RAHULAN
VS.
ATTORNEY GENERAL

COURT OF APPEAL.
BALAPATABENDI. J (P/CA).
BASNAYAKE J.,
C. A. 101/2002
HC COLOMBO NO. 294/99
DECEMBER 6, 2004
JANUARY 17, 2005

Prevention of Terrorism (Temporary Provisions) Act No. 48 of 1979 (PTA) Amended by Act No. 10 of 1982 and No. 22 of 1988 - Section 2, section 3 undergoing weapons training-Could it be considered as an act that would violate section 2 (1) - of the Prevention Terrorism Act-Ejusdem generis Rule-Its applicability-Confession vague ?

The accused-appellant a member of the LTTE was charged under section 2 (1)h of the Prevention of Terrorism Act for undergoing weapons training-a punishable offence. The accused was convicted as charged, the conviction was based on a confession.

It was contended that, undergoing weapons training does not fall within the definitions of words either spoken or intended to be read or by signs or by visible representations or under section 2(1) (h) and that the rule of Ejusdem generis applies.

It was otherwise contended by the respondent that, section 2 (1) (h) was enacted to cover situations that do not satisfy the criteria in section 3 of the PTA.

HELD

(1) In considering the preamble and the other provisions of the PTA it becomes clear that the intention of the legislature in enacting this statute was to establish and maintain the rule of law and dispel the threat of anarchy.

Therefore the widest possible meaning should be attached to the provisions of this Act, it is only then that the purpose of the legislation could be achieved.

Per Eric Basnayake. J

"Here is a case where the foundation of the democratic institutions has been challenged. The purpose of undergoing weapons training is evidently to cause acts of violence by the terrorists who are waging war against the established government".

(2) *Ejusdem generis* rule does not apply to this case and the words "or otherwise" provides for the institution of a broader offence referred to in section 2(1) (h) meaning any act done either to "cause or intended to cause the commission of acts of violence".

(3) Though the accused had given evidence under oath and denied everything mentioned in the confession, the confession has not become vague as a result of the denial.
No Court shall convict an accused on a mere confession of a crime. It shall be verified and the Court would then have to be satisfied that in fact such crime was committed.

(4) Although in the instant case no verification has been made, Court cannot expect the authorities to verify these kind of facts. The dates, names and places are not known to the authorities. There is no way of verifying them. In this kind of situation the Court has to arrive at a decision by looking at the confession alone.

Where there is no evidence besides a voluntary confession the Court may convict the accused on that confession alone, if after scrutiny of the confession the Court is satisfied beyond reasonable doubt that it is true.

Appeal from the judgment of the High Court of Colombo.

Cases referred to :-

(1) *Nagamani Theivendran vs. A. G.* - SC 65/2000 - SCM 16.10.2002
(2) *R vs. Edmonds* - 1859 - 28 LJMC 213 at 215
(3) *Evans vs. Croos* - 1938 - 1KB 694 Cries 180
(4) *In Re Stockport Schools* - 1898 2 CA 687 at 696
(5) S. *S. Magnild (owners) vs. Mac Intyne* - 1920 3 KB 321 cited in Cris at 180
(6) *Brown Sea Haven Properties vs. Police Corporation* - 1958 A1 574. CA
(7) *Papworth vs. Coventry* - 1967 - 2 All ER 41
(8) *In Re Latham* - 1962 Ch 616
(9) *Eton RDC vs. Thomas Conservation* - 1950 Ch 540 at 544
(10) *NALGO vs.Bolton Corp* - 1943 A1 166
(11) *State vs. Sajed* - 1962 - SALR (CPD) 128
(12) *Rex vs. Nolte* - 1928 AD 377
(13) *Quazi vs. Quazi* - 1980 A1 744
(14) 1957 A1 436
(15) *AG vs. Prince Ernest Augustus Hanover* - 1957 AL 436
(16) *Shankira vs. State of Rajasthan* - AIR 1978 (SC) 1248
(17) *L. S. Raja and others vs. State of Mysore* - AIR (BOM) 297
(18) *Jai Singh and another vs. The State* - AIR 1967 Delhi 14
(19) *Ram Singh vs. State of UP AIR* 1967 SC 152

Prince Perera for accused-appellant
Achala Wengappuli SSC for respondent

cur.adv.vult.

June 1, 2006
ERIC BASNAYAKE, J.

