

(2002) 10 SC CK 0008
In the Supreme Court Of India
Case No : Criminal Appeal 300 of 2002

State of Tamil Nadu

APPELLANT

Vs

Kamaraj

RESPONDENT

Date of Decision : 23-10-2002

Acts Referred:

Terrorist and Disruptive Activities (Prevention) Act, 1987 — Section 3, 5

Citation : (2003) 2 ACR 1511 : (2002) 9 JT 398 : (2003) 5 SCALE 90

Hon'ble Judges : U. C. Banerjee, J; Shivaraj V. Patil, J

Bench : Division Bench

Final Decision : Allowed

Judgement

1. The state is in appeal u/s 19 of the TADA Act against the judgment and order of acquittal by the TADA court. The contextual facts depict that accused Kamaraj brought the deceased Rajendran to Melaulur and sought for a rented house from Dhakshinamoorthy and the accused has had close links with the deceased Rajendran, being a co-participant to the LTTE movement. The facts further depict that on 8th August, 1994, one Felix Roger had withdraw a sum of Rs. 50,000/- from Indian Bank, Gandhi Road for the purpose of purchasing the land. Around 12.30 p.m. Felix Roger having withdrawn from the bank did put the sum into a white cloth bag and was coming out of the said branch around the same time. It is at that juncture a man of about 5 1/2 feet tall with robust physique dashed him and relieved him of his bag. On an alarm being raised, Rajendran was caught upon a chase red handed though prior thereto certain gun shots were fired thereby injuring PW-34 who fainted on the spot. It is at this stage Rajendran, however, eventually shot himself with a bullet injury and thus breathed his last. The present respondent, being accused under TADA, however, has tried to harbour the said Rajendran deceased who happened to be a LITE man. The learned judge, TADA court did go into the matter in rather a great detail and recorded therein that there has been no evidence to implicate the accused with LTTE movement or even with Rajendran as such. A few statements of one or two

persons were to the effect that both Rajendran deceased and the accused were seen together. The evidence is delightfully silent on this score and it is this silence which prompted the court to record its suspicion as regards the involvement of the accused and subsequent recovery of armoury from him. The TADA court relying upon the principle law as decided by this Court came to a conclusion that it would be quite unsafe to rely on the evidence available on record for the purpose of awarding punishment to the accused under TADA and thus acquitted the accused and set the accused at liberty immediately thereafter. Hence, the statutory appeal u/s 19 of the TADA Act by the state.

2. Mr. K. Ramamoorthy, learned senior counsel appearing in support of the appeal has been very candid to make his submissions that the entire prosecution case hinges on evidence of PW-41 who happened to be the village administrative officer. The learned judge, TADA court has the following to observe as regards the evidentiary value of the evidence tendered by PW-41 before the TADA court. The learned judge stated as follows:

"It is found in the instant case, that the village administrative officer (PW41) was not loyal either to prosecution or to the defence. No part of his testimony inspired confidence of the court. Therefore, his testimony is fit to be effaced from the records. The fact remains that the prosecution has failed to establish the arrest of the accused on 24.8.94 at Pattukottai bus stand. The alleged recovery of the material objects (M.O.13 to M.O. 18) also stood not proved."

3. In the course of his submissions Mr. Ramamoorthy further submitted that there is manifest error in appreciation of the evidence by the learned judge of the TADA court having particular reference to PW-41 attest and he has taken us through the evidence. Incidentally, be it noted that this particular witness was declared hostile and while it is true that though the testimony of the hostile witnesses cannot be stated to have been washed of from the record altogether but it is a duty paramount for the appellate court to see for itself as to whether in fact the evidence available seems to have some acceptability or creditworthiness as otherwise the conviction on the basis thereof would be wholly unwarranted. On even a cursory look at the deposition available with us, we are, however, unable to record our concurrence with the submissions of Mr. Ramamoorthy but lend concurrence to the observations of the learned judge since the evidence not only pertains to the nature of improbability but it delve on the region of impossibility and thereby tendering the evidence non-acceptable. Acceptance of the evidence of PW-41 would in any event lead to a manifest error and as also manifest injustice to the accused person since it would result in an absurdity that the village administrative officer who was waiting for a bus at the bus stand would accompany the search party wherein the armaments seized were recovered and then come back to the bus stand record a confessional statement and sign thereon. The place chosen, namely, the bus stand, does not fit in with such instances of recording a confession or even of a search and seizure.

4. The learned TADA judge in para 65 of the judgment categorically recorded

that the prosecution has not established the arrest of the accused, the recovery of material objects at his instance and that the alleged confession voluntarily given by him. The learned judge further recorded the possession of objectionable arms and ammunition containing substances thus does not stand proved by the prosecution. We cannot but lend our agreement to the said observations on the state of evidence available on record.

5. No relationship as such between the accused and Rajendran has even been admitted excepting their testimony to the effect that they were seen together on some occasions - no credence can be given to the same. Since apart from this casual statement of two witnesses nothing has been shown to be indicting the accused person and to declare him a part of LTTE movement and thus to prosecute him under TADA Act. There is neither any evidence to co-relate the association of these two persons (the accused and the deceased) nor there is any evidence of harbouring the deceased.

6. Significantly, there is no evidence as well pertaining to the association of Rajendran being involved in LTTE movement. The co-relation of snatching a bag, subsequent death of the deceased, the snatcher and the conduct of the accused shall have to be established in order to bring him to the charge under TADA and it is on this score the learned judge felt it rather difficult to convict on the state of evidence available on record. We also do feel it convenient to record our concurrence therewith.

7. On the wake of the aforesaid we deem it fit to record our concurrence with the judgment of the TADA court. The appeal has no merit and it is hence dismissed.