

(2011) 09 CAL CK 0041
In the Calcutta High Court
Case No : C.R.A. No. 005 of 2011

Tawee Athoki Tawee

APPELLANT

Vs

The State

RESPONDENT

Date of Decision : 23-09-2011

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 374, 375

Foreigners Act, 1946 — Section 14A

Marine Zones of India (Regulations of Fishing by Foreign Vessels) Act, 1981 — Section 10, 14, 15, 3, 7

Wild Life (Protection) Act, 1972 — Section 50, 51, 51(1)

Citation : (2012) CriLJ 742

Hon'ble Judges : Tarun Kumar Gupta, J

Bench : Single Bench

Advocate : D. Illango, Mrs. Anjili Nag, for the Appellant; Santosh Kumar Mandai for state, for the Respondent

Final Decision : Allowed

Judgement

Tarun Kumar Gupta, J.—This appeal u/s 374 read with Section 375 of the Criminal Procedure Code is directed against order of conviction dated 8th March, 2011 and order of sentence dated 10th March, 2011 passed by the learned Additional Sessions Judge. Andaman & Nicobar Islands at Port Blair in Sessions Trial No. 10 of 2011. It is the case of the appellant that he along with other 12 accused persons faced trial in the said case u/s 3/7/10/ 14/15(c), MZI and u/s 14A of Foreigners Act and also u/s 50/ 51 of Wild Life Protection Act, 1972. On 8th March, 2011 when the case was fixed for framing of charges, learned Court decided to read out the charges through a Burmese interpreter. Learned counsel for the appellant-accused neither knew Burmese language nor has any knowledge of Thai language and that there was no occasion for them to submit before court that co-accused Lekhit knew both Burmese language and Thai language or that Lekhit can interpret in Thai language to the present appellant and two others who were accused persons of Thailand. Learned advocate for the

present appellant-accused never submitted that present appellant pleaded guilty as learned counsel had no means of communication with accused persons directly. Learned counsel for the appellant could not also follow as to how the Court held that present appellant pleaded guilty when the charges were not stated to the appellant in Thai language and no interpreter of Thai language was present in Court. Only after passing of sentence on 10th March, 2011 the learned counsel of the appellant-accused was able to contact his relation namely Panom Khomcho and later on said Panom Khomcho and one member of Thai Council namely Arun Roy Chowdhury arrived at Port Blair in May, 2011 and thereafter there was interaction between appellant-accused and his learned counsel through Arun Roy Chowdhury who knew English language and learned counsel learnt that on 8th March, 2011 the appellant could not understand anything what co-accused Lekhit was speaking to him and that though appellant repeatedly asked Lekhit to speak in Thai but Lekhit was continuously speaking something which was not understood by the appellant and learned trial court convicted and sentenced the accused on the alleged plea of guilt of accused, though in reality appellant-accused did not understand the contents of the charges. The conviction and sentence were liable to be set aside.

2. Mrs. Anjili Nag has submitted that admittedly present appellant being a Thai personnel and knowing only Thai language faced trial with other 12 accused persons most of whom are Burmese and that on 8th March, 2011, the date fixed for framing of charges, one Burmese interpreter was present in court for interpreting the contents of charges in Burmese language. According to her, learned court observed that Lekhit, another Thai accused knew Burmese and that learned counsel for the appellant did not submit before the learned court that Lekhit knew Burmese language or that Lekhit would be able to interpret said charges to be read over in Burmese language to this appellant in Thai language. According to Mrs. Nag, learned trial court passed the order of conviction with the assumption that Lekhit knew Burmese language or that Lekhit was able to understand the contents of charges read over in Burmese language and/or able to interpret the same to this appellant in Thai language or that appellant pleaded guilty after truly knowing the contents of the charges. According to Mrs. Nag, as the recording of plea of guilt of this appellant was based on the assumption that appellant-accused understood the contents of the charges though in reality he could not understand the charges and hence the conviction on the alleged plea of guilt of this appellant and subsequent sentence should be set aside.