The charge against the accused appellant (accused) was that, he being a member of the LTTE organization between the period 20.10.1991 and 20.10.1992, had weapons training, an offence punishable under section 2 (2) (II) read with 2 (1) (h) of the Prevention of Terrorism (Temporary Provisions)

Act No. 48 of 1979 as amended by Act Nos. 10 of 1982 and 22 of 1988. The accused was convicted as charged. The conviction was based on a confession. Extracts of the confession were marked P1a, P1b and P1c. The accused was sentenced to seven years rigorous imprisonment. This is an appeal against the said conviction and the sentence.

When this case was taken up for argument, learned counsel for the accused and the learned Senior State Counsel invited court to make an order on the written submissions already tendered to court. Learned counsel for the accused was gracious enough to submit to court copies of the Supreme Court Judgment of *Nagamani Theivendran vs. Attorney General*[1] which is relevant to this case and where all the important authorities were considered. Thereafter on the invitation of Court, written submissions were tendered on the question whether the acts proved to have been committed constitute an offence.

> Section 2 (1) (h) is as follows : Any person who - by **words** either spoken or intended to be read or by **signs** or by **visible representations or otherwise** causes or intends to **cause commission of acts of violence or religious, racial or communal disharmony** or feeling of ill will or hostility between different communities or racial or religious groups : or . . . In terms of section 2 (2) (ii) of the Act, on conviction accused is liable to imprisonment for a period not less than five years and not more than twenty years (**emphasis added**).

Does undergoing weapons training fall within the definition of "words either spoken or intended to be read or by signs or by visible representation or otherwise . . . " ?

The learned Senior State Counsel submitted that if the acts proved to have been committed by the accused, namely, undergoing weapons training, do not fall within the definitions of "words", "signs" or "visible representations" mentioned in the above section, the conduct of the accused is covered by the term "or otherwise" mentioned in the section. The learned counsel submitted that one could incite another to do an act of violence by words, signs or visible representations which are covered by section 3 of the PTA. He submitted that what the Legislature expected to provide by

enacting section 2 (1) (h) was to cover situations that do not satisfy the criteria in section 3 of the PTA.

Section 3 of the PTA is as follows :-

Any person who-

(a) does any act preparatory to the commission of an offence;

or

(b) abets, conspires, attempts, exhorts or incites the commission of an offence; or

(c) causes the death of any person, or commits any act upon any person whomsoever in the course of committing any offence under this Act, which act would, under the provisions of the Penal Code, be punishable with death or with a term of imprisonment of not less than seven years, shall be guilty of an offence and shall on conviction be liable to imprisonment of either description for a period of not less than five years but not exceeding twenty years where the offence is one specified in paragraph (a) or (b), or to imprisonment for life where the offence is one specified in paragraph (c).

Ejusdem Generis Rule

"Where there are general words following particular words and specific words, the general words must be confined to things of the same kind as those specified. Lord Campbell in *R. V. Edmondson*[2] at 215 cited in Craies on Statute Law seventh edition pg. 179. In *Evans vs. Cross*[3] it was held that section 48(9) of the Road Traffic Act of 1930 which defined "traffic signs" to include "all signals, warning sign posts, direction posts, signs or other devises", must be construed as to include "devises" as thing *ejusdem generis* with the preceding words and therefore that a painted white line on a road was not a raffic sign within the section. *In Re Stockport, Schools*[4] the Court of appeal held that in the phrase "cathedral, collegiate, chapter or other schools" in section 62 of the Charitable Trusts Act 1853 the words "or other schools" did not apply to all schools of whatever description, but

only to schools similar in character to those specifically mentioned in the section. Lindly M. R. said "I cannot conceive why the Legislature should have taken the trouble to specify in this section such special schools as cathedral, collegiate and chapter except to show the type of school which they were referring to, and in my opinion other schools must be taken to mean other schools of that type".

In *SS Magnild (Owners) v. Macintyre*[5] McCardie J pointed out that in considering whether a particular unspecified thing is *ejusdem generis* with specified things, the questions to be asked are, first what common quality the specified things possess which constitutes them a genus ?, then, does the particular unspecified things possess that quality so that it may be regarded as of the same genus? It is not enough to consider merely whether the particular unspecified thing is like one or more of the specified things.

