IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MRS. JUSTICE K.HEMA

TUESDAY, THE 25TH OCTOBER 2005 / 3RD KARTHIKA 1927

Crl.Rev.Pet.No. 512 of 1997()

CRA.155/1992 of ADDL.SESSIONS COURT, KOTTAYAM
CC.57/1990 of JUDL.MAGISTRATE OF FIRST CLASS-I, KANJIRAPPALLY

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REVN. PETITIONER:

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1. GEORGE S/O. VARKEY ALIAS APPACHAN,
   PATTANAMAKKAL, KANYANKAVAYAL BHAGOM,
   PEREUVANTHANAM VILLAGE,
   PERRMADE TALUK.

2. VIDHYADHARAN S/O. PATTAR KRISHNAN,
   MATHAMBA BHAGOM,
   PERUVANTHANOM VILLAGE,
   PERRMADE TALUK.

BY ADV. SRI.K.GOPALAKRISHNA KURUP

RESPONDENT:

FOREST RANGE OFFICER,
ERUMELY,
REPRESENTED BY THE PUBLIC PROSECUTOR,
HIGH COURT OF KERALA, ERNAKULAM.

BY PUBLIC PROSECUTOR (SMT. NOORJI NOUSHAD)

THIS CRIMINAL REVISION PETITION HAVING BEEN FINALLY HEARD ON 25/10/2005, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

K. HEMA, J:

Crl.R.P.No.512 of 1997

Dated this 25th day of October, 2005

O R D E R

Petitioners are accused Nos. 1 and 2 in C.C.No. 57 of 1990 on the file of the Judicial First Class Magistrate, Kanjirappally. They were convicted and sentenced under section 27(2)(c) and 27(1)(g) of the Kerala Forest Act to undergo rigorous imprisonment for six months each for the said offences. The learned Addl. Sessions Judge confirmed the said conviction and sentence in Crl.A.No.155 of 1992. These are challenged in this revision.

2.According to prosecution, on 8.5.1997, the petitioners trespassed into the reserve forest at Mathamba beat in Erumeli range of Ranni Reserve within the boundaries, as disclosed in Ext.P2 notification. They also allegedly felled down a teak tree and cut the tree and attempted to remove the logs worth Rs.3500/- causing loss of Rs.4000/- to the State and thereby committed offences sunder section 27(2)(c) and 27(1)(g) of the Kerala Forest Act. 1961.

3.The court below considered the evidence of PWs. 1 to 4 and Exts.P1 series and Ext. P2 and held that their evidence established that the petitioners trespassed into the reserve forest and prepared to

remove the tree after cutting them into logs. It is also inferred from the evidence that the tree was cut down by the accused themselves and that the tree was felled by them recently. Learned counsel appearing for the petitioners strenuously contended that the petitioners were brought into the array of accused much after the alleged date and time of the occurrence.

4. The incident is alleged to have taken place on 8.5.1987. As per the evidence, none of the witnesses had any idea about the identity of the persons who had committed the various offffences alleged against them. But the petitioners' names were mentioned in the mahazar and the documents at a belated stage. Though the incident happened on 8.5.1987, the mahazar Ext.P1 in which the name of the accused appeared for the first time had reached the court only on 11.5.1987, as revealed from the endorsement of the court. The delay in this vital document reaching the court has not been explained by the prosecution.

5. It is in this background that the evidence of the witnesses has to be appreciated. PW1 to 3 deposed before the court that they had previous acquaintance with the accused. They deposed that they saw the accused cutting the tree and they were hiding themselves behind the tree to watch the act done by the accused. They were attempting

to impress upon the court that they had clearly identified the accused from the spot. They also attempted to make out a case that the mahazar was prepared from the spot itself and as per the prosecution case, names of accused found a place in the mahazar itself which was prepared at the spot.

