

Raman Vs. State

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Court : Kerala

Decided On : Jul-26-2013

Judge : Honourable Mr. Justice B.Kemal Pasha

Appellant : Raman

Respondent : State

Judgement :

IN THE HIGH COURT OF KERALA AT ERNAKULAM PRESENT: THE HONOURABLE MR. JUSTICE B.KEMAL PASHA FRIDAY, THE 26TH DAY OF JULY 2013 4TH SRAVANA, 1935 Crl.Rev.Pet.No. 1309 of 2001 ()
----- AGAINST THE ORDER/JUDGMENT IN Crl.Appeal 99/1997 of SESSIONS COURT,THODUPUZHA AGAINST THE ORDER/JUDGMENT IN CC 170/1994 of JUDICIAL FIRST CLASS MAGISTRATE'S COURT-I, THODUPUZHA REVISION PETITIONER/APPELLANT/ACCUSED :

----- 1. RAMAN, S/O. KUTTAPPAN , MYLAPUZHA BHAGAM, KANJIKUZHI VILLAGE, THODUPUZHA TALUK.

2. SOMAN, S/O. DAMODRAN, THYPARAMBIL MYLAPUZHA, -DO- -DO- 3. RAJU, S/O. VASU, PERUMBARAMURIYIL, MYLAPUZHA BHAGAM -DO- -DO-. BY ADVS.SRI.T.I.ABDUL SALAM SRI.P.CHANDY JOSEPH RESPONDENTS/RESPONDENTS/COMPLAINANT :

----- 1. STATE OF KERALA,

REPRESENTED BY THE PUBLIC PROSECUTOR, THODUPUZHA.

2. FOREST RANGE OFFICER, THODUPUZHA. BY PUBLIC PROSECUTOR SRI. SREEJITH V.S. THIS CRIMINAL REVISION PETITION HAVING BEEN FINALLY HEARD ON 26-07-2013, THE COURT ON THE SAME DAY PASSED THE FOLLOWING: DSV/- B. KEMAL PASHA, J ----- Crl.R.P.No. 1309 of 2001 ----- Dated this the 26th day of July, 2013

ORDER

Petitioners are accused in C.C.No.170 of 1994 of the Judicial First Class Magistrate's Court-I, Thodupuzha. They were convicted under Section 27 (1) (e) (iii) and Section 27 (1) (e) (iv) of the Kerala Forest Act and they were sentenced to undergo simple imprisonment for one year each and to pay a fine of `1,000/- each, in default, to undergo simple imprisonment for three months under Section 27 (1) (e) (iii) and sentenced to undergo simple imprisonment for one more year each for the offence under Section 27 (1) (e) (iv) of the Kerala Forest Act. The petitioners challenged the conviction and sentence before the Sessions Court, Thodupuzha through Criminal Appeal No.99 of 1997. The learned Sessions Judge set aside the conviction and sentence passed by the trial Crl.R.P.No. 1309 of 2001 :-2:- court for the offence under section 27 (1) (e) (iii) of the Kerala Forest Act and confirmed the conviction and sentence for the offence under Section 27 (1) (e) (iv) of the Kerala Forest Act.

2. The prosecution case is that on 05.03.1993, the petitioners trespassed into the reserve forest at Mylapuzha of Keeriplavu beat of Thodupuzha Range which is a notified reserve, and felled five Pali trees, one Maruthi tree and one Jack tree, sliced it and converted into fire wood and attempted to remove it. The approximate cost of the timber and fire wood was assessed as `550/-. According to the Investigating Officer, the Government has sustained a loss of `1,000/-.

3. On the side of the prosecution, PW1 and PW2 were examined and Exhibits P1 to P3 were marked. No defence evidence was adduced.

4. Heard the learned counsel for the petitioners and Crl.R.P.No. 1309 of 2001 :-3:- the learned Public Prosecutor. The learned counsel for the petitioners argued that

this is a case in which the petitioners were not placed under arrest and PW1 had prepared Exhibit P1 mahazar and allegedly sent away the petitioners out of the reserve forest. The said evidence of PW1 has no corroboration at all. Even though two other witnesses were cited, only one witness was examined as PW2. According to the learned counsel for the petitioners, there is no sufficient evidence to connect the petitioners with the offence alleged.

5. According to PW1, the Forest Guard of the Thodupuzha Forest Range, on 05.03.1993, while he along with CW1 were on beat duty, they could see the petitioners coming through the reserve forest by carrying one bundle each of fire wood as headload. When they were questioned, they informed them that they had felled five Pali trees, one Maruthi tree and one CrI.R.P.No. 1309 of 2001 -:4:- Jack tree in the adjacent reserve, and the said fire wood was made by slicing the said trees. Four chains towards west, there were seven stumps of the trees out of which five were that of Pali trees, one of the Maruthi tree and the other of the Jack tree. PW1 prepared Exhibit P1 mahazar and affixed his signature in it. As he knew the petitioners, they were sent out of the reserve. Exhibit P2 is the notification showing the boundaries of the reserve. He prepared Exhibit P3 Form-I report.

6. PW2 was the Velloor Section Forester of Thodupuzha Range as on 06.03.1993. According to him, he verified the contents of Exhibit P1 and also the scene of occurrence. He certified the correctness of Exhibit P1. The said certificate is marked as Exhibit P1(a). This is the evidence, on which the trial court had entered into a conviction, which was confirmed by the Appellate Court. It seems that CW1, who was the other occurrence CrI.R.P.No. 1309 of 2001 -:5:- witness, who was allegedly present along with PW1, was not examined. This is a case wherein, the petitioners were not placed under arrest. If as a matter of fact, the petitioners were arrested from the spot, it could have been shown that they had trespassed into the forest. It seems that both the courts below have relied on mere Exhibit P1 alone for entering a conviction. Especially, when the petitioners were not arrested, the testimony of PW1 ought to have obtained corroboration at least from another witness. In the absence of any corroborative piece of evidence, it is not at all safe to convict and sentence the petitioners based on the sole testimony of PW1, that too very vague. It seems that the petitioners are behind this case for the last more

than twenty years. In the absence of any corroborative piece of evidence, I am of the view that the conviction and sentence passed by the courts below are liable to be set aside. Crl.R.P.No. 1309 of 2001 -:6:- In the result, this Criminal Revision Petition is allowed by setting aside the conviction and sentence passed by the courts below. Their bail bonds shall stand cancelled, and they are set at liberty forthwith. Sd/- B. KEMAL PASHA, JUDGE. // True Copy // P.A. To Judge DSV/-

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