
(2011) 03 SHI CK 0346

In the High Court Of Himachal Pradesh

Case No : Criminal Appeal No's. 444, 445 and 665 of 2002

Varinder Lal Sood and Another

APPELLANT

Vs

State of Himachal Pradesh

RESPONDENT

Date of Decision : 23-03-2011

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 173, 207, 313

Forest Act, 1927 — Section 41, 42

Himachal Pradesh Forest Produce Transit (Land Routes) Rules, 1978 — Rule 11, 18, 20

Penal Code, 1860 (IPC) — Section 120B, 167, 218, 379, 420

Prevention of Corruption Act, 1947 — Section 5(2)

Citation : (2011) 3 ShimLC 593

Hon'ble Judges : Surjit Singh, J;Rajiv Sharma, J

Bench : Division Bench

Judgement

Surjit Singh, J.—These three appeals are being disposed of by a common judgment, as in all of them the same judgment, i.e. judgment dated 28th June, 2002, of learned Special Judge (Forest), Shimla, has been assailed. Two appeals, i.e. Criminal Appeal No. 444 of 2002, titled Varinder Lal Sood and another v. State of H.P., and Criminal Appeal No. 445 of 2002, titled Subhash Chand and others v. State of H.P., have been filed by some of the accused, who have been convicted and sentenced. Third appeal, i.e. Criminal Appeal No. 665 of 2002, titled as State of H.P. v. Sham Lal and Others, has been filed by the State against acquittal of some other accused persons. A case, under Sections 379, 420, 467, 468, 471, 218, 167 and 120-B of the Indian Penal Code, Sections 41 and 42 of the Indian Forest Act, read with Rules 11/18 and 20 of the H.P. Forest Produce Transit (Land Routes) Rules, 1978, and Section 5(2) of the Prevention of Corruption Act, 1947, was filed against twelve persons, by Police Station Enforcement, South Zone, Shimla. It was alleged that Sham Lal Walia, respondent No.1 in the appeal filed by the State, i.e. Criminal Appeal No. 665 of 2002, who shall, hereinafter, be referred to as accused No. 1, in connivance with some forest officials, namely Bhau Ram, also a respondent in the aforesaid State appeal and hereinafter referred to as accused No.2, Kewal Ram, also a

respondent in the aforesaid State appeal and hereinafter referred to as accused No.3, Shyama Nand, also a respondent in the aforesaid State appeal and hereinafter referred to as accused No.4, Shanti Swaroop, also an appellant in Criminal Appeal No.445 of 2002 and hereinafter referred to as accused No.5, Vinod Kumar, a respondent in the aforesaid State appeal and hereinafter referred to as accused No.6, Mohan Lal Ghemta, again a respondent in the aforesaid State appeal and hereinafter referred to as accused No.7, Subhash Chand, appellant in Criminal Appeal No.445 of 2002 and hereinafter referred to as accused No.8, Om Prakash (now dead), appellant in Criminal Appeal No.445 of 2002 and hereinafter referred to as accused No.9, Surinder Lal Sood (now dead), a respondent in the aforesaid State appeal and hereinafter referred to as accused No.10, Varinder Lal Sood, appellant in Criminal Appeal No.444 of 2002 and hereinafter referred to as accused No.11, and Anil Kumar, also an appellant in Criminal Appeal No.444 of 2002, hereinafter called accused No.12, illicitly felled one tree from Government forest, adjoining Khasra No.176, in village Khashdhar and thereafter obtained permits No.228/81-82 and 174/81-82 for export of 86 scants against the first permit and 156 scants against the second permit, but forged one of those permits, i.e. permit No.228/81-82 (Ex. PW-63/B), and increased the number of scants from 86 of 986 and also changed the expiry date of the permit from 31.3.1982 to 30.4.1982.

2. According to the prosecution, two applications, one in respect of village Khashdhar and the other in respect of village Khurshali, were submitted by accused No.1 Sham Lal, who was a petty forest contractor, to the Divisional Forest Officer, for marking trees for felling, on the private land described in those applications. Those applications were sent to the concerned Range Officer, for marking the trees, after obtaining demarcation from revenue officials. After demarcation, two trees of Deodar species were marked on Khasra No.176 in village Khashdhar and in village Khurshali some Kail trees were marked. Felling permission was granted. Accused No.1 then felled two trees and converted those trees into timber. Thereafter, he applied for grant of export permits, one in respect of Deodar scants, numbering 86, and one for Kail scants, numbering 156. Two permits were issued. Permit No.228/81-82 was issued, in respect of 86 Deodar scants. The permit is Ex. PW-4/D (carbon copy Ex. PW-63/B). Other permit was issued, in respect of Kail scants, which is Ex. PW-4/A.

