

IN THE COURT OF JUDICIAL MAGISTRATE FIRST CLASS, BANPUR.

Present. : Miss Sarmistha Dash, LL.M.,
Judicial Magistrate First Class,
Banpur

Date of argument : 09.09.2014

Date of Judgment. : 20.09.2014

2(b)cc No. 46/2003

T.R. No. 216/2003

State

.....Prosecution.

-Versus-

Amara Bisoi, aged about 45 years,

S/o Hazari Bisoi

Vill: Dhusuma, Po:Sikharapur

P.S: Saranakula, Dist: Khordha

..... Accused.

Offence: U/s 27(3)(a)O.F.Act & Under Rule. 21 of the O.T.T. Rule, 1980.

For the Prosecution. : J.Pradhan, A.P.P.

For the Defence. : Sri S.K.Pattnaik
Advocate & associates.

J U D G M E N T

01. In this case the accused stands prosecuted for the offence punishable U/s 27(3)(a) O.F.Act & Under Rule 21 of O.T.T. Rule, 1980 for being alleged to have transporting teak wood without any lawful authority.

02. The case of the prosecution in brief runs thus :

On 13.10.2002 at 4.30 am the then Forester of Dhuanali section got reliable information that in Tamana Reserve Forest Compartment No.12 teak trees were being cut. So he along with two forest guards namely Biraja Mohapatra and Sadhu Charan Mohapatra and C.R.P.F Jawans reached at the spot saw that the accused was dragging green teak log by his buffalo from Tamana Reserve Forest Compartment No.12 teak plantation area. So they chased him and caught raid

handed. Hence the Forest Guard seized the teak wood and prepared seizure list. Thereafter he kept the seized articles in his zima on execution of zimanama. Then he submitted the offence report before the Forester. After completion of investigation the Forester submitted P.R. against the accused U/s 27(3) (a) of O.F.Act & U/r.21 of O.T.T. Rules. 1980.

03. The plea of defence is denial one and false implication.

04. The point for determination in this case emerges as follows:

(a) Whether on 13.10.2002 at 4.30am in Compartment No.12 of Tamana Reserve Forest the accused was cutting trees or removing any forest products?

(b) Whether the above noted date, time and place the accused contravenes Rule-4 of OTT Rules by transporting a teak log without having any transit or permit?

05. In order to prove its case, prosecution has examined only two witnesses namely Gokula Chandra Sethi and Biraja Prasad Mahapatra who is the forest guard of Dhuanali beat under Balugaon Range.

6PW.1 the forester of Dhuanali section deposed that he got reliable information that in Tamana Reserve Forest Compartment No.12 teak trees were being cut. So he along with two forest guards namely Biraja Mohapatra and Sadhu Charan Mohapatra and C.R.P.F Jawans proceeded to the spot and they heard tree cutting sound. Then they surrounded at the spot and saw the accused after cutting a tree was making it into pieces. Seeing them the accused was running away from the spot but the forest guard Sadhu Charan Mohapatra and C.R.P.F Jawans caught hold him. The forest guard Sadhu Charan Mohapatra prepared seizure list. They brought the accused and seized articles to Neeladriprasad beat and there F.G Biraja Mohapatra recorded statement of the accused in his presence and he puts his signature on his statement. He also deposed that he again visited the spot conducted stump verification report in separate sheet, prepared spot map and also

submitted P.R before the Range Officer, Balugaon. During his cross examination he said that he could not say the Khata number, plot number or area of “Tamana Reserve Forest”. He also said that he could not say there are how many tree in the said compartment wherein the accused was detected and he could not say the Gazette Notification number of the Govt. declaring the land in question as “Reserve forest:”. P.W.2 deposed that on the alleged date he along with forester G.Sethi , forest guard Sadhu Charan Mohapatra were performing patrolling duty at Tamana Reserve forest compartment No.4. He deposed that the accused cutting log of teak.

7. Now coming to the offence U/s.27(3)(a) of O.F.Act, it is seen that the most essential ingredients which needs to be proved is:-

(i) the place of occurrence from where the forest product was taken is a reserve forest.

(ii) The accused must have cutting any timber or removed any forest product.

