



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Dated: 28.11.2019

CORAM

THE HONOURABLE MR. JUSTICE B.PUGALENDHI

Crl.A(MD)No.348 of 2009

State rep. by
The Forest Range Officer,
Azhagiya Pandipuram,
Kanyakumari District.

.. Appellant/Complainant

Vs.

1.Sampson Chellakkan

2.Yesudoss

.. Respondents/Accused 1&2

PRAYER: Criminal Appeal filed under Section 378 of the Criminal Procedure Code as against the judgment of acquittal passed by the learned Special Judge [Forest Cases], Nagercoil, in C.C.No.6 of 2008, dated 05.06.2009.

For Appellant : Mr.K.K.Ramakrishnan
Additional Public Prosecutor

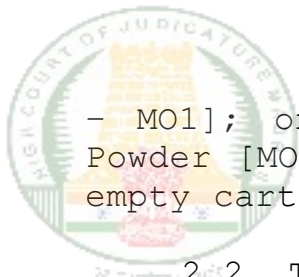
For Respondents : Mr.T.S.R.Venkatramana
Legal Aid Counsel

JUDGMENT

This Criminal Appeal is preferred by the complainant / State as against the judgment passed by the learned Special Judge [Forest Cases], Nagercoil, in C.C.No.6 of 2008, dated 05.06.2009, in and by which, the learned Judge has acquitted the respondents / accused from the charges framed against them.

2. The brief facts of the case, in a nutshell, are as follows:

2.1. On 08.04.2004, at about 05.30 pm, when PWs.1, 2, 4 and another Forest Watcher were on patrol duty at Vattaparai in Keeriparai in Veerapuli Reserved Forest, they found the accused persons, namely, Sampson Chellakkan - A1, who was a Doctor by profession; Yesudoss - A2 [A1's assistant], along with one Jayapal and Minor Rajkumar - A3 trespassed into the Reserve Forest area, without permission, using a Jeep bearing No.TN-74-D-1820. On inspection, they were found in possession of carcasses of two Indian Giant Squirrels; one SBBL Gun [Single Barrel Breach Loading



- MO1]; one SBML Gun [Single Barrel Muzzle Loading - MO2]; Gun Powder [MO3]; A box containing Aluminium bullets [MO4]; 12 nos. of empty cartridges [MO5].

2.2. The prosecution agency seized the carcasses of Squirrels; Guns; Bullets along with the Jeep [MO7] and arrested the accused persons. The appellant, namely, the Forest Range Officer, Azhagiya Pandipuram, Kanyakumari District, conducted the investigation and laid the charge sheet against the accused persons / respondents and against Minor Rajkumar [A3], for the offences under Section 21 (d) of Tamil Nadu Forest Act, 1882 and Sections 9, 39(3), 51(1) and 52 of Wild Life (Protection) Act, 1972.

2.3. The case was tried by the Special Court (Forest Offences Cases), Nagercoil, in C.C.No.6 of 2008. Since the third accused, namely, Rajkumar, was a minor at the relevant point of time, the case as against him was split up and sent to Juvenile Board, Tirunelveli.

2.4. Before the trial Court, the prosecution has examined 4 witnesses and marked 10 documents, besides 7 material objects. PW1 is the Forester, PW2 is the Forest Guard and PW4 is the Forest Ranger. They speak about the patrol duty and the arrest of the accused persons as well as the recovery of the material objects, including the carcasses of two Indian Giant Squirrels. PW3 is the Doctor, who conducted postmortem on the carcasses and issued the postmortem certificates [Exs.P4 & P5].

2.5. After the prosecution witness was closed, the incriminating materials were put to the accused under Section 313 Cr.P.C. and the accused denied the same. Though the accused has stated that there are evidences on their side, they have not let-in any evidence, but has marked a document [Ex.D1] addressed by the prosecution agency to the Court seeking permission to take photographs of the carcasses of the Squirrels and to bury the same. In conclusion of the trial, the trial Court has acquitted the respondents / accused and as against the same, the prosecution has preferred this appeal.

3. Since there was no representation for the respondent / accused, this Court by order dated 31.08.2019 directed the Registry to engage a legal aid Counsel for the respondent. Accordingly, the High Court Legal Services Committee appointed Advocate Mr.T.S.R.Venkatramana, who is having a bar standing of more than 40 years, as legal aid Counsel to defend the respondent / accused.

4. Mr.K.K.Ramakrishnan, learned Additional Public Prosecutor appearing for the appellant / State has made his submissions on



the following lines:

4.1. As per Form-H, the ammunitions were recovered from the jeep [MO7] of the accused persons along with the carcasses of two Squirrels. The animals and the weapon were seized from the vehicle and it is obvious that the pellets recovered are from the said weapon.

