

IN THE COURT OF JUDICIAL MAGISTRATE, 1ST CLASS, KOKRAJHAR.

C.R. Case no. 872/2013

u/s 24(a)(b)/41(1) of AFR,1891

State

vs

Zakir Hussain

... accused

Present :- Sri N. Boro,

J.M. 1ST Class, Kokrajhar

For the prosecution :- Sri L. Barman, APP

For the defence :- A. Choudhury, advocate

Evidence recorded on :- 31/3/2014, 15/5/2014, 24/7/2014, 16/9/2014

Argument heard on :- 29/9/2014

Judgment delivered on :- 13/10/2014

JUDGMENT

- 1) Prosecution case, in brief, is that on 24/7/2013, complainant namely Dipak Singh Roy along with his staffs had gone on patrolling duty in Mahamaya Reserve Forest and then they saw, at about 12 noon, accused loading felled trees (fire wood) in a handcart. Complainant and his staffs caught accused red handed along with an axe and handcart. Complainant seized fire wood, axe and handcart from the accused. Thereafter, complainant forwarded accused in the court. On completion of investigation of the case, complainant submitted the Offence report u/s 3/9/24/25/32/33/40/41/49 of AFR, 1891 against accused. Copies of relevant documents were furnished to accused as required. Prosecution witnesses were examined first before framing charge. After having heard both sides and considering the material available on record, the charge u/s 24(a)(b)/41(1) of AFR, 1891, was framed against accused. The particulars of charge u/s 24(a)(b)/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 three 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.

POINTS FOR DETERMINATION :-

- a) whether the accused on 24/7/2013, at about 12 noon, trespassed and cut trees at Tipkai area under Mahamaya Reserve Forest and thereby committed an offence punishable u/s 24(a)(b) of AFR, 1891 ?

b) whether the accused on 24/7/2013, at about 12 noon, carried timber in a handcart without valid pass or without order from competent authority and thereby committed an offence punishable u/s 41(1) of AFR, 1891 ?

DISCUSSION OF EVIDENCE, DECISION AND REASONS THEREOF :-

- 3) Keshab Ch. Roy, p.w.-1, stated that he knows complainant and accused. He stated that the incident has become about one year and occurred at about 12-30 p.m. He stated that on that day, he along with Dipak Singh Roy, Ranjit Das and forest Battalion went on patrolling duty at Tipkai area. He stated that on that day, they found accused at that time loading of Sal and non-Sal trees in a handcart. He stated that they recovered one axe, a 'thela' (handcart) and about 40/50 tree saplings and complainant seized the recovered articles from accused. He stated that they took seized articles to their Range office and kept accused at Kazigaon police station on that day. Ext.-1 is the said seizure list and ext.-1(1) is his signature.
- 4) During cross-examination, p.w.-1 stated that they caught accused inside the jungle. He did not see accused cutting tree. It is not true that they did not find axe, 'thela' (handcart) and tree saplings in possession of accused. Ranjit Das was present along with him at the time of catching accused. Accused did not run away on seeing them. It is not true that he has stated falsely against accused.
- 5) Ranjit Kumar Das, p.w.-2, stated that he knows complainant and accused. He stated that the incident was occurred on 24/7/2013, at about 12 noon. He stated that on that day, he along with Dipak Singh, Keshab Roy and forest Battalion went on duty at Mahamaya Reserve Forest. He stated that they saw accused carrying Sal trees (fire wood) in a handcart along with one axe. He stated that it was about 30/40 pieces of logs and their officer seized the articles. He stated that they had caught accused and took to Khoraghat Range office. He stated that accused was forwarded to court later. Ext.-1 is the said seizure list and ext.-1(2) is his signature.
- 6) During cross-examination, p.w.-2 stated that they caught accused on road. He did not see accused cutting tree. It is not true that they did not seize axe, 'thela' and Sal logs fire wood in connection with this case. It is not true that he has stated falsely against accused.
- 7) Dipak Singh Roy, complainant of this case deposing as p.w.-3 stated that he knows accused and the incident was occurred on 24/7/2013, at about 12 noon. He stated that on that day, he along with Ranjit Roy, Keshab Roy and Battalion party went to Mahamaya Reserve forest on patrolling duty. He stated that they found accused on road carrying some Sal saplings in a 'thela' after cutting from jungle. He stated that they caught accused and seized an axe, 'thela' and about 10/12 Sal saplings. He stated that they kept accused in the Kazigaon police station for that night and forwarded accused to the court on next day. Ext.-1 is the said seizure list and ext.-1(3) is his signature. He stated that on completion of investigation of the case, he submitted offence report u/s 3/9/24/25/32/33/40/41 of AFR, 1891 against accused. Ext.-2 is the said offence report and ext.-2(1) is his signature. Material ext.-1 is an axe, one 'thela' and fire wood.
- 8) During cross-examination, p.w.-3 stated that they caught accused inside jungle road. He did not see accused cutting tree. It is not true that he did not find an axe, 'thela' and fire

wood from possession of accused on the day of occurrence of the incident. It is not true that they caught accused on road on suspicion and seized articles were not belongs to accused. It is not true that he has stated falsely against accused.

- 9) The points for determination are taken together for sake of convenience in discussion. Thus, in view of the above discussion of evidence of prosecution witnesses, it has established that on the day of occurrence of the incident, accused Zakir Hussain was caught red handed at Tipkai area under Mahamaya Reserve Forest at the time of carrying fire wood (tree sapling) in a 'thela' collected from Jungle. Keshab Ch. Roy (p.w.-1), Ranjit Kumar Das (p.w.-2) and Dipak Singh Roy also recovered an Axe from the possession of accused. The testimonies of p.w.-1, p.w.-2 and p.w.-3 however, remained unshaken in their cross-examination and therefore, evidence of prosecution witnesses are believable. Therefore, I found on the day of occurrence of the incident, accused trespassed into the Tipkai area and carried fire wood in a 'thela' without any permission from competent authority. However, from the evidence of prosecution witnesses, it has not come out that accused cut trees in the jungle. Recovery of an axe from the possession of accused and carrying trees in a 'thela' does not mean directly that accused cut trees on the day of occurrence of the incident. Prosecution witnesses clearly stated that they did not see accused cutting tree. Further, prosecution witnesses also did not state in their evidence that they had visited the place from where trees were cut and removed. Therefore, prosecution side could not establish beyond all reasonable doubt of the fact that accused had cut trees on the day of occurrence of the incident.
- 10) Prosecution side proved the charge u/s 24(a)/ 41(1) of AFR, 1891, against accused beyond all reasonable doubt.
- 11) Hence, I held accused guilty for committing offence u/s 24(a)/41(1) of AFR, 1891 and accused is convicted there under.
- 12) Heard the accused on sentence.
- 13) Accused stated that he is poor man and earns livelihood by working as daily labour, therefore, in absence of him, his family will face hardship. So, he prayed leniency in sentencing him. After having heard accused and considering the fact that accused was caught in carrying fire wood, I sentenced accused to pay fine Rs. 1,000/- for committing offence u/s 24(a) of AFR, 1891, in default, simple imprisonment for one month and Rs. 1,000/- for offence u/s 41(1) of AFR, 1891, in default, simple imprisonment for one month.
- 14) During the period of investigation the case, the investigating officer seized tree saplings, an Axe and one 'thela' (handcart) from the possession of accused. From record, it has not appeared that seized articles were confiscated by the competent authority. So, the seized articles are hereby confiscated and at the disposal of government.

Given under my hand and seal of this court on this 13th day of October, 2014.

Typed and corrected by ;-

(Sri N. Boro)