

INTHECOURTOF THE JUDICIAL I CLASS MAGISTRATE KUTHUPARAMBA.

Present:- Smt.Jalajarani M.T.

Judl. I Class Magistrate,

Dated this the 15th day of March, 2016

CC 392/14

Complainant : SHO, Kelakam Cr. 425/12
By A.P.P.Gr.II Kuthuparamba.
Vs.

Accused : 1.Jacob
By Sri. Anil Prakash C.V., Advocate

Offence : Punishable u/s 2, 16(b) 2 (20) 2(36) 9, 39 ,50, 51
and 57 of Wild life Protection Act 1972.

Plead : Not guilty.

Finding : Guilty

Sentence/order : Accused is convicted and sentenced to undergo
R.I. for 3 years and to pay fine of Rs.10,000/- for the
offence u/s section 51 of Wild Life Protection Act .IDRI
for 6 month.

Description of accused.

Sl.No	.Name	Father' name	Occupation	Residence	Age
1.	Jacob	Joseph	Agriculture	Kolayad	57

Date of :

Offence : 19.4.12

1. Complaint : 10.2.14

2. Apprehension : 20.4.12

3. Release on bail : 25.4.12

4. Commencement of trial : 21.7.14

5. Close of trial : 10.3.16

6. Sentence/order : 15.3.16

This case having been finally heard on this the 15th day of March, 2016, the court on the same day delivered the following.

JUDGMENT

This is a case originating from the complaint filed by the Forest Range Officer of Kottiyur Forest Range against the accused alleging the offences punishable under sections 2, 16(b) 2 (20) 2(36) 9, 39 ,50, 51 and 57 of Wild life Protection Act 1972.

2.Gist of the prosecution case is as follows; Accused hunted a wild boar ,killed and kept the meat at his residence. With the above allegation accused is alleged to have been committed the aforesaid offences.

3.On appearance copies of relevant prosecution records were furnished to the accused. He was defended through a counsel appointed by him. Thereafter, Pw1 and 2 examined and Ext.P1 and P2 marked on the side of the prosecution. After preliminary hearing charge framed u/s 2, 16, (b)2 (20), 2(36) ,9, 39 ,50, 51 and 57 of Wild Life Protection Act read over explained to which he pleaded not guilty, claimed to be tried.

4.Thereafter, Pw1 and 2 recalled and cross examined on the side of the accused and Pw3 to Pw5 also examined and Ext. P3 to P8 marked. MO.1 to 5 also marked. After close of prosecution evidence, accused was examined under section 313(1)(b) Cr.PC. He denied all the incriminating evidence appearing against him, maintained plea of innocence.

5. Dw1 to 3 examined and Ext. D1 to D5 marked on the side of the accused.

6. Both sides were heard,

7.From the facts and circumstances of the case following points arise for

consideration;

- 1) Whether the accused hunted and killed wild boar and kept the meat at his house?
- 3) Whether the prosecution has succeeded in proving the alleged offence against him?
- 4) If so, what is the proper order as to sentence to be passed?

8.Point No.1; . Definite case of prosecution is that the accused entrapped a wild boar from his farm adjacent to his house, killed and kept the meat in his house for cooking and put the waste in to a ferrow. Pw1 to 4 the officials of Kottiyur Forest Range on getting the information inspected the house of accused and seized 5 Kg of meat of wild boar, knife and other articles used by the accused for entrapping and killing the wild boar. During examination Pw1 to 4 narrated the incident and identified the accused. They identified MO.1 as the pressure cooker used by the accused for keeping the meat, MO.11 as the sack, MO.111 as the wooden plank and MO.1V as the knife used by the accused for cutting the meat and MO.5 as the iron wire used by the accused for trapping the animal.

9.Pw1 is then beat guard of Kottiyur Range Tholambra section. He deposed that on 19.4.2012 on the basis of telephonic information received from Thalasseri Flying Squad Range Officer ,they reached at the house bearing No. 155/X1 of Kolayadu Panchayath belonging to the accused then they noticed the accused has been vanishing through the back side door with a sack on his hand. They intercepted him and on examination, they noticed a wooden plank, a blood stained knife and 2 Kg meat inside the sack. Accused produced a pressure cooker containing 3 Kg meat. Pw1 would say, they enquired about the remaining portion of the wild boar then, the accused showed a ferrow and they

recovered the head portion and legs and an iron trap from the pit. According to Pw1, he prepared mahazar in the incident and produced the accused and articles seized before the Range Officer. Pw1 would say, he produced the remaining portions before Veterinary surgeon at Kommeri for chemical examination. Ext.P1 is the mahazar and Ext.P2 is the Form A1 prepared in the incident. During examination Pw1 identified his signature seen in those documents. During trial accused was absent and learned counsel stated that he is not disputing the identity of the accused. Pw2 and 3 are the fellow officers who accompanied Pw1 to the house of the accused and detected the offence. They deposed in tune with the evidence of Pw1. They identified their signature in Ext.P1 and P2 and the accused also MO.1 to MO.V the material objects seized from the accused.

