

HIGH COURT OF CHHATTISGARH, BILASPUR

Criminal Revision No. 78 of 2005

Judgment reserved on: 21.10.2016

Judgment delivered on: 03.11.2016

Keshav Netam, Son of Shri Gudaha, Aged about 40 years, resident of Pujaripara Chowki, Makdi, P.S. Kondagaon, District Bastar (C.G.)

---- Applicant

Versus

State of Chhattisgarh through Police Station Kondagaon, Chhattisgarh

---- Respondent

For Applicant	:-	Mr. Avinash K. Mishra, Advocate
For Respondent	:-	Ms. K. Tripti Rao, Panel Lawyer

Hon'ble Shri Justice Anil Kumar Shukla

C A V Judgment

1. This revision is directed against the judgment dated 21.12.2004 passed by Third Additional Sessions Judge Bastar, Jagdalpur in Criminal Appeal No.135/2002 affirming the judgment of conviction and order of sentence dated 23.09.2002 passed by the Judicial Magistrate, First Class, Kondagaon in Criminal Case No. 728/2000 whereby learned Judicial Magistrate after holding the applicant guilty for commission of offence punishable under section 49(B) read with section 51(1)(A) of the Wild Life Protection Act, 1972 sentenced him to undergo rigorous imprisonment for 1 year and to pay fine of Rs. 5000/-.
2. Being aggrieved by both the judgments, the applicant has filed the present Criminal revision.
3. The prosecution case, in short, is that on 21.07.2000, P. L. Noutiyal, was posted as Assistant Sub Inspector in Police Station - Kondagaon. On that date, he received an information from the

informant (*mukhbir*) that the applicant Keshav Netam had illegally kept the skin of wild animal which he wanted to sell between village Makdi and Belgaon. After receiving the information he registered the same in *Rojnamcha Sanha*. Assistant Sub Inspector P. L. Noutiyal (PW-4) along with the staff reached to the spot and in presence of witness Dayaluram (PW-1) and Bhivram (PW-3) notice was given to him under section 91 of Cr.P.C. (Ex.P-7) regarding search and illegal possession of skin of a wild animal (Leopard) and informing him to produce relevant documents, if any. The skin of leopard was seized vide Ex.P-2 from the possession of the applicant and he was arrested on the spot. On the basis of seizure memo vide (Ex.P- 2), Dehati Nalishi (Ex.P-5) and First Information Report (Ex.P-9) were registered in Police Station Kondagaon.

4. After completion of the investigation, charge sheet was filed against the applicant in the Court of Judicial Magistrate First Class, Kondagaon, who conducted the trial and convicted the applicant under section 49(B) read with section 51(1)(A) of the Wild Life Protection Act, 1972 and sentenced him to undergo rigorous imprisonment for 1 year and to pay fine of Rs. 5000/-.
5. Aggrieved by the judgment of conviction and order of sentence passed by the Judicial Magistrate First Class Kondagaon, the applicant filed an appeal before the court of third Additional Sessions Judge, Jagdalpur which was also dismissed by the learned Third Additional Sessions Judge Bastar, Jagdalpur.
6. Learned counsel for the applicant argued that the finding recorded on the basis of evidence adduced by the prosecution is not in accordance with the law and suffers from legality, validity and correctness, therefore, the findings recorded by both the Courts is not

sustainable and the applicant deserves to be acquitted from the charges levelled against him.

7. On the other hand Ms. K. Tripti Rao, learned Panel Lawyer appearing on behalf of the State supported the impugned judgment passed by the learned trial Court as well as the Appellate Court and submitted that there is no illegality or infirmity in the impugned order and the revision may be dismissed at the threshold.
8. The question for consideration before this Court is - "Whether the findings of the First Appellate Court suffers from any illegality, perversity or is valid and correct?"
9. I have heard learned counsel for the parties and perused the impugned judgment as also the record of the Courts below.
10. The statement of the witness namely R.K. Tiwari(PW-1) Range Officer, Forest Department, Kondagaon was recorded before the Court below on 30.07.2000 and he has stated in his statement that he examined the skin of Leopard vide (Ex.P. 1) in which he found the following facts:-
 - (i)- The skin was of a wild animal (leopard)
 - (ii)- The length of the skin from head to tale was 7 feet and 5 inch, the width of chest was 31 inch. The length of tale was 2 inch, the length of paws was 16 inch and the 18 inch. This witness in his cross-examination has stated that the colour of skin of leopard was golden yellow like the colour of normal leopard.
11. Regarding the seizure of skin of wild animal from the possession of the applicant, both the witnesses (PW-2) Dayaluram and (PW-3) Bhivram have not supported the case of prosecution. Both these witnesses have been declared hostile by the prosecution and even on cross-examination, no material in support of the prosecution has come out. However, from the evidence collected by the prosecution,

it is evident that the skin of wild animal recovered from the possession of the applicant was of a wild animal i.e. Leopard.

12. The main witness of the case (PW-4) P. L. Noutiyal Assistant Sub Inspector who deposed that the information was received from the informant that the applicant had illegally kept skin of wild animal which he wanted to sell between village Makdi and Belgaon. He prepared Dehati nalshi vide (Ex.P-5) which was certified. In para-3 of his deposition he has stated that on 21.07.2000 between Makdi and Belgaon, at about 01:00 O'clock, he seized a skin of leopard in a plastic bag from the possession of the applicant, the cost of which was Rs. 1,00,000/-. The skin of wild animal was taken out one month prior to death of the animal. Notice (Ex. P-7) was given under section 91 of Cr.P.C to the applicant regarding search and seizure. Thereafter, in presence of the witnesses, Dayaluram (PW-2), Bhivram (PW-3), R.K. Mishra constable (PW-5) statement was recorded and FIR (Ex.P.-9) was registered against the applicant.
13. In the cross-examination, it has been stated by the witnesses that at the time of recovery of the skin of wild animal, there was no one present except the applicant and the witnesses (PW-2 and PW-3). The witnesses (PW-5) R.K. Mishra, Constable and (PW-6) Puran Singh Baghel, Head constable, in their cross examination have supported the statement of (PW-4) P. L. Noutiyal, Assistant Sub Inspector. The statement of both these witnesses have remained unshaken even in their cross-examination. Only for the reason that these witnesses are police personnel, there is no reason to disbelieve their statement.
14. In these circumstances, the learned trial Court as well as the learned Appellate Court have not committed any illegality in convicting the applicant under section 49(B) read with section 51(1)(A) of the Wild

Life Protection Act, 1972. So far as the sentence is concerned the applicant has been convicted under section 49(B) read with section 51(1) (A) of the Wild Life Protection Act and sentenced him to undergo one year rigorous imprisonment and to pay fine of Rs. 5000/-. The sentence of one year imprisonment is the minimum sentence which can be awarded under the aforesaid section. The Applicant was aged about 40 years at the time of commission of the offence, and the offence relates to killing of wild animal there has been a great decline in the number of wild animals because of illegal hunting, and further there appears no reason why the Applicant should be awarded punishment even lesser to the minimum sentence which can be awarded under the aforesaid Sections, I am of the considered opinion that the Courts below have not committed any illegality or infirmity in convicting the appellant under section 49(B) read with section 51(1)(A) of the Wild Life Protection Act, 1972.

15. Consequently, the revision being devoid of substance is accordingly dismissed.

Sd/-

(Anil Kumar Shukla)
Judge