

(2011) 03 SHI CK 0320

In the High Court Of Himachal Pradesh

Case No : Criminal Appeals No's. 143 and 145 of 2002

Vijay Kumar Sood and Others

APPELLANT

Vs

State of H.P.

RESPONDENT

Date of Decision : 14-03-2011

Acts Referred:

Forest Act, 1927 — Section 41, 42

Penal Code, 1860 (IPC) — Section 120B, 379, 420, 468, 471

Prevention of Corruption Act, 1988 — Section 13(2)

Citation : (2011) 03 SHI CK 0320

Hon'ble Judges : Surjit Singh, J

Bench : Single Bench

Judgement

Surjit Singh, J.—These two appeals, filed by two sets of convicts, are being disposed of by a common judgment, because the Appellants, in both the appeals, have challenged the same judgment, i.e. judgment dated 19th March, 2002, of learned Special Judge, Kullu, whereby they have been convicted of offences, under Sections 379, 420, 468, 471, 120-B of the Indian Penal Code, Section 13(2) of the Prevention of Corruption Act, 1988, and Sections 41 and 42 of the Indian Forest Act, and sentenced to varying terms of imprisonment and fine.

2. A case was registered against the Appellants and two other persons, namely Dharam Chand (Driver) and Lal Chand (Forest Guard), on the basis of report Ex. P.W.-9/A, addressed by P.W.-9 B.P. Pathania, Range Officer, Naggar (District Kullu). In the report, it was stated that on 30th March, 1997, Block Officer, Naggar, was required to make enquiry into the timber, which was found loaded in Truck No. HIL 3112, as desired by the police, and that the Block Officer, after visit to the forest, had intimated that five trees of Kail, valued at Rs. 2,13,432/-, had been illicitly felled in N-3 and 2/27, Padhra Rias Forest and that timber in the shape of 93 scants, which was being carried in Truck No. HIL 3112, had been extracted from those trees. It was also reported that Forest Guard Jawala Dass issued damage report (Ex. P.W.-9/B), in respect of those illicitly felled trees. The aforesaid report Ex. P.W.-9/A is dated 31st March, 1997, while damage report Ex.

P.W.-9/BB is dated 30th March, 1997.

3. It appears from the evidence on record that before lodging the aforesaid report Ex. P.W.-9/A by the Range Officer, P.W.-9 B.P. Pathania, Truck No. HIL 3112 was intercepted by the police, on 29th March, 1997, at a place known as Mehra Mor and in this Truck there were 93 scants of Kail. That truck was being driven by Dharam Chand, a co-accused with the Appellant, who has been acquitted. The driver produced a challan, which indicated that the number of scants was 93 and volume 7.132 and it pertained to the trees, which had been felled by Appellants, Madan Kumar and Ajay Kumar Sood, who had been awarded the work of felling trees from private land by the Forest Corporation. On receipt of report Ex. P.W.-9/A, police formally registered the case, vide FIR Ex. P.W.-6/A.

4. During the investigation, it was found that Appellants Ajay Kumar Sood and Madan Lal Sood (Appellant in Criminal Appeal No. 143 of 2002) had been assigned the work of felling, converting and then transporting the trees, standing on private land in the area of Jana Forest, by the Forest Corporation of Himachal Pradesh. The trees were of Deodar, Kail and Fur species. Those trees had been duly got marked by the Forest Corporation, after getting demarcation from Revenue officials. Volume of Kail trees, which were marked, on the spot, was 55.10 cubic meters, per report Ex. P-7. The trees were supposed to yield timber around 50 per cent of the volume of the standing trees. Case of the prosecution is that Kail trees yielded 27.11 cubic meters of timber, out of which 19.979 cubic meters had been shifted to a road-side depot and there remained 7.132 cubic meters timber, consisting of 93 scants, in the forest. Procedure for shifting the timber, from the forest to the road-side depot, was that the timber, sought to be shifted, was to be jointly inspected by a Block Officer of the Forest Corporation, who, in the present case, was Appellant Nokhu Ram and by the Block Officer of Forest Department and such timber was required to be hammer marked by Forest Corporation's Block Officer. Entry of such timber was also required to be made in Passing Register Ex. P-1.

5. On 17th December, 1996, both Nokhu Ram, Block Officer of Forest Corporation and P.W.-10 Bine Ram, Block Officer of Forest Department, were in the concerned forest, where verification of 55 scants was carried out. Entry was made at page-20 of Ex. P-1, which was signed by both the Block Officers. Facsimile of the hammer, affixed on those 55 scants, was also taken on Page-20 of the said Register. There appears another entry at Page-21, suggesting that the same day 93 scants of Kail were hammer marked by Appellant Nokhu Ram. Facsimile of the hammer mark was affixed on that page also. However, this entry is not verified and signed by P.W.-10 Bine Ram, Block Officer of the Forest Department. It was these 93 scants of Kail, which were allegedly being carried in Truck No. HIL 3112 that was intercepted by the police on 30th March, 1997.