10. Learned counsel for the accused filed notes of arguments raising various arguments. He contended that, regarding the presence of accused with meat at his house evidence of Pw1 to 3 are contradictory to each other. According to learned counsel, a matured pig would have weight of 50 to 150Kg and the total meat alleged to have been seized from the accused was 5 Kg only and the waste seized would come around 5 or 6 Kg but, prosecution evidence does not show what happened to the remaining meat. Learned counsel contended that Ext.P7 was obtained by fraud and coercion so, the same cannot be relied. According to the accused, the meat alleged to have been seized by the forest officials was purchased by him from Dw3 a licensed dealer and Pw3 have got some personal animosity towards the accused and by knowing the purchase of meat from Dw3, Pw3 and party forest officials rushed in to the house of the accused and foisted a false case against him.

11. During examination Pw1 deposed that when they knocked at the door

the accused opened the door and when they introduced himself ,accused closed the door and went towards the back side. According to Pw1, the meat seized by them were removed one day prior to their visit and the skin was not removed from the meat also. Pw1 would say, along with the waste they have seized the dead body of a piglet. Pw2 also deposed that ,the skin was not removed from the meat and the same was the meat of a wild boar. Evidence of Pw1 and 2 shows that they seized the remaining parts of the wild boar from a near by ferow, in front of the house of the accused. According to Pw2 the wild boar killed by the accused would be aged 3 years and the animal was entrapped .

12.Dw1 is the Veitenary surgeon ,now working in Kattakkada hospital ,Thiruvananthapuram. He examined the body of the dead wild boar and issued certificate. He was not examined on the side of the prosecution. He was cited as defence witness and the certificate issued by him was marked as Ext.D2. Dw2 ,according to the defence is a retired forest range officer and Dw3 is the person who supplied meat of pig to the accused. Ext.D3 is the license issued from Chittriparamba Grama Panchaytah to Dw3 for keeping pig in his house. Ext.D4 is the license fee receipts. Which shows that, the accused has license to keep 120 pig in his farm. Ext.D1 is the cash bill issued by 'CHRIS SEBASTIAN PIG FARM' to the accused for purchasing 4 Kg pig for price Rs.480/-.

13.According to Dw1, the head portion of a pig and the dead body of a piglet were brought before him by the forest officials for examination and he conducted the post- mortum and issued certificate. Evidence of Dw1 coupled with Ext.P3 shows that ,the head of the pig was cut and removed by a sharp edged weapon like knife. . According to Dw1, if the pig was died by entrapping, there would be some colour change in the brain cells of the pig.

Dw1 would say the head of the pig and piglet would have 5 days old and in a normal case there would be 50-150Kg weight to a pig. According to the forest officials, the meat they seized were not removed from the skin but ,Dw1 deposed that one cannot eat the meat without removing the skin. According to Dw1 a pig in her advanced stage of pregnancy will not come out from the forest since her belly would touch the ground. Evidence of Dw2 shows that, he is a retired forest range officer having 35 years service in his carrier. He also deposed that a fully grown pig would have weight 50Kg-140Kg and he had seen pregnant pig also. According to him also, a pig in advanced stage of pregnancy will not come out from the forest . According to Dw3 he is running a 'pig farm' at Edayar and he used to supply meat in accordance with the order. Dw3 would say on 19.4.2012 accused had purchased 4Kg meat of a pig from him to which he issued Et.D1 cash bill.

14. Learned counsel for the accused argued that, the evidence of Dw1 to 3 coupled with Ext.D1 to D5 documents produced on the side of the accused would disprove the case of the prosecution. On the other hand learned Assistant Public Prosecutor submitted that ,Dw1 was influenced by the accused and Dw2 is an interested witnesses. She further submitted that the evidence of Dw3 cannot be relied since as per Ext.D3 to D5 he has only license to keep the pig so, Ext.D1 was fabricated for the purpose of the case.

15. From the above discussion ,it would see that Pw1 to 3 have given a vivid description of the incident. They have a definite case that during the course of their inspection they have seized 2 Kg of meat in pressure cooker from the possession of the accused and MO.11 to V material objects used by the accused for entrapping and killing the pig. Definite case of accused is that, the meat of a pig alleged to have been seized from him was purchased from

Dw3. Etxt.D1 is the cash bill showing the purchase. During examination Dw3 deposed that as per Ext.D3 to D5 he has right to keep the pig and he has no authority to kill the pig for sale of their meat.