Sec.3 of O.F. Act states that the State Govt. shall declare a land as reserve Forest while Section 4 of O.F. Act states that when ever it is proposed to constitute any land a Reserve Forest the State Govt. shall issue a notification on the official gazettee declaring that the proposed land is Reserved forest. Law is well settled that to hold a person guilty under this section, there must be notification U/s.4 of the Act. In this case the Enquiring Officer has not supplied the Gazettee Notification number in which the said forest was declared as reserve forest. P.W.1 stated that he could not say about the notification regarding reserve forest. So in the absence of Gazette notification I am of the view that the prosecution has failed to establish the fact that the place where the seizure was made is a part of reserve forest.

Now as per Sec.21 of OTT Rule it reveals from the PR it is found that the accused was dragging a teak log by buffalo but in his evidence he deposed that the

accused was cutting the green teak when they reached at the spot. The forester (P.W.1) has not seized the axe from the possession of the accused. In this regard no independent corroboration from the side of prosecution to prove the seizure from the conclusive possession of the accused. So it is difficult to say that the said log was recovered from the exclusive and conscious possession of accused. Hence in view of the above lacunas from the side of prosecution and in absence of independent corroboration I am of the opinion that the prosecution has not able to prove the offence U/r 21 of OTT Rules.

7In the result of the above discussions and the reasons recorded it can be concluded that no ingredients of the alleged offence against the accused could be proved. Hence I hold the accused is not guilty of the offence U/s. 27(3)(a) of O.F Act and 21 of O.T.T.Rule and acquitted him thereof U/s.255(1) of Cr.P.C. He be set at liberty forthwith and his bail bond stands cancelled.

The seized articles shall be confiscated to the state after four months of expiry of the appeal period, if no appeal is preferred and if preferred be dealt as per the order of the appellate court.

Judicial Magistrate First Class,
Banpur.

This judgment typed to my dictation, corrected by me and pronounced in the open court, given under my hand and seal of this court, this the 20th day of September, 2014.

Judicial Magistrate First Class,
Banpur

List of witnesses examined for Prosecution.

P.W.1 Gokula Chandra Sethi.

PW.2 Biraja Prasad Mohapatra.

List of witnesses examined for defence.

None.

List of Exhibits marked for Prosecution.

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|---------|---|
| Ext.1 | Seizure list. |
| Ext.1/1 | Signature of P.W.1 on Ext.1. |
| Ext.2. | Signature of P.W.1 on statement of accused. |
| Ext.3 | Stump verification report. |
| Ext.3/1 | Signature of P.W.1 on Ext.3 |
| Ext.4 | Spot map. |
| Ext.4/1 | Signature of P.W.1 on Ext.4. |
| Ext.1/2 | Signature of P.W.2 on Ext.1. |

List of Exhibits marked for defence.

Nil.

List of MOs marked for Prosecution.

Nil.

Judicial Magistrate First Class,
Banpur.

IN THE COURT OF JUDICIAL MAGISTRATE FIRST CLASS, BANPUR.

Present. : Miss Sarmistha Dash, LL.M.,
Judicial Magistrate First Class,
Banpur

Date of argument : 03.09.2014

Date of Judgment. : 11.09.2014

2(b)cc No. 27/2003

T.R. No. 179/2003

State

.....Prosecution.

-Versus-

Binod Panda, aged about 40 years,

S/o Late Lingaraj Panda

Vill: Mangarajpur, P.S: Banpur,

Dist: Khordha

..... Accused.

Offence: U/s 27(3)(a)O.F.Act & Under Rule. 21 of the O.T.T. Rule, 1980.

For the Prosecution. : J.Pradhan, A.P.P.

For the Defence. : Sri B.B.Pattnaik
Advocate & associates.

J U D G M E N T

01. In this case the accused stands prosecuted for the offence punishable U/s 27(3)(a) O.F.Act & Under Rule 21 of O.T.T. Rule, 1980 for being alleged to have transporting teak wood without any lawful authority.

