

IN THE COURT OF THE ADDITIONAL SESSIONS JUDGE:.....**UDALGURI**

**Present : Smti. N. Talukdar,
Addl. Sessions Judge,
Udalguri.**

Cri. Appeal No. 31/2016

Md. Elias Ali.....Accused/Appellant.

-Vs-

State of Assam.....Respondent.

For the Appellant : Mr. P. Lomga, learned Advocate.
For the Respondent : Mr. R. Sarmah, Addl. Public Prosecutor
Date of Argument : 04-03-2020.
Date of Judgment : 12-03-2020.

J U D G M E N T

1. The impugned judgment and order dtd. 13-10-2016, passed by learned Judicial Magistrate First Class, Udalguri, in connection with C.R Case No. 367/2015, convicting and sentencing the accused/appellant Elias Ali to undergo 01(one) year simple imprisonment and to pay a fine of Rs. 5000/-(five thousand), in default to 15(fifteen) days judicial custody for the offence committed under Section 24 of Assam Forest Regulation, is under challenge in the present criminal appeal preferred by the accused person as appellant.

2. The prosecution case in brief, is that on 09-07-2015, at about 11.00 am, the SSB personnel of Bongrung compound 37th Battalion had handed over the accused Md. Elias Ali to Range Officer Nonai Forest Range, alongwith six numbers of bicycle and sawn timber. The accused was apprehended by the SSB personnel inside the Khulingduar Reserver Forest and seized bicycles and sawn timbers were found in his possession. In connection with the incident Range Officer Satyaram Boro of Nonai Forest Range, submitted Offence report under Section 24/25/40/41/49(a)/49(b) of Assam Forest Regulation Act 1891 as amended in 1995 against the accused Md. Elias Ali.
3. The accused appeared before the court and learned trial court framed charges under section 24/25 of Assam Forest Regulation, 1891 and read over and explained the ingredients of charges under said sections to which the accused person pleaded not guilty and claimed to be tried.
4. During trial the prosecution examined 04 (four) prosecution witnesses who were duly cross examined by the defence.
5. Defence case was of total denial and no witness was examined by the defence.
6. Learned Judicial Magistrate First Class, Udalguri, upon consideration of materials on record vide impugned Judgment and Order dated 13-10-2016, having found the accused/appellant Elias Ali guilty convicted him and sentenced to undergo 01(one) year simple imprisonment and to pay a fine of Rs. 5000/-(five thousand), in default to 15(fifteen) days judicial custody for the offence committed under Section 24 of Assam Forest Regulation.

7. During hearing of the appeal none appeared for the accused/appellant. I have heard learned Addl. P.P. Mr. R. Sarmah appearing for the respondent, the State.
8. In the memorandum of appeal, the appellant has taken the ground that there is inconsistent evidence adduced by the prosecution witnesses with regard to the actual date of occurrence. Hence, their evidence is not reliable. The learned trial court has failed to appreciate the evidence in its proper perspective and as such the impugned Order and Judgment of conviction is liable to be set aside.
9. Learned Addl. P.P. Mr. R. Sharmah appearing for the State/Respondent argued that there is consistent and trustworthy evidence that the accused appellant is caught by the SSB personnel alongwith seized timbers and as such he is liable to be punished under Section 24 of Assam Forest Regulation, 1891.
10. Before appreciating the arguments put forward by learned Addl. P.P. for the State as well as the grounds taken by the accused/appellant in the appeal, I would like to discuss the evidence adduced by the prosecution.
11. PW1 is Satyaram Boro Range Officer of Nonai Reserve Forest, informant of this case. In his evidence PW1 had deposed that on 07-07-15, SSB Bangrown caught one person and handed over him to them stating that they caught the accused with about 1.82 MQ non sal alongwith six bicycles. Then PW1 took the custody of the accused and got those 1.82 MZ non sal seized by Bharat Deka, Forester-I. They took the custody of all 1.82 MQ non sal wood and forwarded the accused to the Court. The accused was caught inside the Nonai

Reserve Forest. As per SSB there were more persons besides the accused involved in the incident. Ext.-1 is the forwarding report and Ext.-1(1) is the signature of PW1. Ext.-2 is the Offence report and Ext.-2(1) is the signature of PW1. Ext. 4 is the forwarding of the seizure and apprehension memo by the SSB personnel. Ext. 4 (1) is the signature of PW1. Ext. 5. is the apprehension memo. Ext.5 (1) is the signature of PW1. Ext. 6 is the seizure memo. Ext. 6 (1) and 6 (2) are the signatures of PW1. In cross-examination, PW1 had stated that they arrested the accused when the accused was handed over to them by SSB personnel on 09/07/2015. The distance from the SSB camp to their office is about 3/ 4 kilometers. He submitted the offence report. He did not prepare the seizure list. Bharat Deka prepared the seizure list in their office at the time of handing over the accused to them. The name of the bicycles was not mentioned in the seizure list. Bharat Deka took the weight of the seized timbers. He did not know where the accused was caught by the SSB personnel. PW1 had denied the suggestion that nothing was seized from the accused.

