

IN THE COURT OF MS. SHAIL JAIN
ADDITIONAL SESSIONS JUDGE/SPECIAL JUDGE NDPS 02
(CENTRAL) DELHI

Cr.L.A NO. 73/13

Wildlife
 Through
 S. R. V Murthy, Deputy Director
 Wildlife Crime Control Bureau (NR)
 Ministry of Environment and Forests

.....APPELLANT

versus

1. **Umesh Tripathi**
 s/o Ram Parkash Tripathi
 R/o Gali No. 14, Bhajan Pura, Delhi.
2. Prem Kumar
 S/o Kundan Lal Sharma
 R/o 5/37, Sector-2, Rajinder Nagar
 Sahibabad, Ghaziabad
 now, shifted to 71, Old Anarkali
 Krishna Nagar, New Delhi.

.....RESPONDENT

DATE OF INSTITUTION :18.07.2013
 DATE OF JUDGMENT :.02.05 .2014

J U D G M E N T

1. The present criminal appeal u/s 378 Cr.PC has been filed

Cr. A NO. 73/13

Page 1 of 11 pages



ATTESTED
 06/05/2014.
 EXAMINER

by the present appellant for setting aside the judgment dated 23.04.2013 passed by Shri Devender Kumar Sharma , Ld Additional Chief Metropolitan Magistrate Central (Special Acts), Delhi whereby the respondents were acquitted.

2. Brief facts leading to the present appeal are that on 13.07.2000 at about 10.10 p.m, SI Shalinder Tomar PS Anand Vihar, received a secret information that respondents will come to Anand Vihar ISBT with illegal ivory tusk. The said information was reduced into writing. At about 11.35 p.m, Deputy Director K N Thakur, Wild Life Inspector K N Singh came to PS and thereafter a raiding party was constituted. At about 12.35 a.m, blue colour two wheeler came on which three persons were riding and two wheeler scooter was stopped by raiding party. On seeing the police party accused persons tried to escape. The bag which was being carried by accused persons was checked and it was found containing two pieces of ivory. Accused persons failed to produce any certificate/license for possessing the ivory. The accused were arrested. During the trial, accused Om Parkash had expired. In order to prove the case against accused persons, prosecution has examined six witnesses. Vide order dated 23.04.2013 both accused were acquitted by Ld Trial Court.
3. It is stated by the appellant that order of Ld Trial court is liable to be set aside on following grounds:

Cr. A NO. 73/13

Page 2 of 11 pages

ATTESTED
D 06/05/2014.
EXAMINER

- a) That the impugned order passed by Ld Trial Court is contrary to the facts of the case.
- b) That Ld Trial Court failed to appreciate that accused has not been able to give explanation as to how he has come into possession of ivory and therefore, there is a presumption against him u/s 57 Wildlife (P) Act.
- c) That Ld Trial Court failed to appreciate the evidence led by the complainant.
- d) That Ld Trial Court failed in accepting the contention of the respondent that nothing was recovered from them, as same was baseless and devoid of any merit in view of the statements of prosecution witnesses which clearly proved that Ivory pieces were recovered from possession of the respondent.

with these and similar grounds appellant has prayed for setting aside the impugned order.

4. I have heard arguments from Sh. Atul Bhardwaj, Ld. counsel for appellant and Ld counsel for respondent.
5. Present appeal has been filed by Wildlife department against the impugned order dated 23.04.2013 passed by Ld Trial Court whereby the respondents were acquitted by Ld Trial Court. After careful perusal of the grounds of appeal mentioned in the appeal as well as the order of acquittal passed by Ld Trial Court, it is clear that Ld Trial Court has acquitted the



ATTESTED
20/05/2014.
EXAMINER

respondent/accused on the ground that no public witness was examined and that the case property was not sealed immediately after the seizure and there are other contradictions in respect to the incidental aspects.

