

(2015) 03 JH CK 0043

In the Jharkhand High Court

Case No : Acquittal Appeal (S.J.) No. 38 of 2005

State of Jharkhand

APPELLANT

Vs

Bihari Lal Khandelwal and Others

RESPONDENT

Date of Decision : 18-03-2015

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 378

Forest Act, 1927 — Section 33, 42

Penal Code, 1860 (IPC) — Section 120(B), 120B, 379, 411, 413

Citation : (2015) 03 JH CK 0043

Hon'ble Judges : Ravi Nath Verma, J.

Bench : Single Bench

Advocate : M.B. Lal, for the Appellant; B.K. Dubey, Advocates for the Respondent

Final Decision : Dismissed

Judgement

Ravi Nath Verma, J.—This acquittal appeal filed by State under Proviso of Section 378 of Code of Criminal Procedure is directed against the judgment dated 25th February, 2004 passed by 2nd Assistant Sessions Judge, Chatra in Sessions Trial No. 240 of 1990 whereby and whereunder the court having found the accused respondent Nos. 1 to 5 not guilty for the offence under Sections 379, 413, 414 and 120(B) of the Indian Penal Code and also under Sections 33 and 42 of the Indian Forest Act, acquitted them from the charges.

2. The case of the prosecution which is based on the written report dated 29.07.1984 submitted by Kishore Toppo, Range Officer, Chatra in short is that on the basis of search warrant issued by S.D.M., Chatra on the request of D.F.O., South Division, Chatra the police in presence of Ram Kishun Sahu, Magistrate and two independent witnesses conducted raid in the bungalow-cum-godown of the respondent Nos. 1 and 2 Bihari Lal Khandelwal and Krishna Kumar Khandelwal of Chatra on 29.07.1984 and seized 146 bags of Katha weighing 9452 Kg, 19 basket of Katha biscuit weighing 179 Kg. and 16.443 cubic meter

Gila Kotch. It is also the allegation that the said two respondents after cutting and removing Khair trees from various protected forest, manufactures Katha with the help of their associates for their wrongful gains and keeping the same in their godown causing huge revenue loss to the State. Thereafter, Chatra P.S. Case No. 93 of 1984 was instituted under Sections 379, 411, 413, 414, 420, 120B of the Indian Penal Code and also under Sections 33 and 42 of the Indian Forest Act.

3. After investigation, which was finally concluded by C.I.D. Food, Bihar under the Investigation Officer, R.D. Suberno and I.O. Krishna Bihari Singh, the charge sheet was submitted under the aforesaid Sections against the two above respondents and other accused persons. Some of the accused persons were shown as absconder. The learned C.J.M., Chatra took cognizance of the offence and committed the case to the court of Sessions for trial and disposal.

4. During trial, the prosecution examined altogether 11 witnesses. P.W. 1 Jagdev Mahto and P.W. 5 Birendra Tiwari as a seizure witnesses, Kishore Toppo the informant as P.W. 2. P.W. 3 Jitan Dusadh, P.W. 4 Bifa Bhuiyan, P.W. 6 Daneshwar Ganjhu and P.W. 7 Mohit Bhuiyan were declared hostile. Mithilesh Kumar, D.F.O., North as P.W. 8, Kuldeep Manjhi, Range Officer as P.W. 9, Usha Ranjan Biswas, D.F.O., South as P.W. 10 and R.D. Suverno, who investigated the case on behalf of C.I.D. as P.W. 11. The defence also examined one witness D.W. 1 Krishna Kumar Khandelwal the respondent No. 2 and brought on record the following relevant documents:-

(i) Ext. A, Ext. A/3, Ext. A/5, Ext. A/6 and Ext. E the letters of different dates.

(ii) Ext. A/4 is Memo.

(iii) Ext. B/92 is Transit Permit of different dates.

(iv) Ext. C is Depot Register.

(v) Ext. D is handwriting and signature on Depot Register.

(vi) Ext. F is a Chart of Katha etc.

(vii) Ext. I Report of Tapez Depot for the month of February, 1984.

5. The trial court, after considering the evidence and other materials including the documentary evidences, recorded the order of acquittal as said above. Being aggrieved with that, this appeal has been preferred by the State.

6. Learned counsel for the State while assailing the finding recorded by the trial court seriously contended that the court below failed to appreciate the evidence of the prosecution witnesses in right perspective and without applying judicial mind, acquitted the respondent Nos. 1 to 5. It was also submitted that there was no justification in disbelieving the consistent evidence of prosecution witnesses regarding theft of Khair trees and woods from the protected forest areas by the respondents. Hence, the court below committed error and wrongly acquitted the respondents.

7. Contrary to the aforesaid submissions, the learned counsel appearing for the respondents relying upon the judgment *Bhim Singh Vs. State of Haryana*, submitted that in a case of appeal filed against acquittal, the appellate court has a very limited role to play and should not interfere in the finding as a matter of routine. The court below also bear in mind that there is presumption of innocence in favor of the accused and the accused are entitled to get the benefit of doubt.

