
(2011) 05 SHI CK 0112

In the High Court Of Himachal Pradesh

Case No : Criminal Appeal No. 350 of 2006

State of Himachal Pradesh

APPELLANT

Vs

Diwan Chand and Others

RESPONDENT

Date of Decision : 02-05-2011

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 313
Penal Code, 1860 (IPC) — Section 409, 420, 467, 468
Prevention of Corruption Act, 1988 — Section 13(2)

Citation : (2011) 05 SHI CK 0112

Hon'ble Judges : Surjit Singh, J;Rajiv Sharma, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

Rajiv Sharma, J.—This appeal is directed against the judgment dated 20.7.2006 passed by the Special Judge, Chamba in Corruption Case No. 1 of 2001, whereby the Respondents, who were charged with and tried for offences, under Sections 409, 420, 467, 468 of the Indian Penal Code and 13(2) of the Prevention of Corruption Act, were acquitted.

2. Case of the prosecution, in a nutshell, is that Respondent No. 1 Diwan Chand posted as Forest Guard, Respondent No. 2 Janam Singh posted as Block Officer and Respondent No. 3 Birbal Singh Yadav posted as Range Officer, Forest Division Killar (Pangi), District Chamba were entrusted with fuel wood weighing 9856 quintals. They sold 7981.99 quintals against which a sum of Rs. 10,16,949.99 was collected by them towards sale proceeds. A sum of Rs. 7,080/- was recoverable from weaving centre Killar. The Respondents deposited a sum of Rs. 8,14,591.50 with H.P. State Forest Corporation. According to prosecution, Respondents misappropriated a sum of Rs. 1,95,278.49. Case was investigated by the police and the challan was put up after completing all the codal formalities. The Respondents were charged with for offences, under Sections 409, 420, 467, 468 of the Indian Penal Code and 13(2) of the Prevention of

Corruption Act.

3. Prosecution examined as many as 33 witnesses to prove its case against the Respondents. The Respondents were also examined u/s 313 of the Code of Criminal Procedure. Their defence was of simplicitor denial.

4. Mr. Ramesh Thakur, learned Assistant Advocate General has strenuously argued that the prosecution has proved its case. According to him, the Special Judge has failed to appreciate the evidence brought on record by the prosecution in its right perspective.

5. Mr. N.K. Thakur has supported the judgment passed by the Special Judge.

6. We have heard the learned Assistant Advocate General and the learned Advocate for the Respondents and perused the record carefully.

7. PW-1 Kailash Chand has deposed that he remained posted as Range Officer Incharge Purthi Range, Forest Division Pangi, District Chamba. According to him on 7.10.1996, the record was taken into possession vide memo Ex.PA. In cross-examination, he has admitted that in his Department, driage to the extent of 30.9% has been given in the fuel wood for the year 1987-88. He has also admitted that when fuel wood comes from jungle, it is in wet condition. The fuel wood, which comes from jungle through Corporation is too heavy and becomes light when it gets dried. He has also admitted that all the local residents of Pangi area get the fuel wood on subsidized rates.

8. PW-2 Chanda Singh has deposed that he was posted as Junior Assistant in the office of D.F.O. Killar. In his cross-examination, he has admitted that he joined the office of D.F.O., Killar in the year 1991 and prior to that he was not posted there and he could not state who was the Incharge of fuel depot at Killar and who was dealing with the fuel wood.

9. PW-3 Ranjeet Singh Rana remained posted as Superintendent in the office of D.F.O., Pangi at Killar, District Chamba. He has proved on record transfer order of Respondent Diwan Chand Ex.PW-3/1, driage fuel wood Ex.PW-3/2, audit inspection note Ex.PW-3/3, transfer and posting order of Sanjay Sain Ex.PW-3/4 and his joining report Ex.PW-3/5. He has also proved on record the Government rates of fuel wood for the year 1987-88 Ex.PW-3/6 and Ex.PW-3/7 for the year 1988-89.

10. PW-4 Joginder Kumar remained posted as Timber Watcher in the office of Divisional Manager, Forest Corporation, Chamba. He has produced reconciliation statement of fuel wood pertaining to Killar Depot for the year 1987-88 Ex.PW-4/1. He has also produced reconciliation statement for the year 1988-89 Ex.PW-4/2 alongwith forwarding letter Ex.PW-4/3.

11. PW-5 Kashmir Chand Verma was posted as Senior Clerk in the office of D.F.O., Pangi at Killar from 15.7.1994 to July, 2001. He has produced pass-book Ex.PD/1 of Incharge Forest Range Killar, its cheque book Ex.PD/2, form No. 14

having receipts from Sr. No. 3 (i) to Sr. No. 95, which receipt book is Ex.PD/3, cash book from 9/86 to 10/87, Ex.PD and another cash book from 10/87 to 3/89, Ex.PD/5.

12. PW-6 Ram Lok, in his cross-examination, has stated that in the years 1986-87, 1987-88 and 1988-89, Sham Lal, Block Officer was the Incharge of fuel wood depot, Pangri at Killar. He has admitted that Sanjay Sain was posted as Range Officer, Pangri from 1985 to 1988. He further admitted that during these years Sham Lal and Diwan Chand were Incharge of Fuel Wood Depot, Killar. The fuel wood used to be received and sold by Depot Incharge.

13. PW-7 Susheel Kumar was posted in the H.P. Forest Corporation as Senior Assistant since the year 1981. He has produced six photo copies of challans for the year 1987-88, 31 photo copies of receipts for the year 1987-88, 12 photo copies of challans for the year 1988-89 and 23 photo copies of receipts for the year 1988-89. He has also given the bank receipt Ex.PH/1 to the police vide memo Ex.PF. He has also produced 12 challans Ex.PJA/1 to Ex.PJA/12 and 4 bills Ex.PJA/13 to Ex.PJA/16.

