

IN THE COURT OF JUDICIAL MAGISTRATE, 1<sup>ST</sup> CLASS, KOKRAJHAR.

C.R. Case no. 446/2012

u/s 40(2)(1) of A.F.R., 1891

State

.... complainant

vs

Aziz Ali Sheikh @ Abdul Aziz

... accused

Present :- Sri N. Boro,

J.M. 1<sup>st</sup> Class, Kokrajhar.

For the prosecution ;- Sri L.Barman, APP

For the defence :- A. R. Mandal, advocate

Evidence recorded on :- 8/11/2012, 18/7/2014, 12/8/2014

Argument heard on ;- 17/9/2014

Judgment delivered on ;- 8/10/2014

JUDGMENT

- 1) Prosecution case, in brief, is that on 10/10/2010, at about 2-30 p.m. complainant Usuf Khan along with ACF headquarter, Parbatjhora Division, Khoraghat Range officer, in-charge of protection squad, Parbatjhora division and staffs went to 'Kutkutarbhita' village in search of illegally running bench saw mills. Complainant stated that when they had reached at the village and on inquiry, they found machinery parts of bench saw mill were removed and hid somewhere. Complainant and his team came to know that an illegal bench saw mill was set up in the compound of accused Aziz Ali Sheikh and they seized 5 pieces of non Sal logs and saw dust from compound of accused. Complainant and his team found accused absent in his house during the time of search and seizure of this case. On completion of investigation of the case, complainant on behalf of state submitted Offence report of the case u/s 3/32/33/34/35/40/41 of AFR, 1891 and section 49 (4) b, 1995 (amended) against accused Abdul Aziz Sheikh. Copies of relevant documents were furnished to accused as required. Complainant and witnesses were examined first and their evidence recorded before framing of charge. After having heard both sides and considering the material on record, the charge u/s 41(1) of AFR, 1891 was framed against accused. The particulars of charge u/s 41(1) of AFR, 1891 were read over and explained to accused. Accused pleaded not guilty and claimed to be tried

- 2) Prosecution side examined four witnesses. Accused was examined u/s 313 Cr. P.C. and his statement was recorded. The plea of accused was of total denial and refused to adduce evidence. I heard argument of the case from both sides.

POINT FOR DETERMINATION :-

a) whether the accused established a saw mill in his house compound for the purpose of conversion, manufacturing, cutting etc. or possessing implements used for making timber violating provision of section 40 (2)(1) of AFR,1891 and thereby committed an offence punishable u/s 41(1) of AFR, 1891 ?

DISCUSSION OF EVIDENCE, DECISION AND REASONS THEREOF :-

- 3) Dipak Singh Roy, p.w.-1, stated that on 10/10/2010, at about 2-30 p.m., he along with his colleagues went to raid at Silbari area and then, they found saw dust and five pieces of non Sal logs in the house of Abdul Aziz Sheikh. He stated that they could not arrest accused. He stated that they came to know, on being asked to neighbours, that there had been a saw mill set up by accused at the place of occurrence. Ext.-1 is the Offence report and ext.-1(1) is signature of Usuf Khan, he identified. Ext.-2 is seizure list and ext.-2(1) is signature of Usuf Khan.
- 4) During cross-examination, p.w.-1 stated that he heard that the place where on the mill had been set up belonged to accused. He cannot say name of person from whom he heard. There were houses at the place of occurrence and he cannot say about owners of those houses. Seized articles were not produced in the court. He cannot say who was owner of the place of occurrence. Seized logs were decayed. He put his signature on seizure list at the place of occurrence. Local people gathered at the place of occurrence and they did not make local people as witnesses in this case. It is not true that he did not heard from local people of the place of occurrence that the said saw mill belonged to accused Abdul Aziz. It is not true that he stated falsely against accused.
- 5) Jibesh Ch. Roy, p.w.-2, stated that on 10/10/2010, he along with his officers went to raid at Silbari area. He stated that during the time of raiding, they found a makeshift saw mill at one place. He stated that they found five pieces of non Sal logs and some saw dust near the saw mill. He stated that they came to know from the neighbours of the place of occurrence that said saw mill belonged to accused Aziz Sheikh. He stated that they could not arrest accused. Ext.-2 is seizure list and ext.-2(2) is his signature.
- 6) During cross-examination, p.w.-2 stated that seized articles were not produce in the court. He forgets name of person who said to him that the place of occurrence belongs to accused. He cannot say who was owner of the land whereon saw mill was established. Local people gathered at the place of occurrence. There was no dwelling house in the mill compound. It is not true that he did not hear from some people that saw mill belonged to accused. It is not true that he has stated falsely against accused.
- 7) Usuf Khan, p.w.-3, stated that he was complainant of this case and he knows accused. He stated that the incident occurred on 10/10/2010, at about 2-30 p.m. He stated that on that day, he along with two ACF headquarters, Range officer Uttama Nanda Goswami and other

staffs went to the house of Aziz Ali's at 'Kukutarbhita' in search of bench saw mill. He stated that at the house of Aziz Ali, they saw machinery parts of bench saw mill were removed from the structure. He stated that they found some fresh saw dust at the place of occurrence and recovered five pieces of logs. He stated that seized logs were about 2 ½ feet width and about seven feet long. He stated that he seized the recovered articles. He stated that they came to know, accused had fled away from the place of occurrence. He stated that on completion of investigation of the case, he submitted Offence report of the case u/s 3/32/33/34/35/40/41 of AFR, 1891 against accused. Ext.-1 is the said Offence report and ext.-1 (2) is his signature. Ext.-2 is seizure list and ext.-2(3) is his signature.