In *Brown Sea Haven Properties V. Poole Corporation*[6] and *Papworth vs Coventry*[7] the word "in any case" in a provision in the Town Police Clauses Act 1847 giving power to control traffic routes "in all times of public processions, rejoicings, or illuminations, and in any case when the streets are thronged or liable to be obstructed" were held to be confined to cases within the category of which public processions, rejoicings and illuminations are specific instances and should not be extended to cover the circumstances of ordinary day-to-day traffic conditions.

In Re Latham deceased[8] it was held that the words "or other person" in the phrase "trustee, guardian, committee or other person" in section 8 (4) of the Finance Act 1894 meant a person in a similar position to a trustee, etc., and could not refer to a person beneficially interested. The words "or otherwise" have been held in *Eton R. D. C. v. Thames Conservators*[9] at 544 to apply *ejusdem generis* with the foregoing words.

The application of the ejusdem generis rule to section 2 (1) (h) of the PTA

In the Prevention of Terrorism (Temporary Provisions) Act "words" "signs" "visible representations" are followed by the words "or otherwise", causing or intending to cause commissions of acts of violence or religious, racial or communal disharmony or feeling of ill-will or hostility between different communities or racial or religious groups. Under this provision using words

like "kill a section of a particular community", for example, would constitute an offence under this provision. The same message could be driven through posters, leaflets, cartoons, and pictures etc. Whatever the words spoken or signs displayed should be capable of creating communal disharmony etc. Under the *ejusdem generis* rule the word "or otherwise" would mean anything done which would be similar to "words either spoken or intended to be read or signs or visible representations" that would cause the commission of acts of violence . . . hostility between different communities . . . Could one create such communal disharmony by the fact of undergoing weapons training in a terrorist camp ?

The learned Senior State Counsel submitted that in the interpretation of the general term "or otherwise" the *ejusdem generis* rule does not apply. In *N. A. L. G. O. v. Bolton Corpn*[10] Lord Simon L. C. referred to a definition of "workman" as any person who has entered in to a works under a contract with an employer whether the contract be by way of manual labour, "or otherwise" and said "The use of the words 'or otherwise' does not bring in to play the *ejusdem generis* principle : for 'manual labour' and 'clerical work' do not belong to a single limited genus". Lord Wright remarked that "the ejusdem generis rule is often useful or convenient, but it is merely a rule of construction, not a rule of law. In the present case it is entirely inapt.

In *State v. Sayed* [11] the Police Offences Act read, any person guilty of 'encumbering' any public street, footway or carriage-road, or obstructing the free passage along the same by means of any wagon, cart or other thing whatsoever shall be liable to a penalty. The appellant was charged and convicted under this section for having boxes full of vegetables exposed in front of the appellant's business obstructing free passage along the footway. Counsel for appellant in that case submitted the words "or other thing whatsoever" should be constructed in terms of the *ejusdem generis* rule as denoting only things similar to wagons and carts, namely, wheeled vehicles; that they denote a genus or category. Van Heerden A. J. held "in endeavouring to ascertain the intention of the lawgiver one must consider the scope and objects of the enactment sought to be interpreted and the

mischief at which it is aimed. The mere fact that general words follow particular words does not necessarily invoke the application of the *ejusdem generis* rule; a rule which according to *Rex vs. Nolte*[12] is one that has to be applied with caution.

In *Quazi v. Quazi*[13] section 2 of the Recognition of Divorces & Legal Separation Act 1971 required recognition to be given to foreign divorces and legal separation obtained by means of "Judicial or other proceedings". The House of Lords considered 'other proceeding' as not being limited to proceedings akin to judicial proceedings but capable of being applicable also to talaq divorces which are essentially religious ceremonies. Lord Scarman remarked [14] "if a legislative purpose of a statute is such that a statutory series should be read *ejusdem generis*, so be it; the rule is helpful. But if it is not, the rule is more likely to defeat than to fulfill the purpose of the statute. The rule like many other rules of statutory interpretation is a useful servant but a bad master".

In *AG vs. Prince Ernest Augustus of Hanover*[14] Lord Normand observed that where there is a preamble it is generally in its recitals that the mischief to be remedied and the scope of the Act are described. It is therefore clearly permissible to have recourse to it as an aid to construing the enacting provisions. The courts are concerned with the practical business of deciding a lis; and when the plaintiff puts forward one construction of an enactment and the defendant another, it is the courts business in any case of some difficulty, after informing itself of what I have called the legal and factual context including the preamble, to consider in the light of this knowledge whether the enacting words admit of both the rival constructions put forward. If they admit of only one construction, that construction will receive effect even if it is inconsistent with the preamble,but if the enacting words are capable of either of the constructions offered by the parties, the construction which fits the preamble may be preferred."

