

REPORTABLE

IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO.1272 OF 2012

Periyasami s/o. Duraisami Novanagar ... Appellant

Vs.

State represented through
the Inspector of Police, 'Q' Branch
CID, Tiruchirappalli, Tamil Nadu. ...
Respondent

WITH

CRIMINAL APPEAL NO. 787 OF 2013

Senthilkumar ... Appellant

Vs. _

State of Tamil Nadu ... Respondent

J U D G M E N T

(SMT.) RANJANA PRAKASH DESAI, J.

1. The present appeals filed under Section 19 of the Terrorist And Disruptive Activities (Prevention) Act, 1987 ("**the TADA**") are directed against the judgment and order dated 27/06/2012 passed by the Principal Sessions Judge and Designated Judge under the TADA, for Tiruchirapalli in Calendar Case No.45 of 1995 in Crime No.307 of 1992 of Vridhachalam Railway Police Station. The appellant in Criminal Appeal No.787 of 2013 is Senthilkumar @ Kumar ('**A1-Senthilkumar**' for convenience). The appellant in Criminal Appeal No.1272 of 2012 is Periyasami ('**A2-Periyasami**' for convenience).

2. According to the prosecution, on 24/10/1992, PW-10 Ramasamy was driving Quilon Express (Train No.6105). When the train reached near Maruvathur Peria Odai Bridge No.276, he noticed some object over the railway track. He immediately applied emergency brake and stopped the train. PW-11 Rajendran Raja, who was the Assistant Driver stepped down from the train along with the guard and proceeded to inspect the track. They saw some boulders

placed on the track covered with green leaves. At that time, they heard a loud noise near the bridge situated at a distance of 1 K.M. In the meantime, PW-2 Ganapathy, Station Master 3 of Sillakudi Station received information that Quilon Express had started from Kallagam Station after crossing of Pearl City Express, but had not reached Palanganatham. He instructed PW-1 Antonisamy, PW-4 Hazi Salahudeen, PW-6 Thangaraj and PW-7 Ponnaian to find out the reason for the delay of the Quilon Express. They found at the place of occurrence the rails bent upwards and the gravel stones and the sleepers broken and dislocated. Under the bridge, they saw some papers containing slogans. They saw some slogans written on the bridge walls. Some boulders were also found over the railway track covered with green leaves. PW-8 Raja Chidambaram, SEP at Kallagam Station also went in search of the train along the track and found the train on the northern side of Bridge No.276. He found boulders placed on the track covered with green leaves. The sleepers were found broken and dislocated and rails found bent upwards.

3. On information being received from the control room about the bomb blast on the railway line, PW-29 Hyder Ali Khan, Sub-Inspector of Police, Railway, Vridhachalam rushed to the place of occurrence. He received complaint [Ex-P1] dated 24/10/1992 from PW-1 Antonisamy and registered a case being Crime No.307 of 1992 against unknown persons under Section 150 of the Indian Railways Act and under Sections 3 and 5 of the Explosives Act and Sections 120-B and 124 of the IPC. The printed version of First Information Report [Ex-P11] was forwarded to Judicial Magistrate No. V, Tiruchirappalli and a copy was forwarded to the Inspector of Police, Railways, Villupuram for necessary action. Investigation was started. It appears from the evidence of PW-40 Pattabiraman, the Inspector of Police of "Q" Branch CID, Tiruchirappalli that after he took over investigation, he interrogated PW-15 Sevi Periyasamy. He got the leads. Involvement of A1-Senthilkumar, A2-Periyasami and other accused was disclosed. A1-Senthilkumar was arrested on 17/12/1993. On his search, five gelatin sticks concealed in

his right side waist, five electric detonators concealed in his left side waist and two pen torch cells from his pocket were recovered. They were seized under Mahazar [Ex-P5]. On 19/12/1993, the confessional statement of A1-Senthilkumar was recorded by PW-37 Ramanujam, Superintendent of Police, "Q" Branch CID under Section 15 of the TADA, after following the necessary procedure. A2-Periyasami was arrested on 9/1/1994.