4.2. The accused did not establish any enmity with the forest department. The defence taken by the accused with regard to the enmity between him and his labour or the neighbouring estate owner has nothing to do with Forest Department. The appellant has no reason to have enmity with the accused person and hence, the act of the appellant / State is not a vengeance attempt.

4.3. The benefit of Section 25 of Indian Evidence Act, 1872, that primarily applies to forest officers may be extended to the present case as the entire crime and the consequent events occurred in the forest area where independent witnesses are hardly available.

4.4. It is highly important to note that Indian Giant Squirrel is the only brown Squirrel in the forest area. The authenticated population distribution of this species is reported from this region especially Kanniyakumari. The species is clearly recorded by the Veterinary Assistant Surgeon along with the dimensions of the skull, tail and trunk in his postmortem report.

4.5. The findings of the Veterinary Assistant Surgeon in the postmortem report is vital. Without making any inference on *Rigor mortis* in the postmortem report, the Veterinary Surgeon had made imaginative deposition which is clearly an 'after thought' with vested interest. Studies have confirmed that *Rigor mortis* will persist until it is disrupted either by physical manipulation or early decomposition, which fragments the myosin and actin filaments. As the carcass was under continuous physical handling, the process of *Rigor mortis* might have got disrupted that would have resulted the condition of the carcass. But, the Veterinary Surgeon leaving such a significant inference is a failure of duty and he is answerable for not making it on record by making an oral deposition in this regard much later after the scene.

4.6. The Veterinary Assistant Surgeon had been influenced by the first and second accused and the Veterinary Assistant Surgeon had succumbed to it. The Surgeon had denied his own report which is a clear scene of being influenced.

Therefore, the learned Additional Public Prosecutor prays for interference.



5. In reply, Mr.T.S.R.Venkatramana, learned Counsel for the respondent / accused made his submissions as follows:

5.1. The learned Special Judge, Forest Cases, Nagercoil, has discussed the case thoroughly and thereafter, acquitted the accused. In a case of this nature, the prosecution has to prove

- i) that the accused trespassed into the Reserve Forest;
- ii) that two Giant Squirrels were killed;
- iii) that the accused persons killed those animals;
- iv) that the animals were killed by the accused using the weapons seized; and
- v) that the dead animals were the one that were shoot and killed by the accused.

The learned Judge rejected the case of the prosecution after considering all those aspects and acquitted the accused.

5.2. With regard to trespass, the learned Counsel would submit that it is an admitted case that the entry into the reserve forest is regulated by a Check Post and none can trespass into the reserve forest byepasing the check post. All the ingress and egress vehicles into the reserve forest are always recorded at the check post. No evidence was let-in to prove the trespass and the accused were not charge sheeted for trespass into the forest land.

5.3. The forest officials are alleged to have recovered the corpus of two dead Squirrels from the Jeep of the accused and according to them, the animals were shot dead at about 04.30 pm, whereas, Dr.Babu Kollapana, who conducted the postmortem, in his evidence, has stated that postmortem was conducted at about 08.15 pm., ie., within 03.45 hours of the alleged shooting and that the body was in decomposing stage.

5.4. The Doctor further stated that the animals were not shot within 4 hours of the postmortem, but were killed atleast 48 hours before the alleged shooting. So it is very clear that the animals brought by the forest department were not having the identification mark normally found and that the head of the Giant Squirrels was not found on the dead animals.

5.5. The prosecution has not secured the blood sand from the place of the alleged occurrence and the alleged cause of death by the weapon of the accused was not proved by examining the ballistic expert. Moreover, both the animals were not shot by the same weapon and the bullets were not connected with the weapon of the accused.

5.6. The Forest Department has taken permission from the Court to take photos of the dead animals, but no photos were taken and



produced in the Court, to erase the fact that the animal body was in a highly decomposed state.

5.7. According to the prosecution, they arrested the first accused [Doctor] on 08.04.2004 (Thursday) evening, but he was not taken to the nearby Magistrate Court and was taken to Nagercoil and kept in custody in a shed 25 kms away from the Court, where he was produced later. He was produced before the Court only on the next day evening, ie., Friday evening, with an intention to detain him during the weekend.

5.8. In fact, the first accused is having a boundary issue with one Santhosh, Balakunnan and the Forest Department is supporting them. Apart from that, the first accused / Doctor was a key witness in a rape cum murder case, in which the accused was employed by Santhosh, Balakunnan, after his dismissal by the Doctor. The first accused has clearly spoken about the motive in his 313 statements.

