

IN THE COURT OF THE ASSISTANT SESSIONS JUDGE: PUTTUR.

Present: Sri C. Muralidhar,
Assistant Sessions Judge. Puttur

Wednesday, the 31st (Thirty First) day of October, 2018

Sessions Case No. 96 of 2018
PRC.No.15/2016 of JMFC, Puttur
Crime No.193/2014 of Puttur PS

Between:

The state Represented by Sub-Inspector of police,
Puttur Police Station.

... Complainant

And:

1. 1. Yarlapalli Jithendra @ Gajendra, aged 32 years, son of late Yarpalli Damodar, residing at Dr.No.11-213, Arunodaya colony, Jeevakona, Tirupathi **A1**
2. 2. K.N. Mohan, aged 41 years, son of K.Nagabhushanam, Dr.No.52, Chennai bye-pass road, Tiruthani 531 209, Proprietor Hero Sri Balaji Motors Chennai Bye pass road, Tiruthani **A2**
3. 3. R. Muthu Raj @ Appachi, aged 45 years, son of Ramaswamy r/o D.No.2 Thaniga Meenakshi Amman Koil street, Tiruttani Town, Tiruvellore Dist. Tamilnadu **A3**
4. 4. Marri Ulaganadhan, aged 38 years, son of N. Mani, Indra Nagar, Dr.No.11-32, Periya Kuppan, Tiruvallur District. Tamilnadu. **A4.**
5. 5. Manivanan Pushpanadham @ Vijay aged 28 years, son of G.Manivanan, Dr.No.17/10, Sridevi Nagar, 9th cross street, Allapakam, Porur Chennai 116. **A6.**
6. 6. Ravi Siva Prakash, aged 29 years, son of G.Ravi, No.31 Lakshmi Koil street, Bachiathipedu, Uthukottai Taluk, Tiruvallur Dist. Chennai. **A8**
7. Kumar Krishnan, aged 29 years, son of K.Kumar, Lakshmi Amman koil street, Bachiathipedu Uthokottai Taluk, Tiruvallur District, Chennai **A9**
8. Jayaraman Selvam, aged 21 years, son of P.jayaraman, lakshmi Amman Koil street, Bachitathipedu, Uthukottai Taluk, Tiruvallur District, Chennai. **A11.**

.... Accused

This case coming on 25/10/2018 before me for final hearing in the presence of Additional Public Prosecutor for the complainant and of Sri D.Seshachalam, Advocate for A1, A3, A4, A9, and A11, and of B. Vasudeva Raju and Sri B.Jayasekhar Reddy, Advocates for A2, A6 and A8, and having stood over for consideration till today, this court delivered

the following:-

J U D G E M E N T

The Sub-Inspector of Police, Puttur Police station laid charge sheet in Crime No.193/2014 of Puttur Police station against the accused for the offences u/ss 353, 307, 379 or 411 IPC and secs. 20(1) C (III) (IV) (IX), 29 (IV) (A) of AP Forest Act, 1967 and sec. 3 and 4 of Red Sandal and Sandalwood Transit Rules, 1969, Section 55(2) of Biological Diversity Act 2002 and secs 27 (1) of Arms Act.

2. Brief facts as narrated in the charge sheet are that on 20/10./2014 at about 5.00 PM the police received credible information about illegal transportation of red sander logs, they reached Tirupathi-Chennai Bypass road at Narayanavanam junction at Punnami hotel of Puttur mandal at 8.30 PM found one qualies van coming from Tirupathi side on their opposite direction, they stopped the said vehicle, in the meantime accused jumped down and began to attack the police party by showing knives and axes to kill them having knowledge to cause death of Police personnel attempted to commit murder. Immediately the Sub-Inspector of police opened his service pistol and aimed upon them for self protection and on seeing the same accused left their arms and ran away, but the active assistance of his staff the Sub-Inspector of police caught hold of driver of qualis and remaining 3 persons were escaped. All the persons with common intention armed with sickles threatened the police by showing knives, knives, axes, sticks and stones having knowledge to cause death of Police personnel attempted to commit murder and registered a case in Crime No.193/2014 for the offences u/ss 353, 307, 379 or 411 IPC and secs. 20(1) C (III) (IV) (IX), 29 (IV) (A) of AP Forest Act, 1967 and sec. 3 and 4 of Red Sandal and Sandalwood Transit Rules, 1969, Section 55(2) of Biological Diversity Act 2002 and secs 27 (1) of Arms Act.

