

(1990) 03 SHI CK 0019

In the High Court Of Himachal Pradesh

Case No : Criminal Appeal No. 135 of 1989

State of Himachal Pradesh

APPELLANT

Vs

Lachhmi Singh and Others

RESPONDENT

Date of Decision : 07-03-1990

Acts Referred:

Constitution (Forty-Second Amendment) Act, 1976 — Article 41A, 51A

Criminal Procedure Code, 1973 (CrPC) — Section 161, 313

Forest Act, 1927 — Section 41, 42, 42(1), 55

Himachal Pradesh Forest Produce Transit (Land Routes) Rules, 1978 — Rule 10, 11, 6

Penal Code, 1860 (IPC) — Section 379

Citation : (1990) 2 ShimLC 26

Hon'ble Judges : Bhawani Singh, J

Bench : Single Bench

Advocate : M.S. Guleria, Assistant Advocate General, for the Appellant; O.P. Sharma, for Respondents Nos. 1 to 3 and A.K. Goel, for Respondent Nos. 4 to 6 and K.D. Sood, for the Respondent

Judgement

Bhawani Singh, J.—State of Himachal Pradesh has preferred this appeal against the acquittal of the accused in a case u/s 379 of the Indian Penal Code and Sections 41 and 42 of the Indian Forest Act (hereinafter to be referred as "the Act") by the Judicial Magistrate First Class, Nahan, Camp at Rajgarh. While admitting the appeal, on May 10, 1980, Brother Bhatnagar, J. issued notice to the owner of truck No. HPA 6463 calling upon him to show cause as to why the truck in question be not confiscated to the State. He appeared and defended himself through M/s. K.D. Sood and A.K. Goel, Advocates.

2. The prosecution case, in brief, is that on January 1, 1986, a complaint Ex. PW 8/B, was sent to the Police Station by Hardev Singh, Block Officer, Forest Department, complaining that he found truck No. HPA 6463 standing on the side of the road with three punctured tyres at Bhujal. On checking of the vehicle, about 40 sleepers of Devdar were found in the truck. They were kept underneath the potato bags which the said truck was carrying at that time. The truck, the

potatoes and the timber was taken into possession. The timber had been loaded in the truck from Pulwahal in District Simla. As a consequence of this information, a case u/s 379 of the Indian Penal Code and under Sections 41 and 42 of the Act was registered. The matter was investigated and the challan against the accused was filed in the Court. In their statement u/s 313 of the Code of Criminal Procedure, the accused have denied the prosecution case. Their plea appears to be that Deepak Ram (PW-5) wanted to load his timber and on refusal to do so he gave beatings to the occupants of the vehicle besides, fired at the tyres of the truck thereby puncturing three of them. The trial ended in the acquittal of the accused.

3. Shri M.S. Guleria, learned Assistant Advocate General, has challenged the decision of acquittal by the trial Judge on various grounds. He submitted that the acquittal of the accused, in the light of sufficient evidence on the record of the case, is absolutely erroneous and, therefore, the decision deserves to be set aside. It was also contended that the accused deserve severe penalty since forests in the State have been cut to a great extent by such like persons thereby not only destroying the forest wealth of the State and the nation but also affecting the whole ecological system. It was also contended that the truck which was involved in the commission of the offence is liable to be confiscated alongwith the timber.

4. From the evidence, it is clear that the truck was carrying not only the potato bags but also 37 sleepers of Devdar, a precious variety of timber. In order to conceal the carriage of these sleepers and avoid detection thereof, they had been kept underneath the potato bags which the truck was otherwise carrying. Many of the prosecution witnesses turned hostile and did not support the prosecution version that the truck was carrying the timber also despite the fact that they had clearly mentioned about the recovery of these sleepers in their statements u/s 161 of the Code of Criminal Procedure. However, the factum of carriage of timber and the recovery thereof is proved from the statements of Bhagat Ram (PW-2), Lachhmi Ram (PW 3), Munnalal (PW 4), Deep Ram (PW 5), Beli Ram (PW 6), Hardev Singh (PW 8), Ram Lal Thakur, Ranger Officer (PW 10) and Hukam Singh, ASI of Police (PW 11). The official witnesses have clearly demonstrated the whole occurrence in an exhaustive and straightforward manner thereby leaving nothing to chance any doubt as to the occurrence although some of the witnesses sifted their stand obviously due to the reasons that they are either local or, have been connected with the timber trade. The prosecution case stands proved beyond any shadow of doubt and the only tiring that does not appeal to me in this case is the commission of offence u/s 379 of the Indian Penal Code, since Jiu Ram (PW 7) who has been stated to be the owner of the timber also turned hostile and stated that the timber was not lifted from his house thereby not only saving the accused for committing the offence u/s 379 of the Indian Penal Code but also himself since he was to account for the possession of the timber. Anyway, the fact remains that offence u/s 379 of the Indian Penal Code has not been established and the decision of the trial Judge to that extent is correct.

