IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

Criminal Appeal Nos. 283, 311, 312, 313 and 314 of 2011
Date of Decision: 22.8.2026

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1. Criminal Appeal No. 283 of 2011

Kushal Singh
.....Appellant

Versus

State of Himachal Pradesh
.....Respondent

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2. Criminal Appeal No. 311 of 2011

Brij Lal
.....Appellant

Versus

State of Himachal Pradesh
.....Respondent

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3. Criminal Appeal No. 312 of 2011

Bihari Lal
.....Appellant

Versus

State of Himachal Pradesh
.....Respondent

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4. Criminal Appeal No. 313 of 2011

Khub Ram
.....Appellant

Versus

State of Himachal Pradesh
.....Respondent

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5. Criminal Appeal No.314 of 2011

Brij Lal
.....Appellant

Versus

State of Himachal Pradesh
.....Respondent

Coram
Hon'ble Mr. Justice Sandeep Sharma, Judge.
Whether approved for reporting?

High Court of H.P.

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For the appellant(s): Ms. Sheetal Vyas and Ms. Tejasvi Thakur, Advocates.

For the respondents: Mr. Rajan Kahol & Mr. Vishal Panwar, Additional Advocates General and Mr. Ravi Chauhan, Deputy Advocate General.

Sandeep Sharma, J. *(Oral)*

By way of instant appeals, challenge has been laid to judgment dated 22.7.2011 passed by learned Additional Sessions Judge, Mandi, H.P. in Criminal Appeal No. 26/2007, titled "State of H.P. v. Bihari Lal and Ors.", reversing the judgment of acquittal dated 11.5.2007 passed by learned Judicial Magistrate-II, Court No. 2, Sundernagar, District Mandi, H.P. in Police Challan No. 741-I/2002/ 315-II/2002 (Old), 208-I/2006/197-II/2006 (New), whereby the learned trial Court acquitted the appellants-accused (in short the "accused") for their having allegedly committed offences punishable under Sections 41 and 42 of Indian Forest Act and Section 379 of IPC.

2. Since common questions of facts and law are involved in the above captioned appeals and all the appeals are directed against common judgment dated 22.7.2011, this Court after having clubbed them together, heard the same together and are now being disposed of vide this common judgment.

3. Quintessential facts, which are common in all the cases are that SI/SHO Dalip Singh, ASI Madan Lal (PW-6), ASI Chet Ram (PW-7), Constable Nand Lal and HHC Gulab Singh, who were present at Rehan Galu on 27.9.2002, in vehicle bearing registration No. HP-

High Court of H.P.

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33-2470, being driven by Constable Lalman, signaled a Jeep bearing registration No. HP-31-3640 coming from Gohar side to stop. Five persons were found to be sitting in the above said vehicle and the driver revealed his name as Bihari Lal, whereas other persons revealed their names as Kushal Singh, Khub Ram, Brij Lal son of Kehar Singh and Brij Lal son of Bholu Ram. The vehicle was checked and was found containing 46 scants of different sizes of Kail wood. Though driver was asked to produce permit for transportation of the said wood, but since the accused failed to produce the same, police seized the vehicle and timber vide recovery memo Ex. PW-6/A. Accused Bihari Lal also produced documents of the vehicle, which were seized vide seizure memo Ex. PW-6/A. Rukka was sent to Police Station through Constable Nand Lal, on the basis of which, FIR Ex. PW-4/A was registered in the Police Station. SI/SHO Daleep Singh conducted the investigation, wherein accused Bihari Lal made a disclosure statement to the effect that he could show the place from where timber was loaded by him. He took the police to the place from where the timber was loaded, on which basis, recovery memo Ex. PW-1/A was prepared. The vehicle and the timber were handed over on sapurdari to Jai Singh (PW-2), Forest Guard, vide memo Ex. PW-2/A. Value of the timber was assessed through Jai Singh, who submitted report Ex. PW-2/B. Police after having completed the investigation and recording the statements of the witnesses, prepared the challan and submitted

High Court of H.P.