During the course of further investigation A4 and A6 to A11 were arrested on 20.10.2014, and on 28.11.2014 A1 also arrested and they were send for judicial custody. A2 surrender before the police station on 4.3.2015 on bail in Crl.M.P.No.126/2015, and A3 produced before the court on PT warrant on 29.10.2015. A5 is to be arrested. Investigations has been completed as the all the accused arrested except A5.

On 28.6.2015 the seized property along with crime vehicles were handed over to Sub Divisional Forest Officer and obtained acknowledgment vide Endorsed No.95/2014-2015 . Hence, the charge sheet under Indian Penal Code. Forest Laws, Arms Act and other Act against A1 to A4, and A6 to A11.

3. After filing charge sheet, before the learned Judicial Magistrate of 1st Class, Puttur case taken on file for the offences u/ss 353, 307, 379 or 411 120(B) IPC and secs. 20(1) (c) (III) (IV) (IX), 29 (IV) (A) of AP Forest Act, 1967 and sec. 3 and 4 of Red Sandal and Sandalwood Transit Rules, 1969, and sec. 55(2) of Biological Diversity Act 2002 and secs 27 (1) of Arms Act against A1 to A4, A6, A8, A9 to A11 and registered as PRC.NO.15/2016

4. After appearance of A1 to A4, A6, A8, A9 to A11 before the learned Judicial Magistrate of 1st Class, Puttur, copies of documents submitted by the police were furnished to them and case was committed to Hon'ble Principal Sessions Judge's Court u/s 209 Cr.P.C and the said case is registered as SC.No.96/2018 and made over to this court for trial according to law.

5. After appearance of A1 to A4, A6, A8, A9 to A11 before this court, they were asked whether they have means to engage counsel and they informed the court that they got means to engage counsel. After hearing the learned Additional Public

Prosecutor and learned counsel for accused and on perusing the material available on record, charges u/ss 307, 353, 379, IPC, sec 3 of Prevention of Public Property and Damage Act 1985, sec. 411 r/w 34 IPC secs. 20 r/w 32 of AP Forest Act, 1967, Rule- 3 of Red Sandal and Sandalwood Transit Rules, Sec. 29 of Wild Life Act 1972, Sec. 58 of Biological Diversity Act 2002 and sec. 27(1) of Arms Act were framed against the A1 to A4, A6, A8, A9 to A11, read over and explained to them in Vernacular language and they pleaded not guilty and claimed to be tried. Then, the matter was posted for trial.

6. In order to prove the guilt of the accused, prosecution has examined Pw1 to Pw5, and got marked Ex.P1 to Ex.P9 and Mo.1 and 2. On behalf of accused no documents were marked.

7. After closure of the prosecution evidence, accused were examined under section 313 Cr.P.C with regard to incriminating material appearing against them for which they denied the same and pleaded not guilty, and also they reported no defence evidence. Then the matter is posted for arguments.

8. Heard arguments on both sides.

Now the point for determination is Whether the accused have committed the offences charged u/ss 307, 353, 379, IPC, sec 3 of Prevention of Public Property and Damage Act 1985, sec.411 r/w 34 IPC secs. 20 r/w 32 of AP Forest Act, 1967, Rule- 3 of Red Sandal and Sandalwood Transit Rules r/w 36 of A.P.Forest Act, Sec. 58 of Biological Diversity Act 2002 and sec. 27(1) of Arms Act and whether the prosecution proved the case beyond all reasonable doubt?

9. **POINT:-** From the evidence of Pw1 to Pw5. Pw1 is Village Revenue Officer, Pw3 is teacher who acted as panchayatdars for the arrest of accused and seizure of property. Pw2 is the Sub-Inspector who detected the offence and seized

the case property from the possession of accused. Pw4 is retired Forest Officer who received the case property from Pw2 weighed the same and prepared Forms A to C and intimated the same to superior officers of Forest Department. Pw5 is the investigating officer who on receipt of confiscation proceedings laid charge sheet.

