

# Loordu v. Canada (Minister of Citizenship and Immigration)

Between  
Joseph Kennedy Loordu, applicant, and  
The Minister of Citizenship and Immigration, respondent

[2001] F.C.J. No. 141  
Court No. IMM-1258-00

**Federal Court of Canada - Trial Division**  
**Toronto, Ontario**  
**Campbell J.**

Heard: January 25, 2001.  
Judgment: January 25, 2001.  
(14 paras.)

*Aliens and immigration — Admission, refugees — Disqualification, crimes against humanity — Evidence — Appeals or judicial review, scope of review — Grounds.*

This was an application for judicial review by Loordu of a decision of the Convention Refugee Determination Division of the Immigration and Refugee Board which found Loordu ineligible to make a refugee claim on the ground that he had committed crimes against humanity. Loordu was a member of the Sri Lankan Police Force for eight years. Loordu claimed that he had never participated in the torture of Tamils, although he knew that this was occurring and did nothing to stop it. The Board found Loordu to be a credible witness but concluded that his behaviour constituted willful blindness and complicity in crimes against humanity. The Board found the Police Force was a persecuting group from which Loordu should have disassociated himself.

**HELD:** Application allowed. The Board's finding of willful blindness was not supported by the evidence. Loordu had not denied knowledge and he was forthright in explaining what he had witnessed. Loordu was merely a member of the Sri Lankan Police Force and did not participate in persecutorial acts. There was no evidence that he shared a common purpose with those committing persecutorial acts. The Sri Lankan Police was not a persecuting group as it was not an organization which was directed to a brutal purpose. Although there were elements of the Force that were brutal, there was no evidence that Loordu was a member of those elements. The Board erred in concluding he should have disassociated himself from the Force. The conclusion reached by the Board was patently unreasonable and was set aside.

**Counsel:**

Robert Lepore, for the applicant.  
James Brender, for the respondent.

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1 **CAMPBELL J.** (Reasons for Order and Order):— The Applicant, who is a Tamil, was a low ranking member of the Sri Lankan Police Force between 1989 to 1997. In June 1997, because he was ordered to report to the front lines in the civil war ongoing in that country, he deserted. As a result, according to his Personal Information Form ("PIF") filed at the time of making his refugee claim, he fears persecution by both warring sides: the LTTE and the government forces opposed to its fight for independence. In his PIF, the Applicant says that he did not become a police officer to fight a war, particularly a war against Tamils, and he deserted to save his life.

2 The CRDD did not deal with the merits of the refugee claim since it found that the Applicant is ineligible to make a claim by virtue of section F of Article 1 of the United Nations Convention Relating to the Status of Refugees which reads as follows:

The provisions of this Convention shall not apply to any person with respect to whom there are serious reasons for considering that:

- (a) he has committed a crime against peace, a war crime, or a crime against humanity, as defined in the international instruments drawn up to make provision in respect of such crimes.

3 An important feature of the present case is that the CRDD found the complainant credible in the evidence he produced. Indeed, the evidence the claimant gave about his police service activities is detailed and, apparently, forthright. It is upon this candid evidence that the CRDD has based its exclusion decision.

4 The CRDD accepted the claimant's statements that, during his seven years of service with the Sri Lankan Police Force which took him to various parts of the country, the Applicant never arrested a suspected Tamil terrorist, did not take part in cordon and search operations, and did not participate in physical abuse of detainees.

5 With respect to the claimant's knowledge or participation in the torture of Tamils at the hands of the Sri Lankan Police Force, the panel said this:

The panel accepts the claimant's evidence that he never participated in physical abuse of detainees. However, the panel notes that the claimant admitted that he had heard of the physical abuse and torture of detainees, specifically suspected Tamil terrorists and sometimes innocent people, at the hands of the police and security forces. He had received this information while in conversation with the civil Tamil population as well as with other Tamil police colleagues. He had also overheard Sinhalese

officers' conversations, though he maintained that he never witnessed any of this in his work.

It is the claimant's admission of knowledge of the detention and physical abuse of individuals at a unit located in the Puttalam Police Station compound which gives the panel most concern. The claimant stated that as early as 1990, there were occasions when he heard screams of torture but took no action. However, there was one particular incident in 1997 which bothered him when he heard screaming and shouting in Tamil. This particular incident stood out in his mind. Nevertheless, the claimant stated that he did not know and he never asked what was the exact nature of the apparent torture committed by his fellow police officers<sup>1</sup>.

6 On the basis of the documentary evidence presented at the hearing, the CRDD found that the brutality of the Sri Lankan Police Force is well established. In this respect, the panel said that while it "does not wish to suggest that the Sri Lankan Police Force is an organization with a limited and brutal purpose of committing crimes against humanity, the latter nevertheless occurs within its regular operations"<sup>2</sup>.

