

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

Cr. Appeal No.549 of 1999

Date of decision:29-11-2006

State of H.P.

Appellant.

Versus

Chatro Ram & others

Respondents.

Coram

The Hon'ble Mr. Justice V.K.Ahuja, J.

The Hon'ble Mr. Justice

Whether approved for reporting¹?

For the appellant:

**Mr.Ashutosh Burathoki, Addl. Advocate
General.**

For the respondent:

Mr.N.K.Thakur, Advocate.

V.K.Ahuja, J.

This is an appeal filed by the Appellant - State of Himachal Pradesh against the judgment of the Court of learned Addl. Chief Judicial Magistrate, Chamba dated 10.12.1998 vide which, all the respondents were acquitted of the charge under Sections 379 IPC and 33 of the Indian Forest Act.

Briefly stated, the facts of the present case are that on 3.10.1992, Shri M.P.Rastogi, the then Range Officer, lower Chamba lodged a complaint with the Police Station, Chamba that on 1.10.1992 he had inspected the forest area and found that 17 trees of Deodar etc. had been illegally cut from the forest land. He made inquiries in this regard and on search, he recovered scants of Deodar from the house of accused persons as under:

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| 1.Chatro Ram | 29 scants |
| 2.Ghimo Ram | 47 scants |

Whether the reporters of Local Papers may be allowed to see the Judgment?

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| 3.Prithi | 45 scants |
| 4.DharamChand | 15 scants. |

Besides above, 34 scants of Deodar were seized outside the forest area. The case was tried by the learned trial Court, which resulted in the acquittal of the accused persons. The submissions made by the learned Additional Advocate General for the State were that the recoveries had been duly proved to have been made from the house of the accused persons and there was damage reports and confessional statements of the accused persons which were also proved in evidence and, therefore, the learned trial Court had come to a wrong conclusion that the guilt of the accused persons had not been establish.

On the other hand, the learned counsel for the respondents had pointed out some infirmities in the statements of witnesses, which shall be referred below, and had supported the findings recorded by the learned trial Court.

On a perusal of the evidence led by the prosecution, it is clear that, according to the prosecution case itself, on learning about the cutting of the trees from the Forest area, PW-1 M.P.Awasthi had raided the house of the accused persons and made recoveries of 136 scants of Deodar tree as detailed above. However, when this witness appeared in the witness box, he simply stated that they made a search, filed challan but he does not remember in regard to the recoveries. His conduct has to be deprecated since it was required of him to have proved the recovery memo. in regard to the recovery of the scants of Deodar tree having been recovered from the house of the accused persons. However, I am not proposing any action against him for the present in view of the fact that the case pertains to October, 1992 and

according to the Statement of PW-3 Rikhan Singh, this witness is already facing corruption charges and by this time he may have also retired.

PW-2 Jai kishan, Forest Guard stated that they made recoveries of Deodar tree wood from the house of Chatro Ram etc. who were not having the permit and the wood on Superdari was handed over to him. He could not State as to how many scants were recovered from each of the accused persons. PW-3 Rikhi Singh, Forest Guard has stated that they had gone to Padra Beat on the verbal orders of the Range Officer, and found that the trees had been cut and recovery was effected from the house of the accused persons and they were keeping the wood without any permits. He also could not state in detail in regard to the recoveries having been effected from the house of each of the accused persons. In cross examination, he has stated that 141 scants were recovered in all and further stated himself that when they went to the spot they had carried five sleepers of deodar and kept in the house of accused Prithi. He also stated that 45 scants were left in the house of accused by the Range Officer, which shows that these were kept by the forest officials themselves and, therefore, it demolishes the case of the prosecution.

PW-4 Govind Singh has stated that the at the spot, 17 trees were found to have been cut which were lying on the spot and some of the wood had been misappropriated. He also stated about the recovery of some Deodar Scants from the common path. He further stated that accused persons had signed the "Supardarinama" and confessional statement but admitted that Prithi and Ghana had not signed it, since they had run away from the spot. The statement of other witnesses are not much material.

From the above discussion, it is clear that the learned trial Court had rightly concluded that the guilt of the accused persons had not been established from the evidence led by the prosecution. The findings recorded by the learned trial Court cannot be said to be perverse, which call for interference by this Court. However, before parting with this judgment, I may observe that the learned trial Court had committed an illegality by recording the statement of accused persons under Section 313 Cr PC by keeping the Photostat copy of the statement made by one of the accused Chatro Ram and the Carbon copies were put on record and these were put to the accused persons. Moreover, a reference has been made to the damage report and confessional statement jointly, though it is in evidence that two of the accused persons had not signed this statement and this should have been put separately. This practice of keeping carbon copies of the statements had to be deprecated but this has been followed by the trial Court for the reasons best known to it. In view of the fact that sufficient time has elapsed since the statements were recorded by the trial Court, I am of the opinion that a copy of the judgment should be put up before the Hon'ble Chief Justice, for whatever appropriate orders he deems proper in the facts and circumstances of the case.

In view of the reasons recorded above, there is no merit in this appeal and the same is accordingly dismissed.

November 29, 2006
(SDS)

(V.K.Ahuja),J.