10. As per the evidence of prosecution witnesses, it is the case of the prosecution that on 20.10.2014 at about 4.30 pm when Pw1 to Pw3 were present at Narayanavanam junction road situated on Tirupathi- Chennai bypass road they noticed one qualies vehicle coming from Tirupathi side and proceeding towards Chennai side and on seeing it they stopped the vehicle and found four persons were traveling in the said vehicle. Three persons escaped on seeing the police after that they got down the vehicle. Police arrested A4, examined the vehicle ie., qualies vehicle and found red sandalwood logs hided underneath of seat inside of the vehicle and that police arrested the accused and interrogated him, during interrogation A4 confessed that the escaped persons and himself and also other accused who were also following in two other vehicles are illicitly transporting red sandalwood logs and that in pursuance of confession made by A4 Pw1 to Pw3 proceeded to Punami hotel circle situated at Tirupathi -Chennai bypass road and there they noticed two other vehicles and found six persons in the said two vehicles. Police examined the car and found red sandalwood logs hided underneath the seat of the car and that Pw2 arrested the accused and interrogated them, seized forest produce and weapons under the cover of mahazars. Later, after obtaining sanctions orders from the forest officials, police filed charge sheet.

11. The learned APP argued that prosecution well established its case against all the accused for the charges leveled against them. Further argued that Pw1 to

Pw3 are official witnesses, they categorically stated that all the accused conspired together and illicitly transporting red sandalwood logs in three vehicles, and that on information Pw1 to Pw3 went to the scene of offence and arrested A4 at first instance and with his assistance the remaining accused were also arrested by the police and property also seized by them. The evidence of Pw1 to Pw3 and case property Mos 1 and 2 and Ex.P3 to Ex.P5, Ex.P8 and Ex.P9 are well established that accused illicitly transporting the red sandalwood logs and when police tried to obstruct them then all the accused tried to assault the police and some of them escaped, however, Pw3 identified all the accused those are the persons arrested by him while they were in possession of red sandalwood logs and that prosecution well established its case beyond all reasonable doubts` for the charges leveled against the accused. At the outset, she requested the court that accused are to be convicted for the charges leveled against them.

12. On the other hand, the counsel for accused vehemently argued that though Pw1 and Pw3 present along with Pw2 at the scene of offence and though they were present while arresting the accused and seizure of property, they failed to identify all the accused those who are participated in the offence and that their presence at the scene of offence is highly doubtful. If at all Pw1 and Pw3 were present they might have stated the particulars of the case property and they might have identified all the accused. So the evidence of Pw1 and Pw3 cannot be taken into consideration to support the case of Pw2.

13. The learned counsel for accused further argued that police not followed the procedure for the seizure of property and even after seizure of property they failed to follow the procedure that to send the case property before this court for the

purpose of marking them as material objects. Non production of case property before this court even during the course of trial is a fatal to the case of prosecution and it leads an inference that no such property recovered by the police. At the outset, the counsel for accused requested the court to acquit the accused for the charges leveled against them.

14.As seen from the evidence of Pw1 to Pw3, they are the persons who participated in the ride and detected this offence that A4 and other accused also arrested by police. The evidence of Pw1 and Pw3 is that they assisted Pw2 in arrest of accused at two places, first place is at near Narayanavanam Junction and later place is at Punami hotel. Further they also stated that they noticed four persons traveling in the first qualities car and six persons traveled in another two vehicles. The total number of accused traveled in three cars and total number of logs concealed underneath the seat and transported by the accused in the said cars, corroborated with each other with the evidence of Pw2. Further the evidence of Pw2 regarding date of detection of scene of offence and the property transported by the accused, conveyance of vehicles by the accused and also weapons carried by the accused are all corroborated by the evidence of Pw1 and Pw3, and their evidence is corroborated with each other. All the material facts corroborated by each other ie., Pw1 to Pw3. There is no discrepancy found place from the evidence of Pw1 to Pw3 regarding any aspect except identity of some of the accused. Pw1 and Pw2 completely corroborated the evidence of Pw2 regarding identity of A4. Further Pw4's evidence is established that the seized property produced before forest officials and thereafter they prepared forms A to C as per A.P. Forest Act and Rules which are marked as Ex.P3 to Ex.P5. It further strengthens the case of prosecution

regarding the seizure of property which comes under forest produce. Ex.P8 and Ex.P9 are the confiscation proceedings issued by the Forest officials confirmed the evidence of Pw1 to Pw3 for the seizure of property and production of property before Pw4 and the same confiscated by the Forest Officer by issuing Ex.P8 and Ex.P9. The oral testimony of Pw1 to Pw5, Mo.1 and Mo.2 and Ex.P1 to Ex.P9 well established the case of prosecution that all the accused are involved in this case and illicitly transporting of red sandalwood logs from one place to another place and they were caught hold by the police on the date of offence at the scene of offence.