7 In reaching a conclusion on the issue of exclusion, the CRDD applied the test in *Ramirez v. Minister of Employment and Immigration*, [1992] 2 F.C. 306, 89 D.L.R. (4th) 173, 135 N.R. 390 (F.C.A.) which, it is agreed, the CRDD correctly found as follows:

- (a) mere membership in an organization involved in international offences is not sufficient for exclusion from refugee status;
- (b) personal and knowing participation in persecutorial acts is required;
- (c) membership in an organization which is directed to a limited, brutal purpose, such as secret police activity, may by necessity point to personal and knowing participation;
- (d) mere presence at the scene of persecutorial acts does not qualify as personal and knowing participation;
- (e) presence coupled with being an associate of the principal offenders amounts to personal and knowing participation; and
- (f) the existence of a shared common purpose and knowledge that all the parties have of it is sufficient evidence of complicity.

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<sup>1</sup> CRDD Decision, p. 2

<sup>2</sup> *Ibid*, p. 4.

8 In applying the facts which are not in dispute to the test in Ramirez, in addition to finding early in the decision that the Applicant's behaviour constitutes willful blindness and complicity in crimes against humanity<sup>3</sup>, the CRDD said this:

The panel finds that the claimant was complicit through his voluntary and lengthy association in the police force by being a member of the police force. While we find that he did not commit a crime in a "physical" sense, we believe that the claimant is as culpable as those fellow officers who committed "physical" crimes. The claimant's knowledge of the atrocities committed by the police force on a systematic basis make him complicit and leads the panel to the finding of personal and knowing participation by the claimant in a crime against humanity. The panel also believes that there was a shared common purpose between the claimant and his police colleagues to find and wipe out Tamil terrorists, a shared common purpose in which many innocent civilians were detained and tortured. The panel believes that the claimant's denial of knowledge of atrocities is a circumstance of wilful blindness and that the claimant must have known about the activities committed by the force to which he belonged for a period of eight years. The panel further notes that the claimant did not disassociate himself from the police force because he believed that resignation was forbidden. However, it is noteworthy that when he perceived that his own physical safety would be under threat by being transferred to the front lines of Vavuniya, it was then that he deserted the Sri Lankan Police Force<sup>4</sup>.

9 In my opinion, the CRDD's finding of "willful blindness" cannot be supported by the evidence. Contrary to the finding of the CRDD, the Applicant did not deny knowledge; he was forthright in explaining what he heard and saw.

10 In addition, I find the evidence in the present case does not meet the test as stated in Ramirez. Instead, in my opinion, the evidence supports findings that the Applicant was: merely a member in the Sri Lankan Police Force; did not have personal and knowing participation in persecutorial acts; was not a member in an organization which is directed to a limited, brutal purpose; was merely present at the scene of persecutorial acts but such presence was not coupled with being an associate of the principle offenders; and did not share a common purpose and knowledge with those committing persecutorial acts.

11 With respect to the CRDD's opinion that the Applicant owed a duty of "disassociation", the Respondent relies upon the following passage of Justice Reed's decision in *Penate v. Canada (Minister of Employment and Immigration)*, [1994] 2 F.C. 79 (T.D.) cited by Justice Tremblay-Lamer in *Kiared v. Canada (Minister of Citizenship and Immigration)*, [1998] F.C.J. No. 1197 at paragraph 11 as follows:

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<sup>3</sup> Ibid, p. 2.

<sup>4</sup> Ibid, p.4.

As I understand the jurisprudence, it is that a person who is a member of the persecuting group and who has knowledge that activities are being committed by the group and who neither takes steps to prevent them occurring (if he has the power to do so) nor disengages himself from the group at the earliest opportunity (consistent with safety for himself) but who lends his active support to the group will be considered to be an accomplice. A shared common purpose will be considered to exist.

12 Without finding whether Justice Reed is correct in her interpretation of the jurisprudence, I find that the evidence in the present case does not support the conclusion that the Applicant was a member of the "persecuting group". In my opinion, the words "persecuting group" as used in Penate must be read with the test in Ramirez and, therefore, a "persecuting group" is an "organization" which is directed to a brutal purpose. As found by the CRDD, it might very well be that elements of the Sri Lankan Police Force meet this definition, but there is no evidence that the Applicant was a member of these elements. That is, in my opinion, the Applicant's mere membership in the Sri Lankan Police Force does not meet the definition of "persecuting group" as found in the decision cited.

13 Therefore, with respect to the finding of "willful blindness", the application of the criteria outlined in Ramirez, and the imposition of the requirement of "disassociation", on the evidence in the present case, I find that the CRDD's decision is made in reviewable error. Thus, I find that the conclusion reached by the CRDD is patently unreasonable.

#### ORDER

14 Accordingly, I set aside the decision of the CRDD and refer the matter to a differently constituted panel for re-determination.

CAMPBELL J.