6. Considering the evidence led by the complainant department and the cross examination of complainant witnesses conducted by the defence, I am of the opinion that Ld Trial Court has committed grave error in appreciating the evidence. In the present case, 6 witness were examined by the prosecution/complainant. The allegations against the accused is that he was found in possession of two pieces of ivory which was being carried by him in jute bag. Ld Trial Court while appreciating the evidence has stated that though the case property was produced before trial court, but at that time, case property was in unsealed condition, hence Ld Trial Court was of opinion that chances of tampering cannot be ruled out. Since case property was not sealed, hence Ld Trial Court has considered it non compliance with the provisions of law and thus acquitted the accused persons.
7. After considering the evidence led by the department/complainant and the order passed by Ld Trial Court, I am of the opinion that the fact that raiding party was constituted on 13.07.2000 by SI Shalinder Tomar, PS Anand



Cr. A NO. 73/13

Page 4 of 11 pages

ATTEST
06/05/2014
EXAMINER

Vihar on receipt of secret information, is proved. It is also proved that PW-1 Shri K N Singh who was Assistant Deputy Assistant, Wildlife Preservation at that time, PW-3 Ashok Kumar & PW-4 K N Thakur who was Deputy Director of wildlife, had joined the raiding party. In the pre charge evidence as well as in post charge evidence when these witnesses were examined & cross examined, the defence has not been able to prove that no ivory tusk was recovered from the possession of accused/respondents. In the cross examination of PW-1 K N Singh examined in post charge evidence, it is specifically stated by PW-1 that SI Shalinder Tomar /IO of the case and PW-4 K N Thakur the then Deputy Director of Wildlife had put their signatures on the Ivory pieces recovered from the bag in possession of accused persons. He has also stated that signatures of SI Shalinder Tomar/IO and PW-4 K N Thakur were visible on the Ivory pieces at the time of cross examination of the witnesses in Pre Charge evidence recorded in the year 2004. No suggestion has been given to witness PW-1 that no such Ivory pieces were recovered from the possession of accused Umesh Tripathi or that there was no signature of above two persons present on the Ivory pieces. It is important to note, at this stage that, when PW-1 was cross examined, during post charge evidence on 30/03/09, he was not cross examined by both the



Cr. A NO. 73/13

Page 5 of 11 pages

ATTESTED
[Signature]
 06/05/2014
EXAMINED

present respondents, hence his testimony is unchallenged and thus stood admitted . The suggestion was given to PW-1 that he is not a competent person to identify the Ivory pieces which was denied by PW-1 and he has stated that he has got sufficient experience in this field because of his qualifications and experience.

8. The factum of putting signatures by SI Shalinder Tomar and PW-5 K N Thakur has been corroborated by the testimony of SI Shalinder examined as PW-4, PW-2 Ashok Kumar and PW-5 K. N. Thakur have identified the case property produced in the court correctly. They have also identified the signatures put by SI Shalinder Tomar and PW-5 K N Thakur on the ivory pieces. All the four witnesses have proved that these are the two pieces of ivory which were recovered from the possession of the accused persons. In cross examination of these witnesses, testimonies of witnesses have remained firm and could not be shaken by detailed cross examination. All the witnesses have categorically proved the date, time and the factum of recovery of two pieces of ivory from the possession of respondent/accused Umesh Tripathi & Prem Kumar and Om Parkash(since deceased). They have also identified the case property shown to them, to have been the 'recovered two pieces of ivory', recovered from possession of accused persons/respondents, hence the

Q. A NO. 73/13

Page 6 of 11 pages

ATTESTED
D 06/05/2014
EXAMINER

testimonies of PW-1 to PW-5 categorically prove the recovery of the two pieces of ivory from respondents/accused persons.

