

(2017) 12 SHI CK 0027
In the High Court Of Himachal Pradesh
Case No : 510 of 2005

State of Himachal Pradesh

APPELLANT

Vs

Gian Chand Sharma and another

RESPONDENT

Date of Decision : 15-12-2017

Acts Referred:

Code of Criminal Procedure, 1973, Section 313, Section 378 - Power to examine the accused - Appeal in case of acquittal
Indian Forest Act, 1927, Section 41, Section 42 - Power to make rules to regulate transit of forest produce - Penalty for breach of rules made under section 41

Citation : (2017) 12 SHI CK 0027

Hon'ble Judges : Sandeep Sharma

Bench : Single Bench

Advocate : P.M. Negi, Neeraj Gupta

Final Decision : Dismissed

Judgement

1. Being aggrieved and dissatisfied with the judgment of acquittal dated 19.7.2005, passed by Judicial Magistrate 1st Class, Court No.1, Mandi, Himachal Pradesh, in Cr. Case No. 59-III/2002, under Sections 41 and 42 of the Indian Forest Act,, whereby respondents-accused (hereinafter, "accused") came to be acquitted of the charges framed against them under aforesaid Sections of Indian Forest Act, appellant-State has approached this Court by way of instant appeal filed under Section 378 CrPC, praying therein for the conviction of the accused after setting aside the judgment of acquittal recorded by the learned trial Court.

2. Facts as emerge from the record are that on 9.7.2002, police received a telephonic information at police post Darang, that two persons, were illegally transporting Morchella (Guchhi) in a Maruti Car bearing registration No. HP-32-0250. Said car was coming from Padhar to Darang. Police, after having received information, laid a Naka in front of police post. Car allegedly being driven by the accused was stopped by the police and on its search, one gunny

bag kept on the backside of car and another gunny bag kept in the dicky were recovered. When gunny bags were opened, Morchella (Guchhi) was found in them. Since occupant of the car i.e. Hem Prabh and Gian Chand, failed to produce a valid permit for transporting Morchella (Guchhi), Investigating Officer Pratap Singh, PW-4 directed Constable Dinesh Kumar (PW-2) to call for a local witness and to bring scale. Morchella (Guchhi) was weighed on the spot. It was found to be 13 kg 250 grams in one bag and 14 kg 250 grams in another gunny bag. Investigating Officer took out 250 grams of Morchella (Guchhi) from each of the gunny bags for sample and sealed it in a separate parcel. Parcel and gunny bags were sealed with seal "H". Seal after use was handed over to witness, Puran Chand. Maruti Car mentioned above, alongwith documents and two gunny bags containing Morchella (Guchhi) was taken by the police into possession vide seizure memo Ext.PW-1/A. Subsequently, Pratap Singh, PW-4, sent a Rukka Ext. PW- 4/A through Constable Lekh Ram, to the Police Station, on the basis of which FIR Ext. PW-4/B came to be registered against accused. After completion of investigation, Challan was presented in the competent Court of law, against accused, who being satisfied that prima facie case under Sections 41 and 42 of Indian Forest Act is made out against accused, put notice of accusation to them, to which they pleaded not guilty and claimed trial.

3. Prosecution with a view to prove its case against accused, examined as many as four witnesses. Accused in their statements recorded under Section 313 CrPC, denied the prosecution case in toto and claimed themselves to be innocent and also examined two witnesses in their defence.

4. Learned trial Court subsequently, vide judgment dated 19.7.2005, acquitted the accused of the charges framed against them. In the aforesaid background, appellant-State has approached this Court, by way of instant appeal, seeking herein conviction of the accused, after setting aside judgment of acquittal.

5. Mr. P.M. Negi, learned Additional Advocate General, while referring to the impugned judgment of acquittal recorded by learned Court below, vehemently argued that the same is not sustainable in the eye of law as the same is not based upon proper appreciation of the evidence as such, deserves to be quashed and set aside. Mr. Negi, further contended that bare perusal of evidence led on record by the prosecution clearly suggests that the prosecution successfully proved beyond reasonable doubt that on 9.7.2002, vehicle being driven by accused was checked at Naka and on search, two gunny bags containing Morchella (Guchhi) were recovered. Mr. Negi, further contended that it stands duly proved that accused were not having any valid permit to transport the Morchella (Guchhi) and as such, they were rightly booked under Sections 41 and 42 of the Act *ibid*. While inviting attention of this Court to the statements adduced on record by the prosecution, Mr. Negi, contended that all the material prosecution witnesses have unequivocally stated that on 9.7.2002, two gunny bags containing Morchella (Guchhi) were recovered from the car being driven and occupied by the accused, as such, there was no scope left for the learned

