RAUF AND OTHERS
v.
THE RANGE FOREST OFFICER, PUTTALAM

COURT OF APPEAL
GRERO, J.
C.A. 258 – 260/85
M.C. PUTTALAM NO. 17095
12 SEPTEMBER, 1991

Forest Ordinance – Entry into forest reserve and transporting teak logs – Misjoinder of charges – Omission of words "in the course of the same transaction" – Prejudice.

Held:

The omission to mention the words 'in the course of the same transaction' in count 2 has caused the accused no prejudice as all the ingredients of the offence were stated. Hence the objection of misjoinder fails.

Though the Magistrate's order was scrappy there was evidence to support count 1 of unlawful entry into a forest reserve. The evidence however did not establish beyond reasonable doubt that the accused transported ten logs of teak.

As the accused were first offenders, a jail term was not justified. A fine would be sufficient.

APPEAL from the order of Magistrate's Court, Puttalam.

G. J. I. Alagaratne for 3rd accused-appellant.

K. Waidyaratne, S.C. for complainant-respondent.

Cur adv vult.

1st October, 1991.
GRERO, J.

The accused-appellants in the said three cases have filed their petition of appeal against the order of the Learned Magistrate of

Puttalam. The accused, according to the charge-sheet, had been charged on two counts to wit:

(i) That they have entered (trespassed) a reserved forest bearing No. lot 5, Sellakandal and thereby committed an offence under Section 6 of the Forest Ordinance.

(ii) That they engaged in the act of transporting ten logs of teak without a permit from the said reserved forest Sellakandal and thereby committed an offence punishable under Section 7 of the Forest Ordinance.

At the end of the trial, the Learned Magistrate on 23.5.85 convicted all three accused on both counts and on 29.5.85 he had sentenced each accused to 6 months R.I. on each count. Against this order, all the three accused appealed to this Court.

When this case was taken up before the Court on 12.9.91 the 1st and the 2nd accused-appellants were absent and they were not represented by any Counsel, but the 3rd accused-appellant was represented by Attorney-at-Law Mr. Alagaratna. He made his submissions in such a manner that the Court was able to look into the appeals of the 1st and 2nd accused although they were not represented by any Counsel. Therefore, the Court is of the view no prejudice is caused to them although no Counsel appeared for them. The Learned Counsel for the 3rd accused-appellant submitted to Court that in the first place, there has been a misjoinder of charges in the charge sheet in question. He pointed out that there should have been two distinct charges and it is not possible to have these two charges in one charge-sheet, unless there appears in count No. 2, that the offence has been committed in the course of the same transaction as that of count No. 1. This Court perused the charge sheet that is filed of record. With regard to Count No. 2, the words "at the above stated place and at the same time the accused committed an offence punishable under Section 7" are stated very clearly. No doubt that the words "in the course of the same transaction" are not given in the said charge-sheet, but the question will be as the Learned State Counsel argued whether the accused-appellants were greatly prejudiced or an injustice has been caused to them for not

having the words "in the course of the same transaction" in the charge sheet. Apart from those words (in the course of the same transaction), the other necessary ingredients that should be present in a charge are embodied in this charge-sheet. Therefore, the Court cannot come to the conclusion that an injustice has been caused to the accused for the simple reason that in regard to count No. 2, the words "in the course of the same transaction" are not stated. As all the necessary ingredients that should be contained in a charge are found other than the said words "in the course of the same transaction" this Court is of the view that there is no misjoinder of charges as adduced by the Learned Counsel for the 3rd accused-appellant. The Learned Counsel for the 3rd accused-appellant dealing with the count No. 1 stated to Court that there is no evidence whatsoever to show that these accused-appellants transported ten logs of teak on the day in question. Therefore, he submitted to Court that it was not correct for the Magistrate to convict the said accused-appellants on count 2, in view of the fact that there was no evidence to show that they transported ten logs of teak. He also drew the attention of Court to the order of the Learned Magistrate and stated to Court that the Magistrate had acted on a statement of a confessional nature made by the accused in this case. Therefore, he stated that the conviction with regard to count No. 2 cannot be sustained. He further submitted to Court that the Magistrate has not addressed his mind with regard to the question of trespass in this case and therefore that conviction in respect of count No. 2 cannot be sustained.

At the outset, it must be stated that this Court is of the view that the order of the Learned Magistrate is a scrappy one. This Court is of the view that a much better order should have been written by the Learned Magistrate than the one which he has already written. Although it was a scrappy order yet this Court feels that the Learned Magistrate had addressed his mind to the fact that they entered the reserved forest which is grown with the teak plantation. In fact, in his order, he has stated when the prosecution witnesses went into the plantation area, they had seen five logs by the side of the road. Again he stated that it is not necessary for the accused to wait in an area where there is a teak plantation. Therefore, it could be possible to come to the conclusion that at the time of writing his order (although

scrappy) the Learned Magistrate had addressed his mind to the question of accused entering the reserved forest on the day in question.

In fact this Court perused the evidence of the prosecution witnesses and they have given evidence to show that these accused have entered into the reserved forest area on the day of the incident. This Court is of the view that there is ample evidence before the Learned Magistrate to convict these three accused-appellants on count No. 1.

The Learned Counsel for the 3rd accused-appellant stated to Court that the Learned Magistrate had not properly addressed his mind with regard to the evidence given by the accused in this case. Therefore, he stated that the Learned Magistrate has come to an erroneous conclusion with regard to their presence in the area where they were found. In his order, the Magistrate had given reasons as to why he rejected the defence put forward by the accused-appellants. This Court is of the view that he had given sufficient reasons to disbelieve the version of the accused-appellants and therefore this Court cannot agree with the contention of the Learned Counsel for the 3rd accused-appellant that he had come to an erroneous conclusion without proper assessment of the evidence of the said accused. This Court after considering the evidence placed before the Learned Magistrate with regard to the removal of 10 logs of teak, agrees with the submissions made by the Learned Counsel for the 3rd accused-appellant that there is no sufficient evidence to convict the accused with regard to count No. 2. In fact, there was evidence to show that these three accused on the day in question were carrying one log of teak, but not ten logs of teak. In fact, the Learned Magistrate had drawn an inference with regard to the other logs because there had been some other logs lying near to the place where the accused were detected; but this Court is of the view that such an inference could not be drawn in view of the evidence placed before the Magistrate. In fact, this Court is of the view that count No. 2 has not been proved beyond reasonable doubt due to the lack of sufficient evidence. Therefore, the conviction and sentences with regard to count No. 2 are hereby set aside and all the three accused-appellants are acquitted on count No. 2 of the charge sheet.

As this Court sets aside the conviction of the accused-appellants in respect of count No. 2 for the above stated reasons it is not necessary to go into the question as to whether the Magistrate took into consideration a confessional statement of an accused-appellant at the time he wrote his order.

For the above stated reasons, the conviction of the accused-appellants with regard to count No. 1 of the charge sheet is hereby affirmed. With regard to the question of sentence passed by the Learned Magistrate, on count No. 1, it seems that he had imposed the maximum jail sentence prescribed by Section 6 of the Forest Ordinance.

The record does not speak that the accused-appellants had previous convictions of similar offences as stated in the charge-sheet.

Therefore it is justifiable to treat them as first offenders and impose a fine instead of the maximum jail sentence.

The sentence of 6 months R.I. in respect of count No. 1 in respect of all the accused-appellants is hereby set aside and a fine of Rs. 500/- on each of them is hereby imposed. If the said fine is not paid, each accused is given a default sentence of 2 months R.I.

Subject to these variations, the appeal is dismissed.

Appeal dismissed subject to variations.