6. After the interception of the Truck, loaded with 93 Kail scants, damage report Ex. P.W.-9/B was prepared by Jawala Dass, Forest Guard, one of the Appellants in

Criminal Appeal No. 145 of 2002, and on the basis of this damage report, report Ex. P.W.-9/A was submitted by Range Officer of the Forest Department, namely P.W.-9 B.P. Pathania, to the police.

7. Demarcation of the site, where five trees were alleged to have been illicitly felled, as per damage report Ex. P-9/B and report Ex. P.W.-9/A, was carried out, at the instance of the Investigating Officer, by P.W.-19 Parkash Chand, Naib Tehsildar. A forest official, namely P.W.-22 Naveen Chand, Block Officer, Naggar, accompanied him. In the course of such demarcation, three stumps were found on Government forest, known as Padhra Rias.

8. Timber, which was being carried in the aforesaid Truck, on 30th March, 1997, was measured to find out its total volume. The volume worked out at 7.685 cubic meters. The volume was, thus, in excess of the balance Kail timber, as shown in progress report Ex. P-7, by .553 cubic meters.

9. According to the prosecution, there was a conspiracy between the two private convicts and the Government official convicts, including acquitted accomplices of the Appellants, namely Forest Guard Lal Chand and driver Dharam Chand, to illicitly fell Government trees, so as to bestow illegal pecuniary advantage on private convicts, in the form of claiming extra labour charges, for lumbering and transportation. Role attributed to the convicted officials of the Forest Corporation is that Appellant Chunni Lal, Assistant Manager of Forest Corporation, certified the timber being carried in the intercepted Truck to belong to the Forest Corporation, Nokhu Ram, Block Officer of the Corporation, made false record, by way of entry at Page-21 of Passing Register Ex. P-1 to show that there were 93 scants from the lot of trees allowed to be felled by private accused and Jawala Dass, Forest Guard of Forest Corporation, issued bogus challan accompanying the timber in the Truck, in question.

10. Prosecution examined a number of witnesses, besides proving various documents in the form of entries in the record of Forest Corporation. Appellants denied that there was any conspiracy. They took the plea that the timber, which was being carried in the Truck, was the remaining Kail timber, consisting of 93 scants, which was being shown as balance, in progress report Ex. P-7, and that it was duly entered in Passing Register Ex. P-1. They pleaded that earlier on 18th December, 1996, the timber had been carried from the forest to road-side depot and on 29th March, 1997 it was being carried from road-side depot to the Patli Kuhl Depot of Forest Department, against valid challan, issued by Appellant Jawala Dass, Forest Guard.

11. Trial Court convicted the Appellants, mainly relying upon two pieces of evidence, i.e. entry in Register Ex. P-1 at Page-21 (Ex. P.W.-10/E) and the fact that challan Ex. P.W.-10/B, was issued from a challan-book (Ex. P-2) that had not been in use since 22nd December, 1989.

12. I have heard learned Counsel for the Appellants as also learned Deputy Advocate General, representing the State and reappraised the entire evidence on

record.

13. Ex. P-7 progress report is part of the evidence, adduced by the prosecution itself. The report shows that total volume of the timber, extracted from Kail trees, was 27.11 cubic meters. As per this document 19.979 cubic meters of timber had been shifted from the forest to roadside depot and there remained 7.132 cubic meter of timber in the forest. Prosecution very much relies upon this document. There is no evidence that the Appellants removed from the forest timber of Kail, in excess of 19.979 cubic meters, as indicted in this report Ex. P-7, at any point of time, prior to 18th December, 1996. Now, when there is no evidence that 7.132 cubic meters of timber, which is shown in balance in Ex. P-7, had been shifted from the forest to the road-side depot, prior to 18th December, 1996 when it is shown to have been shifted vide entry Ex. P.W.-10/E, in Passing Register Ex. P-1, and also there is no evidence that that very timber had been shifted from road-side depot to Patli Kuhl Depot, prior to 29th March, 1997, when 93 scants of timber (the number is the same as mentioned in progress report Ex. P-7 and Ex. P.W.-7/A), being carried in Truck No. HIL 3112, were intercepted, presumption should be that it was the same timber, as was being shown in balance in progress report Ex. P-7 and Ex. P.W.-7/A and not of illicit origin. This presumption is strengthened by the testimony of P.W.-10 Bine Ram, Block Officer of the Forest Department, who stated that there was no timber of the Corporation in the Forest, on 4th February, 1997, when he visited the Forest.

