
(2010) 09 UK CK 0056

In the Uttarakhand High Court

Case No : Government Appeal No. 2007 of 2001 (Old No. 1315 of 1999)

The State

APPELLANT

Vs

Sher Singh and Another

RESPONDENT

Date of Decision : 14-09-2010

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 313, 378

Forest Act, 1927 — Section 26

Penal Code, 1860 (IPC) — Section 379, 411

Citation : (2010) 09 UK CK 0056

Hon'ble Judges : Dharam Veer, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Dharam Veer, J.—Heard Sri Prabhakar Joshi, learned Brief Holder for the State/ appellant and Sri JS Virk, Adv. for the respondent.

2. The present appeal has been preferred by the State u/s 378 of Code of Criminal Procedure, 1973 (hereinafter to be referred as Cr.P.C.) against the judgment and order dated 29.01.1999 passed by the Addl. J.M., Khatima, Distt. US Nagar in Crl. Case No. 739/96 State v. Sher Singh and Anr., thereby acquitting the respondents/accused u/s 379/411 of the Indian Penal Code, 1860 {hereinafter to be referred as the IPC} and 26 of the Forest Act {hereinafter to be referred as the Act}.

3. In nutshell, the prosecution case is that on 22.9.1990, SI Suresh Singh along with other police officials, was in the patrolling duty. When he was coming back from Bidora, he received information that two persons were carrying the logs of Saal wood on a Dunlop Vehicle to the saw-machine of Jagir Singh. On this information, the police party reached on the spot and arrested the respondents/ accused by using force and from their possession, illegal Saal wood was recovered. Fard of recovery Ex.Ka-1 was prepared on the spot on the basis of which FIR was lodged by SI Suresh Singh at PS Nanakmatta, US Nagar on

22.9.1990 at 11:30 PM and CHIK FIR was accordingly prepared, which is on record. Investigation was entrusted to SO Jamil Mohd. The I.O. inspected the place of occurrence and prepared the site plan, which is on record. During investigation, the IO recorded the statement of the witnesses and after completing the investigation, he filed the charge sheet on 7.1.91 against the respondents/accused which is also on record.

4. On 24.8.1993, charge was framed u/s 379/411 of IPC and 26 of the Act against the accused/respondents by Munsif Magistrate, Khatima, Nainital, which was read over and explained to them to which they pleaded not guilty and claimed to be tried.

5. The prosecution has produced the sole witness Constable Ram Kisan on 16.3.1996 but that witness was not produced for cross-examination and when the prosecution failed to produce the said witness for cross-examination, then the statement of the accused/respondents u/s 313 Cr.P.C. was recorded on 29.1.99 and thereafter on the same day, the judgment was passed by the court below dated 29.1.1999 thereby acquitting the respondents/accused u/s 379/411 IPC and also u/s 26 of the Act.

6. Learned Brief Holder appearing for the State/appellant fairly admitted that there is no evidence against the respondents. It is settled law that without giving the opportunity of cross-examining any witness produced by the prosecution, his statement cannot be read into evidence against the accused. In this case also, the examination in chief of PW1 Constable Ram Kisan was recorded on 16.3.1996 and thereafter several opportunities were given to the prosecution to produce the said witness for cross-examination which was not done. Even the incident is of 22.9.90, charge sheet was filed on 7.1.91, charge was framed on 24.8.93, examination in chief of PW1 was recorded on 16.3.96 and statement u/s 313 Cr.P.C. of accused was recorded on 29.1.99, i.e. after framing of charge, after three years, the sole prosecution witness was produced by the prosecution and further after three years i.e. in 1999, statement u/s 313 Cr.P.C. was recorded and the judgment was passed, which reveals that the prosecution miserably failed to prove its case against the respondents/accused and the trial court has rightly acquitted the respondents for the offences under which they were charged and I do not find any illegality or incorrectness in the judgment and order passed by the trial court.

7. In view of the above, the appeal preferred by the State is dismissed. The judgment and order dated 29.01.1999 passed by the court below is affirmed.