

(2008) 02 SHI CK 0003

In the High Court Of Himachal Pradesh

State of Himachal Pradesh

APPELLANT

Vs

Jawahar Lal and Another

RESPONDENT

Date of Decision : 26-02-2008

Acts Referred:

Evidence Act, 1872 — Section 25
Forest Act, 1927 — Section 41, 42
Penal Code, 1860 (IPC) — Section 120B, 379

Citation : (2008) 3 ShimLC 401

Hon'ble Judges : Sanjay Karol, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Sanjay Karol, J.—The present appeal arises out of the judgment dated 30.12.1999 passed by Additional Chief Judicial Magistrate, Amb, District Una, in case No. 60-1-1997, titled as State of Himachal Pradesh v. Jawahar Lal and Ors. acquitting the accused of the charged offence.

2. The case of the prosecution is that in the intervening night of 7.11.1996 and 8.11.1996, in the early hours at about 2 a.m., Shri P.C. Sharma (PW-1), the then Divisional Manager, Una, alongwith Shri Mansa Ram (PW-2), Assistant Manager, Shri Shamsheer Singh (PW-5), Deputy Ranger, Rattan Chand, another Deputy Ranger were on Nakkabandi near a place called Surang Dwari (Daulatpur), Una, H.P. Accused No. 1 Shri Jawahar Lal alongwith accused No. 2 Shri Gian Chand and accused No. 3 Shri Roshan Lal, (who died during the pendency of the trial) were found transporting 22 tins of resin in Jeep No. HP-19-2035. The vehicle was signalled to be stopped for checking by the said Forest officials. The vehicle was stopped, but, however, taking advantage of the darkness the accused persons tried to escape. Accused Jawahar Lal, however, was apprehended at the spot. On checking the vehicle it was found that 22 tins filled with resin (Exts.X-1 to X-22) were being transported in the vehicle without any permit. The tins were seized vide recovery memo Ext. PW-2/B. One tin was retained as sample and 21 tins

were handed over to the Assistant Manager Shri Mansa Ram vide memo Ext.PW-2/D. Accused Jawahar Lal made a disclosure statement (Ext.PW-1/A) to the effect that he had been hired by accused Gian Chand to transport the tins of resin in question. After completing the initial formalities, the raiding party consisting of aforesaid forest officials left for a place called Una, where a formal complaint (Ext.PW-1/D) was lodged with the Police Station Gagret, District Una, H.P. On the basis of same, FIR No. 134/96 (Ext. PW-14/A) was registered u/s 379, IPC read with Sections 41, 42 of Indian Forest Act and Section 120-B, IPC.

3. Based on the confessional statement (Ext.PW-1/A), matter was investigated and raids were conducted at various places and certain other tins of resin were recovered from the possession of Smt. Nirmala Devi wife of accused Gian Chand. The recovered tins were given on Superdari to Smt. Nirmala Devi vide memo Ext. PW-4/A, which were later on further entrusted on Superdari to Jagdish Ram, Forest Guard, vide memo Fxt.PW-3/B.

4. The record maintained by accused No. 2 to whom the permission for tapping the resin from the trees was granted by the State, was also seized vide seizure memos Ext.PW-3/C and Ext.PW-3/D. During the course of investigation, it was found that in excess of the permission accorded by the State, the said accused had put 277 blazes in stead of 148 blazes. This is alleged to be evident from damage report Ext.PW-9/B issued by Forest Guard. Ext.PW-9/C is to the effect that 8 tins were found less in the store maintained by accused No. 2 Gian Chand.

5. Thus as per the case of the prosecution, accused No. 2 had been illegally and unauthorisedly tapping excess resin from the trees for which permission had been granted in accordance with law and had been dishonestly attempting to remove the resin without any permission.

6. With the completion of investigation, challan was presented in the Court for trial. The accused was charged for an offence under Sections 41, 42 of the Indian Forest Act, 1927, Sections 4 and 10 of H.P. Resin and Resin Products Act, 1981 and Sections 379 and 120-B of the Indian Penal Code, 1860. The accused did not plead guilty and claimed trial.

7. In order to support its case, the prosecution examined 18 witnesses and statement of accused u/s 313, Cr.P.C. was also recorded. No evidence was led by the accused in their defence.

8. Based on the material on record, the Court acquitted the accused of the charged offence on the ground that confessional statement recorded by the forest officials could not have been used against the accused and also that there were material contradictions in the statements of forest officials. The fact that no independent witness was associated and in any event the other non-official witnesses had turned hostile and not supported the case of the prosecution was also taken note of by the Court below while arriving at its conclusion.

9. I have heard the learned Counsel for the parties and perused the record.

In all the prosecution has examined 18 witnesses. Shri P.C. Sharma (PW-1), Shri Mansa Ram (PW-2), Shri Shamsheer Singh (PW-5) are the forest officials who are stated to have apprehended the accused transporting the contraband and also caught accused Jawahar Lal from absconding at the site.

10. Shri Bhulla Ram (PW-3), Shri Sukhraj (PW-4), Shri Sheetal Singh (PW-4), Shri Phuman Ram (PW-7), Shri Rattan Singh (PW-8) and Smt. Nirmala Devi (PW-11) are the witnesses who have either witnessed subsequent recovery of 8 tins of resin or have been entrusted with the case property on Superdari. Shri Mohinder Singh (PW-9), Shri Jagdish Ram (PW-10) are the forest officials who have deposed with regard to various permissions which were accorded in favour of accused No. 2. Shri Ram Nath (PW-14) is the police official, who recorded the FIR (Ext.PW-14/A) on the basis of complaint (Ext. PW-1/B). Their statements alone, however, do not implicate the accused with the charged offence. Shri Anjani Kumar (PW-12), Shri Gurdass Ram (PW-18) are police officials who have earned out the investigation at various stages.

