

(2011) 08 SHI CK 0104
In the High Court Of Himachal Pradesh
Case No : Criminal Appeal No. 293 of 2004

State of Himachal Pradesh

APPELLANT

Vs

Nagnu Ram and Others

RESPONDENT

Date of Decision : 23-08-2011

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 155, 313
Forest Act, 1927 — Section 41, 42
Himachal Pradesh Forest Produce Transit (Land Routes) Rules, 1978 — Rule 11, 20
Penal Code, 1860 (IPC) — Section 34, 379

Citation : (2011) 08 SHI CK 0104

Hon'ble Judges : Kuldip Singh, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Kuldip Singh, J.—The judgment of acquittal for offence punishable under Sections 41, 42 of the Indian Forest Act read with Section 34 Indian Penal Code, 1860 of learned Additional Chief Judicial Magistrate, Jogindernagar dated 16.10.2003 in P.C. No. 281-1/2001 has been assailed by the State in the appeal.

2. The facts, in brief, are that on 27.6.2001 at about 1.00 a.m. Uttam Singh, SHO along with HC Daya Ram, HC Mohan Singh, C. Kashmir Singh and Jai Chand Range Forest Officer, Jogindernagar were on nakabandi at Dhelu curve when at about 1.15 a.m. maruti van No. HP-02-0139 came there. It was checked and found carrying 10 scants of deodar of different sizes. The Respondents failed to produce any permit/permission for transportation of logs, therefore, 10 scants of deodar along with van were seized. The rukka was sent through C. Kashmir Singh and on that basis FIR No. 105 of 2001 was registered u/s 379 Indian Penal Code, 1860. On completion of investigation, challan was presented against the Respondents. No. case of theft was made out against the Respondents. Notice of accusation for offence punishable under Sections 41, 42 of the Indian Forest Act read with Section 34 Indian Penal Code, 1860 was put to the Respondents. They pleaded not guilty and claimed trial.

3. The prosecution has examined six witnesses in order to prove the case. The statements of Respondents were recorded u/s 313 Code of Criminal Procedure. They denied the prosecution case. In defence DW-1 Kehar Singh was examined. The learned Additional Chief Judicial Magistrate acquitted the Respondents, hence appeal by the State. The Respondent Prakash Chand died during the pendency of the appeal.

4. I have heard the learned Assistant Advocate General for the Appellant and Mr. Vinod Thakur, Advocate, learned Counsel for the Respondents and have also gone through the record. It has been submitted on behalf of the State that the Court below has not properly appreciated the evidence on record and the Respondents have been wrongly acquitted. He has submitted that the case has been proved against the Respondents beyond reasonable doubt and, therefore, prayer has been made for setting aside the impugned judgment and for appropriate conviction and sentence of the Respondents. The learned Counsel for the Respondents has submitted that the prosecution has miserably failed to prove the case against the Respondents. The learned Court below has taken a possible view from the evidence on record which requires No. interference. He has prayed for dismissal of the appeal.

5. PW-1 Hari Ram, Forest Guard has stated that on 26th day of the month he along with others was at Dhelu at naka. At about 1.15 a.m. a maruti van came, it was stopped by the police and on checking 10 sleepers of deodar were recovered from the van. Prakash Chand, driver and two more persons were sitting in the van. The sleepers were taken into possession vide memo Ex.PW-1/A which he and Jai Chand Katoch signed as witnesses. These sleepers were handed over to him on sapurdari vide memo Ex.PW-1/B. One sleeper was kept separately. He identified sleeper Ex.P-1. In cross-examination, he has stated that village Gadiara is at a distance of 200 meters from Dhelu having 10 -12 houses. Dicky of the van was four feet deep. He denied that no sleepers were recovered from the van. The sleepers were old and dry.

6. PW-2 Prakash Chand, Forest Guard has stated that on 27.6.2001 the police handed over 9 sleepers out of 10 sleepers to Hari Ram on sapurdari and one sleeper Ex.P-1 was retained as sample. PW-3 Jai Chand Katoch has stated that on 27.6.2001 at about 1.00 a.m. he and Ors. were at Dhelu curve at naka, a taxi HP-02-0139 came there in which there were three persons, from taxi 10 sleepers of deodar were recovered. In cross-examination, he has stated that the villagers from village Gadiara were not called due to night. He has stated that he does not know the accused personally. The longest sleeper was 7 1/2 feet. He has stated that middle seat of the van was removed but he has also stated that when he made the statement to police then at that time he has not referred to removal of seat. PW-4 Jagjeet Singh is the photographer and he has proved photographs Ex.P-1 to Ex.P-3 and negatives Ex.P-4 to Ex.P-6. PW-5 Jai Gopal has proved FIR Ex.PW-5/A.

