

Murukan Vs. State of Kerala

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Court : Kerala

Decided On : Oct-24-2013

Judge : Honourable Mr.Justice K.Harilal

Appellant : Murukan

Respondent : State of Kerala

Judgement :

IN THE HIGH COURT OF KERALA AT ERNAKULAM PRESENT: THE HONOURABLE MR.JUSTICE K.HARILAL THURSDAY, THE 24TH DAY OF OCTOBER 2013 2ND KARTHIKA, 1935 CrI.Rev.Pet.No. 1531 of 2013 ()
----- CRL.A802001 of ADDL. SESSIONS COURT, THODUPUZHA CC1221999 of JFCM COURT, DEVIKULAM REVISION PETITIONER/APPELLANT/ACCUSED NO.1:
----- MURUKAN, S/O.VELLACHAMY, HOUSE NO.114, NOORUVEEDU BHAGAM, 8TH WARD, MARAYOOR VILLAGE IDUKKI DISTRICT. BY ADV. SRI.SOORAJ T.ELENJICKAL RESPONDENTS/RESPONDENTS/COMPLAINANT & STATE:
----- STATE OF KERALA, THROUGH RANGE OFFICER, MARAYOOR, REP.BY PUBLIC PROSECUTOR HIGH COURT OF KERALA, ERNAKULAM. BY PUBLIC PROSECUTOR SMT.BINDU GOPINATH THIS CRIMINAL REVISION PETITION HAVING BEEN FINALLY HEARD ON 24-10-2013, THE COURT ON THE SAME DAY PASSED THE FOLLOWING: OKB. K.HARILAL, J.

----- Dated this the 24th day of October, 2013

ORDER

The revision petitioner is the first accused in C.C.No.122/99 on the files of the Judicial First Class Magistrate's Court, Devikulam. He was prosecuted for the offence punishable under Section 27(1)(e)(iii) and (iv) of the Kerala Forest Act. The allegation against the revision petitioner is that the accused, who were 2 in numbers, trespassed into the Reserve Forest and felled one sandal wood tree causing a loss to the tune of Rs.9,000/- to the Government. Thus, the accused have committed the offence as referred above. After trial, the learned Magistrate found the revision petitioner guilty of the said offence and he was sentenced to undergo simple imprisonment for six months and to pay a fine of Rs.2,000/- and in default to undergo simple imprisonment for two months. Aggrieved by this, though he had preferred Crl.A. No.80/01, the appellate court also, after re-appreciating the Crl.R.P.1531/13 :2: evidence on record, confirmed the conviction and sentence as such, without any interference. This Revision Petition is filed challenging the concurrent findings of conviction and sentence.

2. Though this Revision Petition has been filed on various grounds assailing the findings of guilty, the learned counsel for the revision petitioner mainly raised three points. The learned counsel for the revision petitioner submits that the evidence of PWs 1 and 2 are not trustworthy and reliable to base conviction. The second point is that the material object was not recovered to prove the allegation against the accused. The short point is that no independent witness was examined to prove the prosecution case. It is also contended that the prosecution is not sure about the exact boundary of the reserve forest to which the accused allegedly trespassed.

3. Per contra, the learned Public Prosecutor advanced arguments to justify the impugned judgment under challenge. The learned Public Prosecutor contends that the evidence of PWs 1 to 3 are mutually corroborative Crl.R.P.1531/13 :3: and reliable to base conviction. The short question that arises for consideration in this Revision Petition is whether there is any illegality or impropriety in the impugned

judgment under challenge. Put it differently, whether the prosecution has successfully proved the charge against the accused beyond reasonable doubt.