- 8) During cross-examination, p.w.-3 stated that he did not see accused taking machinery parts of the mill after removing. He did not draw a sketch map of the place of occurrence. He did not inquire as to who was the owner of land of the place of occurrence. He did not examine neighbours of the place of occurrence in connection with this case. It is not true that they did not see structure of saw mill in the house of accused Aziz Ali. It is not true that they did not find and seize any log and saw dust from the house of accused.
- 9) Md. Shahjahan Ali Ahmed, p.w.-4, stated that he knows complainant and accused. He stated that the incident occurred on 10/10/2010, at about 2-30 p.m. He stated that on that day, he along with ACF Parbatjhora Division, protection party and staffs of Khoraghat Range went to the village 'Kutkutarbhita'. He stated that they went to the house of Abdul Aziz on receiving information that accused had been running saw mill business illegally. He stated that they did not find Abdul Aziz in his house. He stated that Abdul Aziz had escaped before they reached his house and removed machinery parts of the saw mill. He stated that they found four pieces of 'Bahera' logs and one piece 'Jia' log from house compound of Abdul Aziz. He stated that they seized logs and one bag saw dust from the house of accused Abdul Aziz. He stated that Uttama Nanda Goswami was their Range officer and he had received information about establishing illegal saw mills. He stated that complainant seized the articles. Ext.-2 is the said seizure list and ext.-3(3) is his signature.
- 10) During cross-examination, p.w.-4 stated that ext.-2 was prepared at the spot. Jibesh Das and Kishori Das were their staffs. There were about 30/ 40 people gathered at the place of occurrence. Villagers did not put their signatures. Seized articles were kept at Khoraghat Range office and did not produce in the court. There was no dwelling house in the mill compound. Dwelling houses were situated about 50/100 meters distance from the place of occurrence. He cannot say as to who was owner of land whereon mill was established. He did not try to know owner of land of the place of occurrence inquiring in the Circle Office. It is appeared that ext.-2 was over written with black ink and bore no initial. It is not true that complainant lodged a false case against accused and he stated falsely against accused. It is not true that they did not seize any log and saw dust from the place of occurrence.
- 11) In view of above discussion of evidence of prosecution witnesses, it has come out that on 10/10/2010, at about 2-30 p.m., complainant Usuf Khan (p.w.-3) along with Dipak Singh Roy (p.w.-1), Jibesh Ch. Roy (p.w.-2) and Shahjahan Ali Ahmed (p.w.-4) and others went to the village 'Kutkutarbhita' in search of saw mills set up illegally. According to p.w.-1, p.w.-2, p.w.-3 and p.w.-4, they found evidence regarding establishment of a saw mill by accused Abdul Aziz and seized five logs and saw dust from the spot. Complainant and his team did

not find accused at the spot and could not recover parts of saw mill machine on that day. Now, the question is whether accused Abdul Aziz did set up a saw mill illegally in his land or land under his possession.

- 12) The evidence of Dipak Singh Roy (p.w.-1) shows that on the day of occurrence of the incident, he and others recovered five pieces of logs and saw dust from the house compound of Abdul Aziz. P.w.-1 came to know that at the spot, a saw mill was set up and that saw mill belonged to accused on being asked to neighbours of accused. During cross-examination of p.w.-1, it reveals that there was a dwelling house at the place of occurrence but he does not know who was owner of that house. The evidence of Jibesh Ch. Roy (p.w.-2) clearly indicates that they found structure of saw mill not in the house of accused and they recovered logs and saw dust from the mill compound. P.w.-2 heard from neighbours of place of occurrence that accused was owner of that saw mill. During cross-examination of p.w.-2, it has become clear that there was no dwelling house in the mill compound. Usuf Khan (p.w.-3) and Shajahan Ali Ahmed (p.w.-4) also stated that they found evidence regarding set up of a saw mill in the house of accused Abdul Aziz. During cross-examination of p.w.-4, it reveals that there was no dwelling house in the mill compound and there were dwelling houses situated about 50/100 meters distance from the mill compound. Thus, according to p.w.-2 and p.w.-4, there was no dwelling house in the mill compound. It is true that complainant and others found sufficient evidence at the place of occurrence about existence of a saw mill prior to their arrival.
- 13) What can be gathered from the evidence of prosecution witnesses is that on the day of search and seizure, they only could recover five logs and saw dust from the place of occurrence and they did not inquire to ascertain as to who was owner of land of the place of occurrence. Complainant also did not draw a sketch map of the place of occurrence to consider of the fact that accused set up a saw mill in his house compound. Further, the evidence of prosecution witnesses also does not indicate that there was a dwelling house in the mill compound and they had met family members of accused in that house.
- 14) As such, complainant and his team failed to recover parts of machines or implements used in saw mill from the possession of accused Abdul Aziz and of the fact that, prosecution witnesses failed to state about owner of land of the place of occurrence, therefore, I do not find it safe to hold accused guilty for establishing a saw mill illegally. Prosecution side failed to establish the charge u/s 41(I) of AFR,1891, against accused beyond all reasonable doubt.
- 15) Hence, accused is acquitted on benefit of doubt and set at liberty forthwith.
- 16) From the evidence of prosecution witnesses, it has cleared that the seized five logs and saw dust were decayed. Therefore, complainant is hereby directed to take necessary steps for disposal of seized articles suitably.

Given under my hand and seal of this court on this 8<sup>th</sup> day of October, 2014.

Typed and corrected by :-

( Sri N. Boro )