7. PW-6 Uttam Singh, SHO has stated that on 27.6.2001 he was present along

with other party at 1.00 a.m. at Dhelu curve, a van came at about 1.15 a.m. which was stopped, three persons were sitting in the van, who disclosed their identity as Prakash Chand, Nagnu and Kanhaiya Lal. On checking the van, it was found carrying 10 deodar sleepers which were taken into possession vide memo Ex.PW-1/A. The occupants of the van could not produce any permit for carrying the sleepers. Rukka Ex.PW-6/A was sent through C. Kashmir Singh for registration of the case and thereupon FIR Ex.PW-5/A was registered. In cross-examination, he has stated that dicky of the van was three-four feet deep but the occupants of the van had removed the back seat and put it on the sleepers. The timber was not cut but was lifted from Dharotu Nullah. The source of the timber could not be traced. He did not feel it proper to call any local person.

8. DW-1 Kehar Singh has stated that on 27.6.2001 he took on hire van No. 139 for carrying "Lingar" (forest vegetable). In all, five persons were in the van. At about 2.00 a.m. at Dhelu curve, police met them; police stopped the van and asked to drop them at bus stand. He and Chuhar Singh were dropped at Jogindernagar bus stand and police took the van. In the van there was nothing except "Lingar". He waited for quite some time but ultimately went to his house at 6.00 a.m.

9. The prosecution case is that van was intercepted on 27.6.2001 at about 1.15 A.M. but PW-1 Hari Ram, Forest Guard has stated that it was 26th of the month when at about 1.15 A.M. van was checked. It has come in evidence that village Gadiara is at a distance of 200 meters from the point where the van was checked. In that village there are about 10-12 houses. PW-6 Uttam Singh SHO has stated that he did not feel it proper to call any local person. No independent person was joined by the police when van was intercepted and checked.

10. The prosecution case is that 10 sleepers were recovered from the van. It has come in the evidence that dicky of the van was about four feet deep. PW-3 Jai Chand Katoch has stated that longest sleeper was 71/2 feet but when he realized that how 71/2 feet sleeper can be placed in the dicky of the van then he stated that middle seat of the van was removed but he has also stated that when he made the statement to police he had not stated removal of the seat before the police. In maruti van there is no middle seat. It has either front seats or back seat. PW-6 Uttam Singh has also stated that occupants of the van had removed the back seat for accomodating the sleepers but in rukka Ex.PW-6/A it has not been stated that the back seat of the van was removed to adjust the sleepers. This is important omission and cannot be ignored lightly, it creates suspicion in the prosecution case.

11. PW-6 has stated that timber was not cut but was lifted from Dharotu Nallah. The source of the timber could not be traced. There is no charge of theft. The notice of accusation was put to Respondents for transporting 10 sleepers of deodar in van No. HP-02-0139 without any valid permit and thereby committed offence punishable under Sections 41, 42 of the Indian Forest Act. Section 41 provides that State Government may make rules to regulate transit of timber and

other forest produce. Section 42 provides that State Government may by such rules prescribe as penalties.

12. In the notice of accusation put to Respondents in the present case no reference of violation of rules framed under Sections 41, 42 of the Indian Forest Act has been stated. In *Shiv Narain Bhasin v. State of Himachal Pradesh* 1985 SLC 274 it has been held that Section 42 of the Indian Forest Act is merely an enabling section empowering the State government to prescribe by rules penalties of imprisonment or fine or both for contravention of rules framed u/s 41 of the Indian Forest Act. The Court has further held that it was necessary for the trial Magistrate to state the precise rules framed u/s 41 of the Indian Forest Act for the violation of which the accused was required to be punished and therefore, notice of accusation was held to be defective.

13. The Himachal Pradesh Forest Produce Transit (Land Routes) Rules, 1978 have been framed under Sections 41, 42 of the Act. Rule 11 provides pass for transportation of forest produce. Rule 20 provides imprisonment or fine or both for contravention of rules. The proviso to Rule 20 provides penalty double in case offence committed after sunset or before sun-rise or after resistance to the lawful authority or where the offender has been previously convicted of like offence. Therefore reference of Rule 20 in the accusation is necessary where there is allegation of violation of rules. In the present case there is absence of reference of rules, more particularly, Rule 20 framed under Sections 41, 42 of the Indian Forest Act by the State Government in the notice of accusation which was put to Respondents, who were not given an opportunity to project their defence to the accusation of violation of rules framed under Sections 41, 42 of the Indian Forest Act which has caused prejudice to Respondents. In these circumstances, after due appreciation of material on record the finding of benefit of doubt given by the learned Magistrate to the Respondents cannot be said to be wrong.

14. The learned Counsel for the Respondents has also referred Cr. Appeal No. 160 of 2002 and Cr. Appeal No. 311 of 2002, both decided on 11.5.2009 by the High Court on the point that police are debarred from investigating the case under Sections 41, 42 of the Indian Forest Act in view of Section 155 of the Code of Criminal Procedure. The learned Assistant Advocate General has submitted that the judgment dated 11.5.2009 is distinguishable as some relevant provisions of Indian Forest Act have not been considered in the said judgment. It is not necessary to go into the question in view of the fact that on facts of the case the prosecution has not proved the case beyond reasonable doubt against the Respondents. There is no merit in the appeal.

15. In view of above discussion, the appeal is dismissed. Bail bonds of the Respondents are discharged.