4. Upon completion of investigation, PW-40 PI Pattabiraman filed a police report under Section 173 of the Code of Criminal Procedure (for short '**Cr.P.C.**') against A1-Senthilkumar, A2-Periyasami, absconding accused Rajaram @ Madhavan alleging that A1-Senthilkumar, A2-Periyasami along with absconding accused Rajaram @ Madhavan and deceased Lenin and Karalan @ Nagarajan are members of "Tamil Nadu Viduthalai Padai" and "Thamizhaga Makkal Viduthalai Padai", the main object of which was to strike terror in the people by planting bombs to cause derailment of trains and to cause damage to Central and State

Government properties by such acts and to secede Tamil Nadu from the Indian Union. It was alleged that A1-Senthilkumar, A2-Periyasami, along with the absconding accused Rajaram @ Madhavan and deceased Lenin and Karalan @ Nagarajan conspired together and A2-Periyasami introduced witness Sevi Periyasamy to them at Duraimangalam and they manufactured explosive bombs and caused blast of the rails of Bridge No.276 in between Kms. 292/6 and 7 situated between Kallakudi Pazhanganatham and Kallagam railway stations on 24/10/1992 at 2.45 hours with intention to endanger the life of passengers of Quilon Express which usually crosses the bridge at or about the same time and the explosion damaged 20 wooden sleepers and rails to a length of 20 feet and portion of concrete structures. The disaster was averted because the engine driver stopped the train noticing the boulders on the rails. It was also alleged that on 17/12/1993 A1-Senthilkumar was in unauthorised possession of detonators and gelatin sticks without any permit. The report alleged various charges under the TADA, the Explosive

Substances Act, the Prevention of Damage to Public Property Act and the Railways Act against the accused.

5. As accused Rajaram @ Madhavan was absconding, the case against him was split. Since it was reported that he had died, his case was disposed of as having abated.

6. The trial court framed charge against A1-Senthilkumar for offences under Section 120(B) IPC read with Section 3(3) and Section 4(1) of the TADA, Sections 3(2) (ii), 4(1) and 5 of the TADA, Sections 3 and 5 of the Explosive Substances Act, Section 150(2) (b) of the Railways Act and Section 3 read with Section 4 of the Prevention of Damage to Public Property Act. As against A2-Periyasami the trial court framed charge under Section 120(B) IPC read with Sections 3(3) and 4(1) of the TADA, Sections 3(3) and 4(1) of the TADA, Section 3 of the Explosive Substances Act, and Section 3 read with Section 4 of the Prevention of Damage to Public Property Act.

7. A1-Senthilkumar and A2-Periyasami pleaded not guilty to charges. Two defence witnesses were examined to establish that the police threatened them and asked them to produce A1-Senthilkumar thus suggesting that A1-Senthilkumar was falsely implicated. The prosecution examined 41 witnesses.

8. After perusing the evidence, the trial court convicted A1-Senthilkumar under Section 120(B) IPC read with Sections 3(3) and 4(1) of the TADA, Sections 3(2) (ii), 4(1) and 5 of the TADA, Sections 3 and 5 of the Explosive Substances Act, under Section 150(2) (b) of the Railways Act, 1989 and under Section 3 read with Section 4 of the Prevention of Damage to Public Property Act and sentenced him to undergo life imprisonment for offence under Section 150(2) (b) of the Railways Act; rigorous imprisonment for a period of 5 years and to pay fine of Rs.1,000/- and in default to undergo rigorous imprisonment for a further period of 6 months for offence under Section 120(B) of IPC read with Sections 3(3) and 4(1) of the TADA; rigorous imprisonment

for a period of 5 years and to pay fine of Rs.1,000/- and in default to undergo rigorous imprisonment for a further period of 6 months for offence under Section 3(2) (ii) of the TADA; rigorous imprisonment for a period of 5 years and to pay fine of Rs.1,000/- and in default to undergo rigorous imprisonment for a further period of 6 months for offence under Section 4(1) of the TADA; rigorous imprisonment for a period of 5 years and to pay fine of Rs.1,000/- and in default to undergo rigorous imprisonment for a further period of 6 months for offence under Section 5 of the TADA; rigorous imprisonment for a period of 10 years and to pay fine of Rs.1,000/- and in default to undergo rigorous imprisonment for a further period of 6 months for offence under Section 3 of the Explosive Substances Act; rigorous imprisonment for a period of 5 years and to pay fine of Rs.1,000/- and in default to undergo rigorous imprisonment for a further period of 6 months for offence under Section 4 of the Explosive Substances Act and rigorous imprisonment for a period of one year and to pay fine of Rs.1,000/- and in default to undergo rigorous imprisonment for a further period of 2

months for offence under Section 3 read with Section 4 of the Prevention of Damage to Public Property Act (Total fine Rs.7,000/-). Substantive sentences were to run concurrently.

