BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on	:	27.01.2025
Pronounced on	:	03.04.2025

CORAM

THE HONOURABLE MR.JUSTICE K.K.RAMAKRISHNAN

CRL.A(MD).No.698 of 2024
and
Crl.M.P.(MD).No.8725 of 2024

Sri ... Appellant

Vs.

State rep. By,
The Inspector of Police,
Q Branch, Ramanathapuram ... Respondent

PRAYER: This Criminal Appeal is filed under Section 374 of Cr.P.C and Section 415 of BNSS to set aside the judgment dated 18.07.2024 made in S.C.No.2 of 2018 on the file of the learned Principal District and Sessions Judge at Ramnad, and acquit the accused.

For Appellant : Mr. S.Rajendrakumar

For Respondent : Mr. Meenatchi Sundaram
Additional Public Prosecutor

JUDGMENT

Absconding Accused No. 5 in Cr.No.1 of 2015 on the file of the Respondent Police has filed this Appeal challenging the following conviction and sentence of imprisonment imposed against him in the split up case in S.C.No.2 of 2018 on the file of the Learned Principal District and Sessions Judge, Ramanathapuram.

Sl. No.	*Charged Offence*	*Conviction*	*Sentence of imprisonment*	*default sentence*
1	120(B)	convicted	Five years of Rigorous Imprisonment and to pay a fine of Rs. 10,000/-	15 months simple imprisonment
2	120(B) IPC r/w 10(a)(i) and (iv) and 38(1)of Unlawful Activities (Prevention) Act, 1967	convicted	Five years of Rigorous Imprisonment and to pay a fine of Rs. 10,000/-	15 months simple imprisonment
3	6 of Poisons Act, 1919	Convicted	Three months of Rigorous Imprisonment and to pay a fine of Rs. 1,000/-	1 month simple imprisonment
4	120(B) of IPC r/w Section(c) of Foreigners Act,	Convicted	Three years of Rigorous Imprisonment and to pay a fine of Rs. 1,000/-	One year simple imprisonment

Sl. No.	Charged Offence	Conviction	Sentence of imprisonment	default sentence
5	120(B) of IPC r/w Section 3 r/w 12(1)(a) of Passport Act, 1967	Convicted	Two years of Rigorous Imprisonment and to pay a fine of Rs. 10,000/-	8 months simple imprisonment

