
(2012) 03 SHI CK 0428
In the High Court Of Himachal Pradesh
Case No : Criminal Appeal No. 271 of 2005

State of Himachal Pradesh

APPELLANT

Vs

Mukesh Kumar, Gulab Singh and Hem Chand

RESPONDENT

Date of Decision : 07-03-2012

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 313
Forest Act, 1927 — Section 41, 42
Penal Code, 1860 (IPC) — Section 34, 379

Citation : (2012) 03 SHI CK 0428

Hon'ble Judges : Surinder Singh, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Surinder Singh, J.—The State has challenged the acquittal of the respondents, passed in Case No. 192-1 of 2001, on 18.3.2004, whereby respondents were acquitted for the offences punishable u/s 379 read with Section 34 of the Indian Penal Code and Sections 41 and 42 of the Indian Forest Act, allegedly for transporting 44 scants of timber belonging to the Himachal Pradesh Forest Corporation in Tempo (TATA 407) bearing registration No. HP-14-4836, owned by respondent Mukesh Kumar. Heard and gone through the evidence on record.

2. Brief facts giving rise to the present appeal can be stated thus. An information was received on 16.1.2000 at 8.45 a.m. in Police Station Kotkhai that the aforesaid Tempo-vehicle had overturned between Kotkhai and Jubbal on the road near Jaltahar on a small bridge and the scants of the timber are scattered on the road and some of them had fallen in the Nallah beneath the bridge and no one is present on the spot.

3. After registration of the case, police visited the spot, prepared site plan, took into possession of 44 scants of timber out of which two feet size of 8 sleepers appeared to have been sawn and separated so as to fit in the Tempo vehicle. Its measurement was taken in the presence of the Forest Officers. Timber scants

were having "Khudan Marka HHP" belonging to the Forest Corporation.

4. A Ruqa Ext.PW2/B was sent to the Police Station. PW10 ASI Jai Gopal took photographs of the tempo vehicle. PW8 Dhyan Singh, Chowkidar of the Forest Corporation identified the timber to be that of the Forest department, which was kept in his charge in Gajta Depot of the Corporation. To this effect, memo Ext.PW2/A was prepared. 7 pieces of Deodar wood, which were cut from the full length sleepers were also found in the Depot, which were also taken into possession vide memo Ext.PW12/D. According to the case of the prosecution, these pieces were got tallied with seven sleepers from it was cut, found on the spot, where the accident had taken place. The supurdari of the timber was given to PW7 Mohinder Dutt, Forest Guard vide memo Ext.PW7/A. The vehicle was got mechanically examined. Report is Ext.PW1/A.

5. Police traced Mukesh Kumar the owner of the vehicle. He was arrested alongwith his accomplice Gulab Singh and Hem Chand. Later others were also arrested. It is alleged that Mukesh Kumar had identified the place from where the alleged timber was stolen and removed with the help of Gurkha labour. To this effect, memos Ext.PW8/A and B respectively were prepared.

6. Respondents Hem Chand and Gulab Singh also allegedly identified the said place and to this effect memos were prepared.

7. Police on the strength of the aforesaid evidence, prepared challan against the respondents and presented it in the Court for their trial. Learned trial Court framed the charges against the respondents under the aforesaid sections, to which they pleaded not guilty and claimed trial.

8. To prove its case, prosecution examined its witnesses and respondents were also examined u/s 313 of the Code of Criminal Procedure. Their case was denial simplicitor and no evidence in defence was led by them.

9. At the end of trial, respondents were acquitted for want of legal evidence. During the investigation of the case, timber was auctioned under the orders of the Court and the sale proceeds were claimed by the Forest Corporation. Respondents did not put any claim to it and record does not show as to what had happened to the vehicle as to whether it was released to its registered owner or ordered to be auctioned.

10. I have reappraised the evidence on record. It stands proved in the statement of the Investigating Officer and other witnesses that the vehicle in question had met with an accident at the place known as "Jaltahar" and 44 scants of timber which were allegedly found loaded in that vehicle, belonging to the Forest Corporation were also found scattered, meaning thereby that this timber was loaded in the vehicle in question. To prove that the respondents or any of them had committed theft or transported the timber is the moot question for its determination.

11. There is no legal evidence to this effect that the respondents had in fact

transported the timber belonging to the Forest Corporation or committed theft thereof from the depot of Forest Corporation. Either PW8 Dhyan Singh, Chowkidar or any other forest Officer examined in this case had not produced any list, which could show that this timber was put in the charge of PW8 Dhyan Singh. There is no evidence that the respondents had removed the timber in question from the depot of the Forest Corporation. Dhyan Singh, Chowkidar aforesaid was also having his residence in the close vicinity from where the timber was found missing, even he could not notice about the sound of sawing of 7/8 sleepers, is quite surprising. The labourers who loaded the timber were not associated during the investigation. On the basis of pointing out evidence against the respondents, they cannot be convicted.

12. Further PW12 HC Rajinder Singh, Investigating Officer had no explanation to offer as to what was the other evidence against the respondents except their own statements of pointing out the place of theft recorded during their custody of the police. PW2 Suresh Chauhan denied that any of the respondents had given such a statement to the police. He did not support the case of the prosecution, as such he was declared hostile.

13. Thus, with reference to the above evidence on record, I do not find that there has been a cogent, convincing and reliable evidence against the respondents to convert their acquittal into conviction.

14. For the aforesaid reasons, in my considered opinion, learned trial Court rightly acquitted the respondents by giving them the benefit of doubt. Appeal sans merit and is accordingly dismissed.

15. The respondents are discharged of their bail bonds entered upon by each of them at any stage during the proceedings of the case. Send down the records