

IN THE HIGH COURT OF KARNATAKA, BENGALURU

THE HON'BLE MR. JUSTICE N.K.SUDHINDRARAO

CRIMINAL APPEAL No.821/2010 DATED: 14-06-2018

SRI. THOMAS,S/O ANTONY VS. STATE OF KARNATAKA
BY BEECHANAHALLI POLICE, BANGALORE.

JUDGMENT

This appeal is directed against the order passed by the learned Presiding Officer, Fast Track Court-IV, Mysore, on 16.07.2010 in S.C. No.79/2007, wherein the accused Nos.1 & 2 were convicted for the offencespunishable under Sections 353 and 307 read with Section 149 of IPC and sentenced to undergo simple imprisonment for a period of three years for the offence punishable under Section 307 read with 149 ofIPC.

2. The appellant in this case is accused No.2 before the trial Court.

3. The complaint is lodged by one Ravikumar, S/o. Sannalingaiah, aged about 32 years, who is Forest Watcher of Gundre Range, Begur, H.D. Kote Taluk. The

substance of the complaint, which is marked as Ex.P1 during trial, is that:

On 01.10.2006 night at 10.00 p.m., on receiving definite information from N.Begur Forest Office, the Complainant - Range Forest Officer, Mr.Karunakaran, Additional Forestor, Mr. Ranganna, Writer, along with Mr. Mariyappa and Mr. Somu, Watchers, went in a Department Jeep, which was driven by Mr. Mohan, for patrolling job at Begur forest area. At about 12.00 A.M., at night when they were patrolling at Kannegala Forest, near River bund, they found 10 to 11 persons were carrying wooden logs from the Forest area and were armed with machu (Chopper), club, etc. Thepatrolling party chased them and caught two persons out of them as the remaining escaped. Suddenly, one of them snatched a department rifle from Karunakaran and obstructed the complainant and the patrolling officials from discharging their official duties. The said person with an intention to murder the Complainant fired at the leg and members of the patrolling party snatched the rifle from the said person. The other

persons ran away. However, two persons as stated above were taken to custody.

4. On inquiry, it was revealed that the person, who fired the rifle, namely, Thangacchan, S/o. Verghes, aged 38 years, resident of Padichera Village, Kerala. As the Complainant had sustained serious injuries over the leg, there was bleeding, he was taken in the Department jeep to the hospital at Kenchanahalli and thereafter he was shifted to JSS Hospital, Mysore.

5. A case came to be registered in Cr. No.87/2006 for the offences punishable under Sections 143, 147, 148, 447, 353, 307 read with Section 149 of IPC and Sections 2, 9, 31, 51, 52 of Wild Life Protection Act and Sections 3 & 27 of Arms Act. Procedures regarding investigation, drawing mahazar, spot mahazar and formalities were conducted.

6. The learned Sessions Judge by his judgment, convicted the appellant - accused No.2 for the offences punishable under Sections 353 and 307 of IPC and was

acquitted for the other offences. The appellant – accused No.2 was sentenced to undergo SI for two years for the offence punishable under Section 353 r/w 149 IPC and to undergo SI for three years for the offence punishable under Section 307r/w 149 IPC. Aggrieved by the said Judgment and Order of Conviction and Sentence, accused No.2 – Thomas has preferred this appeal.

7. I have heard the arguments of Mr. Amar Correa, learned counsel appearing for appellant- accused No.2, and learned HCGP for respondent- State.

8. The learned counsel for appellant would submit that the Complaint and the prosecution materials are not clear and full of contradictions. They do not present natural facts as the complaint is full of exaggerations. It was further submitted that there was no such incident as stated in the complaint, FIR or the final report. He would further submit that the appellant in this case is accused No.2 and there are no overt acts attributed against him before trial Court. Further, he would submit that the learned trial Judge has not assigned reasons for convicting the appellant for the offence

punishable under Section 307 r/w 149 IPC and also for imposing the sentence which is harsh.