5. In view of the examination of the evidence relating to timber, I am of opinion, that carriage of timber illicitly is established and the only thing left to be discussed is whether any offence under the provisions of the Act and the rules framed thereunder is committed by the accused or not. Shri A.K. Goel has laid great emphasis on this aspect of the case by asserting that the prosecution has not proved that the carriage of the timber was from one revenue estate to another. According to him, this requirement is necessary otherwise no offence for the transport of timber can be said to have been committed, if the carriage is between the same revenue estate. I am not impressed by this submission of Shri Goel, for the reasons being stated hereafter.

6. Sections 41 and 42 of the Act are relevant and the same are being quoted hereunder:

41 (1) The control of all rivers and their banks as regards the floating of timber, as well as the control of all timber and other forest produce in transit by land or water, is vested in the State Government, and, it may make rules to regulate the transit of all timber and other forest-produce.

(2) In particular and without prejudice to the generality of the foregoing power such rules may-

(a) prescribe the routes by which alone timber or other forest-produce may be imported, exported or moved into, from or within the State;

(b) prohibit the import or export or moving of such timber or other produce without a pass from an officer duly authorised to issue the same, or otherwise than in accordance with the conditions of such pass;

(c) provide for the issue, production and return of such passes and for the payment of fees therefor;

(d) provide for the stoppage, reporting, examination and marking of timber or other forest-produce in transit, in respect of which there is reason to believe that any money is payable to the Government on account of the price thereof, or on account of any duty, fee, royalty or charge due thereon, or, to which it is desirable for the purposes of this Act to affix a mark;

(e) provide for the establishment and regulation of depots to which such timber or other produce shall be taken by those in charge of it for examination, or for the payment of such money, or in order that such marks may be affixed to it, and the conditions under which such timber or other produce shall be brought to, stored at and removed from such depots;

(f) prohibit the closing up or obstructing of the channel or banks of any river used for the transit of timber or other forest-produce, and the throwing of grass, brushwood branches or leaves into any such river or any act which may cause such river to be closed or obstructed;

(g) provide for the prevention or removal of any obstruction of the channel or

banks of any such river, and for recovering the cost, of such prevention or removal from the person whose acts or negligence necessitated the same;

(h) prohibit absolutely or subject to conditions, within specified local limits, the establishment of sawpits, the converting, cutting, burning, concealing or making of timber, the altering or effacing of any marks on the same, or the possession or carrying of marking hammers or other implements used for marking timber;

(i) regulate the use of property marks for timber, and the registration of such marks; prescribe the time for which such registration shall hold good; limit the number of such marks that may be registered by any one person, and provide for the levy of fees for such, registration.

(3) The State Government may direct that any rule made under this section shall not apply to any specified class of timber or other forest produce or to any specified local area.

41-A. * * * * * 42. (1) The State Government may by such rules prescribe as penalties for the contravention thereof imprisonment for a term which may extend to six months, or fine which may extend to five hundred rupees, or both;

(2) Such rules may provide that penalties which are double of those mentioned in Sub-section (1) may be inflicted in cases where the offence is committed after sunset and before sunrise, or after preparation for resistance to lawful authority, or where the offender has been previously convicted of a like offence.

7. In exercise of powers conferred under these provisions, rules known as "the Himachal Pradesh Forest Produce Transit (Land Routes) Rules, 1978" (hereinafter called "the rules") were enacted. Rule 10 of these rules envisages procurement of pass for export or transport of forest produce while Rule 11 prohibits the transport of the forest produce by land routes without obtaining pass in Annexure "A" to the rules from the concerned Divisional Forest Officer or any other officer so authorised. The issuing authority has been authorised to prescribe the route by which the forest produce may be transported for export outside Himachal Pradesh. Certain barriers have been established through which the forest produce has to pass and these barriers are to be mentioned in the export pass. In this case, the contention of the learned Counsel for the accused is that the prosecution has not established that the carriage of the timber was from one revenue estate to the other and that, therefore, no offence has been committed by the accused. It is, therefore, relevant to quote Rule 6 of the rules. Rule 6 is as under:

6. All persons wishing to transport forest produce by land routes shall register at the office of the Divisional Forest Officer the mark, or marks which indicate their proprietary rights in such forest produce provided that no mark is required to be imprinted on any timber which is being transported within the concerned revenue estate only by a right-holder in consequence of a grant to that effect in his favour.

