

Asim @ Asham Vs. The State

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Court : Karnataka

Decided On : Nov-26-2019

Judge : K.Somashekar

Appeal No. : CRL.RP 1194/2011

Appellant : Asim @ Asham

Respondent : The State

Judgement :

1 R IN THE HIGH COURT OF KARNATAKA AT BENGALURU DATED THIS THE26H DAY OF NOVEMBER, 2019 BEFORE THE HONBLE MR. JUSTICE K.SOMASHEKAR CRIMINAL REVISION PETITION NO.1194 OF2011

BETWEEN :

1. Asim @ Asham S/o Pathan Basheersam Aged about 28 years Occ: Coolie.
2. Dadapeer S/o Tipusab Aged about 25 years Occ: Coolie. S/o Chinnappaiah Aged about 28 years Occ: Coolie 3. Muruga All are R/o Basalikatte Siddapura, Bhadravathi Taluk Shimoga District. (By Sri B S Prasad- Advocate) And: The State By R.F.O. ...

... Petitioner

s 2 Bhadravathi Range Bhadravathi. ... Respondent (By Sri Vinayaka .V.S.-. HCGP) ***** This Criminal Revision Petition is filed under Section 397 r/w Section 401 of the Code of Criminal Procedure, praying to, set aside the orders of conviction dated 29.09.2011 passed by the Presiding Officer, FTC, Bhadravathi in CrI.A.49/2011 and in CrI.A.No.31/2011 confirming the order dated 24.01.2011 passed by the Civil Judge and Additional JMFC, Bhadravathi in C.C.No.4275/2006 and acquit the petitioners of charges leveled against them. This Criminal Revision Petition coming on for Hearing, this day, the Court made the following:

ORDER

This petition is filed by the accused petitioners herein seeking for a direction to set aside the orders dated 29.09.2011 passed by the Appellate Court in CrI.A.No.49/2011 and CrI.A.31/2011 confirming the order of conviction and sentence passed by the Trial Court in C.C.No.4275/2006 dated 24.01.2011. By the said order of the Trial Court, the petitioners have been 3 convicted for the offence punishable under Section 104- A of the Karnataka Forest Act and sentenced to undergo simple imprisonment for six months and to pay a fine of Rs.2,500/- each, which has been confirmed by the Appellate Court.

2. Heard the learned counsel for the petitioners and the learned HCGP for the respondent State.

3. Factual matrix of the case of the prosecution is that on 23.09.2002 when the Forest Guard and his staff were on patrol duty in the forest area by foot, when they came near 1998 year Acacia Neduthopu, they found a person having an axe in his hand. On seeing the Forest officials, that person had run away towards the jungle. The other two persons who were following him with rosewood logs threw the logs and had also run away. Though the officials had chased them, the accused could not be secured. They had then seized the rosewood logs under a mahazar. The official staff then 4 had carried out panchanama in the place where the rosewood was cut with the help of an axe and mahazar was conducted at the spot. The Investigating Officer had recorded the statement of witnesses and filed the charge-sheet. Subsequent to laying the charge-sheet Accused Nos.1 to 3 put in their appearance through their counsel but they pleaded not guilty and claimed to be

tried. Subsequently, the prosecution in all examined PWs 1 to 4 and got marked photographs in order to evidence the rosewood logs said to have been seized from the accused. The statement of accused was recorded under Section 313 Cr.P.C. but the accused did not come forward to adduce any defence evidence as contemplated under Section 233 Cr.P.C. After hearing the arguments advanced by the prosecution and the defence counsel, the Trial Court by its order dated 24.01.2011 in C.C.No.4275/2006 convicted the accused for offence under Section 104-A of the Karnataka Forest Act and sentenced them as aforesaid. 5 Being aggrieved by the said judgment of conviction and sentence passed by the Trial Court, the petitioners preferred an appeal before the Appellate Court in Crl.A.No.49/2011 and Crl.A.No.31/2011, which came to be dismissed by order dated 29.09.2011 thus confirming the judgment of conviction and sentence passed by the Trial Court. It is these judgments which are under challenge in this petition by the petitioners, urging various grounds.

