

(2013) 12 KAR CK 0260

In the Karnataka High Court

Case No : Criminal Appeal No. 421 of 2013 connected with Criminal Appeal No. 584 of 2013

Sri. Kumara and Sri. Shiva @ Sutta @ Shivashankar

APPELLANT

Vs

State
 Mohammed Khalled @ Khaleed and Ananda @
Achari Anada Vs State

RESPONDENT

Date of Decision : 05-12-2013

Acts Referred:

Forest Act, 1963 — Section 87
Penal Code, 1860 (IPC) — Section 380, 457

Citation : (2013) 12 KAR CK 0260

Hon'ble Judges : N. Ananda, J

Bench : Single Bench

Advocate : Chandrashekar Rodhavar in Criminal A. No. 421/2013 and Sri. Dilraj Rohit Sequeira in Criminal A. No. 584/2013, for the Appellant; B.T. Venkatesh, SPP, for the Respondent

Final Decision : Allowed

Judgement

N. Ananda, J.—Criminal Appeal No. 584/2013 and Criminal Appeal No. 421/2013 are filed by accused Nos. 1, 2, 4 and 5 against the judgment of conviction in S.C. No. 110/2012 on the file of Additional Sessions Judge, Hassan. Accused Nos. 1 to 5 were tried for offences punishable under Sections 457 and 380 of the Indian Penal Code and also for offences punishable under Section- 87 of the Karnataka Forest Act. The learned Sessions Judge, Hassan has sentenced accused Nos. 1 to 5 for offences punishable under Sections- 457 and 380 and also for offences punishable u/s - 87 of the Forest Act and has sentenced them to undergo simple imprisonment for a period of five years and to pay a fine of Rs. 10,000/- each, in default to undergo simple imprisonment for three months for the offences punishable under Sections- 457 and 380 of I.P.C. The learned Sessions Judge has sentenced the accused to undergo imprisonment for a period of five years and pay a fine of Rs. 50,000/- each, in default to undergo simple imprisonment for one year eight months, for an offence punishable under Section- 87 of the

Karnataka Forest Act, 1963.

2. The matters are listed for orders. The lower court records are received. The accused are in judicial custody. Therefore, the appeals are taken up for final disposal.

3. Heard the learned counsel for the appellants and the learned State Public Prosecutor for the respondent.

4. The charges framed against the accused are as follows:

(a) That, on 31.07.2005 during night hours at Arasikere town, the accused No. 1 to 5 in furtherance of common intention, committed lurking trespass by break open the iron rod put to the property room of Civil Judge and JMFC Court, Arasikere with an intention to commit theft and thereby committed an offence punishable under Section- 457 read with Section- 34 of Indian Penal Code?

(b) That on the above said date, time and place, the accused persons committed theft of sandalwood billets, which were kept in the property room of Civil Judge and JMFC Court, Arasikere and chips and thereby committed an offence punishable under Section- 380 read with Section- 34 of Indian Penal Code?

(c) That on the above said date, time and place the accused persons were in possession and transporting of sandal wood billets belonging to the government without possessing the permit or licence in respect of the same, thereby committed the offence punishable under Section- 87 of the Karnataka Forest Act.

5. It is the case of the prosecution that accused Nos. 1 to 5 has committed house breaking and committed theft of sandal wood billets from the property room of Civil Judge and JMFC Court, Arasikere during the intervening night of 31.07.2005. The First Information was lodged on the following day, the crime was registered for the aforesaid offences against unknown persons. The Investigating Officer was not able to detect the offences and trace the culprits, therefore he submitted a "C" report.

6. On 15.02.2010, accused No. 1 was arrested in Crime No. 13/2010 by Najarbad Police, Mysore. The Investigating Officer of the instant case sought permission of the Court for reopening of the case and issuance of body warrants for production of accused No. 1 and 2 from the District prison at Mysore. The learned Magistrate issued body warrants and accused Nos. 1 and 2 were produced before the learned Magistrate on 25.01.2011 and they were given to police custody from 25.01.2011 to 27.01.2011. The accused were interrogated by the Investigating Officer.

7. It is the case of the prosecution that accused No. 1 gave a voluntary statement on 25.01.2011 in pursuance the Investigating Officer some of the stolen properties on 26.01.2011.