9. The trial court convicted A2-Periyasami under Section 120(B) of the IPC read with Sections 3(3) and 4(1) of the TADA, Sections 3(3) and 4(1) of the TADA and under Section 3 read with Section 4 of the Prevention of Damage to Public Property Act and sentenced him to undergo rigorous imprisonment for a period of 5 years and to pay fine of Rs.1,000/- and in default to undergo rigorous imprisonment for a further period of 6 months for offence under Section 120(B) of the IPC read with Sections 3(3) and 4(1) of the TADA; rigorous imprisonment for a period of 5 years and to pay fine of Rs.1,000/- and in default to undergo rigorous imprisonment for a further period of 6 months for offence under Section 3(3) of the TADA; rigorous imprisonment for a period of 5 years and to pay fine of Rs.1,000/- and in default to undergo rigorous imprisonment for a further period of 6

months for offence under Section 4(1) of the TADA; and rigorous imprisonment for a period of one year and to pay fine of Rs.1,000/- and in default to undergo rigorous imprisonment for a further period of 2 months for offence under Section 3 read with Section 4 of the Prevention of Damage to Public Property Act (Total fine Rs.4,000/-). Substantive sentences were to run concurrently. Both the accused have challenged the said judgment in these appeals.

10. Mr. M.S. Ganesh, learned counsel for A1-Senthilkumar submitted that the prosecution case entirely rests on the confessional statement of A1-Senthilkumar. The said statement is not voluntarily made and is retracted by him. It is, therefore, not safe to rest conviction on it. Besides, it is not corroborated. Counsel submitted that it is also not properly recorded. Counsel further submitted that reliance also cannot be placed on the evidence of PW-15 Sevi Periyasamy and his wife PW-14 Chandra because both of them have turned hostile. The prosecution has not

examined any independent witness. The evidence on record shows that PW-15 Sevi Periyasamy is, in fact, involved in this crime. There is no explanation as to why he has not been made an accused. The prosecution case has therefore, become suspect. Counsel submitted that no reliance can be placed on PW-15 Sevi Periyasamy who is himself an accused. Counsel submitted that in the circumstances, the conviction of A1-Senthilkumar deserves to be set aside.

11. Mr. Gowthaman, learned counsel for A2-Periyasami has submitted written submissions which we have perused. He submitted that the prosecution has not proved that A2-Periyasami was a member of any banned organization. Relying on **Pulin Das @ Panna Koch v. State of Assam**¹, counsel submitted that conviction of A2-Periyasami cannot be sustained. Counsel submitted that A2-Periyasami was arrested one year after the incident because there was confusion about his name. Because of the similarity of name, he is implicated in this case though he is in no way concerned with the offence. Counsel submitted that no

¹ (2008) 5 SCC 89

reliance can be placed on the evidence of PW-15 Sevi Periyasamy, because he himself is an accused. He procured sulphur for the preparation of bomb. Counsel further submitted that statement of this witness is recorded under Section 164 of the Code after a prolonged police custody hence, no reliance can be placed on it. In any case, it is uncontroverted that A2-Periyasami had asked PW-15 Sevi Periyasamy to only provide food for the four persons who were likely to come for a function. Relying on **Prakash Kumar @ Prakash Bhutto, etc. v. State of Gujarat**², counsel submitted that considering the role assigned to A2-Periyasami, his conviction must be set aside. There is absolutely no evidence on record to establish that A2-Periyasami had any prior knowledge of the offence which was committed by the accused and, therefore, even if it is found that he had some contact with PW-15 Sevi Periyasamy it cannot be said that he was a part of the conspiracy. In this connection, he relied on **Vijayan, etc. v. State of Kerala**³. Counsel submitted that no witness has made any

² (2007) 4 SCC 266

³ (1999) 3 SCC 54

specific allegation against A2-Periyasami. PW-15 Sevi Periyasamy turned hostile and A1-Senthilkumar retracted his confessional statement. Therefore, there is no evidence on record to connect the accused with the crime. He deserves to be acquitted. Counsel submitted that A2-Periyasami has undergone two years and nine months sentence and this fact may also be taken into consideration.

12. Mr. Subramonium Prasad, Addl. Advocate General, for the State of Tamil Nadu on the other hand submitted that the validity of Section 15 of the TADA has been upheld by this Court. Therefore, conviction can be based on a confessional statement recorded under Section 15 of the TADA. If a confessional statement is found to be truthful then, despite its subsequent retraction or its denial in statement recorded under Section 313 of the Code, it can be relied upon. In this connection, counsel relied on **State v. Nalini & Ors.**⁴ and **Yakub Abdul Razak Memon v. State of Maharashtra**⁵. Counsel submitted that in this case apart