11. Smt. Chanchala Devi (PW-15), Smt. Krishna Devi (PW-16) and Shri Krishan Chand (PW-17) are the owners of the land and the trees in question for which permission had been accorded by the State in favour of the accused No. 2 to tap the resin. Out of the aforesaid witnesses PW-3, PW-8, PW-11, PW-15, PW-16 have been declared hostile. There is nothing on record to show that in spite of cross-examination by the Public Prosecutor they have stated anything which would show the complicity of the accused in the commission of crime.

12. It is an undisputed case of the prosecution that during subsequent investigation recovery of remaining 8 tins was carried out on the basis of confessional statement of accused.

13. It is not the case of the prosecution that any resin was either tapped from the trees growing on the forest land or any resin was stolen from the Government depots or Government land. The case of the prosecution is that accused No. 2 was permitted to tap resin from private trees belonging to PW-15, PW-16 and PW-17 for which certain royalty was required to be paid by the accused and the accused tapped resin in excess of the number of blazes which he was authorized.

14. In my view the veracity and truthfulness of testimony of PW-1, PW-2 and PW-5 needs to be looked into to determine the complicity of the accused in the charged offence. A careful scrutiny of their testimony would show that there are major and vital contradictions in their statements. The case, as projected by the prosecution is a concoction.

15. It has come through the statements of PW-1, PW-2 and PW-5 that after completing the proceedings at the place of occurrence they had left the spot for Una at about 2.30 a.m. It has come on record that in between the place of incident and Gagret, the place where the complaint was formally lodged by the raiding party, there were at least four police posts, which were crossed by them

and no complaint whatsoever was lodged by them. Why the complaint was not lodged at the nearest Police post has not been explained at all by these witnesses. This itself makes the case of the prosecution to be suspicious and doubtful.

16. As per the version of PW-1, on 5.11.1996 he had left Una at about 9 p.m. to 10 p.m. and had reached the spot at about 12 O'clock in the mid night. However, as per the version of PW-5 he had met PW-1 and PW-2 at a place called Daulatpur Chowk, at about 7 p.m. PW-2 has, yet, given another version and has stated that all three of them had left Una at 11 p.m. Therefore, the version of all the three witnesses is at variance and cast a serious doubt with regard to prosecution story. The version cannot be said to be reliable and trustworthy.

17. Further, there is contradiction with regard to preparation of the site plan. According to PW-1 the site plan was prepared at the instance of PW-5 but as per the version of PW-5 he did not get the site plan prepared but in fact the same was prepared at the instance of PW-2.

18. As per the version of PW-1 after completing the proceedings at the site they left the spot in between 2 to 2.30 a.m. for Una. According to PW-5, they had left the place in between 3 to 3.30 a.m. and had reached Una at about 5 a.m. The contradiction with regard to timing is minor but PW-2 has emphatically stated that they had reached Gagret next day i.e. 8.11.1996 only at 6 p.m. in the evening. Complaint Ext.PW-1/D was made on 8.11.1996 and FIR. Ext. PW-14/A based on the said complaint was recorded at 5.55 p.m., therefore, obviously there are major contradictions in their statements rendering their version to be extremely unreliable.

19. Another important aspect is the lack of proper identification of case property. There is contradiction with regard to marking of resin tins recovered vide memo Ext. PW-2/B. PW-1 has categorically stated that no marks were put on 22 tins recovered by them, whereas as per version of PW-2, 22 tins which were recovered by them were duly marked. The seizure memo Ext.PW-2/B also refers to marking of tins. However, on the tin i.e. the case property produced in the Court, there were no marks. Thus, it could not be said that the case properly alleged to have been seized by the officials was the one which was produced by the prosecution during trial. The absence of the same further renders the prosecution version extremely doubtful. The prosecution has not been able to link the alleged recovery of tins during trial.

20. It is pertinent to point out that no independent witness has been associated at the time of formation of raiding party and apprehending the vehicle and the accused. Why it was not done has not been explained by the prosecution. It is the case of the prosecution that the raiding party had left Una to set up a Nakkabandi at the spot in question. It is not the case of the prosecution that no independent witness was available anywhere. The area in question is inhabited and road has having vehicular traffic.

21. That apart, even with regard to recording of confessional statement, PW-1 has contradicted himself. At one place, he has stated that confessional statement was recorded at the site, whereas in cross-examination he has clarified that the investigation was carried out on the verbal statement of the accused and only after reaching Una the statement was actually reduced into writing and that too at 4 a.m. In fact, according to PW-2 confessional statement of the accused was actually recorded at 11 a.m.

22. In any event, confessional statement could not have been relied upon by the prosecution as was hit by Section 25 of the Evidence Act (State of H.P. v. Tara Chand and Ors. 1994 (4) SLJ 3333).

23. The accused had the advantage of having been acquitted by the Court below. In my view, the prosecution has not been able to prove its case beyond reasonable doubt. The prosecution has also not been able to link the accused either with the theft or with the transportation of resin. The material on record has been considered and appreciated by the Court below in its entirety. There is no perversity in the same.

I see no reason to interfere with the judgment of acquittal. The appeal is accordingly dismissed. The bail bonds are discharged.