8. The learned Sessions Judge has convicted accused No. 1 to 5 on the basis of the voluntary statement given by accused No. 1 and recovery of the sandal wood

billets at the instance of accused No. 1. The evidence adduced by the prosecution and investigation records do not reveal that accused Nos. 2 to 5 had given any voluntary statements or the stolen properties were recovered at their instance in the circumstance, the learned Sessions Judge should not have convicted accused Nos. 2 to 5 on the basis of the alleged voluntary statement made by accused No. 1 and the alleged recovery of the stolen property at the instance of accused No. 1.

9. Now advertent to the voluntary statement said to have been made by accused No. 1 and recovery of stolen property in pursuance of voluntary statement of accused No. 1, it is necessary to state that accused No. 1 was arrested on 13.02.2010 in crime No. 13/2010 registered for an offence punishable under Section- 396 of I.P.C. by Najarbad Police, Mysore. He was produced before PW-6, Veeraiah Andanaiah Poojaar, who was then working as Assistant Commissioner of Police, Devaraju Division, Mysore city and Najarbad Police station was within the jurisdiction of Assistant Commissioner of Police at Mysore city.

10. PW-6 has deposed that he interrogated accused No. 1 and recorded his voluntary statement. Accused had not given voluntary statement relating stolen properties of the instant case. The voluntary statement stated to have been made by accused No. 1 before PW-6 was not produced. There was no recovery of the stolen properties of the instant case by PW-6.

11. PW-6 has deposed that on the same day accused No. 3 was produced before the court and he recorded the voluntary statement of accused No. 3. However, he did not recover the stolen properties of the instant case. Accused No. 1 and 3 were remanded to judicial custody and he had transferred the case records to jurisdictional police i.e., Arasikere town police station. As already stated, the Investigating Officer secured accused No. 1 under body warrant and recorded voluntary statement on 25.01.2011 regarding the stolen property in the instant case.

12. At this juncture, it is necessary to state that the accused was arrested on 15.02.2010 and he was in judicial custody in Crime No. 13/2010 registered for an offence punishable under Section- 386 of I.P.C. by Najarbad Police station. In the circumstance, the evidence of the Investigating Officer that accused No. 1 made a voluntary statement on 25.01.2011 in pursuance of the same the Investigating Officer recovered the stolen property of the instant case on 26.01.2011 does not inspire confidence.

13. The accused is alleged to have committed offence on 31.07.2005. The evidence on record would show that the accused No. 1 was arrested by Devaraju Division police on 15.02.2010 and they were in judicial custody from 15.02.2010 to 25.01.2011 and they have secured them under body warrant. In the circumstance, the evidence of Investigating Officer that accused No. 1 had made a voluntary statement and in pursuance of the same the investigating officer has

recovered stolen property of the instance case on 26.01.2011 cannot be accepted. The stolen property are sandal wood billets. It is difficult to concede that stolen sandal wood billets on 31.07.2005 had remained in the same condition even after the period of 41/2 years and there was no proper identification of the stolen properties.

14. The learned Trial Judge without properly appreciating evidence and the facts and circumstances of the case by placing reliance on evidence of the Investigating Officer, without noticing the time and date of offence committed and the date of arrest and date of disclosure statement has recorded erroneous findings that the stolen properties were recovered at the instance of accused No. 1 on 26.01.2011 (after a period of five years from the date of offence).

15. The learned Sessions Judge without has convicted accused Nos. 2 to 5 on the basis of voluntary statement made by accused No. 1 though they had not made any voluntary statements and none of the stolen properties was recovered that their instance. It appears that the Investigating officer had submitted "C" report in the instance case. After learning about the crime registered against the accused in Najarbad Police station, Devaraju Division, Mysore city in respect of Crime No. 13/2010 and the Investigating Officer fixed them in the instant case to make it appear that the crime of the instant case was investigated and solved. Therefore, the impugned judgment cannot be sustained. In the result, I pass the following:

ORDER

The appeals are accepted. The impugned judgments are set-aside.

Accused No. 1, Mohammed Khalled @ Khaleed, accused No. 2, Ananda @ Achari Anada, accused No. 3, Kumara and accused No. 5 Sri. Shiva @ Sutta @ Shivashankar are acquitted of the offences punishable under Sections- 457, 380 of I.P.C. and also for offence punishable under Section- 87 of the Karnataka Forest Act. The bail bonds of the accused stand cancelled. They shall be released, if they are not required in any other case.

Office is directed to send the records along with the copy of this judgment.