8. According to this provision a person claiming the benefit has to show that transit pass was not required since (a) the transport of the timber was within the same revenue estate and (b) the same was being done by the right holder as a result of grant of the timber in his favour. In case he is not able to prove the grant of timber in his favour, he cannot claim the benefit of this provision since there is a salutary principle behind this. But for this provision, people will resort to mass illicit felling of trees and finish the forests without obtaining any permit or without obtaining any permission. By this, legal rights of the right holders within the revenue estate have been protected, in case they come in possession of the timber as a result of grant in their favour and they need the timber locally to meet their personal requirements within the revenue estate they have their abode. In the present case, none of the accused has this kind of right. Obviously, the timber was being carried to the market and it was concealed, as already observed, underneath the potato bags and the vehicle did not stop till its tyres were deflated by gun fires. The place where the timber was loaded is in tehsil Chopal of district Simla and the place where it was caught is in tehsil Rajgarh of District Sirmaur. Revenue estates of two tehsils or of two districts are never common. Revenue estate means any area for which a separate record-of-rights has been made or which has been separately assessed to land revenue. There may be two revenue estates in the same village. As a matter of fact, it depends on the total holdings comprised in that village. There may be one revenue estate for a few villages and the government may also declare an area to be a separate revenue estate. The witnesses like Munna Lal (PW 4) and Hukam Singh, ASI of Police (PW 11) have stated that these areas fall in two separate revenue estates. In addition to these factors, the case has been registered by police station Rajgarh which falls in district Sirmaur and in case the offence had been committed in tehsil Chopal of Simla district, the cognizance of the same could have been taken by the police at the police station Theog. As a matter of fact, in view of clear position of this aspect there was no need to prove this aspect of the matter by leading any evidence. However, as discussed above, there is sufficient evidence to set aside the argument of the Counsel for the accused.

9. As a result of the aforesaid discussion, I see great force in this appeal filed by the State. Accordingly I allow the same and set aside the acquittal of the accused and convict them for offences under Sections 41 and 42 of the Indian Forest Act.

10. On the question of sentence, Shri M.S. Guleria has laid great emphasis. It was contended that the accused deserve maximum penalty in view of devastation of forests by such like persons. It was also contended that in order to save the forests, it is essential that persons engaged in illicit cutting and transport of timber are given such punishments which are eye-opener for others. Importance of forests and ecology has been realised not only at the international level but also by our own nation. Keeping in view these objectives, Part-IV relating to the Directive Principles of State Policy. Article 41A enacted by the Constitution (Forty-second Amendment) Act 1976, provides as under:

48-A. Protection and improvement of environment and safeguarding of forests and wild life.

The State shall endeavour to protect and improve the environment and to safeguard the forests and wild life of the country.

Further, Part IV-A relating to the fundamental duties included to the Constitution of India by the Constitution (Forty-second Amendment) Act, 1976, Article 51A, which provides as under:

51-A. Fundamental duties.--It shall be the duty of every citizen of India-

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(g) to protect and improve the natural environment including forests, lakes, and wild life, and to have compassion for living creatures;

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11. I am in agreement with these submissions of Shri M.S. Guleria. However, it appears that the offence was committed in the year 1986 and the accused are undergoing sufficient tension; the interest of justice would be met in case they are called upon to pay fine instead of sentencing them to imprisonment. Accordingly, the accused are sentenced to pay a fine of Rs. 500 each. The timber is ordered to be confiscated to the State.

12. Now comes the question of truck which was used for transporting the timber. The owner of truck No. HPA 6364 has submitted that the same may not be confiscated, since he (the owner) did not know that the driver and the conductor would illicitly transport the timber by truck. I am not at all convinced by this explanation. Section 55 of the Act reads as under:

55 (1) All timber or forest produce which is not the property of Government and in respect of which a forest-offence has been committed, and all tools, boats, carts and cattle used in committing any forest-offence, shall be liable to confiscation.

(2) Such confiscation may be in addition to any other punishment prescribed for such offence.

13. It is fact that but for the connivance of the owners of the vehicles, their drivers and conduction illicit felling of the forests can be saved at least to the extent of 80%. It is because of their involvement and help to transport the timber that forests are being cut and destroyed at large scale. In case trucks are not available for transporting the timber illicitly felled, there is no question of falling trees since the same cannot be taken to the market for sales. Accordingly, the submissions of the owner of the vehicle are not at all tenable and the same are rejected. Truck HPA 6364 is ordered to be confiscated to the State.