2.Respondent Q Branch Police has received the secret information in month of May 2015 about the conspiracy made between appellant and other 5 accused in the above crime No.1 of 2015 to Rejuvenate the banned LTTE organization and in pursuance of the conspiracy, appellant's said to have handed over 75 Cyanide Capsules, 60 grams of Chemical which is being used for making cyanide, GPS-4 to A1 Krishnakumar and directed him to go to Srilanka in a ferry and hand over the same to one "Kavi" of Srilankan Tamilan to reorganize the LTTE cadres and to eliminate rival Tamil leaders. Therefore they made the vehicle search on 20.07.2015 at 20.30 hours in the Utchipuli Bus Stand in the Ramanathapuram-Rameshwaram Main road and searched the TATA Indica Car bearing Reg.No.TN 07 BK 3574 and found A1 to A3 in the said car and seized the alleged 75 Cyanide Capsules, 60 grams of Chemical which is being used for making cyanide, GPS-4, Cell Phone – 6, Indian Currency Rs.46,200/-, Sri Lankan Currency Rs.19,300/- from A1, vehicle documents, mobile phone-2, State Bank Passbook and other documents from A2, a mobile phone recovered from A3. On further interrogation, it was found that the said recovered Items were intended to be illegally smuggled out to Sri Lanka to renew the banned Terrorist organization LTTE. On basis of the confession the A1, A4, A5, A6's involvement was found out and A4 was arrested on 25.07.2015 and from him a route map, the list containing names of some leaders of Sri lanka, one sim card, one Pendrive, one Cell Phone, a bag etc. were seized and further search was made in his house at Chennai on 26.07.2015 and a hard disk, simcard and other documents were seized. Thereafter Q Branch completed the investigation by collecting the incriminating materials, chemical reports, sanction and examining number of witnesses and filed the final report before the learned Principal Sessions Judge, Ramanathapuram by showing the appellant as A5 and the other accused No.6 as absconding. The learned Trial Judge had taken on file the final report in S.C.No. 7 of 2016 and on application in Cr.M.P.No. 467 of 2016 and the case was split up by order dated 15.02.2016 against the absconding accused No.5 and 6 in S.C.No.15 of 2016. Thereafter trial was conducted in the mother S.C.No.7 of 2016 against A1, A2, A3, A4 and after the trial they were convicted for the charged offence by the judgment dated 28.04.2018. In mean time A6 was arrested on 25.10.2016 and separate trial was conducted against him in S.C.No.15 of 2016 by splitting the S.C.No. 15 of 2016 against the present appellant in S.C.No. 2 of 2018 by order dated 18.01.2018. In the said S.C.No.15 of 2016 the learned Trial Judge acquitted said A5 under section 120(B), r/w 10 (1) (iv), 38(1) of the UAPA Act and convicted him under section 10(a)(iv) of the UAPA Act and acquitted from the remaining charges. Thereafter Q Branch Officers executed the nonbailable warrant issued against the appellant on 16.12.2021. After the arrest, Q Branch Officers conducted a search in his rental house on 04.01.2022 and 15.01.2022 and recovered material objects and documents marked and proceeded the trial against the appellant before the learned trial judge by examining the witnesses P.W.1 to P.W.39 and marking documents Ex.P1 to Ex.P102 and exhibiting the material objects M.O.1 to M.O.75. After recording the evidence, the learned trial judge questioned the accused under section 313 of Cr.P.C. by putting the incriminating materials available against him from the prosecution evidence and documents and the appellant denied his complicity and denied the same as false and submitted detailed explanation. The learned trial judge considering the same and the evidence on record convicted the appellant for the above stated charged offences by passing the impugned judgment dated 18.07.2024.

3.Mr. S.Rajendrakumar, Learned counsel for Appellant and Mr.Meenakshisundaram Learned Additional Public Prosecutor made detailed submissions on many hearings submissions also placed detailed written submission. Q Branch Officer also was present before this Court and effectively assisted the learned Additional Public Prosecutor.

4.Now the question is whether prosecution has proved the case against the appellant to convict him under the charged offence?

5. The appellant conspired with the remaining accused to revive the banned LTTE organization and handed over 75 cyanide capsules, 600 grams of chemicals which is used for making cyanide G.P.S., to A1 Krishnakumar in the month of 2015 and further directed him to go to Sri Lanka in a ferry and to hand over the said incriminating materials to one Mr.Kavi Sri Lankan in Sri Lanka, who would re-organise the LTTE cadres, to eliminate the rival Tamil Leaders. On receipt of the same, on 20.07.2015, when A1 Krishnakumar, in order to reach the coastal area of Rameshwaram and to travel to Sri Lanka in a ferry travelled in TATA Indigo Car bearing Registration No. TN-07-BK-3574 along with A2 and A3 with the above incriminating material in a bag in Ramesahwaram Main road. The respondent police intercepted them and arrested and recovered the above incriminating material and registered the case

under Sections 10(a)(i), (iv) and 38(1) of the Unlawful Activities (Prevention) Act, 1967, Section 3(a) r/w 12(1) (a) of the Passport Act, 1967, Section 3 and 14(c) of the Foreigners Act, 1946, Section 6 of the Poisons act, 1919 and Section 419 of IPC. During the investigation, A1 confessed about involvement of the appellant and other two accused. A4 was arrested and his confession also recorded and incriminating material were recovered. Thereafter, the respondent police continued the investigation and filed the final report by arraigning the appellant as absconding accused No.5 and other accused No.6, and trial was conducted in S.C.No.7 of 2016 against A1 to A3 and conviction was passed. Split up trial was conducted in S.C.No.15 of 2016 against A6. The learned trial Judge convicted A6 under Section 10A(4) of the UAPA Act. The appellant was arrested only on 16.12.2021. In the meantime, A1 to A4 preferred appeal in Crl.A.(MD).No.359 of 2018 before this Court against the conviction in S.C.No.7 of 2016. The same was confirmed this Court.