⁴ (1999) 5 SCC 253

⁵ (2013) 3 SCALE 565

from the confessional statement of A1-Senthilkumar, there is other evidence on record to establish complicity of the appellants. In support of this submission, counsel took us through the evidence of PW-13 M. Paramasivam, the then Chief Permanent Inspector of Peralam and the evidence of PW-32 K. Ramakrishnan, the then Assistant Director of Forensic Department. Evidence of these witnesses show that the handwriting on the incriminating posters found at the scene of occurrence is that of A1-Senthilkumar. Counsel also relied on the evidence of PW-15 Sevi Periyasamy who has turned hostile at a very late stage. Counsel submitted that hostile witnesses' evidence need not be totally ignored. Part of the evidence which is consistent can be relied upon. Counsel submitted that sufficient corroboration is available to the confessional statement of A1-Senthilkumar. Counsel urged that since the involvement of the appellants is proved beyond doubt, the appeals be dismissed.

13. The prosecution's claim that on 24/10/1992 at or around 2.45 a.m. there was a blast at rails of Bridge No.276

in between Kms. 292/6 and 7 situated between Kallakudi Pazhanganatham and Kallagam Railway Stations, which damaged 20 wooden sleepers and rails to a length of 20 feet and a portion of concrete structures is not disputed. The engine driver of Quilon Express, which was to cross Bridge No.276, stopped the train as he saw boulders on the track. Thus, a great disaster was averted. So far as the occurrence of the blast is concerned, the prosecution has examined PW-1 to PW-13, who are railway employees. It is not necessary to deal with their evidence because there is no serious challenge to that part of the prosecution story.

14. At the outset, we must deal with the submission that the prosecution has not examined any independent witnesses. It is common knowledge that when the terrorists unleash a way of terror, no independent witnesses are ready to come forward and depose against them. Prosecution case cannot be rejected on this ground. In any case, the evidence on record is cogent and reliable and, therefore, non-examination of independent witnesses does not have any adverse impact on the prosecution case. We may also note

that the evidence of defence witnesses does not inspire confidence and has rightly not been taken into consideration by the trial court. PW-14 Chandra wife of PW-15 Sevi Periyasamy turned hostile. Some other formal witnesses also turned hostile. This, however, has not affected the core of prosecution case which is established by reliable evidence. We shall now deal with the evidence which, in our opinion, bears out the prosecution case.

15. PW-15 Sevi Periyasamy appears to have given the leads to the investigating agency to unearth the crime. His statement was recorded under Section 164 of the Code by the Judicial Magistrate Perambalur on 31/12/1993. He stated that he is a member of Ambedkar Narpani Mandaram. They had celebrated Ambedkar birthday function in 1991. He met A2-Periyasami in that function. On 23/10/1992, A2-Periyasami came to his house and told him that one Lenin and 3 other persons will visit him, they will stay in the house till night and that he should provide food to them. Lenin came to his house at 1.30 p.m. Lenin introduced him to the

other person who had come with him as Kumar. Thereafter, two other persons came there. They were introduced to him as Karalan and Rajaram. He asked them as to for what purpose they had come to his house. They told him that they had come to participate in the function and they will stay in his house till night. He put a cot in the cattle shed and asked them to sit. He and his wife prepared food for them. He saw both Lenin and Karalan removing the gelatin sticks. They applied flour like powder over the same. He suspected them. He asked them as to what they were doing with gelatin sticks. Karalan stated that he should not ask any questions about what they were doing. Then A1-Senthilkumar and Rajaram @ Madhavan wrote slogans on white colour paper with black ink such as "Veera Vanakkam" (royal salute) and 'Withdraw the cases filed against the Tamilian leaders'. Karalan then asked him to get two empty glass bottles. He gave two bottles to them. They broke the glass bottles into powder. Thereafter, Karalan gave him Rs.12/- and asked him to purchase sulphur powder. Since they threatened him, out of fear, he went to Perambalur and

purchased 100 gms. sulphur powder. He came to his village and handed over the sulphur powder to Karalan. After taking food, they left keeping their goods in the cattle shed. After some time, all of them returned with tin bottles and inserted gelatin sticks in tin bottles. They left the house. When he asked them, where they were going, Lenin told him that he would come to know when he reads the newspaper on the next day. Next day, he read the newspaper and came to know that the railway bridge situated at Kallakam Muthuvathur village had been destroyed due to a bomb blast. He asked A2-Periyasami, who had caused the blast. A2-Periyasami told him that Lenin, Karalan and Rajaram @ Madhavan were responsible for the blast and if he discloses this to anybody, his family would be killed. Thereafter, he met A1-Senthilkumar at Thuraimangalam junction road. A1-Senthilkumar told him that he, Karalan, Lenin and Rajaram had destroyed the railway bridge. He told A1-Senthilkumar that he cannot give him shelter in his house. A1-Senthilkumar went away telling him that if he discloses this to anybody, they will finish his family. Therefore, in the

interest of his family, he did not disclose to anybody what he was told. Thereafter, police interrogated him and he disclosed the facts which were known to him. He also identified the photographs of Karalan, Rajaram and Lenin.