6.The mere mentioning of the names of the accused in the mahazar Ext.P1 will not be sufficient to hold that the accused were identified by the witnesses at the spot. The delay in reaching the document to the court is of vital importance. Added to this, the evidence of PWs 1 to 3 with respect to the identity of the accused and the probability of the witnesses to make a correct identification at the spot is not satisfactorily established. PW1 has deposed that he had identified the accused at the spot and he also stated in cross-examination that he had previous acquaintance with the accused. The same witness deposed that he took charge in the beat only in September 1986 and he got acquainted with the accused, after six months of taking of charge i.e. that must be two months prior to the incident in May, 1997. Even then, PW1 stated that he has no direct acquaintance or personal acquaintance with the accused.

7. PW2 has also stated that he had acquaintance with the accused, but it was after the taking of the charge. He worked in the

beat only for a period from 1986 to 1987. But, he could not say when he had taken charge and when he has left the station. It has come out from the evidence of other witnesses also that the second accused is not residing close to the beat. He is residing at Kanayankavayal, at a distance of 3 kms. away from the forest. PW2 also stated that he did not know the exact place where the 2nd accused was residing. He did not know the details as to where 2nd accused was working or staying. He did not know the number of the house where 2nd accused was residing. But, his case is that he made inquiries about the accused, subsequent to the incident.

8. PW3 is another witness who gave evidence in the same tune, He has given evidence that he had reached the spot about 6 to 7 minuets after the incident and that he had only acquaintance with the accused by sight. In cross-examination, he deposed that he made enquiries about the accused themselves and then only he came to know the name of the house of the accused as well as other details. He has admitted in cross-examination that it is two days after the incident that he had enquired about address of the accused and that too, from the accused themselves.

9. The evidence of PWs1 to 3 reveals that they made enquiries about the accused only after the incident. In this context, the reaching

of Ext.P1 mahazar with the details of the accused in the court after three days of the incident assumes relevance. Apart from all these, PW3 stated that it is Alexander Chacko, who has prepared the mahazar. Though Ext.P1 is marked through PW1, he has no specific case that the mahazar was prepared himself. In the above circumstances, it cannot be concluded that it is PW1 who has prepared the mahazar. The evidence of the person who prepared the mahazar is also not forthcoming. Such evidence is significant because he alone can say under what circumstances he had mentioned the details of the accuse in the mahazar.

10. From the evidence adduced by PW1 to 3, it cannot be conclusively held that the details were procured by them correctly before or at the time of preparation of the mahazar. The incorporation of details of the accused in the mahazar under Ext.P1 will not in such circumstances conclusively establish that the accused were identified correctly at the spot, as stated in Ext.P1. The evidence on identification of accused is, therefore, shabby but this aspect was not considered by the courts below. The lower court has only accepted the evidence of PWs 1 to 3 in toto and did not consider various other relevant facts. In the light of the discrepancies discussed, which the court below failed to take note of, I find that the conviction and

sentence passed against the petitioners are not sustainable.

11. Learned Public Prosecutor vehemently contended that no motive is alleged against any of the witnesses and there is no reason to disbelieve the evidence given by PWs 1 to 3. It is well settled that a parrot like version given by the witnesses is not sufficient to accept the evidence but the evidence has to be tested on the scale of probabilities.

12. While doing so, it can be found that the prosecution has not proved beyond reasonable doubt that petitioners had trespassed into the forest and felled teak tree as alleged by the prosecution. In this context, it is relevant to note that there is no satisfactory evidence regarding felling of tree by the accused. PWs 1 and 2 admitted that they had not seen the accused felling the tree. Even going by the mahazar Ext.P1, it can be seen that the prosecution has no case that anybody had seen the accused felling the tree. The alleged felling of the tree was on two days back, as seen from Ext.P1 mahazar. As per Ext.P1, the tree was found to be damaged naturally at the root.

Therefore, the court has only inferred that the accused felled the tree. Such an inference made without the basis of any legal evidence is not proper. A tree can have even a natural fall. Felling

of the tree means cutting down a standing tree. But the prosecution has not established beyond reasonable doubt that the tree was felled down by the accused. In the above circumstances, the court below has wrongly held that the accused was guilty of felling tree from the reserve forest. The conviction and sentence passed against them under section 27(2)(c) and 27(1)(g) are not, therefore, sustainable and those are set aside and they are acquitted. The petitioners are set at liberty forthwith.

This revision is allowed.

Sd/-

K. HEMA, JUDGE.

Krs.