9. As regards the observations of Ld Trial Court in respect to the examination of public witnesses, I am of the opinion that though it is always appreciated that public witnesses are joined in the investigation in order to prove the truthfulness of the investigation but it does not mean that in any case where there are no public witness joined, the case will always be a false case. Even the judgments relied upon by Ld Trial Court does not say that in the absence of any independent witness, the evidence of official witness is to be disbelieved completely. It has also been held by Hon'ble Supreme Court in **Ajmer Singh Vs State of Haryana, 2010 (2) RCR, CrI. 132** that non joining of independent witness is not fatal to the prosecution case particularly when efforts were made by the investigating party to join public witness but none was willing. It was held that accused cannot be acquitted merely because no independent witness was produced.
10. Even otherwise in the present case PW-1 K N Singh, PW-2 Ashok Kumar who is a Wild Life expert and PW-5 K N Thakur are independent witnesses. There is no allegations of the defence about there being any animosity or reason for falsely implicating accused persons/respondents herein by these



G.A. NO. 73/13

Page 7 of 11 pages

ATTESTED
06/05/2014
EXAMINER

witnesses or even by the police. Ld Trial Court has also given too much stress on the point that artificial pieces of ivory are available in the market. Mere fact that artificial pieces of ivory may be available in the market does not prove that pieces of ivory recovered from the possession of accused persons in the present case was artificial. In the detailed cross examination testimonies of prosecution witnesses have not been controverted or shaken by the defence counsel. No suggestion was given to the witnesses of complainant that the ivory pieces produced in court are artificial. The only suggestion given is that it is a planted case on accused persons. Thus the genuineness of pieces of ivory was not doubted even by the accused persons. Correctness of recovered two pieces of ivory and its exhibition in court is also proved by prosecution witnesses, as discussed earlier. Hence, I am of the opinion that the Ld Trial Court had based his order of acquittal on incorrect appreciation of evidence. Competence of PW-1, PW-2 and PW-5 can not be doubted, considering the nature of job and experience.

11. The defence witnesses examined by the accused persons in support of the case of accused persons have also not been able to prove the innocence of the accused persons. DW-1 had not identified any accused persons to have been arrested by police



CrA NO. 73/13

Page 8 of 11 pages

ATTESTED
[Signature]
 06/05/2014.
 EXAMINER

on 12.07.2000 hence his testimony is not reliable. DW-2 is in respect to accused Om Parkash, who had expired, hence not relevant for present purpose. DW-3 Om Parkash has stated that on 12.07.2000 ie one day prior to incident, accused Umesh Tripathi was forcibly taken in a van from Bhajanpura bus stand at 6-7 p.m. In cross examination by Ld Additional PP had admitted that he has deposed at the instance of one Shyam Babu and personally he does not know accused Umesh Tripathi. Though he has stated that he is a law abiding citizen but he did not lodge any complaint to the police nor to any higher authority to inform that the accused persons have been wrongly apprehended neither he informed the family members of the accused. Hence his deposition appears to have been made at the instance of accused Umesh Tripathi and cannot be believed to be correct.

12. In view of my above discussion, I am of the opinion that Ld Trial Court has not rightly appreciated the evidence. The testimonies of the witnesses, who are senior officer in the wildlife department and have no reason of having any grudge against the accused persons to implicate them falsely in the case are reliable. In the present case witnesses have clearly identified the pieces of ivory which were recovered from the possession of the accused persons. The signatures appearing on



Cr. A NO. 73/13

Page 9 of 11 pages

EXAMINED
 05/05/2014
 EXAMINER

the pieces of ivory have also been identified by both the witnesses, mere fact that pieces of ivory were not sealed, can not be made basis of acquittal of accused persons, as it can only be said to be an irregularity , which is not fatal to the case of prosecution.

13. Even otherwise it is settled preposition of law that on mere technical grounds accused is not to be acquitted unless it has specific bearing or affect the root of the case. In the case **Chittranjan Das vs State of West Bengal, 1963 SCR 237-** it was held:

“that undue emphasis on mere technicalities in respect of matters which are not vital or of important significance in a criminal trial, may sometime frustrate the ends of justice. Any irregularity or even illegality during investigation should not be treated as a ground to reject the prosecution and that corroboration of evidence with mathematical niceties cannot be expected in criminal cases.