4. Learned counsel Shri B.S. Prasad for the petitioners has taken me through the evidence of PWs 1 to 4. They are the forest official witnesses. His contention is that their evidence is not cogent and reliable in order to secure conviction in respect of Accused Nos.1 to 3. It is further contended that the Investigating Officer has not followed the mandatory provisions of Section 62-A of the Karnataka Forest Act. He contends that on this sole ground alone, accused 6 ought to be acquitted for the aforesaid offences. It is his further contention that the prosecution even though has not adduced any reliable evidence, the Trial Court has misdirected and misinterpreted the evidence of PWs 1 to 4 and convicted the accused. Therefore, he contends that there are discrepancies in the evidence of these witnesses on which ground the accused ought to be acquitted on the benefit of doubt. The last limb of argument of the learned counsel is that the Trial Court as well as the Appellate Court committed a serious error in convicting the accused for the offence under Section 104-A of the Forest Act. Even though the prosecution has not elicited evidence to probabalise that the accused persons were found in the scene of crime in the forest area in order to cut the rosewood tree which was said to have been recovered after the accused are said to have run away from the spot on seeing the forest officials, but that by itself is not suffice to say that the prosecution has proved the 7 guilt of the accused beyond all reasonable doubt.

PW-3 said to be an official witness has given a go-by to the version of his statement which is got marked as Exhibit P6. The evidence of PW-3 is contrary to the evidence of PW-1 and further contradictory to the evidence of PWs 2 and 4. These discrepancies and inconsistencies arising in the evidence of the prosecution witnesses have not been appreciated by the Trial Court in a proper perspective. Therefore, it is required to revisit the entire evidence of PWs 1 to 4 and thereby to set aside the judgments of the Trial Court as well as the Appellate Court. Hence, the learned counsel contends that Section 104-A of the Karnataka Forest Act would not attract the case of the prosecution. It is his further contention of the learned counsel that the courts below ought to have acquitted the petitioners on the ground that prosecution has not investigated regarding the place from where the alleged products were removed. The fact that the petitioners 8 were implicated solely based on their voluntary statements before the forest official witnesses, casts a serious doubt in the case of the prosecution. Further, the statements of those official witnesses are not consistent with each other. The whole case of the prosecution relying solely on the official witnesses and the conduct of the witnesses clearly goes to show that the same is a created story by the prosecution to lodge a false case against the petitioners for statistical purpose. In support of his contention, the learned counsel for the petitioner has placed reliance on a judgment of this court in the case of BANYA NAIKA vs. STATE BY RFO, BHADRAVATHI RANGE, BHADRAVATHI (2019 (3) KCCR2772, the relevant portion of which reads as under:

14. Apart from that, the Investigating Officer was also not examined before the trial Court. Though it is well settled that the evidence of official witness or forest official cannot be discarded as not trustworthy, otherwise which is 9 reliable and believable, which can be the base for conviction and non examination of the Investigating Officer is not fatal in all cases, but here in this case, PWs.1 to 3 are Forest Guards who are said to have arrested accused No.1 and seized the alleged Sandal wood chips. But once, the investigation was handed over to the higher officer, it is the duty of the higher officer to inspect the spot, prepare the spot mahazar and to confirm from which place/tree the wood has been cut and removed and examine the nearby witnesses. There is no explanation from the prosecution as to why the Investigating officer has not examined any witnesses

and not prepared any panchanama and even the Investigating Officer has not referred the seized articles to the higher authorities or Range Forest Officer to certify that the seized articles were Sandal wood pieces or not. These questions are required to be answered by the Investigating Officer. Therefore, the evidence of PWs.1 to 3 is not sufficient to prove the guilt of the accused under Sections 86 and 87 of the Act. Apart from that, though, PWs.1 to 3 stated that there are no persons available for taking them as witnesses to the seizure, but nothing has been mentioned in Ex.P.1- mahazar to show that PWs. 1 to 3 were trying to get the independent witness, but they were unable to secure. Therefore, the contention of the prosecution witness for non-joining independent witness due to non-availability is unacceptable. The same should be elicited through the Investigating Officer, but the Investigating Officer was not examined. Therefore, non-examination of Investigating Officer is fatal to the case of the prosecution. Hence, on all these grounds, the learned counsel for the petitioners prays that the petition be allowed and the impugned order passed by the Trial Court which has been affirmed by the Appellate Court be set aside.