6. After arrest of the appellant, on 16.12.2021, the police custody was taken on two occasions on 14.01.2012 and 15.01.2012. On the basis of his voluntary confession and on his disclosure, the incriminating material were recovered. The recovery witness, namely, Village Administrative Officer clearly deposed about the recovery of incriminating material and the said incriminating materials clearly shows that the appellant was associating himself in the development of the banned LTTE organization in Sri Lanka. When he is here in roaming in Tamilnadu in the territory of India, where the LTTE was banned organization, he should not involve in any form of the revival programme of the said organization in Sri Lanka. The collected materials galore to show his intention to re-organizes LTTE Cadre in Sri Lanka. Therefore, the offence under above UAPA Act, is clearly made out against the appellant. P.W.8 and P.W.17 clearly deposed about his intention to revive the LTTE Organization in Sri Lanka and for that purpose, he collected the materials and sent through A1 to A3. The said part of the evidence is cogent and also trustworthy. Two witnesses have categorically

deposed about the organized Act of the appellant to revive the banned LTTE organization in Sri Lanka by using the material from the state of Tamil Nadu and the intention to revive LTTE organization and it is corroborated by the documents recovered from the appellant. He masqueraded himself as "Ranjan" where as his name is "Sri" sri was a Honour name given by LTTE Top leader. This Court finds no reason to differ with the learned trial Judge's finding that sufficient evidence are available to prove the offences under Sections 10(a)(i), (iv) and 38(1) of the Unlawful Activities (Prevention) Act, 1967 and Section 419 of IPC. The learned counsel relied following judgments of the Hon'ble Supreme Court and other High Courts:

(i) In the case of ***Jyoti Babasaheb Chorge vs. State of Maharashtra*** reported in ***Manu/MH/1637/2012***

(ii) In the case of ***Thwaha fasal and ors. vs. Union of India (UOI) and Ors.*** reported in ***MANU/SC/1000/2021***

(iii) In the case of ***Vernon vs.The State of Maharashtra and ors*** reported in ***MANU/SC/0805/2023***

(iv) In the case of ***Mahesh Kariman Tirki and others Vs. State of Maharashtra*** and ***G.N.Saibaba vs. State of Maharashtra***.

(v) In the case of ***State of Maharashtra vs. Mahesh Kariman Tirki & Ors*** in ***SLP (Criminal).No.10501/2024***

whether he was a member of the banned organization is not sufficient to convict the appellant under Sections 10(a)(i), (iv) and 38(1) of the Unlawful Activities (Prevention) Act, 1967. According to the learned counsel for the appellant in this case, there was no record produced to prove the membership. But, the evidence of the appellant himself is that during the war they themselves voluntarily surrendered before Sri Lankan Army and got the tender of pardon from Srilankan Government and thereafter, they came to Tamil Nadu. Therefore, it is implied from the above statement of the appellant, he was member of the LTTE organization and after arrival in Tamilnadu, he was vigorously participating in activities to revive the LTTE Organization in Sri Lanka and therefore, he committed the offences punishable under sections 10(a)(i), (iv) and 38(1) of the Unlawful Activities (Prevention) Act, 1967. To prove the

TERRORIST Act, it is not necessary to adduce physical evidence, when the materials collected by the investigating agency are sufficient to infer his criminal intention to act contrary to the provision of the UAPA Act, in the considered opinion of this Court, it is sufficient to convict under Section 10(a)(i), (iv) and 38(1) of the Unlawful Activities (Prevention) Act, 1967.

