

IN THE HIGH COURT AT CALCUTTA

(Criminal Revisional Jurisdiction)

CIRCUIT BENCH AT JALPAIGURI

APPELLATE SIDE

Present:

The Hon'ble Justice Subhendu Samanta

CRR 115 of 2021

Arabinda Barman

Vs

The State of West Bengal.

For the Petitioner

: Mr. Sourav Ganguly, Adv.,
Ms. Deblina Ray, Adv.
Ms. Rishita Chakraborty, Adv.
Mr. Gopal Roy, Adv.
Mr. Abhisekh Sarkar Adv

For the State

: Mr. Aditi Sankar Chakraborty, Adv.,
Mr. Abhijit Sarkar Adv.

Reserved on

: 03.04.2023

Judgment on

: 08.04.2023

Subhendu Samanta, J.:

1. The instant criminal revision has been preferred against the judgment and order dated April 28, 2021 passed by the Learned Additional Sessions Judge, Alipurduar in connection with criminal appeal No. 9 of 2011 thereby affirming the judgment and order dated 16th August 2011 passed by the Learned Magistrate 3rd Court Alipurduar thereby convicted the present petitioner and sentenced him to suffer simple imprisonment for a term of 06 months for the offence punishable u/s 26(i) (e) (f) of Indian Forest Act 1927 and to pay a fine of Rs 500/- in default to suffer further simple imprisonment for a term of 30 days in connection with Cr(Forest) Case No. 293 of 2009 corresponding TR No. 1104 of 2009.
2. The brief fact of the case is that on the basis of a Prosecution Report of one Ranjit Kumar Roy, Deputy Ranger, Forest CR(F) Case No. 293 of 2009 was initiated against the present appellant u/s 26(1) (e) (f) of Indian Forest Act 1927.
3. The said case was transferred to the court of Learned Judicial Magistrate 3rd court Alipurduar for disposal and upon a completion of the trial and after hearing the parties the Learned Magistrate convicted the present petitioner sentencing him to suffer simple imprisonment for a term of 06 months and to pay a

fine of Rs. 500/- i.d.S.I for 30 days for the offence punishable u/s 26(1)(e)(f) of the Indian Forest Act 1927.

4. Being aggrieved by and dissatisfied with the said order of conviction an appeal was preferred before the Learned Additional Sessions Judge, Alipurduar and the same was registered as criminal appeal No. 9 of 2011.
5. The Learned Additional Sessions Judge concerned, after hearing the parties has passed the impugned order dated 28.04.2021 thereby affirmed the order of conviction passed by the Learned Judicial Magistrate.
6. Hence this appeal.

Learned Advocate for the petitioner submits that the order of conviction passed by the learned Magistrate as well as the order of the Learned Additional Sessions Judge, affirming the order of conviction is not sustainable in the eye of law. He submits that the (POR) alleged inter alia that on 16.08.2009 at about 5:00 pm the complainant along with the two forest guards were performing patrolling duty over the Reserve Forest Area of CR – 4 Comptt. of Tiymari Beat under North Raidak Range of Buxa Tiger Reserve (e) division. During the patrolling they heard the sound of cutting trees inside the said compartment and they followed the sound, on reaching the place of occurrence they found one person was cutting a Teak Tree. By the time they had reached the place of occurrence, the person had cut half portion of the Teak Tree but had not completed it. They caught the

person red handed who disclosed his identity. On being asked the petitioner failed to produce any valid document in support of his entering in the Reserve Forest as well as cutting Teak Tree. Thereafter, they arrested the petitioner, seized some articles by preparing seizure list. Thereafter they brought the appellant to the Beat Office. On interrogation, the appellant confessed his guilt and his statement was recorded. After completion of formalities he produced the appellant to the Court.

7. Learned Advocate for the petitioner submits that the order of conviction passed by the Learned Magistrate is completely beyond the periphery of the law laid down under the Forest Act. Actually, during the trial it has revealed that the present petitioner is the resident of village Dhanbati. One had to cross the forest area for the purpose of ingress or egress to their village. The village is situated in-side a reserve forest and the petitioner is the resident of forest village. Several disputes are going on between the guard of forest and the villagers of a forest village. On the above circumstances the presence of petitioner in the Reserve Forest cannot to be in question. He further argued that the Learned Magistrate has passed the impugned order of conviction on the basis of three witnesses. PW 1 is the De-facto complainant, PW 2 and PW 3 are the other two Forest Guards who supported the case of prosecution. There are no independent witnesses in this case. He pointed out that the alleged seizure was affected in this case in respect of following

articles, i.e. 1) Handsaw (1pcs), 2) Rope (plastic one kg), 3) Sawdust (one match box full). He further submits the evidence of PW 1 shows that he and other Forest Guard firstly arrested the petitioner thereafter seized the articles. Seizing articles, after arrest is illegal in the eye of law. He further pointed out that the seized handsaw is cross-cut saw. He referred the Cross-examination of PW 1 wherein the de-facto complainant has admitted that the handsaw which was seized from the spot can handle by minimum two persons. He submits that the present petitioner was alleged to be present in the spot alone, no other person was apprehended by the Forest guards. It is quite impossible for the present petitioner to handle the said cross cut saw for use to cut the teak tree alone.