16. He was examined in the Court on 13/9/1996 and on 3/11/1997 when he reiterated his statement given under Section 164 of the Code. He was recalled on 5/2/1998 when he stated that MO 5 series (wall posters) were written by A1-Senthilkumar in his cattle shed. He was again recalled on 25/9/1998 when he acknowledged that on 31/12/1993 he had given statement before the Judicial Magistrate at Perambalur. He was again recalled on 19/9/2001. On that day, he resiled from his earlier statement to some extent. He stated that he did not remember whether A2-Periyasami had personally informed him that four persons would come and he should feed them. He, however, stated that the four persons did come and they informed him that they hail from the similar organization and he should provide food for them. He was again recalled on 28/9/2001. On that day, he stated

that he saw Lenin when he came to his house and he came to know about Karalan when he visited his house. He then stated that he was detained at Q Branch Police Station and he was told by the Investigating Officer that he would be set at liberty after he gave his statement before the Judicial Magistrate. He, however, denied the suggestion that A1-Senthilkumar did not meet him at his residence. He stated that the person, who accompanied Lenin, informed him that his name was A1-Senthilkumar. He stated that it was incorrect to state that he was intimidated by the police from 10/12/1992 to 30/12/1992. He stated that he was tutored by the Investigating Officer to make the statement before the Judicial Magistrate. He stated that he used to render help to any Dalit guest and he would not have given food and shelter to Lenin, if he had knowledge that he belonged to that organization. He then stated that he had not met A1-Senthilkumar earlier and he was seeing him in the court for the first time. Thus, it is apparent that on 28/9/2001, though he stuck to several assertions which he had made earlier, he resiled from his statement to some extent. The public

prosecutor, therefore, sought permission to cross-examine him. The public prosecutor cross-examined him. In the cross-examination, he stated that he gave this statement at the dictates of the Investigating Officer.

17. PW-40 PI Pattabiraman stated that after he took custody of A1-Senthilkumar, he took his specimen signatures which are Ex-P/6 series. He further stated that on 19/12/1993, he took A1-Senthilkumar to Chennai and produced him before PW-37 Ramanujam, Superintendent of Police, Q Branch CID, Chennai and gave a written requisition for recording confessional statement of A1-Senthilkumar under Section 15 of the TADA. On 20/12/1993, at 1800 hours PW-37 Ramanujam after ascertaining that A1-Senthilkumar was not threatened or induced to give his confessional statement, recorded his confessional statement and obtained his signature on each page.

18. In his confessional statement, A1-Senthilkumar has stated how he came in contact with one Murugesan, who was running an association to spread the ideology of

Ambedkar. It is through Murugesan that he got acquainted with the activities of Tamil Nadu Liberation Force and associates of Murugesan like Lenin and Ravi. He stated that in the house of Ravi, Murugesan, Lenin and others used to hold secret meetings; they used to say that Tamil Nadu should secede from India and for that purpose, they have to fight with weapons. He further stated that Lenin took him to the house of PW-15 Sevi Periyasamy. Lenin told him that they had been sent by A2-Periyasami. Within short time, Rajaram @ Madhavan and Karalan @ Nagarajan also came there. Karalan brought a bag containing 40 gelatin sticks, one long green colour wire, 5 to 6 detonators and jute thread. The bag brought by Rajaram @ Madhavan contained an empty tin of five litre capacity, two large drawing papers and two black and red colour sketch pens. They had brought wall papers and as instructed by Lenin and Karalan A1-Senthilkumar wrote slogans such as 'Bravery salute. Bravery salute', 'Let the liberation struggle of Kashmiri people win', 'Withdraw the cases filed against Tamil leaders', etc. He further stated that in between, Lenin and Karalan

took out gelatin sticks wrapped in a paper and mixed in a dough. They got two empty glass bottles from PW-15 Sevi Periyasamy, broke them into pieces and mixed that also in the dough. He stated that Karalan got sulphur powder through PW-15 Sevi Periyasamy and applied sulphur to the wire. In the evening, they went near the lake area and Lenin told them that they are going to demolish the railway track so that panic would be created among the public. Then they went ahead, had dinner in a hotel. They came to PW-15 Sevi Periyasamy's house and took all articles which were kept there and left that place. While leaving the place, Lenin told everyone that they should read tomorrow's newspaper. From there, they went to Ariyalur by bus. From there, they went by bus to Dalmiapuram. They walked through a canal and reached a railway bridge. Sitting below the bridge, Karalan put the gelatin and sulphur in the tin. He tied the detonator together and inserted the same in the tin which had gelatin mixture. He connected the wire with the detonator and, through the hole in the tin cover, he took out the wire and closed the tin. Thereafter, all the four climbed