Court below to acquit the accused. While referring to the statement made by DW-1, Puran Chand, who was associated as an independent witness by the prosecution at the time of alleged recovery, Mr. Negi, contended that though he failed to support the prosecution case, but if his statement made in defence of accused is read in its entirety, it clearly suggests that vehicle being driven and occupied by the accused was apprehended at police Naka on 9.7.2002 and two gunny bags were recovered from them. While referring to the statement made by this witness namely Puran Chand, Mr. Negi, contended that bare perusal of same suggests that 27 kg 500 grams Morchella (Guchhi) was recovered from the car and same was shown to this witness, namely Puran Chand. Mr. Negi, further contended that record clearly reveals that at the time of effecting recovery from the accused, Investigating Officer had taken out 250 grams of Morchella (Guchhi) from each of the gunny bags and sealed the same with seal impression "H" as such, learned Court below erred in concluding that no sample was drawn by the police at the time of effecting recovery. Mr. Negi contended that statement of PW-3, Divisional Forest Officer, further proves on record that gunny bags allegedly recovered from respondents-accused were containing Morchella (Guchhi) and as such, learned Court below erred in acquitting accused of the charges framed against them under Sections 41 and 42 of the Indian Forest Act.

6. Mr. Neeraj Gupta, learned counsel representing the accused, while refuting aforesaid submissions having been made by the learned Additional Advocate General, contended that there is no illegality or infirmity in the impugned judgment of acquittal recorded by the learned Court below, rather, same is based upon proper appreciation of evidence and as such, same deserves to be upheld. While referring to the material evidence adduced on record, Mr. Neeraj Gupta contended that sole independent witness associated by the police at the time of alleged recovery nowhere supported the prosecution case, rather, was given up by the prosecution on the pretext that he has been won over but there is nothing on record to substantiate aforesaid contention of the prosecution. While referring to the statement of DW-1, Puran Chand, who was associated as independent witness, Mr. Neeraj Gupta, contended that he has supported story of the prosecution to the extent that police had laid Naka on 9.7.2002 and many vehicles were stopped for checking but he specifically denied that two gunny bags containing Morchella (Guchhi) were recovered from the Maruti Car being driven and occupied by accused, as such, learned Court below rightly rejected the story of the prosecution. While referring to the other witnesses adduced on record by the prosecution, Mr. Gupta contended that even if statements, made by these witnesses are read in their entirety, juxtaposing each other, same reveals that there are inconsistencies and they have given different versions with regard to time, laying of Naka and presence of people, apart from police on the spot, as such, learned Court below rightly not placed reliance upon the same while ascertaining the guilt of the accused. Lastly, Mr. Gupta contended that mere drawing of sample if any from the recovered material was not sufficient to connect accused with the alleged recovery, rather, it was incumbent upon the

prosecution to prove that samples allegedly drawn at the time of recovery were kept intact and same were not tampered with, but in the instant case, it has specifically come in the statement of PW-3, who later opined the recovered material to be a forest produce i.e. Morchella (Guchhi), that no seal was brought to him for comparison and as such, story, if any, of prosecution with regard to alleged recovery of Morchella (Guchhi) is wholly vitiated.

7. I have heard the learned counsel for the parties and gone through the record carefully.

8. After having carefully perused record as well as impugned judgment of acquittal, recorded by learned trial Court, it is quite apparent that though the court below held accused not guilty of having committed offence punishable under Sections 41 and 42 of the Act *ibid*, but it after having perused the evidence led on record by prosecution, specifically arrived at conclusion that prosecution was able to prove that two gunny bags were recovered from Maruti Car bearing Registration No. HP-32-0250 being occupied/driven by accused. Since accused were acquitted, they did not choose to lay challenge to the aforesaid finding of the learned Court below and as such, this Court does not deem it necessary to go into that aspect of the matter, rather, this Court shall confine itself to the findings returned by the learned Court below qua another aspect of the matter that prosecution was not able to prove beyond reasonable doubt that gunny bags allegedly recovered from accused were containing Morchella (Guchhi) i.e. a forest produce.

9. Prosecution with a view to prove that gunny bags recovered from accused were containing Morchella (Guchhi), examined one Shri H.C. Katheria, Divisional Forest Officer (PW-3), who in his statement deposed that he at the relevant time was posted as Divisional Forest Officer Mandi. On 9.7.2002, Court had ordered to auction Morchella (Guchhi) weighing 27 kg 500 grams. He auctioned the same on 26.8.2002 for Rs.2,80,315/- and deposited the sale proceeds with the Government treasury. He also admitted that he had issued certificate, Ext. PW-3/A regarding Morchella (Guchhi). But interestingly, in cross-examination, he admitted that Morchella (Guchhi) was not recovered in his presence and police official had brought the same to him. He further stated in cross-examination that he can not say as to what seal was affixed on gunny bags. Though he stated that seal was broken in his presence, but he was unable to state that with which seal the gunny bags were sealed. He also stated in his cross-examination that gunny bags were weighed in his presence but he does not know who weighed the same.

10. PW-1, in his statement deposed that on weighment, 14 kg and 250 grams Morchella (Guchhi) from one gunny bags and 13 kg and 250 grams from another gunny bags was recovered and 250 grams Morchella (Guchhi) was taken out as sample and was sealed in separate parcel with seal impression "H". He further stated that seal "H" was handed over to Puran Chand.