8. Learned Advocate for the petitioner further pointed out the examination- in- chief by PW 2, who disclosed that after the completion of entire seizure at the sport they brought both the accused as well as the seized Alamat in the Beat Office. So in this case, it is quit difficult to assess how the other person who was brought at the PO along with the present petitioner was allowed to go Scott free. He submits that the PW 1 has stated he collected the saw dust and put it in the Match Box but the said saw dust was not chemically examined/tested to prove that it is a saw- dust of teak tree. Finally, he submits that the Learned Magistrate has placed his reliance upon the alleged confessional statement of the present petitioner recorded by the PW 1 by his

own hand. The same confessional statement has been marked as Exhibit 3. He argued that the confessional statement is a extra-judicial confessional which cannot be a ground for conviction. In support of his contention he cited two decisions reported in

Moorthy Vs. State of Tamilnadu 2023 Live law (SC) 679

Extra-judicial confession- While extra-judicial confessions are typically considered weak pieces of evidence, they can still serve as grounds for conviction if proven to be voluntary, truthful, and free of inducement. The court must be convinced of the reliability of the confession, and this evaluation takes into account the surrounding circumstances

Pawan Kumar Chourasia Vs. State of Bihar Live Law (2023) SC 197

Indian Evidence Act 1872 - Extra-judicial confession - Generally, it is a weak piece of evidence. However, a conviction can be sustained on the basis of extra-judicial confession provided that the confession is proved to be voluntary and truthful. It should be free of any inducement. The evidentiary value of such confession also depends on the person to whom it is made. Going by the natural course of human conduct, normally, a person would confide about a crime committed by him only with such a person in whom he has implicit faith. (Para 5)

Indian Evidence Act 1872-Extra-judicial confession - Normally, a person would not make a confession to someone who is totally a stranger to him. Moreover, the Court has to be satisfied with the reliability of the confession keeping in view the circumstances in which it is made. As a matter of rule, corroboration is not required. However, if an extra-judicial confession is corroborated by other evidence on record, it acquires more credibility. (Para 5)

9. Learned Advocate on behalf of the petitioner submits that the order of conviction passed by the Learned Magistrate on the

basis of extra-judicial confession is bad in law so the conviction is not justified.

10. Learned Advocate appearing on behalf of the state submits that the instant criminal revision is preferred against the order of Additional Sessions Judge passed in an appeal. There is no scope for this High Court to enter into the merit of the finding arrived at by the Appellate Court as there is no scope of second appeal. He further submits that the order passed by the Learned Magistrate is not illegal or improper in the eye of law. Thus the Learned Additional Sessions Judge has not committed any error in passing the impugned judgment affirming the order of conviction against the present petitioner. He further submits that the case before the Learned Magistrate has been sufficiently proved against the present petitioner beyond reasonable doubt. So there is no merit to entertain the instant criminal revision.

11. Heard, the Learned Advocates. Perused the materials and also perused the impugned judgment passed by the Learned Sessions judge.

12. The question of law has formulated in the instant criminal revisional application is- whether the confessional statements of the present petitioner recorded by the PW 1 which was marked Exhibit 3 by the Magistrate is at all valid document or whether conviction is justifiable on the basis of such statement.

13. It appears that the Learned Magistrate has placed his reliance upon the confessional statement of the present petitioner with

the observation that the petitioner had admitted his guilt though he denied the same during the framing of charge and his examination u/s 313 Cr.P.C. The Learned Magistrate is also of view that the statement has the value of corroboration.

14. The Learned Sessions Judge in dealing with the same issue is of opinion that by virtue of section 72 of Indian Forest Act any evidence recorded by the Forest Officer during the course of enquiry is admissible in any subsequent trial before a Magistrate.
15. Let me consider whether the observation of Learned Magistrate as well as the Learned Sessions Judge, is correct according to the provisions of law. I peruse the original the Exhibit 3 i.e. alleged the confessional statement of the present petitioner in the LCR.
16. The Exhibit 3 does not contain any specific date as to ascertain when it was recorded. However, the Exhibit 3 is prepared by the ink of two colour. The Exhibit 3 was placed before the Learned Magistrate by the PW 1. The other forest guards i.e. PW 2 and 3 has stated nothing regarding the said Exhibit 3. Thus the Exhibit 3, that is the confessional statement recorded by the PW 1 and facts thereof was not corroborated by any other prosecution witnesses. The alleged statement recorded by the PW 1 was admittedly prepared after the arrest of the present petitioner thus the statement recorded by the PW 1 was made during his custody with the authorities.