8. To counter of the learned Additional Public Prosecutor that this Court confirmed the conviction under the charged offence against the A1 to A3 in Criminal Appeal(MD) No.359 of 2018, confirming the conviction passed by the learned trial Judge in C.C.No.7 of 2016 on the file of the Principal Sessions Judge, Ramanathapuram, the learned counsel for the appellant would submit that unless joint trial is conducted, confession of the co-accused can never be used as a material under Section 10 of Evidence Act and hence, the finding in the C.C.No.7 of 2016, has no relevance. Quiet contrary, the learned counsel for the appellant would submit that he made the submission on the basis of the

finding in the judgment of the other absconding co-accused in C.C.No.15 of 2016, that there was no material available to prove the conspiracy. Therefore, this Court finds dichotomy in the arguments of the learned counsel for the appellant. This Court is not inclined to place any reliance on the judgment of the co-accused and decides the matter on merits on the basis of the material available record in this case. That apart, it is the specific case of the investigating agency that after arrest of the appellant in this case they conducted further investigation and collected number of materials. Thereafter, they filed supplementary final report and on the basis of the said material, relevant charges were slapped under UAPA Act, Foreigners Act, Passport Act and 419 of I.P.C., and they were arrayed as accused. In the said specific circumstances of the case, the finding in the earlier case relating to the co-accused is not relevant to decide the available fresh material collected by the investigating agency and produced by the prosecution agency, during the course of the trial. Therefore, in this case sufficient material is produced by the investigating agency and the same was marked without objection.

9.The learned counsel for the appellant also submitted that, the prosecution agency has not produced any material to prove any Terrorist act, on the part of the appellant. This Court is unable to subscribe to the said argument, when the material produced show their intention to revive the LTTE organization in Sri Lanka, this Court finds ingredients of the offence are made out. The latest Hon'ble Three Judges Bench of the Supreme Court on reference answered in the case of ***Arup Bhuyan v. State of Assam***, reported in ***2023 (8) SCC 745*** i.e. to pass conviction, he should be the member of the organization and he continue in the illegal activities. In this case, the membership is proved from the circumstances and he continued the illegal activities by sending the incriminating material to Sri Lanka to revive the LTTE organization. Hence, both ingredients are made out in the peculiar circumstances of the case. The object of Unlawful Activities (Prevention) Act, is to curtail any form of the terrorism in India. The interpretation of provision and appreciation of the evidence is to be in such a way to achieve the object of the Act. Therefore, this Court having considered the incriminating material collected by investigating agency and going through the entire materials holds that the intention of the appellant is to revive the LTTE organization and it is clearly proved beyond reasonable doubt. It is admitted fact that the LTTE organization is banned by the Union Government in such situation, allowing the person to support the LTTE organization in any form is offence.

9.1.The learned counsel for the appellant also would submit that there was no clear proof for the name of the appellant as Sri @ Ranjan Gunabalasingam., on the basis of the contradiction between the evidence of the witnesses before the trial of A1 to A3 in S.C.No. 2 of 2018 and present trial. It is true that P.W.8, P.W.7, P.W.6, P.W.5, P.W.3, P.W.4, P.W.9, P.W.10, P.W.27, P.W.28 and P.W.29 have not deposed about the name of Sri @ Ranjan Gunabalasingam in the earlier trial. In the present case, the above witnesses were re-examined on the basis of the application filed by the Q Branch

Department to do the further investigation after the arrest of the appellant. All the facts were subsequently found out by the investigating agency and the investigation was conducted in the said angle during the course of the further investigation. Therefore, the witnesses disclosed about the particulars of the above name change. The witnesses specifically stated that accused is member of LTTE organization and he was honoured as "Sri" by the LTTE organization, and the same was clearly proved through the evidence of the above witnesses. The ground raised by the appellant that they were examined belatedly and they made substantial improvement during the course of this examination of the split up trial is not accepted. It is settled law that merely because a witness has been examined belatedly about a particular fact, it is not ground to discard the same. Delay in the examining the witnesses on the part of the investigation agency is not a ground to disbelieve their version when their evidence is cogent and trustworthy. Reliability of the witnesses who had been examined belatedly is to be tested on facts of each case. The Hon'ble Supreme Court has laid down the law to appreciate the witness examined belatedly by the investigating agency:

In the case of ***Abuthagir v. State***, reported in **(2009) 17 SCC 208 at page 216**

> 28. Much emphasis has been laid by learned counsel for the appellants on the alleged delayed examination of the witnesses. It is well settled that delay in examination of the prosecution witnesses by the police during the course of investigation ipso facto may not be a ground to create a doubt regarding the veracity of the prosecution case.