3. While checking the record of Railway Station Shoghi, staff of Police Station Enforcement, South Zone, Shimla, came to know that during the year 1981 to 1983, timber had been exported in excess of the limit prescribed in the export permits. The permits, against which timber was found to have been exported, in excess, included the two permits, issued in favour of accused No.1. A report was lodged by SHO, Police Station Enforcement, South Zone, Shimla, for registration of the case, on the basis of which case was registered, vide FIR Ex. PW-1/B, at Police Station Enforcement, South Zone, Shimla.

4. During the course of investigation, it was detected that out of two trees of

Deodar, alleged to have been marked on Khasra No.176 of village Khashdhar, one tree had been felled and one was found standing. One tree, adjacent to Khasra No.176, on Government land, was also found to have been felled. Investigation further revealed that though against permit No.228/ 81-82, valid upto 31.3.1982, 86 scants of Deodar had been permitted to be exported, actually 1165 scants had been exported, through Railway Station Shoghi alone, by forging one of the copies of the permit, i.e. Ex. PW-63/ B, in which the number of scants had been changed from 86 to 986 and validity date had also been changed from 31.3.1982 to 30.4.1982. Timber had been exported against the said permit, against Railway Receipts Ex. PW-5/A-1 to Ex. PW-5/A-7. Forwarding notes, pertaining to the said timber, are Ex. PW-51/A-4, Ex. PW-51/A-6, Ex. PW-51/A-8, Ex. PW-51/A-10, Ex. PW-51/A-12, Ex. PW-51/A-14 and Ex. PW-51/A-16.

5. Investigation further revealed that though in the aforesaid Railway Receipts, name of accused No.1 Sham Lal was written as a consigner, payment of the price of the timber had been made to Shanti Swaroop, Vinod Kumar, Mohan Lal Ghemta, Surinder Lal Sood, Varinder Lal Sood and Anil Kumar, accused Nos. 5, 6, 7, 10, 11 and 12, respectively.

6. Bhau Ram, Kewal Ram and Shyama Nand, accused Nos. 2, 3 and 4, respectively, were the forest officials. They were alleged to have marked the trees wrongly. In the lists and the certification below those lists, it was stated that the trees had been marked on private land, in respect of which applications had been made, but in fact some trees had been marked on adjoining Government forest. A revenue official was alleged to have given wrong demarcation, but by the time the challan was filed, the said revenue official was no more. Accused Subhash Chand and Om Prakash, who were Assistant Station Masters at Railway Station Shoghi, at the relevant time, allegedly facilitated export of excess timber against forged permit Ex. PW-63/B and also some of the timber was exported after the expiry of the permit.

7. Learned Special Judge, in whose Court report, u/s 173 of the Code of Criminal Procedure, was filed, after complying with the requirement of Section 207 of the Code of Criminal Procedure, and hearing learned Public Prosecutor and learned Counsel representing the accused, found a prima facie case against the accused persons and charged them, under Sections 379, 420, 467, 468, 471, 218, 167, 120-B of the Indian Penal Code, Sections 41 and 42 of the Indian Forest Act, read with Rules 11 and 18 of the H.P. Forest Produce Transit (Land Routes) Rules, 1978, and Section 5(2) of the Prevention of Corruption Act, 1947. Accused pleaded not guilty.

8. Prosecution examined a large number of witnesses, besides proving a number of documents to bring the charge home to the accused. Accused denied in their examination, u/s 313 of the Code of Criminal Procedure, that there was any conspiracy or that any crime had been committed, in pursuance of or even independent of the alleged conspiracy.

9. Trial Court concluded that there was no evidence, in support of the allegation that trees had been marked on Government land, by accused Bhau Ram, Kewal Ram and Shyama Nand and, therefore, they are acquitted. Trial Court also found that there was no evidence connecting accused Vinod Kumar, Mohan Lal Ghemta and Surinder Lal Sood with the payment of timber that was exported from Railway Station Shoshi. It was also held by the trial Court that accused No.1 Sham Lal was not proved to have forged the permit, copy Ex. PW-63/B, to facilitate export of more timber than mentioned in the permit. However, accused Shanti Swaroop, Varinder Lal Sood and Anil Kumar were held to have received payment of some of the timber exported against forged permit, copy Ex. PW-63/B, from timber Commission Agent of Yamunanagar, named and styled ESS ESS Trading Company and accused Subhash Chand and Om Prakash, Assistant Station Masters of Railway Station Shoghi, were held to have dishonestly allowed use of forged permit Ex. PW-63/B, for export of timber, in excess of the quantity, initially mentioned in the said permit.