4. The prosecution evidence consists of the oral evidence of PWs 1 to 3 and Exts.P1 to P3. The accused pleaded not guilty. But, no evidence either oral or documentary was produced before the court. PW1 would swear that the incident had happened in the sandal wood reserve forest No.51, while they were in discharge of their patrol duty and the second accused was found running away with a saw and the first accused was caught hold of with a chopper. The chopper seized from the possession of the revision petitioner is marked as MO1. The said evidence of PW1 is corroborated by the evidence of PW2 and PW3, who accompanied PW1 at the detection of the offence. It is further corroborated by Ext.P1 mahazar and Ext.P2 Form-I report, which is prepared contemporaneously CrI.R.P.1531/13 :4: and immediately after the detection of the offence. The court below evaluated PWs 1 to 3 and found that their evidence is mutually corroborative, reliable and trustworthy so as to base conviction on the revision petitioner. Therefore, I reject the contention that the evidence of PWs 1 to 3 official witnesses is not sufficient to base conviction and I do not find any kind of perversity in the appreciation of evidence of PWs 1 to 3.

5. Coming to the second point regarding the boundary of the reserve forest, the argument of the counsel for the revision petitioner is that the evidence of PWs 1 to 3 are inconsistent and unreliable. It is noticeable that the prosecution has produced Ext.P3 notification describing the boundary of reserve forest. Therefore, in view of Ext.P3 notification, I am of the opinion that it is for the accused to show that the said place of occurrence will not come within the boundary described in the notification. To that extent, absolutely there is no evidence from the part of the accused. In the absence of any other material contrary to Ext.P3 notification, I am of the opinion that the prosecution CrI.R.P.1531/13 :5: has discharged the burden of proving that the offence was occurred within the reserve forest.

6. Coming to the absence of the independent witness, admittedly, the offence was occurred in the thick forest area, a place where entry of the public is prohibited. In view of the prohibition of public, I am of the opinion that it is not possible to get

independent witnesses to corroborate the evidence of official witnesses. Moreover, the settled legal position is that the evidence of official witnesses, even though it is a single official witness, can be relied on for basing the conviction, if the evidence of official witness is trustworthy and reliable. The corroboration is not the rule and it is a rule of prudence only. The legal position is well settled by the Apex Court in Dalip Singh Vs. State of Punjab (AIR 1953 SC364. Therefore, I am inclined to reject all contentions raised in this Revision Petition and I concur with the concurrent findings of conviction of the courts below.

7. Coming to sentence, the learned counsel for the revision petitioner submits that the sentence imposed on CrI.R.P.1531/13 :6: the revision petitioner is disproportionate, excessive and harsh. The petitioner is not involved in any other offence. The only allegation, even if it is punishable, is that he trespassed into the reserve forest only, and even according to the prosecution, he has not made any attempt to cut and remove the trees. In view of the above submission, I called for the report of the Probation Officer, under Section 4 of the Probation of Offenders Act, and he submitted a report, after due enquiry, as provided under Section 4 of the Probation of Offenders Act. Going by the report, it could be seen that the Probation Officer observed that the accused is a man of good conduct in all respect and he has never been an accused in any other offence and the Probation Officer recommended that this is a fit case to be dealt with under the application of Section 4 of the Probation of Offenders Act, 1958, and the accused shall be released on probation of good conduct with sureties for a suitable period which the court deems fit.

8. Consequently, I confirm the sentence imposed by the trial court and confirmed by the appellate court. But, I CrI.R.P.1531/13 :7: am inclined to apply Section 4 of Probation of Offenders Act, 1958, and the accused shall be released on probation to good conduct with sureties for a period of three years. The revision petitioner/accused is directed to be released on his entering into a bond with two solvent sureties each to appear and receive sentence when called upon during the period of three years and, meanwhile, he shall keep the peace and be of good behaviour. It is further ordered that the revision petitioner/accused shall remain under the supervision of the District Probation Officer during the above period of

three years and shall appear before the concerned Probation Officer at least once in three months during the above period. With the above direction, the revision petitioner/accused shall execute a bond within one month from today in the trial court. The Revision Petition is allowed in part. Sd/- (K.HARILAL, JUDGE) okb.

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