10.The investigating agency conducted further investigation and collected the material about the involvement of this appellant. The deposition made by witness on the basis material collected during the further investigation is acceptable and cannot be rejected as argued by the learned counsel for the appellant. In all aspects, this Court finds no merit in the case and the learned trial Judge correctly convicted the appellant for the alleged charged offences under Sections 10(a)(i), (iv) and 38(1) of the Unlawful Activities (Prevention) Act, 1967.

11.It is admitted case that Appellant came in the year 2009 to India through Visa permitting to stay for a specific period. There was no extension of Visa. In the said circumstance, the offence under the Passport Act and also the foreigners Act are clearly made out. Without any extension of visa period from 2009 onwards the prosecution correctly laid the final report against the appellant under Section 14(c) of the Foreigners Act and Section 3r/w12(1)(a) of the Passport Act. Therefore, they had illegally stayed in Tamilnadu without getting extension of the Visa Period. Another incriminating material is that the appellant had number of phones and all the numbers have been obtained in different names. The circumstance of obtaining number of phones in different names and using various numbers and the phone contact with the persons residing in Sri Lanka itself is a strong circumstance to infer his intention to commit the offence. The prosecution was unable to find out the names mentioned in the CDR particulars of Sri Lanka on account of the absence of the Treaty between Sri Lanka and India and that can not be put against the investigating agency when the appellant has not given any explanation for his contacts with persons in Sri Lanka to show that the persons he contacted do not belong to LTTE organization. When the prosecution produced the material to show that he made contacts with some persons living in Sri Lanka and they are involved in the revival of the LTTE organization, it is the duty of the appellant to explain the circumstances to show that he did not belong to the organization.

12.This Court finds that the recovery was proved from the evidence on record that he supplied the materials, and the same was disclosed by number of witnesses in this case. This Court has no other option except to believe the evidence and accept the prosecution case. This is split up case and in this case, appellant intentionally absconded for many years and hence, the evidence P.W.6 and other evidence is sufficient to hold that he only supplied the said substance and hence, he is liable to be convicted under Section 6 of the Poisonous Substance.

12.1.The prosecution witnesses clearly deposed about the name of the appellant as "Sri", but he was falsely pretending himself as "Ranjan" and involved in the act of Terrorism in Tamil Nadu. The only contention about the evidence of the witnesses is that they never disclosed the said fact in any of the previous cases of trials against the co-accused. This Court already observed that the material adduced before this Court in the case is the basis material to decide the culpability of the appellant. More particularly investigating agency conducted further investigation and filed the supplementary final report and the trial Court decided the matter . Apart from that the evidence of the earlier case is not marked and contradiction was extracted. It is settled principles of law that contradiction should be elicited by following procedure stated in section 145 of the Evidence Act and the same was not complied with. Therefore this Court is unable to accept the argument of the learned counsel for the appellant that there was a contradiction on account of the omission in the earlier trial.

13.The learned counsel relied the judgement of the Hon'ble Supreme Court reported in **AIR 1965 SC 87** that the principle of estoppel also is applicable to the criminal case. According to the learned counsel, in this case, evidence of the witnesses examined during the co-accused trial made material improvement in the present case which according to the counsel is estoppel. When the material was collected on the basis of the further investigation and the further statement, and when the evidence given by the witnesses before the Court is against the appellant, there is no question of estoppel. In this case, the precedent relied by the learned counsel is also not applicable. In view of the above discussion, this Court finds no merit in the appeal.

13.1.The learned counsel for the appellant submit that the investigating agency committed procedural lapse in conducting test Identification Parade and failed to follow the principles laid down by this Court in "***Murugaswamy Vs. State***". The investigating agency during the further investigation affirmed conspiracy at Arasan bakery by re-examining the witness PW8 and PW9. According to the counsel for appellant, appellant allegedly made disclosure statement at the time of police custody about the place of the conspiracy namely Arasan Bakery and hence to findout the place, appellant was taken to arasan bakery along with PW 14. The investigating Officer PW 29, to affirm the fact asked PW8 and PW9 and confirmed the statement made by the appellant and they identified the appellant as Ranjan as Sri. PW 14 has not whispered about the presence of the PW8 and PW9. Therefore, according to the appellant's counsel the test identification parade was not conducted as per law. The question of test identification parade has not arisen in this case. PW 8 and PW9 are close associates of the appellant in Trichy residence. As per Section 27 of Evidence Act "disclosure of the place of the conspiracy" is also admissible as laid down by the Hon'ble Supreme Court in the case of ***State of Maharastra Vs. Damu and Others*** reported in ***2000 6 SCC 269 para 35,*** that, '*recovery of an object is not discovery of a fact as envisaged in*

