SUPREME COURT OF INDIA

Anadharaj

Vs.

State of T.N.

Crl.A.No.105 of 1998

(G. T. Nanavati and S. N. Phukan JJ.)

03.02.2000

ORDER

G.T. NANAVATI, J.

1. The appellant has been convicted for the offence punishable under Section 3(4) of the Terrorist and Disruptive Activities (Prevention) Act, 1987 (in short, TADA Act) and the minimum sentence of 5 years rigorous imprisonment has been imposed upon him.

2. It was alleged against the appellant that he had harboured LTTE terrorist, Santhan @ Gundu Santhan @ Periya Santhan @ Bonda Santhan @ Trichy Santhan in his house on 12.1.91. In order to prove its case, the prosecution had examined P.Ws. 110, 111,112, 121, 122, 178, 184, 194, 195, 204, 205, 196. Out of those witnesses only P.Ws. 184, 194 and 204 and 205 deposed that Santhan (not A-1) was a proclaimed offender. Relying upon that evidence the learned Designated Judge convicted the appellant (A-9) under Section 3(4) of the TADA Act.

3. What is contended by the learned Counsel for the appellant is that no evidence was led by the prosecution to prove that Santhan (who had consumed cyanide capsule on that very day and died)

had committed any terrorist act. He also submitted that no such finding has been recorded by the Court. What has been found against him is that he knew that Santhan was a proclaimed offender. He submitted that the evidence was not sufficient for convicting the appellant for the offence punishable under Section 3(4) of the TADA Act.

4. We have considered the evidence led in this case and also the confession made by A-9. There is no evidence to show that Santhan @ Gundu Santhan @ Periya Santhan @ Bonda Santhan @ Trichy Santhan had committed any terrorist act. In absence of such evidence it was not proper and legal to convict the appellant under Section 3(4) of the TADA Act. Merely because Santhan was declared as a proclaimed offender no inference that he had also committed terrorist acts could have been drawn. What the appellant had confessed was that he knew that Santhan was involved in Padmanabha's case and he was wanted by the police. He has not stated a word beyond that. As the prosecution has thus failed to establish that Santhan was a terrorist and knowing that fact he had harboured him, the appellant could not have been convicted for the offence of harbouring a terrorist. Seeing this difficulty in his way, the learned Counsel for the respondent-State submitted that in any case the appellant can be convicted for a lesser offence under Section 216 I.P.C. Before a person can be convicted under the said provision it has to be proved that harbouring was done with the intention of preventing that person from being apprehended. We do not find any such evidence on record. Only thing stated by Shivaji (P.W-205) was that when the appellant saw the police he alerted the persons who were inside the house. It was not stated what exactly was uttered or done by the appellant. No explanation of the appellant was sought with respect to this evidence, when he was examined Under Section 313 Cr.P.C. for this reason and also because on the basis of such vague statement it would not be safe to convict the appellant for the offence punishable under Section 216 I.P.C. We therefore allow this appeal, set aside the conviction of the appellant under Section 3(4) of the TADA Act and also the sentence imposed upon him. If the appellant has paid the fine then it is ordered to be refunded to him.