I will first reproduce the long title of the PTA which is as follows :-

> **"An act to make temporary provision for the prevention of acts of terrorism in Sri Lanka, the prevention of unlawful activities of any individual, group of individuals, association, organization or body of persons within Sri Lanka and for matters connected therewith or incidental thereto".**

The preamble reads as follows :-

"Whereas the Parliament of the Democratic Socialist Republic of Sri Lanka continues to affirm that men and institutions remain free only when freedom is founded upon respect for the Rule of Law and that grievances should be redressed by constitutional methods :

And whereas public order in Sri Lanka continues to be engaged by elements or group of persons or associations that advocate the use of force or the commission of crime as a means of, or as an aid in, accomplishing governmental change within Sri Lanka, and who have resorted to acts of murder and threats of murder of members of Parliament and of local authorities, police officers, and witnesses to such acts and other law abiding and innocent citizens, as well as the commission of other acts of terrorism such as armed robbery, damage to state property and other acts involving actual or threatened coercion, intimidation and violence :

And whereas other democratic countries have enacted special legislation, to deal with acts of terrorism".

In considering the preamble and the other provisions of this Act it becomes clear that the intention of the legislature in enacting this statute was to establish and maintain the rule of law and dispel the threat of anarchy. Therefore the widest possible meaning should be attached to the provisions of this Act. It is only then that the purpose of the legislation could be achieved. Here is a case where the foundation of the democratic institution has been challenged. The purpose of undergoing weapons training is evidently to "cause acts of violence by the terrorists who are waging war against the established government". Therefore I agree that the *ejusdem generis* rule does not apply in this case and the words "or otherwise" provides for the constitution of a broader offence referred to in section 2 (1) (h), meaning any act done either to "cause or intended to cause the commission of acts of violence . . .". Undergoing weapons training therefore could be considered as an act that would violate the provisions of section 2 (1) (h) of the PTA.

The acts referred to in the confession are vague and not proved ?

The other argument that has to be considered in this case is whether "the confession is vague, indefinite and devoid of material particulars and in the absence of any other evidence it cannot be relied upon even if true as being sufficient and trustworthy to form the basis of a conviction on the charge against him" (reproduced verbatim from the judgment of Ismail J in *Nagamani Theivendran*'s case) (Supra).

The only evidence against the accused was the confession. No other evidence had been led to prove the truthfulness or otherwise of the matters related to in the confession.

The accused had given evidence under oath and denied everything mentioned in the confession. In view of this denial and the fact that no other evidence had been led to prove the truth of the matters referred to in the confession, the learned counsel for the accused appellant submits that the confession is vague. The learned counsel appears to rely heavily on the judgment of Ismail J in the case of *Nagamani Theivendiran vs. Attorney General* (Supra). In *Nagamani Thevendiran*'s case the accused was indicted for attacking members of the armed forces between 01.01.1993 and 30.04.1993. The sole item of evidence against the accused was his confession made to an A. S. P. The accused in evidence denied to having made such a statement. The High Court held in that case that the accused did make the statement and failed to discharge the burden that it was obtained by inducement, threat or promise and convicted the accused. The Court of Appeal affirmed the conviction.

The Court of Appeal in the course of its judgment while dealing with the confession set out the general principle that "there is a presumption that a person would not make an admission against his interest unless it was true".

It was argued in that case that the High Court erred in finding the accused guilty on the basis of the contents of the confession as it was in evidence that the relevant authorities made no attempt to ascertain the truth of it's contents; and that the confession did not suffice to establish the charge since it contained hearsay evidence in relation to the consequent deaths

of specific persons. In the circumstances the learned counsel urged the Supreme Court to consider the question of law as to whether the Court of Appeal had erred in holding that the sole evidence in the nature of a confession revealed an attack on a "specified person", and whether it was sufficient to establish the charge without further independent evidence.