3. Mrs. Nag, learned counsel for the appellant has further submitted that as per charge-sheet, charges were levelled against the present appellant u/s 3/7/10/14/15(c). MZI Act. 1981 read with Section 14-A of Foreigners Act, 1946 and Section 50/ 51 Wild Life Protection Act, 1972. According to the learned counsel though there was an allegation of entering into the Maritime Zone of India with the ship by the present appellant accused being Captain of the ship without any legal authority and the charges were liable to be framed on that score u/s 3 read with Section 10(b) of Maritime Zone of India (Regulation of Fishing by Foreign

Vessels) Act, 1981 and u/s 7 read with Section 14 of the said Act of 1981, but the learned trial court wrongly framed charges u/s 3 read with Section 10(a) of the said Act as well as u/s 7 read with 10(b) of the said Act of 1981. It is further submitted that u/s 10(b) of said Act, maximum prescribed punishment is a fine not exceeding Rs. 10 lakhs and u/s 14 of the said Act, the maximum punishment was a fine not exceeding Rs. 5 lakhs. According to learned counsel as the learned trial court erroneously framed charges u/s 10(a) of said Act in place of 10(b) of said Act, he wrongly imposed sentence of one year and Rs. 10 lakhs I.D. one year rigorous imprisonment though in reality the maximum punishment which could have been prescribed u/s 10(b) is only Rs. 10 lakhs and no substantive sentence. It is further submitted that likewise, learned trial court imposed a fine of Rs. 7 lakhs I.D. one year rigorous imprisonment for committing offence u/s 7 read with Section 10(b) of said Act of 1981, though, in reality, for committing offence u/s 7 of said Act, the Penal Section was 14 authorizing a maximum fine of Rs. 5 lakhs. According to the learned counsel of the appellant on these two scores the learned trial court committed gross mistake and that conviction should be set aside and/or the sentence imposed should be curtailed down accordingly. However, learned counsel for the appellant did not make any submission regarding sentence imposed in respect of other three charges namely, 15(c) of MZI Act, 1981. 14(A) of Foreigners Act and Section 50 read with Section 51(1) of the Wild Life Protection Act, 1972.

4. Mr. S. K. Mandal, learned Public Prosecutor, on the other hand has submitted that this appellant Tawai Ataki Tawai being the captain of the seized vehicle entered into Indian territory along with other 12 co-accused persons being crew members of the said vessel and that out of those crew members Lekhit and Thaintawa were Thai nationals and others were Burmese nationals. Mr. Mandal has further submitted that on 8th March, 2011 a Burmese interpreter was present in court and it was submitted by learned counsel of the present appellant and other co-accused of Thai nationals that Lekhit being a Thai national knew Burmese and that Lekhit would be able to interpret the contents of charges to be read over in Burmese language to this appellant and other Thai co-accused in Thai language. Mr. Mandal has further submitted on the basis of the said submission of the learned counsel of this appellant and others the contents of charges were read over and explained to the accused persons firstly in Burmese language by the court interpreter and thereafter co-accused Lekhit who was also Thai national read over said charges to this appellant and to another Thai co-accused in Thai language and thereafter all the accused persons including the present appellant pleaded guilty in the open court in presence of their respective learned counsel. In this connection. Mr. Mandal has further submitted that both learned lawyers on behalf of the accused persons had also submitted in the open court that the accused persons pleaded guilty and admitted the charges. According to him, at this stage there is no scope of resiling from the stand and to plead that appellant could not understand the contents of the charges which was read over and interpreted to him in Thai language by co-accused Lekhit who was

also a Thai national. Mr. Mandal has further submitted that as on account of said pleading of guilt by the accused person the costly vessel along with materials lying therein were confiscated to the State by the order of sentence dated 10th March. 2011 this appeal was filed with false averments being a product of after-thought. In this connection Mr. Mandal has further submitted that as learned counsels were appearing for the present appellant and others certainly they had some mode of communication with this appellant and other accused persons otherwise how they could have conducted the case on behalf of the accused persons and could have submitted to the court that accused persons pleaded guilty and admitted to the charges unless they were sure that contents of charges were properly read over to the appellant and others through proper interpretation. Accordingly, Mr. Mandal prayed for dismissal of the appeal.