10. One appeal has been filed by accused Subhash Chand and Om Prakash, the two Assistant Station Masters, and accused Shanti Swaroop, one of the alleged recipients of the price of the excess timber exported against permit Ex. PW-63/B. It is Criminal Appeal No. 445 of 2002. One of these accused-appellants, namely Om Prakash has died. So, the appeal qua him abates. Another appeal, against conviction, has been filed by accused Varinder Lal Sood and Anil Kumar. This appeal is registered as Criminal Appeal No.444 of 2002. Accused-appellants are the alleged recipients of the price of excess timber exported against the said permit.

11. State has filed the appeal (Criminal Appeal No. 665 of 2002), challenging acquittal of accused Sham Lal Walia, Bhau Ram, Kewal Ram, Shyama Nand, Mohan Lal Ghemta, Surinder Lal Sood and Vinod Kumar. Accused Surinder Lal Sood has died and so the State appeal as against him abates.

12. We have heard learned Assistant Advocate General as also learned Counsel representing the convicted appellants-accused and learned Counsel representing the respondents in the State appeal, and gone through the record.

13. As regards prosecution's case that there was illicit felling on Government land, adjoining the private land, on which marking of trees had taken place, suffice it to say that the evidence led, in support of this allegation, is not acceptable. Allegation is based on the demarcation carried out by a Naib Tehsildar, namely PW-11 S.N. Justa. Prosecution's case is that private land, on which marking was required to be done, has common boundary with Government land and it was on that Government land that one tree was marked. As per Government instruction, Para 10.10 of H.P. Land Records Manual, when demarcation of some land, adjoining Government land, is to be carried out, with a view to determining the boundary of private land and Government land, demarcation is required to be carried out by Assistant Collector 1st Grade. So, no reliance can be placed upon demarcation report Ex. PW-11/A of this witness, who

was not Assistant Collector 1st Grade, but only Assistant Collector 2nd Grade. Not only this, the allegation is that only one tree was found marked on Khasra No. 176 and its stump was there. However, there is no evidence, connecting the stump allegedly found on Government land, with the trees, which were marked by accused Nos. 2, 3 and 4.

14. One of the carbon copies of permit No. 228/81-82, which is Ex. PW-63/B, had been forged to increase the quantity of timber, permitted to be exported. Number of scants has been raised from 86 scants to 986 and the volume from 251.53 cft. to 1251.53 cft. Further allegation is that the date of expiry of the permit had also been changed from 31.3.1982 to 30.4.1982.

15. We have seen the permit, Ex. PW-63/B. It is clearly visible, even to the naked eye, that Ex. PW-63/B, which is a carbon copy of permit No.228/ 81-82, has been altered, by re-typing the number of scants and prefixing digit "1" to the volume of timber. Not only this, word "NINE" has also been prefixed to words "EIGHTY SIX" written within brackets. Ex. PW-63/B, itself, is a carbon copy, but the additions are in the direct strokes of the typewriter. This fact was enough to arouse the suspicion of accused-appellant Subhash Chand, Assistant Station Master and deceased Om Prakash, also an Assistant Station Master, that the quantity of the timber permitted to be exported had been altered, both in terms of number of scants and the volume. Not only this, expiry date has also been altered by overwriting the original date in an ink different from the ink, in which the number and the date of the permit are written in the permit, carbon copy Ex. PW-63/B. Learned Counsel representing the convicted appellants also do not deny that the permit, copy Ex. PW-63/B, is forged in the aforesaid manner, though they deny that none of the accused is proved to be responsible for the forgery or the use of this forged document, as genuine. Learned Counsel representing accused No.1 Sham Lal, in whose favour the permit was issued, also urges that accused Sham Lal is not responsible for this forgery nor did he use this permit to export more timber and that he has rightly been acquitted by the trial Court.

