

**IN THE HIGH COURT OF HIMACHAL PRADESH,
SHIMLA.**

Criminal Appeal No. 522 of 1999.

Judgement reserved on:

Date of decision : February 28, 2006.

State of H.P.

..... Appellant.

Versus

Ramesh Kumar

..... Respondent.

Coram

The Hon'ble Mr. Justice Surjit Singh, Judge.

Whether approved for reporting?

For the appellant: Mr. D.S.Nainta, Dy. Advocate General.

For the respondent: Mr. N.K.Thakur, Advocate.

Surjit Singh J. (Oral).

This appeal by the State is directed against the judgement of acquittal recorded by the trial Magistrate in a case under Section 33 of the Indian Forest Act, 1927.

A complaint was submitted to the Judicial Magistrate by the Range Forest Officer on 25th May, 1996, containing the following allegations. On 9.3.1995, Forest Guard Mangat Ram, while patrolling Pajiara forest in Forest Range, Dalhousie, found that two Deodar trees, one of II –A Class and another of III Class

Whether reporters of local Papers may be allowed to see the judgment?

had been illicitly cut. He saw the stumps of those trees. He made inquiries and came to know that Ramesh Kumar had felled those trees and utilized the timber in the construction of his house. He went to the house of Ramesh Kumar, respondent, and noticed that timber had been used in the construction of his house. He was required to produce the papers pertaining to the timber, which he had utilized in the construction of the house. Not only that he could not produce any papers, but also confessed that he had felled two trees, stumps of which had been noticed by the forest guard in the forest. He made the confession in the presence of one Devya Parsad. Forest Guard informed the Range Officer, who demanded the compensation from the respondent for illicit felling of the trees. On his refusal to pay the compensation, he filed the complaint.

Learned Judicial Magistrate put the substance of accusation to the respondent and on his pleading not guilty, tried him for the alleged offence. The prosecution examined Mangat Ram, Forest Guard as PW 5 and Devya Parsad, in whose presence the respondent allegedly confessed his guilt, as PW 2.

Respondent, in his statement, under Section 313 of the Code of Criminal Procedure, denied having felled the trees or having made any confession. Learned Judicial Magistrate on the conclusion of the trial, held that the case of the prosecution did not stand establish beyond reasonable doubt and consequently acquitted the respondent.

Dissatisfied with the judgement of the trial Magistrate, the State has appealed to this Court. The main grievance of the

appellant is that the evidence has not been correctly appreciated by the trial Magistrate and the order of acquittal is contrary to the evidence on record.

I have heard the learned Deputy Advocate General for the appellant and the learned counsel for the respondent and perused the record. Learned counsel for the respondent argued that the offence under Section 33 is punishable with imprisonment which may run up to six months, and, therefore, limitation for taking cognizance for an offence under Section 33 is one year, per clause (b) to sub-section (2) of Section 468. He submitted that in the present case the crime was allegedly detected on 9.3.1995, but the complaint was filed in the court of the concerned Magistrate on 25.5.1996 or say more than one year after the detection of the crime, and, therefore, in view of the aforesaid provision of law, the Magistrate could not have taken the cognizance of the offence. The submission is well founded. In view of this submission alone, the judgement of the learned trial court cannot be interfered with.

Even on merits, the judgement of the Judicial Magistrate calls for no interference. Admittedly, there is no direct evidence of the alleged offence. Nobody has come forward to say that the trees were felled by the respondent. The prosecution wanted to prove its case by the alleged confessional statement of the respondent. Though the forest guard Sh. Mangat Ram (PW 5) stated that the respondent made a confessional statement, PW 2 Devya Parsad, not only did not say so but on the other hand he stated that the respondent claimed that he had extracted the timber

utilized in the construction of his house from the trees which he borrowed from his co-villagers. The witness was not got declared hostile by the prosecution. The prosecution, therefore, cannot wriggle out of the statement, which belies its allegation that the respondent confessed having felled the trees. Further more, according to PW 5 Mangat Ram, Forest Guard the stumps were 5-6 days old. At the same time he says that timber extracted from the felled trees had been utilized in the construction of the house. It is not believable that within 5-6 days of the felling of the trees, timber extracted therefrom can be completely utilized in the construction of house.

For the foregoing reasons, the appeal is dismissed.

February 28, 2006.
(Hem)

(Surjit Singh),
Judge.