Admittedly no investigations were carried out in respect of any of the incidents referred to in the confession. Ismail J held that "it is well settled that a confession, voluntarily and truthfully made, is an efficacious proof of guilt. However before it can be acted upon, it must satisfy the tests of voluntariness, truth and sufficiency. It must be shown that it was made voluntarily and that it was true and sufficient to constitute a confession"[15]. Ismail J held that "as the admissibility of the confession was not sought to be challenged. . : it would be necessary to ascertain the question as to whether the facts stated therein can be accepted as true and reliable. The period commencing from January '93 to the end of April 93 is stipulated as the date of committing of the offence. On a scrutiny of the confession it appears that the period of time referred to therein is indefinite and does not tally with the period specified in the charge. The period of time given in the confession during which the attack took place is inconsistent with the period specified in the charge".

Ismail J quoted with approval Sakaria J in *Shankria vs. The State of Rajasthan* [15] *L. S. Raja and others vs. State of Mysore*[16] *Jaising and another vs. The State*[17] that "if a confession is voluntary, the court must before acting upon the confession reach the finding that what is stated therein is true and reliable. For judging the reliability of such a confession or for that matter of any substantive piece of evidence, there is no rigid cannon of universal application. Even so one broad method which may be useful in most cases for evaluating a confession may be indicated. **The court should carefully examine the confession and compare it with the rest of the evidence, in the light of the surrounding circumstances and probabilities of the case.If on such examination and comparison the confession appears to be a probable catalogue of events and naturally fits in with the rest of the evidence and the surrounding circumstances, it may be taken to have satisfied the . . . test of truth** *Ramsingh vs State*[18] **(emphasis added).**

Ismail J said that "the confession itself dealt with the activities in the LTTE group three years previously in the year 1992. The confession is vague, indefinite and devoid of material particulars, and in the absence of any other evidence it cannot be relied upon, even if true as being sufficient and trustworthy to form the basis of a conviction on the charges against him".

Fernando J agreeing with the reasoning and the conclusion arrived at by Ismail J and referring to the Indian authorities relied upon said that **"the Indian decisions support the position that, as a matter of law, where there is no evidence besides a voluntary confession (even though it be extra judicial) the court may convict the accused on that confession alone if after scrutiny of the confession the court is satisfied, beyond reasonable doubt that it is true.** The conviction was set aside in that case as the trial judge failed to consider whether there was an attack during the period covered by the charge.

In the current case the charge is that between the period 20.10.1991 and 20.10.1992 the accused, being a member of the LTTE organization, underwent weapons training. Three extracts of the confession marked P1a, P1b and Plc are to the effect that the accused joined the LTTE on 20.10.1991 at the request of Ragunathan; that when he went to the LTTE camp by the name of "Kilibase", 160 were found undergoing training and he joined them with a team consisting of 13; that he was trained by Aribu and Vijith; that he was given training in methods of fighting, physical exercises and training to shoot with AK 47, 303 and SLR rifles; He was also taught to fix them and dismantle them.

How can one verify the truthfulness of these events ? If it is relating to an attack on the armed forces of the elected government or killing someone in a government controlled area, it may be possible to verify the truth as there would be a record of these events. However how is one to prove that the accused joined the LTTE and consequently underwent training ? The accused has not related any incident where the evidence could be verified.

Can this confession be termed vague? The accused has given a detailed account of dates and names of those who trained him and the type of training he underwent.

The accused was arrested while at the Royal Cinema in Vavuniya on information received from Sunderalingam Ghanashathis and Vigneshwaran who were also arrested by the police on suspicion of terrorist involvements. Therefore I am of the view that the confession is definite and not vague. No court shall convict an accused on a mere confession of a crime. It shall be verified, and the court, satisfied that in fact such crime was committed. If a man confessed to the killing of someone who is well and truly living, and such a person is convicted and sentenced, that would create an absurdity. This is the reason why the law has laid down a rule that events should be verified. It should be verified in order that the court can be satisfied beyond reasonable doubt that the crime referred to in the confession had been committed.

In this case admittedly, no such verification has been made. No court can expect the authorities to verify this kind of facts either. The dates, names and places are not known to the authorities. There is no way of verifying the mentioned names. Even if such names were checked, the evidence adduced would be hearsay and not admissible. Therefore in this kind of situation the court has to arrive at a decision by looking at the confession alone. It is true that the accused denied the whole confession in evidence. Could the confession become vague as a result of this ? The trial court held that the confession was voluntary. The learned counsel did not challenge that decision. On that fact and considering the events disclosed in the confession, I am of the view that the evidence adduced is sufficient and that the accused has been rightly convicted. Hence I see no merit in this appeal and the same is dismissed.

BALAPATABENDI, J. (P/C. A.) —*I agree.*

Appeal dismissed.