15. Now the court has to see whether the seized property ie., red sandalwood logs comes under the Forest Act or not ?

As per section 2 (g) (h)) (m) and (o) defines forest produced means. For better understanding the same is reproduced herein:-

Sec.2(g) of AP Forest Act 1967 definitions :- In this Act, unless the context otherwise requires-

Sec. 2(g) of A.P. Forest Act 1967 reads as follows:-

forest produce' includes;

(1)The following whether found in, or brought from a forest or not, that is to say timber, bamboos, charcoal, rubber, cacutchour, catechu, woodoil, resin, natural varnish bark, lac, mahua flowers, mahua seeds, myrobalans, tumki leaves, rousa grass, rauwolfia serpentine, adda leaves;

(2)The following when found in, or brought from a forest, that is to say-

(i)trees, such leaves, flowers and fruits as may be prescribed and all other parts or produce not herein before mentioned of trees;

(ii)plants not being trees (including grass, creepers, reeds and moss) and all parts or produce of such plants,

(iii)wild animals, wild birds, skins, tusks, horns, bones, silk cocoons, honey, wax, and all other parts or produce of animals and birds;

(iv)peat, surface soil, rock and minerals (including lime stone and laterite) mineral oil and all products of mines or quarries; and

Sec. 2(h) of A.P. Forest Act 1967 reads as follows:-

Government ‘ means the State Government.

Sec. 2(m) of A.P.Forest Act 1967 read as follows:-

‘red sanders wood’ means the wood derived out of any part of the tree known by its botanical name as “Pterocarpus santalinus” and include chips, dust or powder of such wood;

Sec.2(o) of A.P.Forest Act 1967 reads as follows:-

‘sandalwood’ means the wood derived out of any part of the tree known by its botanical name as “Santalum album” and includes chips, dust or powder of such wood;’

In a decided case, the definition of Forest produce is defined that the definition of forest produce is not confined to the naturally ground produce it also includes the product prepared out of forest produce with the aid of human skill. As per this definition, the timber or any trees cut up and sawn in a saw mill the timber does not lose its identity as forest produce. As such, it is further observed that any red sandalwood logs are forest produce when they are cut, sawn and made into pieces, found in cart track or vehicle it is a forest produce in transit and that the transit rules are also applicable since any cutting of red sandalwood logs found in the vehicle it won't lose its original identity, thus the prosecution is able to establish that accused were found in possession of red sandalwood logs which are come under Forest produce as discussed above, and that to that extent, the prosecution established that accused found in possession of forest produce comes under the property of aforesaid Government as defined u/s 60 of A.P.Forest Act 1967, that presumption of timber or forest produce belongs to Central or State Government that means where, the accused failed to explain how he secured that forest produce to establish the fact that he secured it from the licensed dealer or an order of any authority or from the private patta land, in the absence of explanation from the accused for possessing the same it is deemed that it is the property of either

State or Central government.

Operation of other laws not barred:-

16. As per section 58 of A.P. Forest Act when the facts of the case are attracted to the provisions of Forest Act and also the provisions of other Act there is no bar to prosecute the accused with the Forest offences along with other offences in existing laws. Likewise, the prosecution has filed the charge sheet and number of offences were laid against the accused ie., 353, 307, 379 or 411 IPC and secs. 20(1) C (III) (IV) (IX), 29 (IV) (A) of AP Forest Act, 1967 and sec. 3 and 4 of Red Sandal and Sandalwood Transit Rules, 1969, Section 55(2) of Biological Diversity Act 2002, Sec. 29 of Wild Life Act 1972, and secs 27 (1) of Arms Act. Hence, there is no bar on the court to try the offender when he was involved in a crime which attracts the provisions of number of Acts. It is not irregular and illegal if at all the accused are prosecuted for more than one offence which took place in a single transaction. As per section 220 Cr.P.C accused can be prosecuted for the offences committed by him in a single transaction though the offence attracts punishments in different laws.