12. PW2 is Rajen Daimari, Forester-I, Nonai Reserve Forest. In his evidence PW2 had deposed that on 09-07-2015, SSB handed over the accused persons alongwith 44 pieces of Non Sal wood and six numbers of bicycles. SSB caught the accused alongwith those non Sal wood inside Nonai Reserve Forest. Those woods and those cycles were seized by Bharat Deka and those were in their custody. Later on the accused was forwarded to the Court. Ext.-3 is the seizure list and Ext.-3(1) is the signature of PW2. In cross-examination, PW2 had stated that the accused was caught by Bangrun SSB personnel. He did not put his signature in the seizure list. Bharat Deka took the measurement of the timbers seized by them.

13. PW3 is Bharat Deka, Forester-I Nonai Reserve Forest. In his evidence PW3 had deposed that on 09-07-2015, SSB handed over the accused

person alongwith 44 pieces of Non Sal wood and six/seven numbers of bicycles. Then those woods and bicycle were seized. Those were now in their custody. Accused person was forwarded to the Court. Ext.-3 is the seizure list and Ext.-3(2) is the signature of PW3. In cross-examination, PW3 had stated that he prepared the seizure list in the Range office. Rajen Daimary was the witness to the seizure list. The seized articles were handed over to them by Bangrun SSB personnel and the Range officer received the same. No case number was given in the seizure list as there was no provision for the case number in the form as prescribed by the Government. He did not go to the place of the occurrence at the time of the preparation of the seizure list. The seized articles were in the Range office. He did not take any permission from the court for keeping the seized articles in the Range Office. He did not know who were with the accused at the time of the commission of the offence.

14. PW4 is Hemanta Basumatary, S.I. SSB. In his evidence PW4 had deposed that they caught the accused in Kalingduar Reserve Forest with timber and bicycle and then they handed him over to the forest officials of the Nonai Forest Range. Ext.-4 is the forwarding of the seizure and apprehension memo to the forest officials of the Nonai Forest Range. Ext.-4(2) is the signature of PW4. Ext.-5 is the apprehension memo. Ext.-5(2) is the signature of PW4. Ext.-6 is the seizure memo. Ext.-6(3) is the signature of PW4. In cross-examination, PW4 had stated that he knew the accused from the date of incident i.e. on 08-07-2015. Ext.4, Ext.5 and Ext.6 are carbon copies. Apprehension memo and seizure memo were written by him in their camp. Eight bicycles, timbers were seized from the accused. He had forgotten the type of timbers recovered from the accused. He had not mentioned the name of the company of the bicycles. No witness was there in the seizure list as there was no public inside the forest. PW4 had denied the suggestion that nothing was seized from

the accused and that the accused was falsely implicated in the case. There were other persons with the accused. However they fled from the place of the occurrence.

15. It appears from the evidence of prosecution witnesses that the accused/appellant is caught in Khalingduar Reserve Forest with timbers and bicycle by the SSB personnel and thereafter, he was handed over to the forest officials of the Nonai Forest Reserve. PW4, S.I. of SSB testified substantiating the claim of the prosecution that the accused was caught alongwith forest materials. PW1, PW2 and PW3 who were the forest officials of Nonai Forest Reserve categorically stated that the accused was handed over by the SSB Bangrun alongwith seized timbers. All the forest officials who were examined as PW1, PW2 and PW3 have deposed that the accused was handed over by the SSB personnel on 09-07-2015, as such I do not see any discrepancies in their evidence with regard to the date of incident. PW4 who is the S.I. of SSB revealed in cross-examination that the incident happened on 08-07-2015. In the offence report it has been clearly stated that the incident happened on 08-07-15, and next day the accused was handed over to forest officials.

16. Under the provision of Assam Forest Regulation 1891, timber is a forest produce whether found in or brought from a forest or not. Under Section 4(a) lays down that " forest produce includes – the following, whether found in, or bought from, a forest or not, that is to say timber, charcoal, caoutchouc, catechu, wood-oil, resin, natural varnish, bark, lac, myrabolams and rhinoceros horns". The accused person is caught red hanged with timber which is a forest produce under such circumstances the accused must show that he was carrying the forest produce under authority issued by duly forest officer under rule 2(a) of Transit rules mentioned in chapter 5 of General rules framed under Assam Forest Regulation 1891. Forest

produce can be removed with pass which shall be in the form of a permit issued by duly authorized forest officer. A certificate of origin, in the case of forest produce from private lands, for which nothing is due to government, issued by owner of such land or his duly authorized agent and transit pass issued by a authorized officer, authorized by a divisional forest officer. In the present case accused has miserably failed to show any permit, certificate of origin or transit pass issued by the appropriate authority allowing to carry the forest produce.

17. In view of above discussion, I find nothing to interfere with the impugned Judgment and Order of conviction.
18. In the result, the appeal is dismissed on contest. The impugned Judgment and Order dated 13-10-2016, passed by learned Judicial Magistrate First Class, Udalguri, in CR Case No. 367/2015, under Section 24 Assam Forest Regulation, is hereby upheld and affirmed.
19. Send back the original case record being CR Case No. 367/2015 to the learned Chief Judicial Magistrate, Udalguri alongwith a copy of this Judgment and Order.
20. Given under my hand and seal of this court on this 12th March, 2020, in the open Court.

Dictated and Corrected

(N.Talukdar)
Addl. Sessions Judge
Udalguri.

(N.Talukdar)
Addl. Sessions Judge
Udalguri.