over the bridge. Karalan kept the bomb in the southern corner of the bridge in the middle of the rails. They put a huge stone between the rails. They kept the branches of trees over the rails. They wrote slogans on the pillars. They also kept posters prepared on drawing papers and notices at the scene of offence. Karalan lit a wire with a match stick and they ran away. Within a few seconds, there was a blast. He, thereafter, narrated how he went from place to place till he was arrested on 17/12/1993.

19. The confessional statement of A1-Senthilkumar reveals that he had accompanied other accused to the house of PW-15 Sevi Periyasamy, that he had actively participated in the activities of Karalan, Lenin and Rajaram @ Madhavan and they had joined him in manufacturing explosive substances. His confession further reveals that he wrote slogans on papers and he was party to preparing, carrying and planting of bomb and causing of the blast. It must also be stated here that A1-Senthilkumar retracted his confessional statement. We shall advert to that a little later.

20. Having referred to the relevant evidence, we shall now consider whether the prosecution has established its case against A1-Senthilkumar. His confessional statement is a major piece of evidence against him. The question is what is the evidentiary value of a confession recorded under Section 15 of the TADA.

21. In **Yakub Abdul Razak Memon**, after referring to several judgments of this Court on the evidentiary value of confession particularly judgment of this Court in **Nalini**, this Court summed up the position of law on the evidentiary value of confession. The relevant conclusions could be quoted.

*“105. **To sum up**, it can easily be inferred that the position of law on the **evidentiary value of confession** is as under:-*

(i) If the confessional statement is properly recorded satisfying the mandatory provision of Section 15 of TADA and the Rules made thereunder, and if the same is found by the court as having been made voluntarily and truthfully then the said confession is

sufficient to base conviction on the maker of the confession.

- (ii) Whether such confession requires corroboration or not, is a matter for the court to consider on the basis of the facts of each case.*
- (iii) With regard to the use of such confession as against a co-accused, it has to be held that as a matter of caution, a general corroboration should be sought for but in cases where the court is satisfied that the probative value of such confession is such that it does not require corroboration then it may base conviction on the basis of such confession of the co-accused without corroboration. But this is an exception to the general rule of requiring corroboration when such confession is to be used against a co-accused.*
- (iv) The nature of corroboration required both in regard to the use of confession against the maker as also in regard to the use of the same against a co-accused is of a general nature, unless the court comes to the conclusion that such corroboration should be on material facts also because of the facts of a particular case. The degree of corroboration so required is that which is necessary for a prudent man to believe in the existence of facts mentioned in the confessional statement.*

(v) xxx xxx xxx xxx”

It is clear, therefore, that a confessional statement recorded under Section 15 of the TADA, if found to be voluntarily made and is truthful and properly recorded, can form the basis of conviction.

22. We have already stated that PW-40 PI Pattabiraman produced A1-Senthilkumar before PW-37 Ramanujam, Superintendent of Police "Q" Branch CID, Chennai for recording his confessional statement. On 22/12/1993, PW-37 Ramanujam recorded confessional statement of A1-Senthilkumar after ascertaining that he was not threatened or induced to give his confessional statement. PW-37 Ramanujam obtained A1-Senthilkumar's signatures on each page of the confessional statement. A1-Senthilkumar signed on the said confessional statement acknowledging that he was giving the statement voluntarily without any coercion and compulsion and knowing its consequence. We have carefully read the evidence of PW-40 Pattabiraman and PW-37 Ramanujam and the confessional statement of A1-Senthilkumar, which is at Ex-P/24. We are satisfied that the

confessional statement was properly recorded; that A1-Senthilkumar was not forced or coerced into giving statement; that the statement is given voluntarily and that it is truthful. In our opinion, therefore, it can form the basis of conviction.

