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IN THE CENTRAL CRIMINAL COURT

U20090424

B

Old Bailey
London
EC4M 7EH

C

THE HONOURABLE MR JUSTICE SAUNDERS

R E G I N A

-v-

D

ARUNCHALAM CHRISHANTHAKUMAR

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MR J LAIDLAW QC and MR P TAYLOR appeared on behalf of
the Prosecution

MR M MULLER QC and MR H ZAHIR appeared on behalf of
the Defendant

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Friday, 12 June 2009

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SENTENCING REMARKS

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(3.00 pm)

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MR JUSTICE SAUNDERS: This defendant, Shanthan, was convicted by the jury on two counts on an indictment, namely counts 1 and 3. Count 3 related to receiving Jane's manuals, knowing or having reasonable grounds to suspect that they would be used for a terrorist purpose. It has been agreed that I should not add to the sentence that I pass on count 1 when sentencing on count 3. I think it is right that I should make clear in my judgment the reasons for that, as some explanation should be given publicly.

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Before this trial started, but only just before, a co-defendant submitted that a count which was severed from the indictment on which Shanthan was tried was void because the proceedings were commenced before the consent of the Attorney-General was obtained. Although Shanthan was jointly charged on that severed count, no submission was made on his behalf on that basis.

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The same point arose on other counts on the indictment which affected Shanthan alone, including count 3, the one on which he was

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convicted. No submission was made in relation to those counts. I decided the point against

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Shanthan's co-defendant. Because it was known that the point could affect other counts on the indictment which was to be tried I made clear to counsel of the co-defendant that if there was to

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be an appeal speed was required, as if my

decision was wrong it would not have been

difficult to remedy what was, on anyone's

understanding, a technicality on the other counts

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on the indictment which were imminently to be

tried. If necessary count 3 could have been

deleted and the facts on which it was based

included within the ambit of count 1.

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Leave is required to appeal a decision made by

a judge in the course of preliminary hearing, as

this decision was. Application must first be

made to the trial judge within three days,

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otherwise leave can be obtained from the Court of

Appeal. No application was made to me, but when

it became apparent that an appeal was intended

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the prosecution, with my encouragement, urged the

Court of Appeal to deal with the matter quickly

because of its possible effect on the trial which

was then proceeding.

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As far as can be seen from the paperwork, and from the Court of Appeal judgment, no leave was ever granted by the Court of Appeal, although it may be implied from the fact that they allowed the appeal.

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The necessity to apply for leave is not

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a technicality. It enables whoever grants leave to ensure that the matter is heard quickly. It had always been understood that appeals from decisions in preparatory hearings would be heard quickly, within a few days, as otherwise a trial could be delayed.

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I did not put back the trial in this case. It had been fixed for a long time and had already been put back. Many expert witnesses had been lined up to give evidence and I was not urged by anyone to delay the trial. However, for reasons which I have already set out, the decision of the Court of Appeal was still required urgently so that any irregularity could be dealt with. This was made clear to the Court of Appeal by prosecution counsel. If the proper leave procedure had been followed this difficulty should not have happened, as any judge would have made the necessary directions to ensure a speedy hearing.

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This was a long trial. It was at least nine weeks before the jury retired to consider their

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verdicts. The Court of Appeal did not hear the matter before I started my summing-up; but, due to judgment being reserved and not being

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delivered for almost a week, the jury had already retired before the Court of Appeal's decision was given and it was quite impossible to rectify the situation because the Court of Appeal, as is well known, allowed the appeal.

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I am now faced with an agreement by counsel that I should not add to my sentence on count 1 by virtue of conviction on count 3. Of course I will do so, but I do not regard that to be a satisfactory situation.

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Of course it can be justifiably said that had I reached the correct conclusion in the first place this would never have happened. I accept that, but I am afraid that first instance judges do get things wrong from time to time. That is why we need a Court of Appeal. It is important that in these sorts of appeals they are put right quickly, to avoid injustice.

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So having explained why it is that I will not add to the sentence on count 1 by virtue of count 3,

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I now have to go on to deal with what the correct sentence seems to me to be on count 1.

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The facts on which I pass sentence are these: Over a three year period from March 2003 to June 2006 Shanthan coordinated the sending of goods to the LTTE in Sri Lanka. Money was used to buy goods

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which at least in part, I am satisfied, had been obtained by Shanthan from members of the Tamil diaspora resident in this country. Other money was supplied by the LTTE. There were a wide

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variety of goods supplied: Toughnote computers, which certainly could be used by the military but could also be used in civilian ways; electrical goods, which could be used militarily but equally

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could have civilian uses. There were high power torches, which equally could have a civilian or military use. There were no guns or explosives included in the goods. There were also items

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like speed guns, which I am quite satisfied could have had no military use. There were a very large number of goods either shipped to Sri Lanka

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by Shanthan or taken in by Tamils living in England visiting relatives in Sri Lanka. The only items which were for an obvious and only military use were the Jane's manuals, the subject

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of count 3, which for reasons I have given will not increase the sentence on count 1. None of the other items could be said only to have a military use.