9. The learned HCGP made the submission that the spot was forest area and the attending circumstances speak about the atrocious acts of the accused. Further, the accused persons committed the offence against the natural resource, forest and environment, apart from the one against the Complainant and the other forest officials, who without any fault of them were discharging their official duties. He would further submit that the other accused persons are absconding, and it tells a lot on the present accused who shared the Crime.

10. The materials and evidence that was available before the trial Court, oral evidence of PW1 to 18 and the documents from Exs.P1 to P19 and material objects MO1 to 5.

11. The claim of the prosecution in brief is that the patrolling party consisted of the officials totally nine members including Forest Guard Watchers and other

officials were patrolling in the jeep provided by the Department.

12. Complainant Ravikumar is PW1. In his oral evidence, he reiterates the complaint version regarding himself and other Forest Officials patrolling Begur Forest area, in the department jeep at 10 p.m. on 1.10.2006, sighting the group of the accused 10 to 11 in number, shifting the wooden logs, they trying to escape, infact, except two other fleeing. One out of them (accused No.1) Thangachan, snatching the rifle from one of the officials. Thangacchan attempting on the life of the complainant by firing forcefully and preventing the complainant and the other officials from discharging the official duties.

13. The statement of Complainant in this case was recorded in the hospital, as he was injured because of the firing. Ex.P14 is the wound certificate of the Complainant. Out of the injuries Sl. No.1 is stated to be grievous.

14. The learned counsel Mr.Amar Correa contended that there is contradiction between the

complaint and the evidence of the Complainant to the fact that in case of former, the Complainant said that his rifle was snatched, but in the evidence he said that rifle was in the hands of one Karunakaran, one of the patrolling officials. Thus, regarding holding of the rifle there is variation with regard to the person. The Complainant also identifies the accused, who snatched the rifle and attempted to murder the Complainant after having obstructed the complainant and others. He also says about the injuries caused on the chest.

15. Version that is not available in the complaint is that the complainant saying in the evidence that the rifle that was pointed towards the complainant, when the accused No.1 was about to fire, the complainant pulled the barrel downwards and because of which, it was directed against the left leg, otherwise it would have been fatal. He identified the weapon also. He has been cross examined by the accused.

16. PW2 – Karunakaran, who is said to be the person accompanied the patrolling party. He also identified

the accused persons. He states that when the accused No.1 pointed the rifle to fire at the Complainant, he pulled it downwards and the Complainant escaped from the chest injury. However, bullet entered near toe area of left leg.

17. PW3 – Basavaraju, ACF, one of the member in patrolling party, asserts that on receiving credible information over phone, the patrolling party went to the forest area near Kannegala Hole, which is located between the border line of Karnataka and Kerala. In the said spot, they sighted 9 to 10 persons and they are in possession of choppers. The patrolling party heard the talks and they went to the spot. Some of them were loading wooden logs into the jeep, belonging to them. They obstructed them from discharging their official duty. This witness also speaks about documents, mahazar and other formalities.

18. Lokesh Murthy – PW4, Forestor, aged about 25 years, states about the incident. He identifies the accused and others. He is also the eye witness to the incident. He speaks about presence of other accused persons and also the incident.

19. Gopala – PW5, Forest Guard, aged 48 years. The substance of his evidence is that he reiterated the earlier evidence of PW1 to 4. He also identifies the accused and also tells about presence of other accused persons, who were loading wooden logs into the jeep from the Kannegala forest area, which is in between Karnataka and Kerala. .

20. Somashekar – PW6, Forest Watcher and his version is the same version as given by PW5. Jaiman – PW7, who is Jeep Driver and Ranganna – PW8, Office Assistant. Both spoke about the same version as spoken by the other witnesses.

21. Mariyappa – PW9, Forest Watcher and Thimmaiah – PW10, Watcher, are stated to be the eye witnesses to the alleged incident and they spoke about the drawing of the mahazar.

