

**IN THE COURT OF APPEAL OF THE DEMOCRATIC
SOCIALIST REPUBLIC OF SRI LANKA**

Mahadevan Yogakanthan

Accused-Appellant.

C.A. Appeal No. 41/2010
High Court Kurunegala No.
03/2002

-Vs-

Republic of Sri Lanka

Respondent

Before: : **W. L. R. Silva, J &**

H.N. J. Perera, J.

Counsel: : **K.A. Upul Anuradha Wickramaratne**
for the Accused- appellant .

Chethiya Gunasekera SSC for the
Attorney-General.

Argued &
Decided on: : **12.06.2012**

Ranjith Silva, J

Heard counsel for and against this appeal respectively. The pivotal issue in this case is whether the confession relied on by the prosecution was voluntarily or involuntarily. First and foremost it has to be recorded that the confession which runs into about 03 pages which appears to be an exhaustive confession was taken down in sinhala whereas the accused-appellant was a Tamil. Therefore a grave doubt arises as to whether it is a verbatim account of the statement of the accused. Competency to speak and understand does not necessarily mean that the appellant could read and understand sinhala equally.

In situations of this nature, it would have been more advisable for the police to have recorded the statement in the Tamil language by a competent Tamil typist.

Section 16 of the Prevention of Terrorism (Temporary Provisions) Act reads as follows;

1) Notwithstanding the provisions of any other law, where any person is charged with any offence under this Act, any statement made by such person at any time, whether-

- a) it amounts to a confession or not;
- b) made orally or reduced to writing;
- c) such person was or was not in custody or presence of a police officer;
- d) made in the course of an investigation or not;
- e) it was or was not wholly or partly in answer to any question,

may be proved as against such person if such statement is not irrelevant under section 24 of the Evidence Ordinance; (emphasis is mine)

Provided, however, that no such statement shall be proved as against such person if such statement was made to a police officer below the rank of an Assistant Superintendent.

- 2) The burden of proving that any statement referred to in subsection (1) is irrelevant under section 24 of the Evidence Ordinance shall be on the person asserting it to be irrelevant.

According to this section it appears that the burden of proving that it was not voluntarily rest on the accused-appellant. But what is important is the language the legislature has used in section 24 of the Evidence Ordinance. It states that 'when it appear to Courts' to guarantee the accused person in criminal proceedings absolute fairness. Thus section 24 does not require positive proof of improper inducement, threat or promise to justify the rejection of a confession. If the Court after proper examination and a careful analysis of the

evidence and the circumstances of a given case, holds to the view that there appears to have been a threat, inducement or promise, though this is not strictly proved, then the Court must refuse to receive in evidence the confession. In other words the burden appears to be, the burden cast by the sub section 2 of (16) of the Prevention of Terrorism Act is a very light burden because there is not much that the accused has to prove. From the given circumstances of the case sometimes a court of law may be able to decide whether it appears that the confession was not voluntarily . Thinking in that line, I would venture to state that the facts and circumstances in this case is morethan sufficient to discharge that burden cast on the accused. The accused had stated that he was tortured and that he had bleeding injuries and he suffered. It is uncontraverted that the accused-appellant been in custody for morethan 01 month by the time he made the confession. No person will languish in a cell at a police station especially

during that era for pleasure, if he could avoid it, he would have done it at the earliest possible opportunity.

It is also in evidence that this particular accused-appellant was in police custody at the time he made the confession and thereafter he was taken back to police custody. The accused-appellant was produced before the ASP and taken away by the same police officer and he was not in independent custody on both days the confession was recorded.

I fully agree with the decision of Hon. Justice Yapa in *Mariadas Vs The State* reported in *1995(1) S.L.R at page 96*; wherein His Lordship expressed the view that certain draconian laws must provide adequate safe guards to protect the subject .

In this case for the reasons stated above, I hold that there is a grave doubt as to the voluntariness of the confession and I am

of the view that it was not voluntarily and therefore the confession should be excluded and should not be acted upon. We set aside the conviction and the sentence of the accused appellant.

We find that there is no purpose in ordering a re-trial as there is no evidence other than the evidence that was forthcoming at the trial in this case. Therefore we acquit and discharge the accused-appellant. Appeal allowed.

Judge of the Court of Appeal

H.N.J.Perera, J

I agree.

Judge of the Court of Appeal

Kpm/-