Therefore, he prays for dismissal of this appeal.

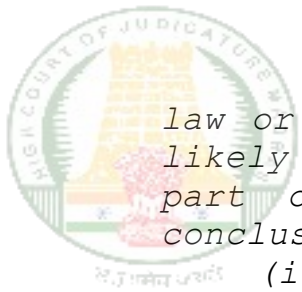
6. Heard the learned Counsel appearing on either side and perused the documents placed on record.

7. Before dwelling into the merits of the case, since the appeal is filed as against an order of acquittal, it is necessary to bear in mind the principles governing the appeal against acquittal, as laid down by the Hon'ble Supreme Court in **V. Sejjappa v. State [(2016) 12 SCC 150]**, wherein, the Hon'ble Supreme Court has followed its own decision in **Muralidhar v. State of Karnataka [(2014) 5 SCC 730]**. The guidelines issued in the said decision are extracted hereunder:

"23. ... (i) There is presumption of innocence in favour of an accused person and such presumption is strengthened by the order of acquittal passed in his favour by the trial court;

(ii) The accused person is entitled to the benefit of reasonable doubt when it deals with the merit of the appeal against acquittal;

(iii) Though, the powers of the appellate court in considering the appeals against acquittal are as extensive as its powers in appeals against convictions but the appellate court is generally loath in disturbing the finding of fact recorded by the trial court. It is so because the trial court had an advantage of seeing the demeanour of the witnesses. If the trial court takes a reasonable view of the facts of the case, interference by the appellate court with the judgment of acquittal is not justified. Unless, the conclusions reached by the trial court are palpably wrong or based on erroneous view of the



law or if such conclusions are allowed to stand, they are likely to result in grave injustice, the reluctance on the part of the appellate court in interfering with such conclusions is fully justified; and

(iv) Merely because the appellate court on reappreciation and re-evaluation of the evidence is inclined to take a different view, interference with the judgment of acquittal is not justified if the view taken by the trial court is a possible view. The evenly balanced views of the evidence must not result in the interference by the appellate court in the judgment of the trial court."

8. In yet another decision in the case of **Chandrappa Vs State of Karnataka [(2007) 4 SCC 415]**, the Hon'ble Supreme Court has laid down the following general principles regarding powers of the appellate Court while dealing with an appeal against an order of acquittal:

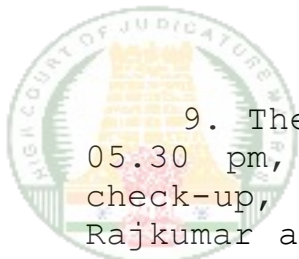
"(1) An appellate Court has full power to review, re-appreciate and reconsider the evidence upon which the order of acquittal is founded.

(2) The Code of Criminal Procedure, 1973 puts on limitation restriction or condition on exercise of such power and an appellate Court on the evidence before it may reach its own conclusion, both on questions of fact and of law.

(3) Various expressions, such as, 'substantial and compelling reasons', 'good and sufficient grounds', 'very strong circumstances', 'distorted conclusions', 'glaring mistakes', etc are not intended to curtail extensive powers of an appellate Court in an appeal against acquittal. Such phraseologies are more in the nature of 'flourishes of language' to emphasise the reluctance of an appellate Court to interfere with acquittal than to curtail the power of the Court to review the evidence and to come to its own conclusion.

(4) An appellate Court, however, must bear in mind that in case of acquittal, there is double presumption in favour of the accused. Firstly, the presumption of innocence is available to him under the fundamental principle of criminal jurisprudence that every person shall be presumed to be innocent unless he is proved guilty by a competent Court of law. Secondly, the accused having secured his acquittal, the presumption of his innocence is further reinforced, reaffirmed and strengthened by the trial Court.

(5) If two reasonable conclusions are possible on the basis of the evidence on record, the appellate Court should not disturb the finding of acquittal recorded by the trial Court."



9. The case of the prosecution is that on 08.04.2004 at about 05.30 pm, when the Forest Officials were conducting a routine check-up, they found this respondents / accused along with a minor Rajkumar and another one Jayapal in the reserved forest in a Jeep, bearing Reg.No.TN-74-D-1820 with two Giant Squirrels and ammunitions. A case was registered against the respondents and the minor Rajkumar that they trespassed into Veerapuli Government Reserved Forest and killed two Giant Squirrels and accordingly, committed the offence under Section 21(d) of Tamil Nadu Forest Act, 1882 and Sections 9, 39(3), 51(1) & 52 of Wild Life Protection Act, 1972. The trial Court, in conclusion of the trial, acquitted the respondents / accused from the charges levelled against them, as against which, the prosecution has preferred this appeal.

