

IN THE COURT OF THE SPECIAL COURT FOR FOREST OFFENCE CASES,
NAGERCOIL

Present: Tmt. D.Asha Kousalya Shanthini, B.Sc., B.L.,
Special Judge, Nagercoil.

Wednesday, the 22nd day of January, 2020.
C.C. No.1 of 2017

State through: The Forest Range Officer,
Velimalai Forest Range,
O.R.No.55 of 2001.

...Complainant

/Versus/

Sajendran, aged 21/2001,
S/o. Sivalingan,
Nedumparaivilai,
Perunchilambu.

...Accused (1st accused)

This case coming up before me finally on 20.01.2020 in the presence of the Special Public Prosecutor Thiru. Felix for the State and Advocate Thiru. J. Jerald for the and after hearing both the sides and having stood over for consideration till this day, this court delivered the following:

J U D G M E N T

The Foresters Murugan, Chandrasekaran Nair and the Forest Guard Pushparaj while patrolling on 05.03.2001 at 5 a.m. in the Velimalai reserve forest area, south beat in the Vazhaikuzhi range, the 1st to 5th accused who trespassed, cut the teak trees were found carrying the cut teak timber on their heads and therefore the Forest range officer of Velimalai range has filed a final report in Forest offence Form 'A' alleging that the 1st to 5th accused have committed offences under Sections 21(d) (e) (f) of Tamil

Nadu Forest Act, 1882 (Tamil Nadu Act V of 1882) and Tamil Nadu Forest (Amendment) Act, 1992 (Tamil Nadu Act 44 of 1992).

2. The case was split up for A2 to A4 in C.C.No. 32 of 2010 which was disposed on 31.01.2017 and presently the 1st accused alone is facing the trial. On securing the 1st accused who surrendered before the court on 19.08.2019, free copies of documents are furnished to him according to Section 204 of the Criminal Procedure Code. On the side of the prosecution witnesses 1 to 4 were examined and exhibits P.1 to P.4 were marked.

3. Based on the prosecution evidence and the materials on record, as there was sufficient grounds for presuming that the 1st accused has committed offences triable by this court, charges were framed under Sections 21(d)(e)(f) (1) of Tamil Nadu Forest Act, 1882 read over, explained and he was questioned. The 1st accused did not plead guilty and he denied the charges. The prosecution witnesses were cross-examined by the defence side and the complainant side evidence was closed.

4. The case of the prosecution as deposed by the prosecution witnesses 1 and 2 is as follows:

On 05.03.2001 at 5 a.m. when P.W.1 Forest guard and Forester Murugan and P.W.2 Forester were patrolling in the Velimalai reserve forest area, south beat in the Vazhaikuzhi range, found the 1st to 5th accused have cut down the teak trees with a

sword (அருப்புவாள்) into 5 pieces and each one of them were found carrying a piece of teak on their heads, who dropped the teak timber pieces and fled away from there with the sword (அருப்புவாள்). While running the 1st accused was struck in a climber plant, who was caught by the forest officials, wherein P.W.1 prepared the observation mahazar and recorded his confession (Ex.P.2). He prepared the 'H' form / Ex.P.3 and the offence report. The seized properties were produced before the court and P.W.2 filed the 'A' form/Ex.P.4 before the court on 28.10.2009.

5. Then the accused was questioned under Section 313 (i)(b) of the Criminal procedure code with regard to the incriminating circumstances in the evidence against him. He denied the same and opted to have oral evidence, but, later no defence witnesses were examined.

6. Now the point for consideration is whether the prosecution has proved the charges under Sections 21(d)(e)(f) (1) of Tamil Nadu Forest Act, 1882 against the accused beyond reasonable doubts?

7. The case of the prosecution is that on 05.03.2001 at 5 a.m. in the Velimalai reserve forest area, south beat in the Vazhaikuzhi range, the present accused with the other 4 accused, trespassed into the reserve forest area, cut the teak trees and attempted to take them away.

8. In order to prove the case of the prosecution / complainant, the learned Special Public Prosecutor mainly relied upon the oral evidence of P.Ws. 1 and 2 who are described as the direct eyewitnesses by him. Out of the 3 listed occurrence witnesses, one Mr. Murugan forester, is reported dead is also a weakening factor because the prosecution relies upon only two witnesses. Admittedly, they are forest officials who are naturally interested in the success of the prosecution case. But, on that score itself their oral evidence cannot be rejected and hence they are perused carefully. When the accused has cut the scheduled timber along with 4 other accused, all of them coming directly opposite to the forest officials namely P.Ws.1 and 2 during the early morning hours sounds doubtful. Out of the 4 accused, the present accused alone was caught by the forester that too when his leg was caught in a climber plant. Though the accused trespassed into the reserve forest area stealthily, he faced the trained forest officials who were not able to catch him directly, were able to catch him just because he alone was struck in a climber plant, sounds doubtful.