14. It is true that Passing Register Ex. P-1 indicates that most of the entries in it were signed both by the Block Officer of the Forest Corporation as also Block Officer of the Forest Department, after joint verification, but it is not that the entry, with respect to timber, in question, Ex. P.W.-10/E, is the sole entry, which is not signed by both the Block Officers. Atleast one such entry was brought to the notice of P.W.-10 Bine Ram, when he was in the witness-box and that entry is at Page-68. May be that there are some other entries also. A witness of the prosecution itself, namely P.W.-3 R.S. Banyal, Divisional Manager of Forest Corporation, testified that it was not the requirement of the prescribed procedure that the timber should be passed by the Block Officers of the Forest Department as also the Forest Corporation or that the passing entry in the Register should be signed by both of them and that the requirement was that the Block Officer of the Forest Corporation carries out the verification on the spot and makes entries in the concerned Register, after hammer marking the timber, cleared for shifting from the forest to the depot of the Forest Corporation. The witness very categorically stated that practice of verification of timber, on the spot, was being followed only in Kullu area and not the other parts of the State. Moreover, when 93 scants measuring 7.132 cubic meters timber was in balance, as per progress reports Ex. P-7 and Ex. P.W.-7/A and there remained no balance in the Forest on 4th February, 1997, as per report and the testimony of P.W.-10 Bine Ram, it can legitimately be presumed that the entry in Passing Register Ex. P-1 at Page-21 was genuine.

15. As regards the challan, against which the timber was being carried in the Truck, from a challan-book, which had been in disuse since December, 1989, again P.W.-3 R.S. Banyal, Divisional Manager of the Forest Corporation, stated that all the challan-books, issued to the officials of the Forest Corporation, remain in use till all the challans in the book are exhausted and that there was nothing wrong in issuing the challan, in respect of the timber, in question, from challan-book Ex. P-2. Learned trial Judge has not taken note of these facts.

16. Above stated position apart, there is absolutely no evidence if the three stumps, which were found on Government land, in the course of demarcation given by P.W.-19 Parkash Chand, Naib Tehsildar, had been illicitly felled or that those trees had been recently felled. P.W.-19 Parkash Chand himself did not say anything qua these facts. Similarly, P.W.-22 Naveen Chand, Block Officer from the Forest Department, who assisted P.W.-19 Parkash Chand, also did not say if the trees had been illicitly felled or that they had been recently felled.

17. Also, there is no authentic evidence, indicating that scants, which were there in the Truck, had been extracted from recently felled trees. Prosecution had sent a piece of one of the scants to an expert, namely P.W.-18 S.P. Aggarwal, a Scientist in Forest Research Institute at Dehradun, who gave opinion Ex. P.W.-18/A that it was not possible to determine as to when the tree, from which that piece had been extracted, could have been cut. It is only P.W.-7 Rishi Raj, a Head Constable of Police Department and P.W.-9 B.P. Pathania, Range Officer, whose duty it was to ensure that there was no illicit felling of the trees, who have stated that the scants had been extracted from the recently felled trees. P.W.-7 Rishi Raj stated that the scants appeared to be fresh. P.W.-9 B.P. Pathania stated that the scants appeared to be fresh, because resin was oozing from them. However, in the seizure memo, against which the scants were seized by the police, i.e. Ex. P.W.-10/A, there is no mention, if resin was oozing from the scants.

18. Learned trial Court has also relied upon the circumstance that though there was 7.132 cubic meters of Kail timber, in balance, as per progress report Ex. P-7 and Ex. P.W.-7/A, but actually 7.684 cubic meters timber was being carried and thus there was excess of 0.53 cubic meter of timber. The difference is too small to be taken note of, especially when the charge is of conspiracy. Appellants Madan Lal Sood and Ajay Kumar Sood were to be paid labour charges only @ Rs. 401/- per cubic meter, for felling, conversion and transportation of the timber. Excess of just about a half cubic meter of timber would have given them monetary advantage of just Rs. 200/- (approximately) and it is not believable that for such a petty amount several Government officials would conspire with private persons, risking their service career.

19. In view of the above discussion, case of the prosecution cannot be said to have been sufficiently proved. Consequently, both the appeals are accepted, judgment of the trial Court, convicting and sentencing the Appellants, is set aside and the Appellants are acquitted. Fine amount, if already deposited by the Appellants or recovered from them, shall be refunded to them.

Both the appeals stand disposed of.