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I am not satisfied so that I am sure that the items sent by Shanthan to Sri Lanka were used by the LTT armed forces rather than by civilian agencies of the LTTE. That is still an offence because, as the jury have found, to Shanthan's knowledge the goods were for the benefit of the LTTE.

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D I am satisfied that Shanthan knew perfectly well, because the LTT was a proscribed organisation, that it was illegal to supply them with any goods, whether for a military or civilian purpose. In 2001, at the time of proscription, he had had the benefit of counsel's opinion as to what was meant by proscription and what he was and was not allowed to do following it. In fact, as has been pointed out, from 2001 to 2003 there is no evidence that he sent any goods to Sri Lanka at all.

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G I am satisfied that he did not know, and indeed was not concerned, whether the goods he was sending would end up being used by military personnel rather than civilian. In my judgment what

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happened was he was given an order for goods by the LTTE and he fulfilled it. As I have said,

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apart Jane's manuals, none of those goods were obviously for military use, though in my judgment he also could not have been satisfied that that was the purpose of them.

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He was in regular contact with Special Branch throughout this period. He told them in detail of his contacts with and relationship with the LTTE, and was undoubtedly helpful to the British

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government in understanding the views and position of the LTTE. But I am quite satisfied that he was deliberately keeping from Special

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Branch that he was supplying the LTTE with goods and was deliberately deceiving Special Branch, having built up their trust; and the reason he deceived them was that he knew perfectly well

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that it was illegal to send these goods to Sri Lanka and, if they knew about it, they would stop it.

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There were an occasion in July 2004 when, in relation to the goods coming from the USMC, he was given a rather imprecise warning by Special Branch of the necessity no longer to send items out to Sri Lanka such as those he was getting from the

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USMC. In so far as that should have acted as

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a further warning it did, but Shanthan knew perfectly well, from the start, that he should not be doing it. He did not need to be told, he already knew.

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There was some, but limited, evidence that Shanthan took steps to cover up the fact that he was exporting goods to the LTTE by the use of false invoices et cetera, although I accept, because he was often using his own credit card, that it was a relatively easy matter for the police to trace the goods back to Shanthan once they realised what he was doing.

D

It is obvious that Shanthan had no means of controlling what the LTTE did with these goods once they were in their possession. A number of the electronic components sent could have had a military use. Even where the goods could only have a civilian use, this could release other resources that the LTTE could use to obtain military goods.

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As I have said, I am not sure that any of these goods were used by the LTTE armed forces. Although this was a time of peace there was evidence, which was uncontradicted, that both the Sri Lankan

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government and the LTTE were using the period of peace in order to build up their resources in order to maintain their position of strength at the peace negotiations that were going on.

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This was, therefore, a protracted, deliberate

breaking of a law against the Terrorism Act which

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was drafted in broad terms as part of the international war against terrorism. While it is true that the LTTE have not threatened this country, I do not believe that that is

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a mitigating feature when one is considering the purpose of the Terrorism Act itself.

There are, however, powerful mitigating features

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relating to the facts of these offences. They were committed during the peace negotiations

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between the Sri Lankan government and the LTTE, which was sponsored by the Norwegian government and which went on throughout the period of the conspiracy. The LTTE controlled the civilian administration of several areas of Sri Lanka perfectly legally during this period of time.

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The LTTE were not proscribed in Sri Lanka over this period. It was a precondition of the peace process that proscription should be removed in Sri Lanka, although it was maintained in this

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country, in the European Union and in America, and, no doubt, other countries.

B I heard evidence from Clare Short, who was a member of the cabinet at the time of these offences.

C She made it clear that the British government supported the peace process and committed aid to the process. The solution favoured by the

the process. The solution favoured by the

British government, and the international community, was a federal state in which the LTTE governed parts of Sri Lanka as autonomous states

D within a federal organisation. To help achieve
this the British government gave aid, at least
part of which was to improve the infrastructure
of the areas of Sri Lanka administered by the
E LTTE.

As I have said, the peace negotiations continued throughout the period of the supply of goods by Shanthan between 2003 and 2006.

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There is, of course, a clear distinction between
a government giving aid and an individual
arranging it in contravention of the law

Governments are able to attach conditions to their gifts to ensure that they are only used in limited ways and they may be able to have inspections to ensure that that is done.

