

Bombay High Court

State Of Mah.Thr.Round ... vs Tryabak Madhaorao Ingle & 2 Ors on 14 July, 2017

Bench: M. G. Giratkar

205-J-Cri.A-378-04

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR.

CRIMINAL APPEAL NO.378 OF 2004

The State of Maharashtra,
Through Round Officer,
Mobile Squad, Yavatmal
-vs-

... Appellant

1. Trymbak Madhaorao Ingle
Nehru Nagar, Ghatanji,
District Yavatmal.
2. Namdeo Ramaji Mokhase
C/o Gajanan Saw Mill,
Ghatanji, Tq. Ghatanji,
District Yavatmal
3. Ishwarlal Laxmandas Drona
R/o Ghatanji, Tq. Ghatanji,
District Yavatmal

... Respondents.

Shri S. A. Ashirgade, APP for appellant/State.

Ms Ashwini Athalye, Advocate for respondent Nos.1 and 2.

Shri N.B. Bargat, Advocate with Shri A. D. Ramteke, Advocate for respondent
No.3.

CORAM : MURLIDHAR G. GIRATKAR, J.

ARUGMENTS WERE HEARD ON : JULY 12, 2017 JUDGMENT PRONOUNCED ON : JULY 14,
2017 Judgment :

Present appeal is against the judgment of acquittal in Regular Criminal Case No.240 of 1998 decided by learned Judicial Magistrate, First Class, Ghatanji. The State has filed the present appeal on the ground that accused persons committed offence punishable under Sections 26(f) and 42 of Indian Forest Act and also Section 379 of Indian Penal Code and proved by prosecution. Learned trial Court not appreciated evidence properly and 205-J-Cri.A-378-04 2/6 wrongly acquitted respondents.

2. It is the case of the prosecution that on 27/12/1994 at about 9 am, the Range Forest Officer mobile squad, Yavatmal came to Gajanan Saw Mill, Ghatanji which belong to accused No.3 and found that accused No.1 has illegally cut down teak trees from the forest and taken it to Gajanan Saw Mill. It was also found that fresh wood logs were lying at Gajanan Saw Mill without any hammer mark. On interrogation, accused No.2 told that teak wood belong to accused No.1 who was present at the spot. RFO Kavitar and U. R. Meshram of mobile squad seized the teak wood/timber wood and prepared panchanama. They went to the house of accused No.1 at Nehru Nagar, Ghatanji and

found 175 illegal timber measuring about 1.1682 cubic meter valued Rs.17,523/-. Those timbers were kept in the house of accused No.1 without any hammer mark.

3. Accused persons were prosecuted by the Forest Department. Learned JMFC, Ghatanji framed charge at Exhibit-85 for the offence punishable under Sections 26(f) and 42 of the Indian Forest Act and Section 379 of the Indian Penal Code. After recording evidence and hearing prosecution and defence, learned JMFC, Ghatanji acquitted all accused.

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4. Learned Additional Public Prosecutor Shri Ashirgade pointed out to me evidence on record. Learned APP vehemently argued that PW-1 Shivkantha stated in his evidence that some wood was seized at Gajanan Saw Mill. These logs of wood were belonging to accused No.1. He proved panchanama Exhibits-93 and 94. PW-2 Kailash has stated that mobile squad of Forest Department prepared panchanama, Exhibit-102 at the house of accused No.1. Accused did not show any documents. PW-4 Gajanan stated that RFO Kavitkar has seized timber from the house of accused No.1.

5. Learned APP has submitted that evidence adduced by the Forest Department is sufficient to hold that accused persons have committed offence. Learned trial Court wrongly not relied upon the same and wrongly acquitted the accused. At last, learned APP Shri Ashirgade prayed to allow the appeal and convict the accused/respondents.

6. Heard learned counsel Shri Bargat for accused No.3. He has strongly supported the impugned judgment. Learned counsel submitted that RFO Kavitkar wrongly seized the timber belonging to accused No.1. Accused No.1 produced all the material documents at the time of the raid but RFO Kavitkar did not consider the same. The impugned judgment is perfectly legal and correct, therefore appeal is liable to be dismissed.

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7. Perused the evidence. PW Nos.1 and 2 are the pancha witnesses who were working in the Forest Department. Naturally they have to support the department. PW-4 Gajanan Warkde has stated that at the time of raid at Gajanan Saw Mill and at the house of accused No.1 he found logs of teak wood. RFO Kavitkar has seized the teak wood. PW-6 Shankar has stated that when he arrested some persons while cutting trees in Gat No.660 at Mowada beet and seized wood from them, both the persons told that they sell the teak wood to accused Nos.1 and 4. They also stated to PW-6 that as per the direction of PW-1 and 4, they cut teak wood and sell them. It is pertinent to note that the persons who have committed theft were not made the accused.

8. Accused No.1 is a carpenter by profession doing the business of furniture from the teak wood. He regularly used to purchase teak wood and used to cut it at Gajanan Saw Mill. Accused No.1 examined himself and proved various documents. He has proved documents vide Exhibits-149, 151, 154 and 155. All these documents show that accused No.1 purchased the logs of wood and taken for

cutting those logs at Gajanan Saw Mill, he has also produced bills dated 21/04/1992, 09/10/1993, 21/11/1994, 04/11/1994 and 21/01/1994 in respect of purchase of wood. All these documents show that accused No.1 legally purchased the logs of woods for the purpose of his furniture business. There is no evidence to show that he 205-J-Cri.A-378-04 5/6 has committed any theft by cutting the wood from the forest.

9. Offence punishable under Section 26 of Indian Forest Act, 1927 is not proved by the prosecution. Section 26 reads as under :

26. Acts prohibited in such forests :

Any person who fells, girdles, lops, taps or burns any tree or strips off the bark or leaves from, or otherwise damages, the same. Section 42 speaks of penalty for breach of rules made under section 41 as under :

The (State Government) may by such rules prescribe as penalties for the contravention thereof imprisonment for a term which may extend to six months or fine which may extend to five hundred rupees, or both.

10. Admittedly accused persons were not found cutting any trees in the forest. Moreover, there is no any notification about the reserve forest. Section 47 of the said Act is in respect of transit pass. Accused No.1 has produced all the material documents including transit pass before the trial Court. As per the contention of accused No.1, he had shown all the documents to PW-4 but he did not consider the same and wrongly prosecuted him.

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11. The evidence adduced by the prosecution is not sufficient to convict the accused. On the other hand, evidence adduced by accused No.1 shows that he is a carpenter by profession. His main business is of making furniture. As per his evidence and documents produced by him, he has purchased logs of wood. He was having valid transit pass. Therefore there is no evidence to show that any of the accused committed offence charged for the offence under Sections 26(f), 42 of Indian Forest Act and Section 379 of Indian Penal Code. The prosecution has miserably failed to prove the guilt of the accused. Hence the learned trial Court rightly came to the conclusion and acquitted all the accused. There is no perversity or infirmity in the impugned judgment. Therefore appeal is liable to be dismissed. Bail bonds of the accused/respondents are cancelled. Record and proceedings be sent back to the trial Court.

JUDGE Asmita