14. In view of above observations, I am of the opinion that Ld Trial Court has not appreciated the evidence properly and impugned order dated 23.04.2013 is set aside. Appellants/accused persons are convicted under section 40(2),



Cr. A NO. 73/13

Page 10 of 11 pages

ATTESTED
[Signature]
26/05/2014
EXAMINER

91

49, 49 B (1) read with section 39 of the Wildlife (P) Act, 1972 which is punishable u/s 51 Wildlife (P) Act, 1972.

ANNOUNCED IN THE OPEN COURT
ON 2nd , May , 2014.

-SJ
(SHAIL JAIN)
ADDL. SESSIONS JUDGE (CENTRAL)
DELHI



Wildlife vs. Umesh Tripathi
06/05/2014

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ATTESTED
06/05/2014
EXAMINED

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06/05/2014

06/05/2014
06/05/2014

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IN THE COURT OF MS SHAIL JAIN: SPECIAL JUDGE:
NDPS: 02: CENTRAL DISTRICT: TIS HAZARI : DELHI

Cr. A NO. 73/13

Wildlife

Through

S. R. V Murthy, Deputy Director

Wildlife Crime Control Bureau (NR)

Ministry of Environment and Forests

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R/o 5/37, Sector-2, Rajinder Nagar

Sahibabad, Ghaziabad

now, shifted to 71, Old Anarkali

Krishna Nagar, New Delhi.

.....RESPONDENT

ORDER ON SENTENCE.

25/04/2014

Present: Shri Subhash Chauhan, Addl.PP for the State.

Convicts in person with counsel Shri Kashish
Batra.

Shri Atul Bhardwaj along with Wildlife Inspector
B. S. Khati.

I have heard submissions on the point of sentence.

It is submitted by Ld Addl. PP that convicts were found

Page 1 of 3 pages



08/05/14
EXAMINER

93

in possession of two pieces of ivory and requests for maximum punishment as prescribed in the Act.

On the other hand, on behalf of Umesh Tripathi, Ld defence counsel had argued that he is 55 years old. He is doing the work of salesman and earning about Rs.8,000/- per month. Further, wife of convict is chronic patient of arthritis and is not in a position to move about properly. He is not involved in any other case. He is facing trial in this case for the last 14 years and he is regularly attending the Hon'ble court. Hence lenient view may kindly be taken in view of his poor financial condition and medical condition of his wife.

On behalf of convict Prem Kumar Sharma, it is argued by Ld defence counsel that he is earning Rs.8,000/- per month and is doing private job. Parents of convict Prem Kumar Sharma are senior citizen and suffering from various ailments. Convict has young children to take care and there is no other earning member in the family. He is not involved in any other case. He is facing trial in this case for the last 14 years and he is regularly attending the Hon'ble court. Hence

Page 2 of 3 pages



ATTESTED
08/05/19
EXAMINER

99

lenient view may kindly be taken in view of his poor financial condition and medical condition of his father, who is blind.

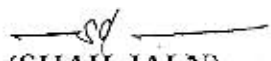
I have considered the arguments advanced by Ld counsel for the parties and the trial court record.

The convicts were found in possession of two pieces of ivory. Considering the family circumstances and previous antecedents, convicts are sentenced to undergo SI for two years for the offence u/s 40 (2), 49 49 B (1) read with section 39 of the Wild Life (P) Act which is punishable u/s 51 of Wild Life (Protection) Act and to pay a fine of Rs.15,000/-each, in default SI for six months. Benefit of section 428 Cr.P.C be given to convicts.

Copy of the judgment and copy of order on the point of sentence be given to the convict free of cost.

File be consigned to record room.

ANNOUNCED IN THE OPEN COURT
ON 06.05.2014.


(SHAIL JAIN)
SPECIAL JUDGE
NDPS: 02: (CENTRAL)
DELHI



ATTESTED

EXAMINER