22. The Evidence of Complainant – PW1 and PW2

to 9, Forest Officials and their version and substance is about the happening of the incident, wherein the patrolling party in the Government jeep patrolling near Kannegala Forest near Hole and it was mid night 12.00. They found the accused persons involved in loading wooden logs into their jeep. On looking by the patrolling party they started running. However, the patrolling party only held two out of 9 to

11 persons. In the meanwhile, the accused No.1 snatched the rifle aimed to fire towards the Complainant. The others pulled out the rifle and thus the Complainant suffered bullet injuries to his left leg. Even they all spoke about recovery mahazar, spot mahazar and also recovery of material object MO1.

23. The incident is said to have happened during midnight 12 P.M. on 01/02.10.2006 at Kannegala, Padichera Village. Further the patrolling party who are said to be 10 in numbers caught only two accused and PW-1 being injured was admitted to Kenchanahalli Vivekananda Hospital and thereafter to JSS Hospital, Mysuru.

24. PW-14 –Dr.P.D.Kumar, who examined the injured, issued wound certificate –Exhibit P-14. Insofar as prosecution version is concerned I do not find there is any lapse regarding happening of the incident on 01.02/10/2016 at Kannegala river, Padichera Village. The version of the complainant regarding apprehension and presence of accused, snatching of rifle and firing at PW-1 are revealed. Further witnesses are natural. It is also necessary to make a mention that the patrolling party cannot be expected to carry available villagers, incident do happen, but independent witnesses may or may not watch.

25. The two offences for which the accused persons convicted are Sections 353 and 307 of IPC. The oral evidence about both offences by complainant PW-2 to 9 is that the accused persons obstructed exercise of official duty. In this connection it is necessary to make a mention that entire patrolling party consisted of only forest officials from watcher to ACF and when sited accused tried to run away and two of them were apprehended. Accused No.1 snatched the rifle from Karunakara-PW-2 and fired at the

complainant, because of pulling it down the bullet touched on the left toes.

26. Thus, this is substantial obstruction to prevent or deter a public servant from performing his duty. Insofar as overt act is concerned the accused persons are said to be a part of a big group consisting of 10 to 11 persons. However, two were apprehended and others escaped. At this juncture, it is necessary to mention that the offence happened at 12 A.M. in the forest area moreover, it did not belong to any private individual. The very presence of accused Nos. 1 and 2 is established before the court and there is no answer from either of the accused as to what was the reason as they were found with the group in the forest area. Injury suffered by complainant is not ordinary it is a bullet injury and part of toes of the leg have become defunct. Insofar as the concept of common intention or common object there would be a consensus to commit a crime. It is consensus or meeting of minds prior to the commission of offence which shows that the accused persons 1 and 2 who participated in the incident had the meeting of mind to commit the offence. The

execution of the offence may be through any one of them.

27. The result is they committed that offence that was in their mind. Thus when offence is said to have been committed by firing a rifle, it is the physical and the mental acts by accused Nos.1 and 2. In the instant case the common mind, object and the related were authored and executed by the accused. Insofar as conviction by the learned Judge is concerned accused Nos.1 and 2 convicted for the offence punishable under Section 353, 307 read with section 149 of IPC. The accused persons did not face trial and absconding.

28. It is necessary to make a cursory glance of Section 353 which reads as under:

“353. Assault or criminal force to deter public servant from discharge of his duty – Whoever assaults or uses criminal force to any person being a public servant in the execution of his duty as such public servant, or with intent to prevent or deter that person from discharging his duty as such public servant, or in consequence of anything done or attempted to be done by such person in the lawful discharge

of his duty as such public servant, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.”

Section 353 clearly states regarding assault or using criminal force to a public servant is to prevent him from exercising his official duties.

