

HIGH COURT OF CHHATTISGARH, BILASPUR**CRR No. 261 of 2007**

1. Ramlal S/o Dularawa Kenwat aged about 36 years.
2. Gangu Ram S/o Sahdev Kenwat, aged about, 28 years, both are R/o Village- Ayabandha, P.S. - Dongargaon, Distt- Rajnandgaon (C.G.)

---- Applicants**Versus**

- State Of Chhattisgarh Through P.S. Dongargaon District- Rajanandgaon (C.G.)

---- Respondent

For the Applicants : Shri Durgesh Goyal, Advocate.

For the State/Respondent : Shri Rajesh Jaiswal, Panel Lawyer.

Hon'ble Shri Justice Rajendra Chandra Singh Samant**Judgment on Board****07/02/2017**

1. This revision has been brought against the judgment in Criminal appeal No.03/2007 passed by learned Sessions Judge, Rajnandgaon on 09.05.2007, whereby the judgment of conviction and order of sentence of applicants under Section 379/34 of Indian Penal Code (for short 'IPC'), was upheld.
2. The case of prosecution in brief is this, that on the basis of information received by Head Constable Domar Singh PW/9 registered offence under Section 379/34 of IPC against applicants by lodging FIR Ex.P/5 himself on 21.09.02. On 22.09.02, Lachchhan Ram PW/1, Sanwali Ram PW/2, Ramadhar PW/3, Vijay Kumar Chandrawanshi PW/5 gave

a written complaint Ex.P/1 in Police Station-Dongargaon, District-Rajnandgaon, alleging that on the intervening night on 17-18.09.2002, they heard the sound of a falling tree. On arriving at the spot, they found the applicants with a saw and the fallen tree, request for taking action against the applicants was made. During investigation, spot map Ex.P/7 was prepared and revenue papers were seized vide Ex.P/6. Statements of witnesses were recorded under Section 161 of Cr.P.C. On completion of investigation, applicants were charge-sheeted before the trial Court.

3. Applicants were charged under Section 379/34 of IPC. On denial of charges, prosecution has examined 10 witnesses. On examination under Section 313 of Cr.P.C, applicants denied all the implicating circumstances against them in evidence and pleaded innocence and false implication. No witness was examined for defence. Trial court passed the judgment dated 29.12.2006, by which applicants were convicted under Section 379/34 and sentenced with imprisonment of R.I. 6 months and fine of Rs.500/-, with default stipulation. Appeal were preferred before the Sessions Court, Rajnandgaon, which was heard and decided on 09.05.2007. The conviction and sentence passed by the trial Court was upheld and the appeal was dismissed.
4. The grounds in this revision are these, trial Court has erred in convicting the applicants for offence under Section 379/34 of IPC. Learned trial Court has failed to appreciate the evidence produced by the prosecution. The evidence of prosecution was unreliable, full of contradictions and omissions, for these reasons, the applicants were

entitled for benefit of doubt and prayed that the conviction against the applicants, be set aside and suitable order be passed in this revision petition.

5. It is submitted by the learned counsel for the applicants, that applicants have been falsely implicated as the complainant and the other witnesses harboured enmity against them. None of the witnesses examined by the prosecution can be regarded, as reliable. Hence, for these reasons, the finding of conviction against the applicants, is bad in law.
6. Opposing the arguments of the applicants side, it is submitted that there is no scope for interference in the impugned judgment.
7. Considering the material on record and the arguments submitted the question in this revision is, whether the conviction against the applicants is supported by evidence of prosecution beyond all reasonable doubt ?
8. Lachchhan Ram PW/1 has stated, that on the date of incident, at about 11:30 p.m. he and others heard the sound of cutting tree and went to the spot and saw applicants cutting the Sagon tree. Applicants were apprehended on the spot, who were handed over to the SHO, Dongargaon, with a written complaint Ex.P/1. Further he has stated, that after being apprehended, when applicants were questioned by Sarpanch and other Panch they admitted cutting the tree. There is no statement in his cross examination, which can be considered as having rebutted the statement given by him in examination-in-chief.

Ramadhar PW/3, Vijay Kumar Chandrawanshi PW/5, Narsingh PW/6 and Kamlesh Kumar PW/8 have stated in support of prosecution and in support of version given by Lachhan Ram PW/1.

9. Head Constable Domar Singh PW/9 has stated, that he recorded FIR Ex.P/5 registering offence against the applicants and conducted the investigation.
10. Patwari Kamal Singh Thakur PW/10 has stated, that on the basis of revenue records the spot of incident was within the government land bearing survey No.109, copy of revenue map Ex.P/10 and Khasra entry Ex.P/9, was proved by him. His statement has remained unchallenged.
11. The defence of applicants had been simply denial of allegation, against them. No claim has been made on their behalf regarding any entitlement of cutting or taking the Sagon tree under question. As proved by the prosecution the tree on the spot stood on the government land, thus, a government property. As per the statement of witnesses, applicants were caught red handed while cutting the tree in order of taking that away without any authority, permission or consent of the owner i.e. government. Thus, the evidence in proof of offence under Section 379/34 IPC, was complete before the trial Court. Thus, there is no scope for interference in finding of conviction given by the trial Court, which has been affirmed by the lower appellate court.

12. It is submitted on behalf of the applicants that applicants have already undergone some period of custody, hence, the sentence awarded being harsh may be modified and reduced to the imprisonment period of custody already undergone.
13. Considering the facts and circumstances in this case and this fact, that almost 15 years have passed since the date of incident, it appears, that it would serve no purpose, if the applicants are sent back to jail to serve out the remaining part of sentence, awarded by the trial Court and affirmed by the appellate court. Thus, it seems proper that the sentence part should be modified in the interest of justice.
14. Considering all these factors, this revision is partly allowed. The conviction of applicants is upheld in this revision and sentence part, is set aside. Applicants were taken into custody on 09.05.2007 and released on bail on 26.06.2007. Thus, they remained in jail for 1 month and 7 days. Hence, applicants are sentenced with imprisonment of period of custody already undergone by them, in jail so far and fine is enhanced to Rs.3,000/-, each. On non-payment of fine, applicant shall be further subjected to R.I. for one month, in default.

Sd/-

(Rajendra Chandra Singh Samant)
Judge