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(261)

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRA-S-26-2024 (O&M)
Date of Decision: 16.01.2024

TASIM

... Appellant

Versus

STATE OF HARYANA

...Respondent

CORAM: HON'BLE MR. JUSTICE JASJIT SINGH BEDI

Present: Mr. Namit Khurana, Advocate
for the appellant.

Mr. Rajiv Goel, DAG, Haryana.

JASJIT SINGH BEDI, J.

The present appeal has been preferred against the judgment of conviction as well as order of sentence dated 19.12.2023 passed by the Additional Sessions Judge, Yamuna Nagar at Jagadhri.

2. According to the case of the prosecution, a complaint was received from the Forest Officer, Kalsia Range, Chhachhrauli for apprehending a truck bearing registration no.HR-39A-6401 loaded with khair logs/wood, alleging therein that he (Devwrat) was posted as Forest Guard, Chikan Beat, Darpur Block, Chhachhrauli Range Division, Yamuna Nagar. On 01.08.2022, at about 01:50 am, secret information was received that khair trees cut from the forest department would be carried in a truck from village Kansli for selling. Upon receipt of the said information, he disclosed the same to the Forester and other accompanying officials as well as police. Thereafter, they set up a barricade with officials consisting of himself, Anuj Kumar, Forester, Yogesh, HC Kuldeep and SPO Jasbir Singh. During nakabandi, they saw a motorcycle coming from the side of Village Kansli,

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wherein three persons namely Hasim, Nasim and Rijwan were travelling. They gave a signal to stop but the rider of the motorcycle did not stop and fled on the motorcycle. Thereafter, a white coloured Swift car was seen coming, wherein Alamgir, Jahangir, Kamil, Ikram and Muneer were sitting. They were also signalled to stop but they did not stop their car and fled. Thereafter, they saw two vehicles i.e. a Truck and a Mahindra Pickup coming from the side of Village Kansli. Both these vehicles were also signaled to stop but the same were also not stopped. The vehicle Mahindra Pickup was being driven by Sehzaad and Islam and Majid were sitting alongwith him whereas the truck was being driven by Tasim and Rashid and Talib were sitting. The driver of the Mahindra Pickup with their accomplice fled from the spot while trying to run over the vehicle upon the officials of the party with an intention to kill them. Meanwhile, taking advantage of the same, the truck which was coming broke the barricade at a high speed and tried to run over the officials of the party with the intention to kill but the officials saved their lives by jumping aside. They chased the accused in a private as well as a government vehicle. At about 05:50 am, near Village Mujafat, the truck driver alongwith his accomplice under the fear of being apprehended, tried to flee from the spot while leaving the truck at the spot but they identified them as Tasim, Rasid and Talib. While removing the Tarpal of the recovered truck, it was found that huge quantity of pieces of khair wood were loaded. The registration number of the truck was written on the front and back side as HR-39A-6401. On checking, 298 pieces of khair wood were found. No document was lying in the truck. The truck had been parked at Kalesar Range Head Quarter. The said wood was being cut from the Government Forest

stealthily. In the khair smuggling, Jabir, Noor Hassan alias Sainu, Vasim, Aslam and Hasim are involved. A prayer for taking legal action was made.

On the basis of above complaint, FIR under Sections 307, 379 IPC, 32, 33 of Indian Forest Act, 1927, 27, 29 and 51 of Wild Life (Protection) Act, 1972 was registered.

3. Pursuant to the registration of the FIR, the report under Section 173 Cr.P.C. was presented and on conclusion of the Trial, the appellant came to be convicted and sentenced as under:-

Offence under Section	Imprisonment	Fine	In default of fine imprisonment
Section 411 IPC	SI for a period of 01 year	Rs.2000/-	SI for 01 month

4. The learned counsel for the appellant contends that the Trial Court has failed to take into consideration that there was no cogent and convincing evidence that the appellant had received stolen property. Therefore, the charge had not been framed under Section 411 IPC. The identity of the appellant had not been established in accordance with law. The appellant had not been apprehended at the spot. In fact, he was arrested later on from the bus stand of the Village Muzakat Kalan. The Trial Court had wrongly recorded that the Khair Wood had been recovered from the possession of the appellant. No effort was made to join independent persons from the concerned area during the course of search and seizure. There were material contradiction in the statements of the prosecution witnesses which had not been considered in its proper perspective. He, therefore, contends that the judgment of conviction was liable to be set aside and the appellant ought to be acquitted of the charges framed against him.

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5. On the other hand, the learned State counsel contends that the offence stands established beyond any reasonable doubt. All the witnesses were consistent in material particulars regarding the manner in which the occurrence took place, the recovery effected and the appellant arrested. In fact, the appellant had been given the benefit of doubt when he was acquitted for all the other offences other than Section 411 IPC. He, therefore, contends that there was no cogent reason to interfere with the well-reasoned judgment of the Trial Court convicting the appellant and that the present appeal was liable to be dismissed.

6. I have heard the learned counsel for the parties.

7. A perusal of the record would reveal that there is sufficient evidence on the record to prove that the appellant was going with his truck bearing Registration No.HR-39-A-6401 loaded with Khair Wood from the side of Village Kansli when the forest officials laid a Naka near village Baniyawala. He was signalled to stop his truck but did do so and fled away from the spot. When the forest officials chased him, he left the truck loaded with Khair Wood and fled away and came to be arrested later on from the bus stand of Village Muzafat Kalan. After his arrest, he was joined in the investigation, suffered his disclosure statement got demarcated the place where he had left the truck loaded with Khair Wood. It is also proved from the record that the truck was brought to the Police Station and the same was given on Superdari to the Forest Guard Devwrat vide memo Ex.P5. The Khair Wood was also produced in the Court during the course of examination of PW6 ASI Kuldeep Singh. It is also a matter of record that the appellant had moved an application for releasing the truck on Superdari being its

registered owner which was allowed on 18.03.2023. Thus, it is apparent that the truck bearing No.HR-39-A-6401 was owned by the appellant and was found loaded with Khair Wood which had been stolen from the Forest Range, Chhachhrauli. However, he has not been able to explain as to how the stolen property i.e. Khair Wood came into in his possession. On the contrary, his disclosure statement memo of demarcation where he left the truck and the memo of demarcation where he loaded the Khair Wood in his truck are sufficient to establish that he was found in possession of stolen Khair Wood owned by the Forest Department.

8. In view of the aforementioned discussion, I find no reason to interfere with the well-reasoned judgment of the Trial Court. Therefore, the present appeal stands dismissed.

9. As regards the imposition of sentence, it may be pointed out that the occurrence pertains to August, 2022. The appellant is also a first-time offender with no other case registered against him. Therefore, while upholding the conviction, I deem it appropriate to modify the sentence as under:-

Offence under Section	Imprisonment	Fine	In default of fine imprisonment
Section 411 IPC	SI for a period of 06 months	Rs.20,000/-	SI for 01 month

9. The appeal stand disposed of in the above terms.

(JASJIT SINGH BEDI)
JUDGE

16.01.2024

JITESH

Whether speaking/reasoned:- Yes/No
Whether reportable:- Yes/No