14. PW-8 Jeet Singh Pathania was posted as R.O. Killar (Pangri) in the year 1996. According to him, reconciliation statement was prepared and the same was signed by the D.F.O. Sh. B.N. Behl and D.M. Chamba also signed it. During the year 1987-88, 9785 quintals fuel wood was received at Killar Fuel Wood Depot from Forest Corporation, Chamba. In the year 1988-89, 9856 quintals fuel wood was received at Killar Fuel Wood Depot. In the year 1987-88, Sanjay Sain was Range Officer and Sham Lal was B.O. at Killar. In the year 1988-89, D.P. Yadav was posted as R.O. and Janam Singh was posted as B.O and Diwan Chand was posted as Forest Guard. The detail of fuel wood received is Ex.PW-8/A.

15. PW-11 R.K. Kapoor has deposed that he was posted as Assistant Manager, Forest Corporation, Killar from 1985 to August, 1989. He has proved challans Ex.PJ/1, Ex.PJ/2, Ex.PJ/3, Ex.PJ/5 and Ex.PJ/6. The challans were issued by him. Ex.PJ/4 had been issued by Het Singh Verma. He had issued the bills of fuel wood supplied to the Forest Range Officer, Killar, who was the Incharge of the fuel wood depot, Killar. He has also proved bill Ex.PJ/7. The abstract of the entire wood, i.e. 9785 quintals was prepared vide Ex.PJ/8.

16. PW-14 Sh. R.L. Gupta remained posted as D.F.O. Pangri at Killar, District Chamba from 1987 to 1990. According to him, B.S. Yadav succeeded Sanjay Sain as Range officer and Respondent Diwan Chand was Forest Guard and Respondent Janam Singh was B.O.-cum-Deputy Ranger, Killar. The fuel wood depot was under the control of Range Officer, Killar. Respondent B.S. Yadav did not furnish the accounts of fuel depot Killar to him. In his cross-examination, he has admitted that fuel wood was being received by them in the shape of green trees/green wood with heavy weight. According to him, with the passage of time, fuel wood used to go dry. He has also admitted that on furnishing the account of fuel wood, he used to allow driage. He also admitted that there was heavy driage in

the green fuel timber received by them but he could not state that during his tenure, he had given more than 30% driage.

17. PW-15 Param Chand remained posted as Forest Guard at Pangi-Killar since 1989. He took the charge from Diwan Chand. He has also taken the charge of fuel wood depot, Killar from Diwan Chand. According to him, Diwan Chand had not given him the charge of fuel wood. He had not received any amount on account of sale of fuel wood after taking the charge in the month of July, 1989 from Diwan Chand. He has admitted in his cross-examination that one Sh. Sham Lal remained Incharge of fuel wood depot for the years 1987 to 1989. He has also admitted that D.F.O. after receiving the green wood gives the driage.

18. PW-21 Trilochan Joshi was posted as Assistant Government Examiner of Questioned Documents. He has given his opinion vide Ex.PW-21/H and Ex.PW-21/J dated 26.7.1999 and 23.6.2000. He has proved on record the detailed reasons for his opinion vide Ex. 21/M and Ex.PW-21/N.

19. Aforesaid is the material produced by the prosecution to prove its case. Case of the prosecution, as noticed above, was that Respondents were entrusted with fuel wood weighing 9856 quintals. They sold 7981.99 quintals for which a sum of Rs. 10,16,949.99 was collected by them towards sale proceeds. A sum of Rs. 7,080/- was recoverable from weaving centre, Killar. The Respondents deposited a sum of Rs. 8,14,591.50 with H.P. State Forest Corporation, as such, according to prosecution, Respondents misappropriated a sum of Rs. 1,95,278.49. We have reappraised the entire evidence. It is proved from Ex.PW-1E/2 that Diwan Chand had received 9856 quintals fuel wood. According to him, there was some driage also. Ex.PW1F/2 is the copy of statement showing sale and driage month-wise for the year 1988-89. A bare perusal of the same proves that total wood received was 9867-89 quintals and driage given was 1885-30 quintals. However, it has come in the statement of PW-1 Kailash Chand that the Department used to give driage to the extent of 30.9% in the year 1987-88. He has also admitted that the fuel wood when comes from jungle through Corporation is too heavy and it becomes light when it gets dried. PW-14 R.L. Gupta, who was posted as D.F.O. Pangi at Killar during the years 1987 to 1990, has categorically admitted that he had given more than 30% driage. He has also admitted that there is heavy driage in the green fuel wood received by the Department. He has also admitted that when the wood is received in the shape of green trees/green wood with heavy weight, with the passage of time, the fuel wood goes dry. Similarly, PW-15 Param Chand, who was posted as Forest Guard at Pangi-Killar in July, 1989 has deposed that D.F.O. after receiving the green wood used to give driage.

20. Now, in view of the categorical statements of PW-1 Kailash Chand, PW-14 R.L. Gupta and PW-5 Param Chand, if the driage to the extent of 30% of 9856 quintals fuel wood is taken, then driage comes to 2960 quintals and as such the total fuel wood remains 6907 quintals instead of 7981-99 quintals. In other words, the fuel wood, which was available for sale was 6907 quintals and its sale proceedings would come to about Rs. 8 lakhs and not Rs. 10,16,949.99 paisa.

21. In view of the above stated position, we do not think this is a fit case for interfering with the judgment of acquittal. Hence, the appeal is dismissed. Bail bonds of the Respondents/accused stand discharged.