17. According to the provisions of Section 25 and Section 26 of Indian Evidence Act, the confessional statement of a person whilst he is in the police custody cannot be proved against him.

18. Section 72 of Indian Forest Act read as follows:

72. State Government may invest Forest Officers with certain powers. -

Section 72 (1) runs as follows:

(1) The [State Government] may invest any Forest Officer with all or any of the following powers, that is to say -

(a) power to enter upon any land and to survey,

demarcate and a map of the same ;

(b) the powers of a Civil Court to compel the attendance of witnesses and the production of documents and material objects;

(c) power to issue a search warrant under the Code of

Criminal Procedure, 1898 (V of 1898); or

(d) power to hold an inquiry into forest-offences, and in the course of such inquiry, to receive and record evidence.

Section 72 (2) runs as follows:

Any evidence recorded under Clause (d) of sub-section

(1) shall be admissible in any subsequent trial before a Magistrate, provided that it has been taken in the presence of the accused person.

Section 72 (2) disclosed that any evidence recorded under clause (d) of Section 72 (1) of the Indian Forest Act is admissible in evidence in any subsequent trial before a Learned Magistrate. The admissibility of any evidence and

proof thereof is completely distinct phenomenon of criminal trial. The statement recorded by the Forest officer during the course of enquiry of forest offence may be admissible in evidence in subsequent trial, but the Magistrate should have satisfied himself about the credibility before proving the same on behalf of the prosecution that the parameters required under the Evidence Act has been established.

19. It appears that the Exhibit 3 is the confessional statement alleged to have been made by the present petitioner when he was in custody of the Forest Officers. Officers/Forest Guards are not the police according to the law, but at the same time before acceptance of a confessional statement, the Court has to inspect whether it was made voluntarily or it was recorded without any inducement or pressure. It is the general notion that when a person is under custody of any authority he must have mentally under compulsion to do any act at the desire of the authority so that he may be released therefrom. So, it is obligatory for a court to look into the voluntariness of Extra-judicial confession made by the incumbent during custody.

20. In this case the PW 1 has only stated before the Learned Magistrate that he recorded the voluntary statement of the petitioner. The voluntary statement i.e. Exhibit 3 has never admitted by the present petitioner during the entire trial,

moreover the said fact of recording of statement was not corroborated by any of the prosecution witness.

21. The Hon'ble Supreme Court in **Moorthi (supra)** as well as **Pawan Kumar Chowrasia (supra)** has specifically set- out the guidelines regarding proving of extra-judicial confession. It appears that the Learned Magistrate as well as the Learned Sessions Judge, has failed to appreciate the reliability and correctness of the confessional statement so recorded by the PW 1 and came to an erroneous finding. The Section 72 (2) of the Forest Act does not impose the statutory presumption upon the Court to hold that the statement recorded by the Forest officers during the inquiry would admitted to be proved in the subsequent trial. The confessional statement (Exhibit 3), on the basis of which the conviction was recorded by the Learned Magistrate is not proper. The learned Additional Sessions Judge also committed error by not following the proper interpretation of Section- 72 of the Indian Forest Act regarding the proof of Exhibit 3.

22. Further more, the seizure list disclosed that one hand cross-cut saw was seized which can only be operated by two persons. The prosecution has only apprehended the present petitioner in this case. Thus it is quite unjustifiable to believe that the prosecution has successfully bring home the charge against the present accused persons. It is quite immaterial to believe that a cross cut saw which can only be operated or handled by at least two

persons was used by the present petitioner alone to cut the teak tree.

23. Considering the facts and circumstances it appears to me justified to hold that the prosecution has failed to prove the alleged offence against the present petitioner beyond reasonable doubt. Thus, the order of conviction recorded by the Learned magistrate against the present petitioner and affirmed by the Learned Sessions Judge is illegal and improper. Accordingly, the instant criminal revision has got merit and the same is allowed.

24. The order of conviction passed against the present petitioner is herein set aside. The petitioner is acquitted from the case.

25. Sureties standing in his favour are also released.

26. All connected Application stand disposed of.

27. Interim order if any stands vacated.

28. Copy of this judgment be sent to the learned Trial Court forthwith for necessary compliance.

29. Urgent certified website copy of this judgment, if applied for, be supplied expeditiously after complying with all, necessary legal formalities.

(Subhendu Samanta, J.)