11. Similarly, other prosecution witnesses PW-2 and PW-4 also stated that police

after having recovered gunny bags containing Morchella (Guchhi) sealed them with seal impression "H" and seal was handed over to independent witness, Puran Chand. But PW-4, though in his examination in chief stated that during investigation, he had obtained certificate Ext. PW-3/A regarding Morchella (Guchhi) from the Divisional Forest Officer (PW-3), but in his cross-examination, he feigned ignorance as to who took Morchella (Guchhi) to Divisional Forest Officer. Though there appears to be some truth in the case of the prosecution that samples were drawn at the time of recovery and they were sealed with seal impression "H", but there is nothing in the statement of any of the prosecution witnesses from where it can be inferred that sample was sealed and that it was sent to Divisional Forest Officer, for comparison, who subsequently issued certificate Ext. PW-3/A. In the case at hand, neither the prosecution has produced the sample allegedly taken at the time of recovery nor seal used by it at the time of drawing samples. Apart from above, it further emerges from the documentary evidence available on record that neither certificate Ext. PW-3/A bears any identification i.e. FIR number, seal, weight etc. nor PW-3 has stated anywhere that what seal was affixed on the gunny bags containing Morchella (Guchhi) which was subsequently auctioned by him. Whether gunny bags allegedly recovered from the possession of accused were containing Morchella (Guchhi), could only be proved by the prosecution by producing sample as well as seal allegedly used by it at the time of recovery. Apart from above, prosecution also could not extract from PW-3, who subsequently certified material allegedly recovered from the gunny bags to be a forest produce, that gunny bags were sealed with sample seal "H" and same was not broken. But, as has been taken note above, PW-3 has nowhere stated anything with regard to the seal.

12. Leaving everything aside, prosecution has failed to examine witness, who allegedly took Morchella (Guchhi) to Divisional Forest Officer, Mandi for certification, rather, Investigating Officer PW-4 also remained silent while deposing before the learned Court below that who actually took gunny bags to Divisional Forest Officer, PW-3, Divisional Forest Officer also has not stated anything specific with regard to how many bags were produced before him, rather, he feigned ignorance about the same as well as seal affixed on gunny bags. In the case at hand, prosecution failed to produce sample as well as seal allegedly used by it at the time of recovery and as such, story of recovery stands vitiated.

13. There is yet another aspect of the matter that even certificate, Ext. PW-3/A issued by PW-3, wherein he certified material recovered to be Morchella (Guchhi), does not bear FIR number, quantity of Morchella (Guchhi) and name of the person, who produced the same before him, for auction.

14. By now it is well settled that in a criminal trial evidence of the eye witness requires a careful assessment and needs to be evaluated for its creditability. Hon'ble Apex Court has repeatedly held that since the fundamental aspect of

criminal jurisprudence rests upon the well established principle that "no man is guilty until proved so", utmost caution is required to be exercised in dealing with the situation where there are multiple testimonies and equally large number of witnesses testifying before the Court. Most importantly, Hon"ble Apex Court has held that there must be a string that should join the evidence of all the witnesses and thereby satisfying the test of consistency in evidence amongst all the witnesses. In nutshell, it can be said that evidence in criminal cases needs to be evaluated on touchstone of consistency. In this regard, reliance is placed upon the judgment passed by Hon"ble Apex Court in C. Magesh and others versus State of Karnataka (2010) 5 Supreme Court Cases 645, wherein it has been held as under:- "45. It may be mentioned herein that in criminal jurisprudence, evidence has to be evaluated on the touchstone of consistency. Needless to emphasis, consistency is the keyword for upholding the conviction of an accused. In this regard it is to be noted that this Court in the case titled Surja Singh v. State of U.P. (2008)16 SCC 686: 2008(11) SCR 286 has held:- (SCC p.704, para 14)

"14. The evidence must be tested for its inherent consistency and the inherent probability of the story; consistency with the account of other witness is held to be creditworthy; ..the probative value of such evidence becomes eligible to be put into the scales for a cumulative evaluation." 46. In a criminal trial, evidence of the eye witness requires a careful assessment and must be evaluated for its creditability. Since the fundamental aspect of criminal jurisprudence rests upon the stated principle that " no man is guilty until proven so," hence utmost caution is required to be exercised in dealing with situation where there are multiple testimonies and equally large number of witnesses testifying before the Court. There must be a string that should join the evidence of all the witnesses and thereby satisfying the test of consistence in evidence amongst all the witnesses.

15. Consequently, in view of detailed discussion made herein above, this Court sees no reason to differ with the judgment of acquittal recorded by the learned Court below, which appears to be based upon correct appreciation of evidence adduced on record.

16. Accordingly, the present appeal is dismissed. Judgment passed by the learned trial Court is upheld. Bail bonds, if any, furnished by the accused are discharged.

17. Case property, if not destroyed, be destroyed forthwith.