8. Before I enter into the veils of submissions of counsels and examine the depositions and other materials on record, a brief analysis of the power of appellate court in an appeal against acquittal is necessary. The Hon"ble Supreme Court in *Bhim Singh Versus State of Haryana* (supra) while dealing with the power of appellate court has held as follows:

"Before concluding, we would like to point out that this court in a number of cases has held that an appellate court entertaining an appeal from the judgment of acquittal by the trial court though entitled to reappraise the evidence and come to an independent conclusion, it should not do so as a matter of routine. In other words, if from the same set of evidence two views are possible and if the trial court has taken one view on the said evidence, unless the appellate court comes to the conclusion that the view taken by the trial court is either perverse or such that no reasonable person could come to that conclusion or that such a finding of the trial court is not based on any material on record, it should not merely because another conclusion is possible reverse the finding of the trial court." So, it appears that the appellate court has a very limited role to play and unless the findings recorded by the trial court is perverse or such that no reasonable person could come to that conclusion or the finding is not based on any material on record, this court cannot interfere. Now keeping in view the above judicial pronouncement and limitations, I would like to examine the evidence of prosecution witnesses to see as to whether the findings recorded by the trial court are based on proper appreciation of evidence or not. The prosecution case relates to illegal cutting of Khair woods from reserve protected forest and subsequent manufacture of Katha out of the said Khair woods. P.W. 2, the informant has testified that two respondents Bihari Lal Khandelwal and Krishna Kumar Khandelwal were the forest contractors and had been purchasing Khair woods in auction sale of State and Khair woods were auction sold on different occasions by District Forest Officer but neither he had any occasion to see the register concerning the purchase of Khair woods in auction sale by the respondents nor he has knowledge in which year they had purchased Khair woods and how much Khair were purchased. This witness has further testified that he cannot say that how much trees were cut and removed by the respondents from protected forest areas of Changer Herua and Tapej. The witness has further clarified that though the accused persons had purchased Khair woods in auction and mixed them with stolen Khair wood but he cannot say how much of those seized Katha was illegal and how much was legal. P.W. 5 a seizure list witness, in his cross examination has admitted that the two

respondents Bihari Lal Khandelwal and Krishna Kumar Khandelwal were the departmental contractors and they used to take forest area of Khair trees in contract and also used to prepare Katha from those woods. Similarly, P.W. 8 Mithilesh Kumar, who was D.F.O. North Division has stated that he was posted at Chatra North Division from July, 1983 to June, 1986 and during the above period the present case was instituted but has further testified that Bihari Lal Khandelwal and Krishna Kumar Khandelwal were forest contractor at that time and those two contractors had purchased Khair coups in auction. The witness has further admitted that he had given the relevant papers showing purchase of Khair woods by the respondents to the Investigation Officer.

9. P.W. 9 Kuldeep Manjhi, who was Range Officer during the period, has testified that as per direction of his superior officers he had seized Katha and utensils used in making Katha. This witness has also admitted the fact that the two respondents Bihari Lal Khandelwal and Krishna Kumar Khandelwal were forest contractors at that time and they used to purchase Katha coups and prepared Katha by bringing Katha woods from State Depots to his godown and that for bringing Khair tree and woods transportation permits were also issued by the department in the name of the two respondents. The witness has further submitted that in the year 1981-82 also accused persons had purchased coups in Lawa Long area and transit permits were also granted to him for transporting Khair woods but he had no occasion to see the records of Tapej Depot. P.W. 10 Usha Ranjan Biswas another D.F.O., South Division, Chatra has testified that in the month of January, 1983 the accused persons had prepared 55 Quintal Katha from 2274 Khair trees and on the recommendation of Range Officer, he had issued permit to the accused persons. This witness on mere presumption and without any cogent reliable material, estimated that the accused persons ought to have been in possession of 3350 Kg Katha only but 13,000 Kg Katha were found excess from the possession of the accused persons. This witness has also admitted that the two respondents Bihari Lal Khandelwal and Krishna Kumar Khandelwal were old forest contractors. He has further admitted the issuance of certain letters which have been filed by the defence in this case relating to storage of Katha. The witness has further admitted that Khair woods Tona of Rajpur and Tapej forest were brought and Katha was prepared and further testified that he had never seen the respondents cutting Khair trees or getting the same cut away through anyone and has also stated that during his tenure, permits were issued to the contractors and he had issued permits to Krishna Kumar Khandelwal in the year 1983 also.

10. From the critical analysis of the evidence of the prosecution witnesses this much is clear that the two above respondents Bihari Lal Khandelwal and Krishna Kumar Khandelwal were old forest contractors and they used to purchase Khair trees and woods in auction sale and thereafter on the basis of transit permits issued by Government authorities, they used to bring those trees and logs of Khair to their godown and thereafter prepare Katha.

11. The court below in my view, has rightly appreciated the evidence of prosecution witnesses and the documentary evidences brought on record by the defence relating to auction purchase and transit permit and rightly came to the conclusion that the respondent Nos. 1 and 2 were bona fide purchaser of Khair trees and woods from the forest department in auction sale. There is absolutely no evidence on record to show that the seized property were theft property or that the accused persons committed any theft of Khair woods from any reserved protected area or damaged any forest property. The prosecution, in my view, has failed to prove beyond all reasonable doubt that the respondent Nos. 1 to 5 have committed any offence as alleged.

12. In that event, I do not find any illegality with the judgment of acquittal. Accordingly, this appeal is dismissed.