

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE K.RAMAKRISHNAN

WEDNESDAY, THE 11TH DAY OF FEBRUARY 2015/22ND MAGHA, 1936

Crl.Rev.Pet.No. 885 of 2003 ()

**AGAINST THE JUDGMENT IN CRA 174/2001 of ADDITIONAL SESSIONS COURT
(ADHOC-I), THODUPUZHA DATED 22-01-2003**

**AGAINST THE JUDGMENT IN CC 700/1997 OF JUDICIAL FIRST CLASS MAGISTRATE
COURT, PEERUMEDU DATED 22.6.2001**

REVISION PETITIONER(S):

**VARGHESE @ THAMPAN, S/O.MATHEW,
KANAKKALIL, 2ND MILE, AMARAVATHY BHAGOM, KUMALY VILLAGE,
PEERUMADU TALUK.**

BY ADV. SRI.CIBI THOMAS

RESPONDENT(S):

**STATE OF KERALA,
REP. BY THE PUBLIC PROSECUTOR,
HIGH COURT OF KERALA, ERNAKULAM.**

R BY SRI.M.P.MADHAVANKUTTY, SPL. GOVT. PLEADER FOR FORESTS

**THIS CRIMINAL REVISION PETITION HAVING BEEN FINALLY HEARD ON
11-02-2015, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:**

R.AV

K.RAMAKRISHNAN, J

CRL.R.P.NO.885 OF 2003

dated this the 11th day of February, 2015

O R D E R

First accused in CC.700/97 on the file of the Judicial First Class Magistrate Court, Peerumedu is the revision petitioner herein.

2. The revision petitioner along with the second accused in the case were charge sheeted by the Assistant Wild Life Preservation Officer, Thekkady in OR.No.31/95 under section 9, 27(1), 29 and 31 of the Wild Life Protection Act (hereinafter called the Act).

3. The case of the prosecution in nutshell was that on 18.12.1995, the accused persons trespassed into Periyar Wild Life Sanctuary and hunted a nilgiri languor (karimkurangu) a specious of animal shown in Part I of Schedule I of Wild Life Protection Act with country gun and they were found to be in possession of the carcass of the said animal without any permit required under the Act and thereby both of them have committed the offence punishable under section 9, 27(1) 29 and 31 of the Wild Life Protection Act.

4. The case was taken on file on the basis of a complaint filed by PW5, under section 55 of the Wild Life Protection Act and after examination of the witnesses charge

under section 9, 27(1), 29 and 31 of Wild Life Protection Act was framed against both the accused and the same was read over and explained to them and they pleaded not guilty. After framing charge, the witnesses were recalled and further cross-examined. PWs 1 to 5 were examined and Ext.P1 to P3 were marked on the side of the prosecution and after closure of the prosecution's evidence, the accused were questioned under section 313 of the Code of Criminal Procedure, and they denied all the incriminating circumstances brought against them, in the prosecution evidence. They have further stated that they have not committed any offence and they have been falsely implicated in the case. First accused had stated he was arrested from Kumily town and he has been falsely implicated in the case. No defence evidence was adduced on their side. After considering the evidence on record, the trial court found both the accused guilty under section 9, 27(1), 29 and 31 of Wild Life Protection Act and convicted them thereunder and sentenced them to undergo rigorous imprisonment for six months under section 9 of the Act and further sentenced to undergo rigorous imprisonment for six months under section 27 (1) of the Act and further sentenced to undergo rigorous imprisonment for one year and also to pay a fine of Rs.2000/- each in default to undergo rigorous imprisonment for four

months under section 27(1) of the Act and further sentenced to undergo rigorous imprisonment for six months under section 31 of the Act and directed the sentences to run concurrently. Period of detention already undergone by them was directed to be given set off under section 428 of the Code of Criminal Procedure. Aggrieved by the same, both the accused filed Crl. Appeal No.174/2001 before the Sessions Court, Thodupuzha, which was made over to Additional Sessions Court (Adhoc-I), Thodupuzha, for disposal and the learned Additional Sessions Judge allowed the appeal in part, acquitting the second accused, but confirmed the order of conviction and sentence passed by the trial court as against the revision petitioner. Aggrieved by the same, the present revision has been filed by the revision petitioner-first accused before the court below.