- A Governments can also use aid to bring pressure to bear to achieve favourable outcomes.
- B Nevertheless, when considered fairly, these matters do, in my judgment, reduce the seriousness of the offences committed. Shanthan was doing no more, although illegally, than the international community were doing.
- C I am also satisfied that Shanthan was wholly committed to the peace process. He did not wish the peace process to fail and civil war to reconvene, as tragically happened. Whatever he did for the Tamils and the LTTE, he did not do it in order to assist them in war. He did them to assist in maintaining the peace process.
- D For most of the period Shanthan was acting as an assistant to Anton Balasingham. Balasingham was a leading member of the LTTE. The evidence before me was that he was a person who initiated the peace process on the LTTE side, because he persuaded the LTTE leader, Prabhakaran, to come to the negotiating table. Balasingham spent much of the time during the peace negotiations in London. He was in regular contact here with officials from the Foreign and Commonwealth Office, Clare Short and other ministers, Special
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- A Branch and no doubt others from the security service, and all this despite the fact that he was a member, and a leading member, of
- B a proscribed organisation.
- C The reason for this was that the British government was seeking to achieve a peaceful outcome and
- D they realised that Balasingham was the most likely person to achieve that, because he could persuade Prabhakaran to reduce his demands for a completely independent state. Unhappily,
- E Balasingham died before the peace process was completed. Clare Short went so far, in evidence, to suggest that if he had survived peace would have been achieved; and, if that had happened,
- F perhaps this prosecution would never have taken place.
- G I have no doubt that Shanthan, who was a devoted disciple of Balasingham, was also desperately seeking for peace. He is devoted to the Tamil cause, but did what he could to assist to achieve its aims through peaceful means. On the evidence that I have heard I think it is extremely unlikely, although of course I have not heard his side of it, that Balasingham was not well aware of the supply of goods that was being carried on

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by Shanthan. Indeed Jane's magazines -- not the manuals, but magazines -- on the evidence were probably taken into Sri Lankan by Balasingham, together with Shanthan.

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Although there is evidence that, certainly in 2006, the ceasefire was breaking down, it was in force, as I have said, throughout the time period of these offences.

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None of this should be seen as minimising what the LTTE has done as a terrorist organisation. They have been responsible for suicide bombings and for the killing of innocent civilians, as well as being involved in conventional warfare.

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In any event, it is for Parliament to decide whether an organisation should be proscribed or not. It is not for a court to decide whether or not the cause of a proscribed organisation is justified or not, or to place proscribed organisations in some sort of ranking depending on how their philosophy is viewed by the court. It is unlikely that a court will have the necessary

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information to do that, nor is it necessary. The evidence in the trial will not be directed primarily to that and it is extremely unlikely that a judge will be sufficiently well informed

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to make that kind of judgment.

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What is relevant in this case, and very relevant, is the fact, as I have said, that all this happened during peace negotiations, which Shanthan, along with most other civilised people, wanted.

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The conventional mitigation, as has been put in Shanthan's case, is also powerful. I have many, many testimonials from distinguished people who have spoken highly of what he has done for

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Tamils. He is not merely a man of good character in a negative sense. He has done a great deal of good for Tamils in this country. He has improved their situation through the organisations he has run, particularly organising sporting events. He

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is a thoroughly decent man, who deliberately broke the law in support of a cause he fervently believes in. His good character is slightly, but

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only slightly, double sided in this case, because it was because of his obvious respectability and good character that Special Branch trusted him to the extent that they clearly did and wrongly

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trusted him in my view.

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great assistance by both the prosecution and the defence as to the appropriate bracket for sentencing in these kinds of offences.

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Having considered all that has been put to me and all the authorities, I do take the view that the factual variations in this type of case are so

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great that, if it is possible to give a bracket at all, the bracket proposed by the prosecution is too narrow. But even if it is possible to give a bracket, there will always be exceptional

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cases where justice demands that a judge goes outside the bracket.

Of course these are very serious offences, which attract substantial sentences of imprisonment.

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The terrorist law has to be obeyed as part of our obligations internationally. Where a judge does decide to go outside the bracket, then it is

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necessary for him to explain in detail why he has done that. I hope I have done so in this case.

The principal difference, as I have indicated, between this case and others to which I have been referred is that the proscribed organisation in this case, the LTTE, at this particular time, at the time of the supply, were not actively involved in an overt armed struggle against

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A Sri Lanka. That is not the position in relation
B to the other cases which are put before me, where
assistance had been given to terrorist
C organisations which were actively engaged in
terrorist activities. As I say, overtly at this
time the LTT were involved in the peace process;
although there were, it has to be said,
occasional lapses, on the evidence I have heard,
on both sides.

D So, at the end of the day, I have to decide on
a suitable sentence. I am afraid to say that the
nature of the offence, the what I take deliberate
breach of the trust of the United Kingdom
authorities, the length of time over which the
E offences were committed, the quantity of goods
involved, mean I cannot avoid an immediate prison
sentence. I regret that, but I fear that it is
necessary.

F In view of all that has been said about Mr Shanthan,
and all that he has done, I make it the very
shortest that I can, so I can hope that you can
G resume the humanitarian work that you undoubtedly
do do for Tamils in this country. They will need
your help more now than ever before, perhaps.

H On count 1 I am afraid the least sentence that I can

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impose is one of two years' imprisonment and
a concurrent sentence with one year on count 3.

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You have already served, I am told, 195 days. You
have to serve, in all, a year. I am sure it will
seem a long time, but it could have been a great
deal longer. That is all I can assure you of.

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At the end of that time I am sure you will resume
the good work you have always down.

Thank you. Take him down.

(3.21 pm)

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We hereby certify that the above is an accurate and complete record of the proceedings or part thereof.

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Signed on behalf of **WordWave International Limited**

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