16. We do not find ourselves in agreement with the submission of the learned Counsel, representing the convicted appellants, that none of the convicted appellants is responsible for this forgery. Ex. PW-63/B appears to be the copy, which was endorsed to Station Master, Railway Station Shoghi. PW-63 Shri Gurdit Singh, Investigating Officer, stated that this copy had been taken into possession from the record of Railway Station. We also find from a bare look at Ex. PW-63/B that one of the copies of the permit had been endorsed to Station Master, Railway Station Shoghi.

17. There are seven Railway Receipts on record, against which timber was exported against this export permit Ex. PW-63/B, because the number of this permit finds mention in those Railway Receipts. The Railway Receipts are Ex. PW-5/A-1 to Ex. PW-5/A-7. Four of these Railway Receipts, i.e. Ex. PW-5/A-1, Ex. PW-5/A-2, Ex. PW-5/A-4 and Ex. PW-5/A-7 are carbon copies, the first copies of

which are Ex. PW-51/A-8, Ex. PW-51/A-4, Ex. PW-51/A- 10 and Ex. PW-51/A-12, respectively, are opined to be in the hand of accused-appellant Subhash Chand, by Handwriting Expert PW-51 Shri B.A. Vaid. The witness compared the writings and signatures on these Railway Receipts, with the specimen and admitted signatures and writings Ex. PW-44/A-1 to Ex. PW-44/A-8 of accused-appellant Subhash Chand and gave opinion Ex. PW-51 /C-1 that the two types of writings match with each other. Accused-appellant Subhash Chand was specifically questioned about this fact, vide Question No.81 of his statement, u/s 313 of the Code of Criminal Procedure. He did not deny the fact, but expressed ignorance. So, there should be no hitch in concluding that the aforesaid four Railway Receipts are in the hand of accused-appellant Subhash Chand. The other Railway Receipts are in the hand of Om Prakash, the second Assistant Station Master, who was a co-appellant with Subhash Chand, but is now dead. In the aforesaid four Railway Receipts, permit number mentioned is 222/ 81-82. The writings regarding permit number in these Railway Receipts have also been opined to be in the hand of accused-appellant Subhash Chand.

18. When the forgery, in the copy of permit Ex. PW-63/B, which has been held to be the copy that was endorsed to Railway Station Shoghi, is clear, even to the naked eye, there cannot be any reason to hold that accused-appellant Subhash Chand was unaware that the quantity of timber as also the expiry date appearing in this document had been forged. In other words, he knew or had reason to know that the quantity of timber and the expiry date in the permit are forged and, therefore, there should be no reason to interfere with the finding of the trial Court that he used this forged permit as genuine, knowing or having reason to believe that the document was forged and did it with intention to cause wrongful gain to the consigner of the timber and thus he is guilty of offence, u/s 471 of the Indian Penal Code, and Section 5(2) of the Prevention of Corruption Act, 1947.

19. However, we find no evidence on record, indicating that he himself is responsible for forging the document. Therefore, appeal filed by him, i.e. Criminal Appeal No.445 of 2002, is partly accepted. His conviction for offences, under Sections 471 of the Indian Penal Code, and Section 5(2) of the Prevention of Corruption Act, 1947, is upheld, but for the rest of the offences his conviction and sentences are set aside.

20. As regards accused-appellant Om Prakash, as already stated, he has died. So, the appeal as against him abates.

21. So far as accused-appellant Shanti Swaroop is concerned, he has been held by the trial Court to be one of the recipients of the price of the timber exported against Railway Receipts Ex. PW-5/A-1 to Ex. PW-5/A-7, on the basis of testimony of PW-6 Shri Ashok Kumar and entry Ex. 6/ A-8 in the ledger maintained by the Commission Agency the witness represents and also the testimony of PW-26 Shri Harish Arpra, a Bank employee, who proved Bank Account statement Ex. PW-26/F and a draft Ex. PW-26/C. Prosecution case is that

this accused-appellant received Rs. 50,000/-, on account of price of some of the timber exported against permit Ex. PW-63/B, as shown in Ex. PW-6/A-8, copy of an entry in the ledger of PW-6 Ashok Kumar. Corroboration is sought by the prosecution to this evidence of entry Ex. PW-6/A-8 from the statement of Account Ex. PW-26/P, and draft Ex. PW-26/C, proved by an employee of Punjab and Sindh Bank, with which this accused-appellant had an account. According to Ex. PW-6/A-8, a sum of Rs. 50,000/- had been remitted to the appellant, vide draft No. 017129. However, the draft that has been proved by PW-26 bears a different number, i.e. 017275/22/82 and thus the Bank record not only does not corroborate entry Ex. PW-6/A-8, but rather runs counter to it.