10. The first accused is a qualified Medical Practitioner, running a Hospital in Krishnan Koil at Nagercoil and the second accused was his Assistant and the minor accused is the son of the first accused. The forest officials recovered the corpse of the Squirrels on 08.04.2004 and forwarded the same for postmortem. PW3, Dr.Babu Kollapana, conducted the postmortem at about 08.15 pm, on 08.04.2004. The postmortem certificates were marked as Exs.P4 & P5.

11. Three bullets were recovered from the Thoracic cavity of the first animal and the cause of the death, according to the Doctor, was due to circulator failure and shock resulting from injury to heart. As regards the second animal, a punctured wound was found on the left side of the rib case, which might have been caused by a fast moving sharp object and according to the Doctor, the death might be due to haemorrhage and shock, resulting from rupture of aorta. The Doctor, in his evidence, has stated that at the time of his examination, the animals were in a decomposed stage and the animals would have died 20 to 30 hours prior to the postmortem. According to the prosecution, the accused killed the animals using their gun on 08.04.2004 at about 04.00 pm and the postmortem was conducted at 08.15 pm on 08.04.2004, within five hours from the alleged commission of offence. But, the Doctor, in his evidence has stated that the animals were found in a decomposed stage and the occurrence would have taken place 20 to 30 hours prior to postmortem.

12. It is the main contention of the learned Counsel for the respondents / accused that the first respondent is a respectable Doctor in that area and he is also having farm lands inside the forest area and having a boundary issue with his neighbour, one Santhosh and Balakunnan and the forest officials, in support of the said individuals, has foisted this false case against this respondent / accused.



13. It is the further contention of the learned Counsel for the respondents / accused that since the case is a foisted one, the prosecution failed to send the recovered bullets for ballistic analysis to establish that the bullets found on the animals are from the one recovered from the accused.

14. Admittedly, the accused were arrested in the reserved forest area and the dead animals along with weapons were recovered from the accused and the Jeep, bearing Reg.No.TN-74-D-1820 was also recovered from the accused on 08.04.2004. But, as stated by the learned Counsel for the respondents / accused, the Forest Department failed to recover the register from the check post to establish their case that the accused entered into the reserved forest area. It is not the case of the Forest Department that there is any other motorable road to enter into the reserved forest, whereas, they have taken a stand that on Thadikarankonam, there is a check post and all the carriage vehicles will be screened with proper entry in the register. But, they are not entering the details of the local residents and the vehicles belonging to persons having immovable property inside the forest area in the register. This explanation by the Forest Department, in the minds of this Court, is not acceptable one.

15. Moreover, the explanation offered by the Forest Department for remanding the accused on Friday evening, though they were arrested on Thursday evening, that in order to avoid public unrest and chaos they had shifted them to Government Timber Depot, is also not sounds good.

16. As stated supra, the evidence of the Doctor [PW3] is very clear that the recovered animals were in a decomposed stage, but that was objected to by the learned Additional Public Prosecutor vehemently that PW3 has been influenced by the accused and there is no such reference in his postmortem report. But, on the other hand, on the side of the accused, a request letter made by the Forest Range Officer to the Magistrate on 09.04.2004 was marked as Ex.D1, wherein, the Forest Range Officer admitted that the recovered dead animals are in decomposed stage and therefore, requested the Court to take photographs of the animals and for burial of the animals. The photographs, which were taken were also not placed before the Court. Though bullets were recovered from the seized dead animals and weapons were also recovered from the accused party, the prosecution has deliberately failed to fix the bullets which were recovered from the animals with the weapons recovered from the accused by a ballistic report.

17. In view of the infirmities noted above and considering the ratio laid down by the Hon'ble Supreme Court on deciding an appeal



against acquittal, this Court is not inclined to interfere with the order of acquittal passed by the trial Court.

In fine, this Criminal Appeal is dismissed.

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Sd/-

Assistant Registrar (CRL.SIDE)

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/ /2020

Sub Assistant Registrar(CS)

gk

To

1.The Special Judge [Forest Cases],
Nagercoil.

2.The Forest Range Officer,
Azhagiya Pandipuram,
Kanyakumari District.

3.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

4.The Section Officer, Criminal Section, (Records)-2 COPIES
Madurai Bench of Madras High Court,
Madurai.

+1 CC to MR.T.S.R.VENKAT RAMANA, Advocate (SR-102354[F] dated
28/11/2019)

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