9. Though sufficient time and opportunities were given, the prosecution failed to mark the gazette notification to show that the occurrence has taken place in the reserve forest area which is the very basis for making out the offence. Though the prosecution says that 5 teak trees were cut by the accused, no stump report is marked by the prosecution. During the trial though sufficient time and opportunities were given, the prosecution failed to place the case properties before the court. Admittedly, the forest officials have taken back the case properties for safe custody on

05.03.2001 (R.P.258/2001), who have not produced them before the court for marking them during the trial. These lapses are found fatal to the prosecution case.

10. The forester / P.W.1 says that the cut trees were 15 years old which were more than 15 feet high and there were 5 cut stumps which were 30 to 40 c.m. high. But, as per the version of P.W.2, 1 piece of teak was cut per tree and if that is, so, atleast 10 feet long teak logs should have been recovered, but, in column no.7 of the 'A' form, the teak pieces were described as of 145 c.m., 152, 132, 148 and 91 c.ms. long only. P.W.2 categorically says that the teak pieces carried by the accused were 4 to 6 feet long which is also a vital contradiction raising doubt about the case property.

11. During the oral evidence P.W.1 says that the teak wood was carried by 5 work men to Erumaipatti, who are not the listed witnesses. P.W.1 is not able to name the FRO who enquired him about the occurrence. P.W.1 says that the accused was brought to the range office in their jeep. If that is true, why the teak pieces were not taken in the jeep. The other occurrence witness namely P.W.2 strangely says that he does not know who took the wooden logs from Vazhaikuzhi to Erumaipatti. P.W.2 is not able to answer any question regarding the confession recorded at the occurrence place. Though the prosecution case is that the other accused fled away with a sword which was used for cutting down the teak trees, the weapon was not recovered by the forest officials, who gave no explanation for the same which also raises suspicion.

12. The prosecution mainly relied upon the confession statement of the accused to prove the entire occurrence from trespass, cutting and removing the scheduled timber, but, the confession statement cannot be safely relied on in the present case, because, the prosecution has not even placed the gazette notification for showing the occurrence place to be a reserve forest area. As per the confession, if property was recovered, the prosecution should have marked them during trial. All these points are leaning in favour of the defence side argument that the confession was not given by the accused who was not caught in the reserve forest area as alleged by the prosecution.

13. When the case of the prosecution is that the accused have cut 5 teak trees and the 5 cut stumps were found 50 feet apart and the accused was caught at 200 feet away from the said cut stumps, what prevented them from preparing the 'stump report' ? Why not even a photograph of the scene of occurrence along with the cut stumps was not taken by the prosecution ? The forest officials have not placed any photographs of the cut stump as found in the reserve forest area is raising a strong doubt about their case.

14. When there is no cogent and reliable evidence placed before the court by the prosecution to say that the accused actually trespassed, cut the teak trees with sword and attempted to take it away, based on the highly doubtful oral and

documentary evidence of the much interested forest officials, it is highly unsafe to accept the confession to be admissible in the present case to incriminate the accused.

15. Considering the prosecution case in the light of the oral and documentary evidence relied upon by the complainant side, the contradictions found in the oral evidence of the interested occurrence witnesses/ P.W.1 and 2, make them less reliable and not trust-worthy enough to implicate the accused. The confession statement relied upon by the prosecution is found doubtful to incriminate the accused. Based on the contradictory oral version of the occurrence witnesses who are the substantive evidence here, to illustrate the incriminating circumstances, the prosecution has failed to carry out their initial burden of proof sufficiently in the present case is the main argument of the defence side, which is also found acceptable. As there is no direct evidence available in the present case, the prosecution relies upon the available evidence of the circumstantial nature, but the chain of evidence herein is not complete but is full of missing links and hence not unerringly pointing towards the guilt of the accused.

16. Considering the facts and circumstances of the present case, in the light of the oral and documentary evidence relied upon by the prosecution, for the above said reasons, I hold that the prosecution has terribly failed to prove the ingredients of offences and the charges levelled against the accused beyond reasonable doubts, who is found entitled for the benefit of doubt and is found not guilty under Sections 21(d)(e)

(f) (1) of Tamil Nadu Forest Act, 1882 and is acquitted under Section 248 (i) of the Criminal procedure Code and is ordered to be set at liberty.

17. There are no case properties marked during the trial by the prosecution for orders in the present case.

Dictated by me to the Steno-typist and typed in the system corrected and pronounced by me in open court, this the **22nd day of January, 2020.**

(Sd/- D. Asha Kousalya Shanthini)
Special Judge,
Nagercoil.

Prosecution side witnesses:

P.W.1. Thiru. Pushparaj, Forest Guard

P.W.2. Thiru. Chandrasekaran Nair, Forester

Prosecution side Exhibits:

Ex.P.1 - Spot mahazar

Ex.P.2 - Confession statement

Ex.P.3 - 'H' Form

Ex.P.4 - 'A' form

Prosecution side Material Objects: Nil

Defence side Witnesses, Exhibits and Material Objects: Nil

(Sd/- D. Asha Kousalya Shanthini)
Special Judge,
Nagercoil.

/True copy/

Special Judge,
Nagercoil.