02. The case of the prosecution in brief runs thus :

On 27.06.2002 at 5 pm the then Forest Guard of Niladriprasad beat Sadhu Charan Mohapatra while performing patrolling duty along with C.R.P.F staffs in Tamana Reserve Forest Compartment No.12 they found the accused was transporting teak log on his shoulder. So they chased him and caught raid handed. Hence the Forest Guard seized the teak wood and one axe from the possession of accused and prepared seizure list. Thereafter he kept all the seized articles in his zima on execution of zimanama. Then he submitted the offence report before the Forester. After completion of investigation the Forester submitted P.R. against the accused U/s 27(3) (a) of O.F.Act & U/r.21 of O.T.T. Rules. 1980.

03. The plea of defence is denial one and false implication.

04. The point for determination in this case emerges as follows:

(a) Whether on 27.06.2002 at 5 pm in Compartment No.12 of Tamana Reserve Forest the accused was cutting trees or removing any forest products?

(b) Whether the above noted date, time and place the accused persons contravenes Rule-4 of OTT Rules by transporting a teak log without having any transit or permit?

05. In order to prove its case, prosecution has examined only one witness namely Biraja Prasad Mohapatra who is the forest guard of Silingapada beat under Balugaon Range.

6PW.1, the forest guard of Silingapada Beat under Balugaon Range stated in his examination chief that on 27.06.2002 while he was working as forest guard on that day He along with forest guard Sadhu Mohapatra and C.R.P.F Jawans were performing patrolling duty the accused had entered into the Reserve Forest and was transporting forest produce. They produced him before the Forester

Dhuanali. Forest Guard Sadhu Charan Mohapatra seized the teak log and prepared seizure list. During his cross examination he said that he could not say the notification number of the Govt. declaring the land as Reserve forest. He also deposed that the compartment No.12 does not comes under his beat area.

7. Now coming to the offence U/s.27(3)(a) of O.F.Act, it is seen that the most essential ingredients which needs to be proved is:-

(i) the place of occurrence from where the forest product was taken is a reserve forest.

(ii) The accused must have cutting any timber or removed any forest product.

Sec.3 of O.F. Act states that the State Govt. shall declare a land as reserve Forest while Section 4 of O.F. Act states that when ever it is proposed to constitute any land a Reserve Forest the State Govt. shall issue a notification on the official gazettee declaring that the proposed land is Reserved forest. Law is well settled that to hold a person guilty under this section, there must be notification U/s.4 of the Act. In this case the Enquiring Officer has not supplied the Gazettee Notification number in which the said forest was declared as reserve forest. P.W.1 stated that he cannot say about the notification regarding reserve forest. So in the absence of Gazette notification I am of the view that the prosecution has failed to establish the fact that the place where the seizure was made is a part of reserve forest.

Now as per Sec.21 of OTT Rule it reveals from the PR it is found that the prosecution has not examined Sadhu Charan Mahapatra who was performing patrolling duty along with C.R.P.F. Jawans. No independent corroboration from the side of prosecution to prove the seizure from the conclusive possession of the accused. The prosecution has also not examined the forester before him the accused was produced. So it is difficult to say that the said log was recovered from the exclusive and conscious possession of accused. Hence in view of the above

lacunas from the side of prosecution and in absence of independent corroboration I am of the opinion that the prosecution has not able to prove the offence U/r 21 of OTT Rules.

In the result of the above discussions and the reasons recorded it can be concluded that no ingredients of the alleged offence against the accused could be proved. Hence I hold the accused is not guilty of the offence U/s. 27(3)(a) of O.F Act and 21 of O.T.T.Rule and acquitted him thereof U/s.255(1) of Cr.P.C. He be set at liberty forthwith and his bail bond stands cancelled.

The seized articles shall be confiscated to the state after four months of expiry of the appeal period, if no appeal is preferred and if preferred be dealt as per the order of the appellate court.

Judicial Magistrate First Class,
Banpur.

This judgment typed to my dictation, corrected by me and pronounced in the open court, given under my hand and seal of this court, this the 11th day of September, 2014.

Judicial Magistrate First Class,
Banpur

List of witnesses examined for Prosecution.

PW.1 Biraja Prasad Mohapatra.

List of witnesses examined for defence.

None.

List of Exhibits marked for Prosecution.

Ext.1 Signature of PW.1 on seizure list.

List of Exhibits marked for defence.

Nil.

List of MOs marked for Prosecution.

Nil.

Judicial Magistrate First Class,

Banpur.