16. On going through the evidence it would see that the defence had admitted the possession and seizure of meat of a pig from the house of the accused. The defence taken by the accused was that the meat seized from his house was not of a wild boar and he purchased the meat from Dw3. It would see that during trial accused has no case that the meat seized from him was purchased from Dw3. During 313 examination also accused has no such case. Ext.D3 coupled with oral evidence of Dw3 shows that he has no license to kill and sell the meat of pig . Ext.D1 is only a cash bill . Either the bill book or cash book have been produced on the side of the accused. I don't finds much relevancy in the oral evidence of Dw1 and 2 because ,Ext.D2 certificate issued by Dw1 shows that on 19.4.2012 he had examined the head and pig let of a wild boar as brought by the forest officials. The cause of death stated in Ext.D2 was that the wild pig was hunted or trapped and head was left over and body was separated by a sharp object like knife which leaded to death. More over, evidence of Dw1 shows that ,now he is working in Thiruvananthapuram District and he has not received any summons to come and deposed before this Court. According to him the accused contacted him over telephone to come and deposed before this Court and he received the summons after reaching before this Court only. As per Ext.D2 the body of the animal produced before Dw2 was that of a wild boar. During examination Pw1 to 3 have a definite case that they seized 3 Kg meat of wild boar in a pressure cooker ,a wooden plank and knife also from the possession of the accused. Regarding the cause of death prosecution has a definite case that the pig was entrapped thereafter, cut in to

pieces using MO.1Vknife. Regarding Ext.P7 confession statement ,it bears the name and signature of the accused and he was putting his signature after understanding the contents. Except a mere allegation that Ext.P7 was obtained by fraud or coercion defence evidence does not show the fraud played by the forest officials.

17.Accused would taken a defence during 313 examination that Pw3 has got some personal animosity towards him. According to the accused, a case is pending before this Court between him and his neighbour one Mr.Manoharan and Pw3 was a mediator in the matter. In the mediation, Pw3 threatened the accused ,then he demanded Pw3 to left the place and due to that enmity he foisted a false case by colluding with said Manoharan. No evidence adduced and no documents produced on the side of the accused to prove his defence. During examination accused has no defence that, the meat seized from him was purchased from Dw1 .On the other hand evidence of the prosecution witnesses coupled with documents produced shows that the animal wild boar would come under Schedule 11 of the Act so, the prosecution has been succeeded in proving the offence under section 9 of Wild life Protection Act 1972. So the accused is to be punished under section 51 of the Act.

18.Considering the nature and seriousness of the offence committed by the accused I am of the view that this is not a fit case to invoke the benevolent provisions of Probation of Offenders Act so, the accused shall be heard on question of sentence.

Typed by me in my personal Lap Top, corrected and pronounced by me in open court this the 15th day of March 2016.

Judicial First Class Magistrate.1
Kuthuparamba.

19. Accused is heard on question of sentence. He prayed for leniency. The cruelty and the killing of the animals are to be viewed seriously. The offence committed by the accused is a grave in nature s, he is not entitled to get any leniency hence deterrent punishment would be imposed on him.

20. In the result accused is sentenced to under go rigorous imprisonment for a period of 3 year and pay fine of Rs.10,000/- for the offence punishable under section 51 of Wild Life Protection Act .In default to undergo RI for 6 month.

21. MO.11 being value less shall be destroyed and MO.1, MO.111 to V shall be confiscated after the appeal period is over. If appeal preferred after the disposal of the appeal.

Pronounced by me in open court this the 15th day of March, 2016.

Judicial First Class Magistrate.1

Kuthuparamba

APPENDIX

WITNESSES EXAMINED FOR PROSECUTION:

PW1: Sajeevan, Forest Guard

PW2: Rajeevan, Section Forest Officer

PW3: Jayesh, Section Forest Officer

PW\$: Jyothi prakash, Range Officer

PW5: Anandkumar, Range Forest Officer

EXHIBITS FILED FOR PROSECUTION;

Ext. P1: Mahazer

Ext.P2: Seizure mahazer

Ext.P3: Arrest memo

Ext.P4: Inspection memo

Ext.P5: Form AI report

Ext.P6: Property list

Ext.P7: Confession statement

Ext.P8: Prosecution sanction order

WITNESSES EXAMINED FOR DEFENCE;

DW1: Dr. Thampiraj

DW2: Abdulrehiman

DW3: Chris Sebastian

EXHIBITS FILED FOR DEFENCE;

Ext.D1: Receipt

Ext.D2: Post mortem report.

Ext.D3: Licence for doing pig business

Ext.D4: Receipt for renewing licence

Ext.D5: Tax receipt

MOS.MARKED;

MO1: Cooker

MO2: Sack

MO3: Wooden plank

MO4: Knife

MO5: Iron rod

Judicial I Class Magistrate,
Kuthuparamba.