5. Per contra, learned counsel for the respondent State supports both the impugned orders of the Trial Court as well as the Appellate Court and contends that the courts below, on a careful consideration of the evidence as well as the material on record, have rightly convicted the accused petitioners herein and hence the judgment of the Trial Court also affirmed by the 11 Appellate Court being just and proper, needs no interference in this petition.

6. On a careful consideration of the contentions advanced by the learned counsel for the petitioners accused and the learned HCGP for the State and on a careful scrutiny of the material on record, it is relevant to refer to the evidence of PWs 1 to 4 and so also the contents in Exhibits P1 to P6 which have been marked on behalf of the prosecution in order to substantiate the case against the accused. PW-3 Nagaraja who is said to be the Forest Guard has stated in his evidence that on 23.09.2002 they had seen the accused coming towards them by holding an axe and other two accused were carrying rosewood logs on their shoulders, but on seeing the forest officials, the accused had thrown away the aforesaid rosewood logs and are said to have run away. The panchanama is said to have been drawn

in the presence of this PW-3 12 Nagaraja. But the learned counsel for the petitioner contended that PW-3 Nagaraja was examined on the part of the prosecution. But however, he did not support the case of the prosecution to a certain extent and hence he has been treated as hostile. PW-3 being the official witness, he did not withstand his own version of statement said to be recorded by the Investigating Officer during the course of investigation. The said evidence has not been appreciated by the Trial Court in a proper perspective. Since PW-3 has turned hostile, the same runs contrary to the evidence of PWs 1, 2 and 4. In such circumstance, benefit of doubt shall always accrue to the accused but the same has not been extended by the Trial Court or the Appellate Court. PW-1, PW-2 and PW-4 being the official witnesses on verification of the rosewood logs, the same were seized by drawing a mahazar as per Exhibit P2 and also filed a report as per Exhibit P3 and the same were subjected to photos as per Exhibit P4. PW-3 official 13 witness has not withstood the version of his statement recorded by PW-1 being the responsible RFO. Further, PW-1 RFO being the Investigating Officer, did not secure any independent witnesses in order to seize the rosewood logs described in Exhibit P2 mahazar. Hence, the evidence of the prosecution does not repose confidence in the mind of the court to convict the accused. Even though this is a revision petition filed under Section 401 Cr.P.C., power under Section 386 Cr.P.C., which deals with the powers of the appellate court may be exercised in an appeal from any other order, wherein the High Court may alter or reverse such order or may make any amendments or any consequential or incidental order that may be just and proper 7. Therefore, on a re-appreciation of the entire evidence of PW-1 to PW-4 and the documentary evidence, I am of the view that both the Trial Court as well as the Appellate Court have misdirected and 14 misinterpreted the evidence adduced wherein independent witnesses have not been examined on the part of the prosecution and the IO had not even made an endeavour to secure independent witnesses in order to draw the mahazar said to have been described in Exhibit P2 and so also the report Exhibit P3. Merely because photographs of the wooden logs seized had been taken, it cannot be said that the prosecution has established the guilt of the accused beyond reasonable doubt. The entire evidence has not been appreciated in a proper perspective, which has resulted in a miscarriage of justice. In view of the aforesaid reasons, I am of the opinion that the

offences alleged have not been proved beyond all reasonable doubt. Hence, benefit of doubt shall be extended to the accused. In view of the same, the judgment of conviction and sentence passed by the Trial Court which has been affirmed by the Appellate Court requires to be set aside. 15 Accordingly, I proceed to pass the following: ORDER The criminal revision petition filed by the petitioners under Sections 397 read with 401 of Cr.P.C. is hereby allowed. Consequently, the impugned orders passed by the Appellate Court in Crl.A.No.49/2011 & Crl.A.No.31/2011 both dated 29.09.2011 confirming the judgment of conviction and sentence dated 24.01.2011 passed by the Trial Court in C.C.No.4275/2006 is hereby set aside. Accused Nos.1 to 3 petitioners herein are hereby acquitted of the offences punishable under Section 104-A of the Karnataka Forest Act. If any fine amount is deposited, the same shall be refunded to the petitioners, on proper identification. Bail bond if any executed by the petitioners, shall stand cancelled. JUDGE Sd/- KS

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