

**(2011) 12 SHI CK 0238**  
**In the High Court Of Himachal Pradesh**  
**Case No : Criminal A. No. 327 of 2005**

State of Himachal Pradesh

APPELLANT

Vs

Kaul Ram and Smt. Kanta Devi

RESPONDENT

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**Date of Decision :** 21-12-2011

**Acts Referred:**

Criminal Procedure Code, 1973 (CrPC) — Section 154  
Forest Act, 1927 — Section 29, 32, 33, 72(2)  
Penal Code, 1860 (IPC) — Section 201, 34, 379, 435

**Citation :** (2011) 12 SHI CK 0238

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

**Bench :** Single Bench

**Final Decision :** Dismissed

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## Judgement

Surinder Singh, J.—Ms. Suman Thakur, learned counsel for the respondents submitted that though she was engaged as counsel in this case, but the respondents have taken away the brief, however, she has prepared the case and so far, no other counsel has been engaged by the respondents. Since it is an old matter pertaining to the year 2003, Ms. Suman Thakur, Advocate is hereby appointed as Amicus-Curie in this case to assist the Court.

2. The accused persons were charge-sheeted, tried and acquitted by the learned trial Court, for the offences punishable under Sections 32 and 33 of the Indian Forest Act and Sections 379, 201 and 435 read with Section 34 of the Indian Penal Code, hence the present appeal by the State.

3. Heard and gone through the record.

4. Precisely, the case of the prosecution is that on 28th July, 2003, PW1 Roshan Lal, Forest-Guard was posted in Beet Torsa Khashdhar range. During the checking of the jungle, he came to know about the encroachment made by the respondents over two bighas of government land for agricultural purposes. When he was on his way back, he met the Block Officer alongwith police and got

recorded his statement Ext.PW1/A u/s 154 of the Code of Criminal Procedure, on the basis of which FIR Ext.PW1/B was formally registered.

5. Police visited the spot, prepared site plan of alleged encroached area and later took into possession the Darat and Axe. They also found the illicit felling of five Kail trees, the stumps whereof were charred, thus the burnt coal of Kail trees were also taken into possession vide memo Ext.PW3/A. Damage report Ext.PW1/D was also chalked out by the Forest Guard with respect to the encroachment and felling of five Kail trees. During the search, the few scants of Kail trees were taken into possession from the house of one Kirpa Ram.

6. The area in dispute was got demarcated from PW7 Budhi Singh, Niab Tehsildar. He submitted the report Ext.PW9/B alongwith the revenue records.

7. After recording the statements of the witnesses, challan was presented against the respondents in the Court for their trial.

8. Learned trial Court found material discrepancies in the statements of the witnesses. On reappraisal, I also find that the statement of PW1 Roshan Lal itself has made the prosecution case doubtful. He stated that on 23.7.2003, he confiscated one Kassi from the respondent when he was found digging the forest land and was given on supurdari to PW3 Numberdar Bhisham Singh, but his statement Ext.PW1/A has a different story to tell. According to him, it was only on 28th July, 2003 that during checking of the forest named 'Thana', he noticed the respondents encroached upon two bighas of government land and they were also burning the stumps of the trees. On having been warned, they did not desist from their illegal activities, he then took into possession the Kassi, which according to him was handed over to police on 28.7.2003. Therefore, the story of taking into possession the said Kassi on 23.7.2003 stands falsified. There is also no record of taking into possession of Kassi on 23rd July, 2003. Further when he was alleged to have found the respondents in illegal possession of the impugned land on 28.7.2003, it is not understood as to why he did not chalk out the damage report on the same day, whereas, the damage report Ext.PW1/D is dated 29.7.2003. Further PW1 Roshan Lal Forest-Guard as well as PW3 Bhisham Singh stated that the accused had signed the damage report in their presence on 29.7.2003 at point-'A', but there is an endorsement on it that the accused had refused to sign the said document. It has not been mentioned on which date the signatures of the respondent Kaul Ram were obtained thereon.

9. Further none of the witnesses have stated that the respondents had cut Kail trees. Recovery of the slippers was effected from the house of one Kirpa Ram, who was neither a witness nor an accused in the instant case. The timber recovered is not connected with the stumps alleged to have been found on the spot.

10. There is also contradictory evidence with respect to the presence of the accused persons at the time of demarcation conducted by PW7 aforesaid. Though, PW7 as well as PW1 both stated that at the time of demarcation, the

respondents were present, but PW4 Joginder Singh stated that they were not present. Even the demarcation report Ext.PW9/B categorically stated that the respondents were not present, therefore, statement of PW7 Budhi Singh Niab Tehsildar is contrary to the record, which cast a doubt on the probity of the prosecution case. Further, the evidence on record establishes that the demarcation of the land was conducted in absence of the accused persons which is inadmissible in evidence and cannot be made basis for convicting the accused persons for an offence of the like nature u/s 72(2) of the Indian Forest Act.

11. Also I find that the prosecution did not make any endeavour to prove that the impugned land is a 'protected forest' and Notification in terms of Section 29 of the Indian Forest Act was ever issued in this behalf. In absence of the Notification having not been proved, the offence under Sections 32 or 33 of the Indian Forest Act cannot be said to have been proved. There is also no cogent evidence with respect to the theft and committing mischief by fire, as alleged. Therefore, in my considered opinion, the findings of acquittal recorded by the learned trial Court, is borne out from the evidence on record, thus it cannot be interfered with, as such, appeal of the State sans merit and is accordingly dismissed.

12. The respondents are discharged of their bail bonds entered upon by them at any time during the proceedings of the case.

13. Ms. Suman Thakur, learned counsel and Amicus-curie has rendered her valuable assistance in this case, therefore, her services are appreciated.

14. Send down the records.