17. It is the contention of the counsel for accused that police has no power to arrest the accused and investigate the case as forest produce detected by them from the possession of accused forest laws alone come into play. In this regard, this court rightly cited Sec. 56 of A.P. Forest Act 1967 that police are having power to prevent the commission of offence of forest that forest laws given such powers to the Police officer and that arrest of accused when they were found in forest produce is not an irregular and illegal. Moreover, Sec. 4 of Cr.P.C legally authorized police officer to detect the offence and apprehend the offender and that arrest of accused by the

police officer and seizure of property is not illegal.

Section 44 and 55 of A.P. Forest Act deals with Seizure of property liable to confiscation and procedure thereupon.

18.It is the further contention of counsel for accused that as per section 44 of A.P Forest Act no police officer or forest official shall take steps to confiscate the seized property until the trial of offender of prosecution evidence is completed. In this particular case, no forest produce submitted by the police officer before this court and non production is also create suspicion that no such property is recovered. This court observed that the learned counsel not noticed the procedure laid down u/s 45 of A.P.Forest Act and also failed to observe the amendments made to A.P.Forest Act vide A.P. Forest (Amendment) 1975 after promulgation of this Ordinance 1975 forest officials got right legally to dispose of forest produce and other vehicles which are involved in the commission of offence. The forest officials even without completion of trial of forest offenders pending before the concerned court can dispose of the same. When law is authorized forest officials there is no irregularity or illegal in disposing of the property by the forest officials for taking confiscation steps. As per law only police produced the case property before the Forest officials and further police proved that they have seized the forest produce ie., red sandalwood logs from the accused and produced before the Forest officials and got it confiscated, and proceedings filed and marked. Confiscation proceedings ie., Ex.P8 and Ex.P9 that itself shows that produce was found in possession of accused and it leads to inference that accused might be committed the offence of theft or received the property from the person who committed they knowingly that it is a stolen property and that it is admissible u/s 114 (a) of Indian Evidence Act .

19. In the above said discussed evidence, the prosecution established its case for the offence u/s 411 IPC.

20. Further the evidence of all the prosecution witnesses disclosed that prosecution failed to establish that accused cut and carried away the forest logs from the Forest and who are the persons cut and produced the logs and that no oral or documentary evidence is produced by the prosecution in this regard. Prosecution failed to establish the fact that accused obstructed the police with an intention to kill them, and assault the police from discharge of their duties and that section. 307 IPC is not attracted to the present case on hand against the accused. At the same time, it is also not the case of prosecution witnesses that accused obstructed them while they were discharging their official duties is not proved against the accused.

21. Further prosecution failed to establish the Biological Diversity Act 2002 is applicable to the present facts of the case and the prosecution not able to produce any evidence regarding diversity and destruction of forest area by the acts of the accused and also failed to establish the damage of forest property as defined u/s 3 of Prevention of Public Property and Damage Act 1985 by the accused. To prosecute the offender under Biological Diversity Act 2002 there is a lot of procedure to be followed by the prosecution as defined u/s 61 of Biological Diversity Act. Section 61 and Chapter-IV, Sec. 18(c) of the said Act that no court shall take cognizance of offence of Biological Diversity Act except on complaint filed by the concerned Biologically Diversity Board Authority. Hence, the said Acts are not applicable against the accused.

22. Further it is observed that police noticed some weapons ie., bill hooks and axes found from the possession of accused, but they have not stated that those weapons are used for commission of offence and made attempt to kill the police officials, as such, Section 27(1) of Arms Act also not proved by the prosecution. Moreover, the weapons allegedly carried by the accused are agricultural implements which do not attract the provisions of Arms Act and Rules.