(Section 27 of the Evidence Act, 1872). The decision of the Privy Council in Pulukuri Kottayya V. King Emperor is the most quoted authority for supporting the interpretation that the "fact discovered" envisaged in the section embraces ***the place from which the object was produced,*** *the knowledge of the accused as to it, but the information given must relate distinctly to that effect'* and the said was reiterated in ***Mehboob Ali And Another vs. State of Rajastan*** reported in ***2016 14 SCC 640, Pattu Rajan Vs. State of Tamil Nadu*** reported in ***2019 4 SCC 771, Somasundaram Vs. State*** reported in ***2020 7 SCC 722*** and ***Asar mohammed Vs State of Uttar Pradesh*** reported in ***2019 12 SCC 253***.

13.2.To prove the said disclosure statement and identification of place of conspiracy, PW 14 was examined. He clearly deposed about the voluntary disclosure statement and place of conspiracy. It is not expected from him further affirmation of the said conspiracy from the evidence of the PW8 and PW9. The evidence of PW14 is relevant only to identify the place of the conspiracy. The affirmation of the conspiracy is substantiated through evidence of the PW8 and PW9. Therefore, argument of the learned counsel for the appellant that there was lapse on the part of investigating agency in the process of the test identification parade cannot be accepted. Even otherwise lapse on the part of investigating agency is not a ground to acquit the accused.

13.3. The learned counsel of the appellant would submit that number of the witnesses namely LW 13, LW 14, were not examined during the earlier investigation which is fatal to the prosecution. This Court is unable to subscribe to the said submission. During the course of the further investigation, it is prerogative of the investigating agency to examine new witnesses and there is no bar to examining new witnesses.

13.4.The learned counsel for the appellant would further submit that PW 17, 18, 25, 8, 9, 10, have disclosed the involvement of the appellant in this case by embellishing their version in this case by introducing new facts other than the facts stated in the earlier cases yielding to the pressure of the investigating agency and therefore they are pressurised witnesses and hence their evidence is liable to be rejected. This Court perused the deposition of the above witnesses. They were subjected to the incisive cross examination and nothing was elicited to disbelieve their evidence on the ground that they were kept in duress. Therefore, the contention of the learned counsel that the witnesses are pressurised to depose against the appellant deserves to be rejected.

14.In view of the above discussion, this Court finds no merit in the primary contention of the learned counsel for the appellant that no material was adduced to prove that the appellant is a member of banned organization, namely, LTTE and his name was Sri @ Ranjan Gunabalasingam. His activity of terrorism in reviving of the LTTE organization in Sri Lanka, by suppling the incriminating materials with over stay at Tamil Nadu even after expiry of the period of Visa in the year 2009 has been proved by the prosecution.

15.In the considered opinion of this Court prosecution has proved the case against the appellant beyond reasonable doubt and the appeal is liable to be dismissed.

16.Accordingly, this Criminal Appeal Stands **dismissed**. The impugned order passed by the learned trial Judge in S.C.No.2 of 2018 dated 18.07.2024 is hereby confirmed. Consequently, the connected Miscellaneous petition is closed.

03.04.2025

NCC : Yes / No
Index :Yes / No
Internet :Yes / No

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To

1. The Principal District and Sessions Judge,
   Ramanathapuram.

2. The Inspector of Police,
   Q Branch, Ramanathapuram

3. The Special Public Prosecutor for CBI Cases,
   Madurai Bench of Madras High Court, Madurai.

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

5. The Superintendent of Police,
   Central Prison,
   Madurai.

K.K.RAMAKRISHNAN,J.

sbn

Pre-delivery judgment made in
CRL.A(MD).No.698 of 2024

03.04.2025