
(2011) 11 GAU CK 0023
In the Gauhati High Court
Case No : Criminal A. No. 25 of 2004

Kalipada Shil

APPELLANT

Vs

Ananda Sarkar, Chetan Sarkar and Kumari Priti Choudhury

RESPONDENT

Date of Decision : 15-11-2011

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 251
Forest Act, 1927 — Section 26(1)

Citation : (2011) 11 GAU CK 0023

Hon'ble Judges : Swapan Chandra Das, J

Bench : Single Bench

Advocate : A. Ghosh, Addl. P.P, for the Appellant; M. Kar Bhowmik, Mr. S. Kar Bhowmik, Advocate, Mr. RPK Singh, Advocate and Mr. S. Sutradhar, for the Respondent

Final Decision : Dismissed

Judgement

S.C. Das

1. This appeal against acquittal is directed against judgment and order of the acquittal dated 31.12.2003, passed CRL. A. No. 25 OF 2004 Page 2 of 6 by the learned Chief Judicial Magistrate, West Tripura, Agartala, in C.R. Case No. 1249 of 2003.

2. Heard learned Additional P.P. for the Appellant and learned Counsel, Mr. S. Kar Bhowmik appearing for the Respondents.

3. Prosecution case, in short, is that on 28.02.2003 at about 09.00 AM, complainant Kalipada Shil, a Forest Officer, found the Respondents along with other 20/25 persons clearing forest land, extracting medicinal plants from the land of Reserved Forests, recorded in Plot No. 801 of Sheet No. 3, Mouja Teliamura Reserved Forest. The Forest Officer with his companion staff tried to resist those persons from cutting the medicinal plants from the forest land but the Respondents and their companion abused the forest officer and staff and

threatened them. The Forest Officer i.e. the complainant seized some of the extracted medicinal plants and prepared seizure list and thereafter filed complaint before the learned Chief Judicial Magistrate, West Tripura on 02.04.2003, for commission of offence u/s 26(1)(a) of the Indian Forests Act, 1927.

4. Cognizance was taken on the basis of the allegations made in the complaint and in course of trial, learned CJM examined the accused persons u/s 251 of Code of Criminal Procedure for commission of offence punishable u/s 26(1)(a) of the Indian Forest Act, 1927 to which they pleaded not guilty and claimed to be tired.

5. In course of trial as I find learned Chief Judicial Magistrate, West Tripura examined material witnesses as produced by the complainant and on completion of trial, by the impugned judgment dated 31.12.2003 acquitted the accused persons from the charge levelled against them and being aggrieved the complainant preferred this appeal against acquittal before this Court.

6. Learned Addl. P.P. Mr. A. Ghosh has submitted that from the evidence of the complainant and other witnesses, it has been clearly established that the Respondents trespassed into the forest land illegally and defying the protest of the forest personnel, extracted medicinal plants and thereby caused damage to the Forest Department amounting to Rs. 50,000/- or more. Learned Addl. P.P. further submitted that there is no reason to disbelieve the oral evidence and the documents submitted by the complainant in support of the prosecution case. It has also been submitted that the accused persons i.e. Respondents herein were found clearing the forest land in plot No. 801 of sheet No. 3, Mouja-Teliamura Reserve Forest and that was a part of the land, recorded in the name of the Forest Department. Learned Addl. P.P. has further admitted that no hand sketch map was produced to identify in which part of the plot of land those medicinal plants were grown by the Forest Department and were extracted by the accused-persons. Learned Addl. P.P. has also pointed out that identification of plot of land has not been established before the learned trial Court. If oral evidence is believed then the Respondents may be punished for the offence committed. It is also submitted that many unauthorized occupants illegally constructed their houses in the forest land and residing thereon. Under such circumstances, learned Addl. P.P. has prayed for allowing the appeal and for punishing the accused persons for the offence charged against them.

7. On the other hand, learned Counsel, Mr. S. Kar Bhowmik has submitted that while it is admitted by the prosecution that identification of land could not be established as to on which part of plot No. 801 those medicinal plants were grown by the Forest Department, which have been alleged to have extracted by the accused-Respondents, the prosecution could not stand on its leg and therefore the order of acquittal passed by the learned Chief Judicial Magistrate, West Tripura should not be disturbed. Learned Counsel also submitted that this Court should not disturb the finding of the trial Court unless the prosecution can

show that the finding recorded by the trial Court is perverse.

8. I have considered the rival contentions of the learned Counsel of both sides. There is evidence on record that the Respondents extracted medicinal plants in the land recorded in plot No. 801. A copy of the Gazette Notification (Extraordinary Issue) dated 11.08.1975 has been produced and marked as Exbt.2, which shows that plot No. 801 recorded in sheet No. 3 of Mouja-Teliamura Reserve Forest was a part of forest land but that plot consists of huge area. According to learned Addl. P.P., it consists about 90 acres of land but in which part of that plot of land the accused persons alleged to have been trespassed and extracted medicinal plants has not been specified.

9. On perusal of the judgment and order of the learned trial Court it appears that learned CJM has disbelieved the prosecution case and acquitted the accused persons on benefit of doubt.

10. Burden lies to the prosecution to prove the charge against the accused persons. They cannot stand on the lapses of the defence. Prosecution could not prove on which part of plot No. 801 the Respondents trespassed and extracted the medicinal plants grown by the Forest Department. On perusal of the certified copy of the final khatians produced by the defence. I find that in plot No. 801, in many of its small parts unauthorized occupants residing constructing their houses. Under such circumstances, it is very difficult to find out and believe the oral evidence of the prosecution witnesses while documentary evidence was necessary to prove this fact.

11. In view of the discussions made above, I find no reason to interfere with the judgment and order of acquittal recorded by the learned Chief Judicial Magistrate, West Tripura, Agartala. The appeal against acquittal, accordingly, stands dismissed.