.

Sd/-

Assistant Registrar (Insp.Cell)

//True Copy//

ari/rpl
To

Sub Assistant Registrar

- 1) The Assistant Sessions Court, Tambaram.
- 2) The Inspector of Police,
Q Branch CID, Chennai - 5.
- 3) The Public Prosecutor, High Court, Madras.

+1 cc to Mr.R.Rajivgandhi, Advocate, S.R.No.35435

Crl.A.No.5 of 2014

EV(CO)
SSM(30/05/2019).