23. We must now come to the retraction. It is argued however that A1-Senthilkumar has retracted his confession and, hence, it has no evidentiary value. It cannot be relied upon. It is not possible to accept this submission. Retraction does not always dilute or reduce or wipe out the evidentiary value of a confessional statement. Quite often retraction is an afterthought. It could be the result of legal advice or pressure exerted by those whose involvement may be likely to be disclosed or confirmed by the confessional statement of the accused. Therefore, in each case, the court will have to examine whether the confession was voluntary and true and whether the retraction was an afterthought. In ***Kalawati v. State of Himachal***⁶, this Court stated that the amount of credibility to be attached to a retracted

⁶ AIR 1953 SC 131

confession would depend upon the facts and circumstances of each case. Again in **State of Tamil Nadu v. Kutty**⁷, this Court stated that a retracted confession may form legal basis for conviction if the court is satisfied that the confession was true and was voluntarily made. Following these judgments in **Yakub Abdul Razak Memon**, this Court held that where the original confession was truthful and voluntary, the court can rely upon such confession to convict the accused in spite of a subsequent retraction and its denial in statement under Section 313 of the Code. The law is thus crystallized. A retracted confessional statement is therefore not always worthless. We have no hesitation in reiterating that A1-Senthilkumar's confessional statement was recorded after following the correct procedure; that it was voluntary and truthful; that A1-Senthilkumar was not forced or compelled to give his statement and that the retraction of the said statement is clearly an afterthought and should be ignored.

⁷ AIR 2001 SC 2778

24. In any case, there is sufficient corroboration available to the confessional statement of A1-Senthilkumar from the other evidence on record. In this connection, it is necessary to turn to the evidence of PW-13 M. Paramasivam, who was working as Chief Permanent Inspector at Peralam at the relevant time. He stated that on 24/10/1992, in the early morning at 3.00 a.m. when he got the news that a train had halted, he went to the place of occurrence. He found that the train was reversed and kept at Kallagam Railway Station. He went to the southern part of the bridge and found that the fish plates and the concrete portion of the bridge were broken. He got down from the bridge. He saw wall posters (MO 5 series), bit notices and other articles. They were taken charge of under Mahazar [Ex-P/3]. PW-32 K. Ramakrishnan, who was working as the Assistant Director in the Photography Division of the Forensic Science Department, Chennai, at the relevant time, stated that he had received the requisition of Inspector of Police, Q Branch, CID, Trichy. He further stated that along with the requisition, he had received two disputed wall posters marked as MO 5

series and four disputed wall posters marked MO 22 series. For comparison of the disputed handwriting on the wall posters, he had received 30 wall posters and four full sheets containing specimen handwriting, which were marked Ex-P/6 series. He compared the specimen handwriting with the handwriting appearing on the wall papers [MO 5 series and MO 22 series] and found that the writings on MO 5 series and MO 22 series were of the person who wrote writings marked Ex-P/6 series. Ex-P/6 series are the specimen handwritings of A1-Senthilkumar taken by PW-40 PI Pattabiraman. Thus, evidence of PW-13 M. Paramasivam and PW-32 K. Ramakrishnan provides necessary independent corroboration to the confessional statement of A1-Senthilkumar. The fact that the incriminating wall posters found at the scene of offence bear handwriting of A1-Senthilkumar is a clinching circumstance and goes a long way in establishing his guilt.

25. So far as evidence of PW-15 Sevi Periyasamy is concerned it is argued that he was himself involved in the

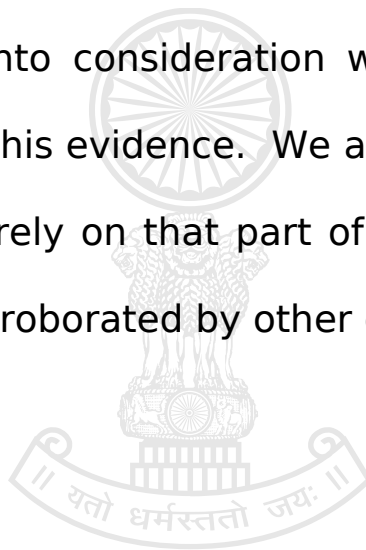
offence. His evidence is tainted evidence and, hence, it should not be relied upon. It is not possible to accept this submission. The evidence of this witness clearly indicates that he did not know anything about the activities of the accused. He is an active worker of Ambedkar Welfare Association. He stated that he is a Dalit and he works for the cause of Dalits. According to him, it is A2-Periyasami, who told him that four persons would be coming to him and he should provide food to them. He accordingly gave them lunch. When they were busy preparing wall posters and manufacturing bombs, he asked them what they were doing and they told him that he should not ask them any question and he would come to know about it if he reads next day's newspaper. According to him, when A1-Senthilkumar met him, he asked him who had caused the blast. A1-Senthilkumar told him that blast was caused by him and his associates and if he informs anyone about it, all members of his family will be killed. It is difficult therefore to come to a conclusion that PW-15 Sevi Periyasamy was involved in the offence. He appears to be a victim of circumstances. He was

used by the accused. He did not know the nature of conspiracy hatched by the accused. His evidence, therefore, cannot be discarded as tainted evidence.