23. Further on perusal of all the evidence of prosecution witnesses, that accused are found in possession of Forest produce, but prosecution not proved that forest produce was cut and carried away from the reserve forest to attract the offence u/s 20(d) of A.P. Forest Act, and that it is not proved. Further the prosecution able to establish based on the above said witnesses evidence, exhibits and other material it is proved that accused A1 to A5 are illegally transporting the red sandalwood logs and violated the provisions of A.P. Forest Act 1967 and they are liable for punishment.

24. In the light of the above discussion, A1 to A4, A6, A8, A9, and A11 are found not guilty for the offences u/s 307, 353 and 379 IPC and u/s 3 of Prevention of Public Property and Damage Act 1985, Section 20 r/w 32 of A.P. Forest Act 1967, sec. 58 of Biological Diversity Act 2002, and Sec. 27(1) of Arms Act 1959 and they are acquitted for the said charges u/s 235 (1) Cr.P.C.

A1 to A4, A6, A8, A9, and A11 are found guilty for the offence u/s 411 IPC and violation of Rule-3 of A.P. Sandalwood and Red Sandal Wood Transit Rules

which is punishable u/s 36 of A.P. Forest Act and they are convicted u/s 235(2) Cr.P.C.

Dictated to the Personal Assistant, and after his transcription, corrected and pronounced by me in the open court, this the 31st day of October, 2018.

Sd/- C. Muralidhar
ASSISTANT SESSIONS JUDGE
PUTTUR

Heard the accused. about the quantum of sentence to be imposed upon the accused, they stated that they have not committed the offences and they are falsely implicated in the case. All the accused reported that they were married having wife and children and aged parents and they are not doing any work and that they requested the court to take lenient view.

On considering the request of A1 to A4, A6, A8, A9 and A11, facts and circumstances of the case and nature of the offence, this court felt that releasing the accused on P.O Act is not sufficient as the offences are causing financial loss to the State and those offences are treated against state. Further on considering facts and circumstances of the case, this court felt that imposing minimum imprisonment and fine is sufficient to meet the ends of justice.

In these circumstances, A1 to A4, A6, A8, A9 and A11 are sentenced to undergo Simple imprisonment for period of 4 months each for the offence u/s 411 IPC and under Rule-3 of A.P. Sandal Wood and Red Sandalwood Transit Rules punishable u/s sec. 36 of A.P. Forest Act. 1967 and also further sentenced to pay a fine of Rs.2,000/- each for the said offences, in default of payment of fine, they shall undergo simple imprisonment for a term of four months. The period under gone by A1 to A4, A6, A8, A9 and A11 in judicial custody is given set-off as per section 428

Cr.P.C. Both sentences shall run concurrently. Mo. 1 and 2 shall be destroyed after expiry of appeal time. Total fine Rs.32,000/- (A1 2000x2, A2 2000x 2, A3 2000x 2, A4 2000x2, A6 2000x2, A8 2000x 2, A9 2000x2 and A11 2,000x 2- = Rs.32,000/-) .

Dictation to the Personal Assistant, after his transcription, corrected and pronounced by me in the open court on this the 31st day of October, 2018.

Sd/- C. Muralidhar
ASST. SESSIONS JUDGE
PUTTUR.

Appendix of Evidence- Witnesses Examined

For Prosecution

Pw1 K.Chandasekhar,
Pw2 V. Ramanjeneyulu,
Pw3 Suresh,
Pw4 B. Sreeramulu,
Pw5 S.Hanumanthappa.

For Defence- None

EXHIBITS MARKED

FOR PROSECUTION

Ex.P1 : Confession, arrest, seizure mahazar dt.20.10.2014 at 5.00 pm
Ex.P2 : Confession, arrest, seizure mahazar dt.20.10.2014 at 6.45 [m.
Ex.P3 : Form-A,
Ex.P4 : Form -B,
Ex.P5 : Form -C,
Ex.P6 : Confession, arrest mahazar dt.28.11.2014 at 4.00 pm
Ex.P7 : FIR in Crime No.193/2014 of Puttur PS.
Ex.P8 : Prosecution order dt.26.8.2015.
Ex.P9 : Prosecution order dt.18.11.2016.

FOR DEFENCE: NIL-

MATERIAL OBJECTS MARKED:-

Mo.1 is two knives.
Mo.2 is two axes.

Sd/- C. Muralidhar
A.S.J. PTR.

// True copy//

Asst. Sessions Judge,
Puttur.