5. Mr. Mandal, learned Public Prosecutor submitted in this connection that though learned trial court noted down the contents of charges correctly showing the commission of offences u/s 3/10(b) of MZI Act and also u/s 7/14 of MZI Act but wrongly the sections were written as 3/10 (a) of MZI Act in place of 3/10(b) of MZI Act and similarly 7/10(b) of MZI Act in place of 7/14 of MZI Act. According to Mr. Mandal noting of wrong section did not vitiate the conviction and that sentences may be revised by this court as per law.

6. I have carefully consider the submissions made by learned advocate of both sides. There is no denial that the present appellant Tawee Athoki Tawee, being a foreign national and Master of vessel carrying fishing gear and other equipments on board along with 12 other crew members illegally entered into the Maritime Zone of India on the relevant date and time without any lawful authority resulting detention of the vessel and arrest of the appellant and his crew members. From the relevant order sheet of the learned trial court, it appears that on 8th March. 2011. the contents of charges were read over to the accused person in Burmese language by an interpreter on the submission of learned advocate for the present appellant that Lekhit, who is also a Thai national, knew Burmese language and that he would interpret the contents of charges to this appellant as well as to another Thai accused in Thai language. It further appears that accordingly there was reading out of the contents of charges in Burmese language by an interpreter present in the court and that accused Lekhit interpreted the same to this appellant and another Thai accused in their language and that entire proceedings was held in presence of learned advocate of the present appellant as well as learned advocate of other accused persons and that both the learned lawyers on behalf of the accused persons have submitted to the learned court that accused persons including the present appellant pleaded guilty and admitted the charges. It further appears that though all the accused persons including the present appellant were convicted for committing of those offences as per charge framed, but sentence was not declared on that day and the same was declared on 10th March. 2011. In view of the order sheets of the court as well as the materials on record, it is palpable that present appellant accused pleaded guilty to the charges framed against him

after knowing their contents, particularly when entire proceedings were held in presence of learned advocate of the accused persons.

7. It appears from the charge form that the learned trial court framed charges against the present appellant accused stating detailed facts which disclosed offences punishable u/s 3/10(b) of MZI Act and 7/14 MZI Act though due to inadvertence the charges were written as 3/10 (a) of MZI Act and 7/10 (b) of MZI Act respectively. Misquoting of section in the charge form cannot vitiate the charges when the contents correctly disclosed commission of specific offences.

8. It appears from the order dated 10th March. 2011 that the learned advocate of both sides submitted before the court that accused persons entered into the Maritime Zone of India due to mistake and without any mala fide intention and that minimum sentence for commission of the offences would meet the ends of justice.

9. Under these facts and circumstances and also considering the age of the appellant accused (60 plus years), I hereby modify the orders of conviction and sentences to the effect that the appellant be convicted for commission of offence u/s 3 read with section 10(b) of MZI Act and be sentenced to pay a fine of Rs. 5 lakhs I.D. S.I for six months, and be further convicted for committing offence u/s 7/14 of MZI Act and be sentenced to pay a fine of Rs. 2, 50,000/- I.D. R.I for six months, after setting aside the orders of conviction and sentence u/s 3/10 (a) of MZI Act and 7/10 (b) of MZI Act. However, order of conviction and sentence for other three offences namely 15(c) of MZI, Act, 14(A) of Foreigners Act and 50/51(1) of the Wild Life Protection Act, 1972 remain unaltered. The orders of conviction and sentences relating to this appellant are stand modified accordingly.

10. The appeal is allowed in part as stated above. Let a copy of this order be forwarded to the learned trial court for informing the jail authority about the revised order of conviction and sentence.

Urgent xerox certified copy of this judgment be supplied to the parties, if applied for, on usual undertakings.