26. It was submitted that the evidence of PW-15 Sevi Periyasamy must be rejected because he turned hostile. It is trite that evidence of a hostile witness need not be completely discarded. The prosecution can use that part of his evidence which is corroborated by other evidence on record [See **Bhajju @ Karan Singh v. State of Madhya Pradesh**⁸]. Moreover, in this case, the facts are peculiar. From 13/9/1996 when PW-15 Sevi Periyasamy was first examined in the Court till 25/9/1998, he supported the prosecution. When after five years he was recalled on 19/9/2001, he resiled from his previous statement only to some extent. On 28/9/2001, he confirmed some portion of his earlier statement but resiled to a large extent from his earlier statement. It is obvious that the recording of his evidence was not continuous. There was huge gap of five years between recording of his examination and re-

⁸ (2012) 4 SCC 327

examination. It is also pertinent to note that on 13/9/1996, 3/11/1997, 5/2/1998 and 25/9/1998, when he narrated the sequence of events and explained the role of the accused, he was not cross-examined at all. It is clear from this that recording of his evidence was unduly prolonged, and in that period, an effort was made to win him over. These facts will have to be taken into consideration while considering the evidentiary value of his evidence. We are of the opinion that it would be safe to rely on that part of the evidence of this witness, which is corroborated by other evidence on record.



27. We have extensively referred to the evidence of PW-15 Sevi Periyasamy. He stated how A1-Senthilkumar came to his house along with Lenin and how two other persons joined him. He further stated how they prepared the dough with gelatin sticks and broken glass pieces. He has further gone on to say that they left the house telling him that he should not ask them anything about their activities and he should

read the next day's newspaper to know what they were doing. He has further stated that after the blast, he met A1-Senthilkumar at Perambalur-Thuraimangalam Junction Road and he told him that he, Karalan, Lenin and Rajaram had destroyed the railway bridge. A1-Senthilkumar left the place telling him that if he discloses it to anyone, all members of his family will be killed. This portion of his evidence finds sufficient corroboration from other evidence on record and, therefore, we are of the opinion that reliance can be placed on it. Thus, A1-Senthilkumar's involvement in the crime is proved to the hilt by his confessional statement recorded by PW-37 Ramanujam; by the evidence of PW-13 Paramshivam who stated that posters were seized from the place where blast occurred; by the evidence of PW-32 Ramakrishnan which indicates that those posters were in his handwriting and the statement of PW-15 Sevi Periyasamy which indicates his role. The trial court, therefore, has rightly convicted him.

28. So far as A2-Periyasami is concerned, in his confessional statement A1-Senthilkumar has only stated that Lenin took him to the house of PW-15 Sevi Periyasamy and others joined him there in that house. When he reached there, Lenin informed PW-15 Sevi Periyasamy that they have been sent by A2-Periyasami. Apart from this, there is no reference to A2-Periyasami in the confessional statement of A1-Senthilkumar. PW-15 Sevi Periyasamy has stated that on 22/12/1993 A2-Periyasami came to him and stated that Lenin and others will visit him and they will stay till night and food should be provided to them. It appears from the confessional statement of A1-Senthilkumar and evidence of PW-15 Sevi Periyasamy that A2-Periyasami did not participate in manufacturing of bombs, carrying them to the scene of offence, planting them under the railway bridge and causing the blast. There is a passing reference in PW-15 Sevi Periyasamy's evidence that after the blast when he asked A2-Periyasami about the blast, he told him that Lenin, Karalan and Rajaram were responsible for the blast and if he discloses this to anyone, all members of his family would be

killed. This part of the statement of PW-15 Sevi Periyasamy is not corroborated by any evidence on record. Thus, it would not be safe to rely on it. We are, therefore, of the opinion that the prosecution has not been able to establish its case against A2-Periyasami beyond reasonable doubt. He must, therefore, get benefit of doubt. In the circumstances, the impugned judgment and order so far as it convicts and sentences A1-Senthilkumar is confirmed. Conviction and sentence of A1-Senthilkumar is confirmed. The impugned judgment and order so far as it convicts and sentences A2-Periyasami is set aside. He is acquitted. A2-Periyasami is on bail. His bail bond stands discharged.

JUDGMENT

29. In the result, Criminal Appeal No.1272 of 2012 is allowed and Criminal Appeal No.787 of 2013 is dismissed.

.....CJL.
(P. Sathasivam)

.....J.
(Ranjana Prakash Desai)

.....J.
(Ranjan Gogoi)

New Delhi;
April 11, 2014.



JUDGMENT