22. We find on record another cheque issued in the name of Shanti Swaroop by the Commission Agent of Yamunanagar. The same is Ex. PW-46/A. The cheque is for a sum of Rs. 10,000/-. The amount of this cheque was received in cash by Satish Kumar and not by accused-appellant Shanti Swaroop. Thus, accused-appellant Shanti Swaroop does not stand connected with the offences, he has been convicted of. Therefore, so far as accused-appellant Shanti Swaroop is concerned, appeal is accepted and his conviction and sentences for all the offences, he has been convicted of, are set aside and he is acquitted of all the charges.

23. As regards appeal filed by accused Varinder Lal Sood and Anil Kumar, learned trial Court has held them guilty of receiving payment of Rs. 10,000/- from the Commission Agency of Yamunanagar, on account of price of some of the timber exported against forged permit and the payment was remitted to them vide draft No. 579213/3/82 dated 1.1.1982. These appellants have been held to stand connected with the receipt of the money, by the copy of entry in ledger Ex. PW-6/A-11 and the draft Ex. PW-28/ C. Copy of entry in the ledger Ex. PW-6/A-11, proved by PW-6 Ashok Kumar of Commission Agency at Yamunanagar, shows that the payment was made to him, in respect of the timber consigned against Railway Receipt No.842391. This is not one of the seven Railway Receipts, against which timber was exported against forged permit Ex. PW-63/B. This payment was made, on account of the timber consigned against Railway Receipt Ex. PW-5/A-8S, which is in respect of Kail trees, in respect of which another permit, i.e. permit No.174/81-82 Ex. PW-4/A had been issued. So, these two accused-appellants can also not be said to have been connected with the export of timber against forged permit Ex. PW-63/B. Their appeal is accepted and the judgment, convicting and sentencing them of various offences, is set aside and they are acquitted.

24. Coming to the State appeal, allegation against the accused forest officials Bhau Ram, Kewal Ram and Shyama Nand is that in the garb of marking trees on private land they marked one tree of Deodar on Government land, adjoining Khasra No.176. The allegation is based upon the report of PW-11 S.N. Justa, Naib Tehsildar. As already noticed, hereinabove, no reliance can be placed upon the report of PW-11, because he was not competent to give demarcation.

25. Also, we find no evidence against accused No.1 Sham Lal. Forged copy of permit Ex. PW-63/B had been endorsed to Station Master, Railway Station Shoghi. Accused No.1 Sham Lal is not proved to have himself exported any timber through Railway Receipts against the aforesaid permit. It is prosecution's own evidence that he exported only 79 scants, against permit No. 228/81-82, upto Shimla and sold those scants to a firm by the name of Harsh Timber, Shimla. Not only that it has not been proved that the permit had been forged or used by accused No. 1 Sham Lal, but we also do not find any evidence, indicating that he had any opportunity or occasion to forge this copy of the permit.

26. There is absolutely no evidence connecting Vinod Kumar and Mohan Lal Ghemta, with the offences. They are neither named as consigners in the Railway Receipts Ex. PW-5/A-1 to Ex. PW-5/A-7 nor are they shown to have received any payment from the Commission Agency of Yamunanagar. Another accused-respondent in the appeal filed by the State, namely Surinder Lal, has died. The appeal as against him abates. As a result of above stated position, appeal filed by the State is dismissed.

27. It has been urged on behalf of accused-appellant Subhash Chand, whose conviction for offences, u/s 471 of the Indian Penal Code and Section 5(2) of the Prevention of Corruption Act, 1947, has been maintained, hereinabove, that he has since retired from service and presently he is 67 years of age. It is also submitted that the case is very old and the accused-appellant has been undergoing agony and trauma of criminal prosecution for more than two decades and taking into account these factors, sentence awarded by the trial Court may be reduced. In view of the submissions made by the learned Counsel for accused-appellant Subhash Chand, sentence for both the offences, in respect of which conviction of this accused has been upheld, hereinabove, is reduced to three months simple imprisonment and fine of Rs. 1,000/-, for each of the two offences. In default of payment of fine, he shall undergo simple imprisonment for a further period of 15 days. Sentences of substantive imprisonment shall run concurrently

All the three appeals stand disposed of accordingly.