5. Heard the counsel for the revision petitioner and the Sri.Madhavankutty, Special Government Pleader for Forests.

6. The counsel for the revision petitioner submitted that there is no evidence to show that the animal said to have been hunted is a nilgiri langur and the doctor who conducted post-mortem examination has not been examined. Further, there is discrepancies in the evidence of PWs 1 to 3 and 5 regarding the manner in which the incident occurred and even as per the allegations, it was the second accused who had

hunted the animal and no offence under section 9 and 29 of the Act will not be attracted as against the revision petitioner and also submitted that the sentence imposed is harsh.

7. On the other hand, Sri.Madhavankutty, Special Government Pleader for Forests appearing for the respondent submitted that the courts below have concurrently found that the case against them has been proved. Further, the revision petitioner holding a gun in the Wild Life Sanctuary and in fact, the sentence imposed is less for each offence the minimum sentence ought to have been provided, which has not been done in this case and no interference is called for.

8. The case of the prosecution as emerged from the prosecution witnesses was as follows:-

On 18.12.1995, during morning hours, while PW5 along with PWs 1 to 3, were doing petrol duty in the Periyar Wild Life Sanctuary, they heard the sound of gun shot during night and when they were going along the Wild Life Sanctuary area, they found two persons coming, one person holding a gun and another person holding a carcass of the animal and on seeing the forest officials, they left the gun and carcass of the animal and ran away from the place. They chased them and they caught hold of the first accused who is the revision petitioner herein and the second accused ran away from the place. The

gun was seen in the possession of the revision petitioner and according to the prosecution, carcass was found in the possession of the second accused and he was also wearing a headlight at that time. They could not arrest the second accused and they seized the gun and the carcass of the animal, which was later identified by them as karimkurangu (nilgiri languor) as per Ext.P1 mahazar and they arrested the first accused and came to the office and prepared Ext.P2 occurrence report. When first accused was questioned, it was revealed that it was second accused had fired the animal and the gun belongs to him. Thereafter the investigation was conducted by PW4, who completed the investigation and submitted the Form-II complaint, before the court.

9. Though, a contention was raised in the revision petition as one of the grounds that PW4 and 5, are not competent to detect and conduct investigation, at the time, when the case was argued, when a notification in this regard was pointed out, the counsel for the revision petitioner also conceded for the same. So, the detection and investigation conducted by PWs 4 and 5 is perfectly valid and that will not vitiate the prosecution.

10. PWs 1 to 3 and 5, have categorically stated that they have seen first accused along with another person, who

was carrying the carcass of the animal and first accused holding the gun and on examination it was found that there was a small bag tied in his waist, which contained firing materials also. Ext.P3 notification will go to show that the place from where the incident occurred is within the Periyar Wild Life Sanctuary. Once, it is proved by the prosecution that accused persons were found inside the Wild Life Sanctuary along with weapon used for hunting and also with the animal hunted, then it is for him to rebut the same that he was not present there and he would have to explain the circumstance under which he came there. Further, revision petitioner had no case that he was having any permission to enter the Sanctuary and possess the animal as well. The nilgiri langur has been included as Item No.25A in Part-I of Schedule I of the Wild Life Protection Act. Merely because, the second accused had really hunted the animal is not a ground to take away the first accused from the purview of the provisions of the Act. Both of them went to the forest for that purpose and the gun belongs to the revision petitioner and he had provided the firing materials and with his aid that the second accused had hunted the animal. So, under the circumstances, it can only be presumed that both were responsible for the hunting and for that purpose both have entered the Wild Life Sanctuary for which they have no

permission. So, under the circumstances, courts below were perfectly justified in convicting the revision petitioner for the offence under section 9, 27(1), 29 and 31 of the Wild Life Protection Act.

11. It is true that Proviso to Section 51, the penal provision for the offences as it then stood provides a minimum sentence of one year and a fine of Rs.5000/-. It is true that for the offence under section 9, the court below ought to have provided one year minimum imprisonment and a fine of Rs.5000/-. But for the offence under section 29 a minimum punishment of one year has been provided and even assuming that section 9 also deserves a minimum punishment of one year, since, court below had directed the sentences to run concurrently, there will be no change even if the sentence provided for the other offences is less. So, considering the circumstances, court below had shown the maximum leniency in awarding the sentence also, which does not require any interference. So, the revision lacks merits and the same is liable to be dismissed.

In the result, the revision petition is dismissed. Office is directed to communicate this order to the concerned court immediately.

K.RAMAKRISHNAN, JUDGE