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**(1989) 10 SHI CK 0019**

**In the High Court Of Himachal Pradesh**

**Case No : Criminal Revision No. 45 of 1986**

Rattan Chand

APPELLANT

Vs

State of Himachal Pradesh and Another

RESPONDENT

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**Date of Decision : 23-10-1989**

**Acts Referred:**

Criminal Procedure Code, 1973 (CrPC) — Section 313  
Forest Act, 1927 — Section 41, 42

**Citation : (1990) 1 ShimLC 62**

**Hon'ble Judges : Bhawani Singh, J**

**Bench : Single Bench**

**Advocate : S.S. Kanwar, for the Appellant; L.S. Panta, Dy. A.G. for State, for the Respondent**

**Final Decision : Allowed**

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## **Judgement**

Bhawani Singh, J.—The Petitioner, Rattan Chand, challenges his conviction by the Courts below through this Revision Petition in a case under Sections 41 and 42 of the India Forest Act. He has been sentenced to suffer simple imprisonment for a period of two months and the timber has been forfeited to the State.

2. The grievance, in the present petition, pertains to the conviction only and no claim relating to the timber has been made since the Petitioner has not, at any stage of the trial, claimed the same to be his own. Accordingly, the whole thrust of Shri S. S. Kanwar, who appears for the Petitioner, is confined to the conviction recorded by the trial court and maintained by the appellate court.

3. The necessary facts, for the decision of this case, are that a police party comprising of Ram Lal, Inspector, Enforcement, North Zone, Dharamshala, and other police officials, while travelling in a jeep on their way from Dharamshala to Una on 5-7-1982, at about 6 p. m. while passing through the Bazar of Amb Town, intercepted a truck, No. HPK-8037. It was carrying logs of ", pine (chil). The driver, Alafdin, and the Appellant were found in the truck. On asking, they failed to produce the relevant documents permitting transportation of the timber.

Consequently, the vehicle was taken to Gagret. The timber was unloaded and given on sapurdari to Bakhshish Singh, Forest Guard (P. W. 2).

4. The driver was arrested there and then and the Petitioner appears to have been arrested in about a week's time. After investigation, the matter was initiated in the Court where the defence of the Petitioner appears to be that the timber initially belonged to the Electricity Department and one Shri Dalip Singh had purchased the same. It was being taken to his house when the truck was intercepted by the police. Further, the case of the Petitioner has been that the timber was covered under a permit duly issued in favour of Dalip Singh. These pleas did not satisfy the trial Judge and the result was that the Petitioner as well as the driver, Alafdin, were convicted and sentenced, as aforesaid- The matter was brought before the Sessions Judge, Una, in Criminal Appeal No. 27 of 1984 but the same was rejected on 25-3-1986. Only the present Petitioner appears to have appealed against the judgment and it also appears from the communication received from Sub-Judge-cum-Sub-Divisional Judicial Magistrate, Amb, dated August 8, 1986 that before the order of release of the Petitioner on bail reached for compliance in the court concerned, the Petitioner had been sent to Jail on May 19, 1986 in pursuance of the order of the Sessions Judge and was released on 16-7-1986, meaning thereby that the Petitioner has undergone sentence from May 19, 1986 to July 16, 1986. This was the total period for which he was convicted by the Courts below.

5. Despite this development, Shri Kanwar. Counsel for the Petitioner, prays for the examination of the matter on merits since the conviction and sentence, although already undergone, will cause serious damage and prejudice to the Petitioner in his later life. In these circumstances, I proceed to look into the matter to know whether the conviction recorded by the courts below deserves to be set-aside in the light of the evidence on record and the submissions of the learned Counsel for the parties.

6. The first point argued by the learned Counsel for the Petitioner pertains to the factum of interception of the truck, presence of the Petitioner and the ownership of the timber. It is submitted that this aspect of the matter is not clearly and convincingly established by the prosecution. Further, the statement of Shri Mohinder Singh (P. W. 7) on this aspect cannot be believed since other witnesses have not supported him on this fact. I see force in this submission of the learned Counsel for the Petitioner. It is fact that a truck was intercepted at a place other than Gagret. The name of the Petitioner is stated to have been revealed by the driver of the truck as appears from the Ruka (Ex. P. W. 6/A) wherein it is stated that on inquiry from the driver, the owners of the timber were Roshan Lal and Rattan Chand, resident of Lamba Sail. This document forms the basis of the First Information Report in this case and it does not mention that the Petitioner, Rattan Chand, was also in the truck at the time of its interception by the police. Further, it is in evidence that Alafdin, driver of the truck, was arrested by the police there and then. Therefore, in case the Petitioner had been in the truck at

that time and was stated to be the owner of the timber, naturally he would have been arrested by the police. His non-arrest at this stage and his arrest after about a week further strengthens the argument that the Petitioner was not occupying the truck nor was he present at the place where the truck was intercepted and the timber found therein.

7. Shri L. S. Panta, learned Deputy Advocate General, submits that at the revisional stage this Court may not reappraise the evidence which has already been taken into consideration by the courts below and they have come to the same conclusion. Taking a view different from the one already taken by them will not be legally permissible at this stage and moreover on merits as well, the Petitioner has himself admitted in his examination u/s 313 of the Code of Criminal Procedure not only his presence at the place but also the recovery of the timber though the same has been stated to be of Dalip Singh, contractor, and carried to his place of living. I am not convinced by these submissions of the learned Deputy Advocate General. It has already been held that the presence of the Petitioner, as stated by the prosecution, stands excluded. Evidence on this aspect is thoroughly infirm, shaky, scanty and unreliable. The prosecution cannot bank upon the statement of the Petitioner u/s 313 of the Code of Criminal Procedure,

8. It is well settled that the court can take into consideration the explanation of the accused given u/s 313 of the Code of Criminal Procedure while dealing with the proved allegations of the prosecution against the accused. However, in case the prosecution has not been able to prove its case against the accused, it cannot make use of his explanation for his conviction. The explanation of the accused u/s 313 of the Code of Criminal Procedure relates to the incriminating material that has appeared against him in the prosecution version. It is not a statement on oath. The court may make use of his explanation if there is substantial evidence otherwise brought on the record of the case by the prosecution. The burden of proof rests entirely on the prosecution to establish its case beyond reasonable doubt. It is neither taken away nor discharged nor shifted merely because the accused has given an explanation favourable to the prosecution. The submission that the Petitioner did not produce Dalip Singh in defence is not a fact to be used against the Petitioner since Dalip Singh had died by that time; rather the prosecution could adduce evidence from the Electricity Department which was stated to be the original owner of the timber.

9. Looking to the present case, suppose the Petitioner has in his explanation admitted the factum of the interception of the truck and his presence at the spot; this is not an admission but an explanation which cannot be taken in isolation for his conviction in the absence of the prosecution discharging its responsibility of proving the guilt against him. When once the prosecution case as to the presence of the Petitioner is found untrue and lacking cogency, piecemeal statement of the Petitioner u/s 313 of the Code of Criminal Procedure cannot be pressed in aid by the prosecution to convict him. The courts below have put implicit reliance on the

prosecution version although it is quite shaky, infirm, contradictory and lacking dependability, thereby causing great miscarriage of justice calling for interference by this Court in its revisional jurisdiction.

10. The result of the aforesaid discussion is that there is genuine doubt as to the role played by the Petitioner in this case. Therefore, it is also hazardous as well to maintain the conviction. Accordingly, there is merit in this revision petition. The same is allowed and the conviction of the Petitioner is set-aside. He is acquitted of the charge. Bail bonds and surety bonds, if any, executed by him at any stage of this case are hereby discharged.