

SUPREME COURT OF INDIA

Sasi

Vs.

State of Kerala

Crl.A.No.611 of 2013

(H.L.Gokhale and Ranjan Gogoi JJ.)

18.04.2013

ORDER

1. Leave granted.

2. Heard Mr. Raghenth Basant, learned counsel in support of this appeal and Mr. Jogy Scaria, learned counsel appearing for the State of Kerala.

3. The appellant has been convicted under Section 27(1)(e)(iii) & (iv) of the Kerala Forest Act and sentenced to undergo simple imprisonment for one year and to pay a fine of Rs.1,000/-.

4. The case of the prosecution is that the appellant, along with three others, was involved in cutting and removing logs of wood from the concerned forest. All of them were charged for the same offence for having indulged in cutting and removing the logs of wood from the forest at the same time. It so happened that the other three accused were proceeded for trial earlier. The appellant was not available to law at that time.

5. All of the three other accused were convicted by the Trial Court but Accused Nos.3 and 4 were acquitted by the First Appellate Court by its judgment and order dated 31.12.2005. The conviction and sentence of the third accused i.e. Accused No.1 was set aside and he was acquitted by the First Appellate Court by its judgment and order dated 24.6.2006. That was on the basis of failure of the prosecution witnesses to identify the accused. Inasmuch as this was a collective offence of removing the logs of wood from the forest by four accused persons

together, and in view of the fact that three of them have been acquitted, the 4th accused could not have been held guilty independently.

Unfortunately, this has so happened that the Trial Court convicted him by order dated 31st January, 2011 but the fact that other three accused persons were acquitted earlier, was not brought to the notice of the Trial Court nor the same was brought to the notice of the First Appellate Court which has confirmed the conviction of the 4th accused i.e. the appellant herein, by judgment and order dated 30.11.2011 rendered in Criminal Appeal No.48 of 2011 and the High Court in Criminal Revision Petition No.542 of 2012.

6. Having considered these facts, in our view, the appellant could not have been convicted alone for the particular incident. The appeal, therefore, deserves to be allowed. Accordingly, the judgment & order dated 31.01.2011 rendered by the Judicial Magistrate, 1st Class, Pathanamthitta in CC NO.299/2006 as affirmed by the Additional District & Sessions Judge by his judgment & order dated 30.11.2011 in Criminal Appeal No.48/2011 and the High Court of Kerala's judgment in Criminal Revision Petition No.542 of 2012 are hereby set aside and the appeal is allowed.