29. There is no dispute regarding the version of the patrolling party 1 to 10. The status of public servant is not disputed, deterring and obstructing them from discharging their official duties is proved beyond any shadow of doubt. Thus from the oral evidence and the attendant circumstances, PW2 to 10 being eye witnesses and aggrieved persons as most of them faced threat to life in the hands of the accused at Kannegala, on 01.10.2006 is established beyond reasonable doubt. Thus, I find ingredients of both sections are proved beyond reasonable doubt and in tandem by the prosecution and the findings of the learned trial Judge regarding the presence of the accused Nos.1 and 2 trying to escape, then snatching rifle

and firing at complainant and because of timely action of pulling down the barrel of the rifle resulted in the firing on the toe of the complainant. Insofar as acquittal of the accused persons for the other offence, I find that there was insertion of number of sections along with the above. It is not known for what better reasons those sections are inserted and the learned Judge was right in acquitting the accused Nos.1 and 2 for the offence punishable under Sections 143, 147, 148 and 447 read with section 149 of IPC.

30. Accused No.1 was convicted for the offence punishable under Section 353 read with section 149 of IPC, sentenced to undergo simple imprisonment for a period of two years and for the offence punishable under Section 307 read with section 149 of IPC and sentenced to undergo simple imprisonment for five years and rigorous imprisonment for two years and to pay fine of Rs.5,000/- and in default of payment of fine to undergo further simple imprisonment for a period of eight months. A sum of Rs.4,000/- out of the fine amount as imposed on accused No.1, be paid to PW-1 Ravikumar by way of compensation.

31. Learned trial Judge convicted the accused No.2 who is the appellant for the offence punishable under Section 353 read with section 149 of IPC and sentenced to undergo simple imprisonment for a period of two years. For the offence punishable under Section 307 read with section 149 of IPC accused sentenced to undergo simple imprisonment for a period of three years and ordered both the sentences shall run concurrently and the period of detention undergone if any by the accused No.1 and 2 shall be given set off under Section 428 of Cr.P.C.

32. In the instant case, the appellant is accused No.2. It is submitted that accused No.1 has not preferred any appeal and is serving the sentence as passed by the District Judge. Insofar as present accused is concerned he is on bail as the sentence was suspended by this Court on 05.01.2011.

33. Learned counsel for the appellant Sri.Amar Correa would submit that the punishment inflicted is harsh as the appellant and his family are put to serious hardship and inconvenience as the appellant is the sole bread earner

for the family.

34. Offence under Section 353 of IPC is punishable with imprisonment which may extend to two years or fine or with both and offence under Section 307 is punishable with imprisonment which may extend to ten years and shall also liable to fine.

35. Learned counsel for appellant would submit that accused was released on bail after suspension of sentence on 05.01.2011 and if he has to go jail for reminder sentence it will upset the very family and family members and prays the court to take lenient view. Learned High Court Government Pleader would oppose the same.

36. The learned trial Judge has imposed substantive sentence of two years simple imprisonment for the offence punishable under Section 353 of IPC without fine and three years simple imprisonment for the offence punishable under Section 307 of IPC without fine. The legal aspect unnoticed by the learned trial Judge is

imposing of fine that is mandatory for the offence punishable under Section 307 of IPC. However, said error is rectified.

37. After hearing both the sides, this court is of the view that period of two years would serve the purpose. Thus the appeal deserves to be allowed in part.

Appeal allowed in part. The Judgment dated 16.07.2010 passed in S.C.No.79/2007 convicting the accused No.2 for the offence punishable under Section 353 and 307 read with Section 149 IPC is confirmed. But the sentence of imprisonment is set aside for the purpose of modification and remission.

Insofar as offence punishable under Section 353 of IPC is concerned, conviction and sentence are confirmed and insofar as offence punishable under Section 307 IPC is concerned, conviction is confirmed and sentence is altered by reducing the same from three years to two years with fine of Rs.5,000/-. In default to pay fine amount accused shall undergo simple imprisonment for three months.

