

Soman Vs. the Forest Range Officer

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Court : Kerala

Decided On : Jun-04-2008

Reported in : 2008CriLJ3418; 2008(2)KLJ544

Judge : V. Ramkumar, J.

Acts : Code of Criminal Procedure (CrPC) - Sections 313(1); Wild Life (Protection) Act, 1972 - Sections 9, 9(2), 11, 12 and 51; [Kerala Forest Act, 1961](#) - Sections 27(2)

Appeal No. : Crl. R.P. No. 1200 of 2008

Appellant : Soman

Respondent : The Forest Range Officer

Advocate for Def. : C.M. Nazer, PP

Advocate for Pet/Ap. : P. Santhalingam, Sr. Adv. and; A.D. Shajan, Adv.

Disposition : Revision dismissed

Judgement :

ORDER

V. Ramkumar, J.

1. The revision petitioner, who was the accused in C.C. No. 3 of 1998 on the file of the Judicial First Class Magistrate, Palakkad for an offence punishable under Section 51 r/w Section 9(2) of the Wild Life (Protection) Act, 1972 and Section 27(2)(c) of the [Kerala Forest Act, 1961](#), challenges the conviction entered and the sentence passed against him by the courts below for the offence punishable under Section 51 of the Wild Life (Protection) Act.

2. The case of the prosecution as unravelled by the oral and documentary evidence can be summarised as follows:

On getting credible confidential information to the effect that wild animals were being hunted and removed from the reserve forest, PW 1, a Flying Squad Range Officer, Palakkad and PW 2, a Mobile Squad Range Officer, Palakkad waited near the K.S.R.T.C. bus stand, Palakkad along with the their forest party at about 9.30 a.m. on 07-09-1987. They soon found the accused coming with a bag. On frisking the accused and examining his bag, the forest officials found the dead body of a Giant Squirrel inside the bag. There were marks of gun shots on the face, head etc. of the animal. The abdomen of the animal was seen split and the internal organs were found removed. On questioning the accused, he admitted that he had shot down the animal from inside the 1971 Teak Plantation in Elival Beat and he was taking the flesh of the animal for giving the same to his relative at Cherthala. PWs 1 and 2 arrested the accused and seized the bag with its contents. On the admission made by the accused that the gun was kept in his residence, the accused led the forest party to his residence from where MO 1 gun and MO 3 belt and catridges and MO 5 belt and unused catridges and MO 4 head light were seized by the forest officials. On being taken to the spot pointed out by the accused, the forest party found the internal organs and hairs of the animal near a stream inside the 1971 Teak Plantation. The articles were seized by the Forest Range Officer, Olavakkot under Ext. P1 mahazar. The investigation was conducted by the Forest Range Officer, Olavakkot who produced before the court Ext. P2 Government Notification showing that the area in question was a reserve forest. Ext. P3 postmortem certificate pertaining to the animal and Ext. P4 certificate issued by Dr. Easa, a scientist to the effect that the animal was Giant Squirrel which is also called Malabar Giant Squirrel, was also produced.

3. After the close of the prosecution evidence, the accused was questioned under Section 313(1)(b) Cr.P.C. with regard to the incriminating circumstances appearing against him in the evidence for the prosecution. He denied those circumstances and maintained his innocence. He did not adduce any defence evidence when called upon to enter on his defence.

4. The learned Chief Judicial Magistrate, Palakkad as per judgment dated 23-11-1996 found the revision petitioner guilty of the offence and sentenced him to simple imprisonment for six months and to pay a fine of Rs. 500/- and on default to pay the fine, to suffer simple imprisonment for two weeks under Section 51 r/w Section 9(2) of the Wild Life (Protection) Act. With regard to the charge under Section 27(2)(c) of the Kerala Forest Act, he was acquitted. On appeal preferred by the revision petitioner as Crl. Appeal No. 163 of 1996 on the file of the Sessions Court, Palakkad as Crl. Appeal No. 163 of 1996, the Additional Sessions Judge, Fast Track-II, Palakkad as per judgment dated 04-04-2002 confirmed the conviction, but reduced the sentence imposed on the revision petitioner by restricting the punishment to the fine amount of Rs. 500/- and imposing a default sentence of simple imprisonment for one month. Hence this revision.

5. Even though the learned Counsel appearing for the revision petitioner assailed on various grounds the conviction recorded against the revision petitioner concurrently by the courts below, in as much as the same has been recorded after a careful evaluation of the oral and documentary evidence in the case, this Court sitting in revision will be loath to interfere with the said conviction. The argument of the learned Counsel for the revision petitioner that it has not been proved by the prosecution that the animal in question was a Giant Squirrel, cannot be countenanced in the face of Ext. P4 certificate issued by the scientist who was examined as PW5 before the trial court. PW5 has credibly deposed in terms of Ext. P4 certificate to the effect that the animal which was found in the possession of the revision petitioner was the Giant Squirrel which is also known as the Malabar Giant Squirrel. Entry ID in Schedule II of the Wild Life (Protection) Act, 1972 pertains to Giant Squirrels (*Raufa Macroura*, *Ratufa indica*, *ratufa bicolor*). Section 9 of the Wild Life (Protection) Act prohibits hunting of any wild animal specified in Schedules I, II, III and IV except as provided under Sections 11 and

12. There is the accused was permitted by the Chief Wild Life Warden to hunt Giant Squirrel or cause the said animal to be hunted as it had become dangerous to human life or disabled or diseased beyond recovery within the meaning of Section 11 of the said Act or that the Chief Wild Life Warden had permitted me accused to hunt any wild animal for the purpose of education, scientific research or scientific management as provided under Section 12 of the said Act. If so, the accused by contravening the prohibition under Section 9 of the Act committed an offence punishable under Section 51 of the said Act. Hence the conviction was rightly recorded against the revision petitioner and the same is confirmed.

6. The sentence imposed on the revision petitioner also cannot be held to be excessive or disproportionately harsh, having regard to the facts and circumstances of the case. If at all, the lower appellate court has erred, that was on the side of leniency in not imposing a sentence of imprisonment on the revision petitioner.

7. However considering the facts and circumstances of the case and in the absence of a challenge by the State, I am not inclined to interfere with the sentence of fine imposed on the revision petitioner by the lower appellate court. This revision is accordingly dismissed confirming the conviction entered and the sentence passed against him.