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the same before the learned trial Court. Learned trial Court finding sufficient reasons to frame charge against the accused for offences punishable under Section 379 read with Section 34 IPC and Section 42 of Indian Forest Act, charged all the accused for the aforesaid offences, to which they pleaded not guilty and claimed trial.

4. Prosecution in order to prove its case examined 7 witnesses, whereas accused in their statements recorded under Section 313 CrPC, denied the prosecution case in its entirety and claimed that they had been falsely implicated, however, no evidence was led in defence. Learned trial Court on the basis of evidence led on record by the prosecution, acquitted the accused for their having committed offence punishable under Sections 41 and 42 of Indian Forest Act and Section 379 read with Section 34 IPC.

5. Being aggrieved and dissatisfied with the judgment of acquittal, respondent-State preferred an appeal in the Court of learned Additional Sessions Judge, Mandi, which came to be partly allowed vide judgment dated 22.7.2011. Learned Additional Sessions Judge though upheld the acquittal of the accused under Section 379 IPC, but held them guilty under Sections 41 & 42 of Indian Forest Act and accordingly convicted and sentenced them to undergo simple imprisonment for six months and to pay a fine of Rs. 1000/- each and in default of payment of fine, to undergo simple imprisonment for one month for the commission of offence punishable under Section 42 of

High Court of H.P.

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Indian Forest Act. In the aforesaid background, appellant-accused have approached this Court in the instant proceedings, praying therein to set aside the judgment of conviction and order of sentence passed by the learned Additional Sessions Judge and restore the judgment of acquittal recorded by the learned trial Court.

6. Precisely, the grouse of accused as has been highlighted in grounds of appeal and further canvassed by Ms. Sheetal Vyas, learned counsel representing them, is that once the prosecution was unable to produce the factum of theft, if any, committed by the accused coupled with the fact that they were acquitted under Section 379 IPC, which finding was further upheld by the learned Additional Sessions Judge, there was no occasion for the learned First Appellate Court to convict them under Sections 41 and 42 of Indian Forest Act. She further submitted that there are material contradictions, embellishments and improvements in the statements of the material prosecution witnesses and as such, same could not have been taken into consideration for ascertaining the guilt of the appellants-accused under Sections 41 and 42 of the Act. She further submitted that none of the independent witnesses associated by the prosecution supported the case of the prosecution in entirety, rather they, instead of corroborating the statements of each other, contradicted each other on material points, which cannot be brushed aside by terming them as mere discrepancies or forgetfulness due to lapse of time. She submitted that

High Court of H.P.

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there are discrepancies and contradictions in the FIR and the statements of witnesses go to the root of the case. Ms. Vyas, submitted that genesis of the incident, the place of incident and the manner in which incident took place were not found to have been established by cogent and credible prosecution evidence, therefore, in the given facts and circumstances of the case and nature of evidence tendered by the prosecution, there was no occasion for the learned Court below to convict the accused. Lastly, Ms. Vyas, further submitted that all the prosecution witnesses were interested in the success of the case set up by the prosecution and were therefore interested witnesses, as such version put forth by them was required to be taken into consideration with utmost caution.

7. To the contrary, Mr. Vishal Panwar, learned Additional Advocate General, supported the impugned judgment and submitted that the prosecution has proved beyond reasonable doubt that the accused were transporting the timber without any valid permit and failed to produce any permit to transport the timber. Burdon was upon the accused to establish that timber belonged to Dolma Devi, being holder of TD Rights. He argued that since there was no evidence that timber belonged to Dolma Devi, hence no illegality or infirmity can be said to have been committed by the learned first Appellate Court, whereby accused came to be held guilty of having committed offence punishable under the aforesaid provisions of law. He fairly admitted

High Court of H.P.

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that acquittal of the accused under Section 379 IPC recorded by the learned trial Court, which was upheld by the learned Additional Sessions Judge, never came to be challenged by the respondent-State, as a result thereof, such finding has attained finality.

8. It is well settled that Appellate Court can re-appreciate the evidence and come to its own conclusion, but certainly it should not interfere with the judgment of acquittal passed by the learned trial Court lightly. Where two views are possible and learned trial Court had taken a view, which was possible, the Appellate Court cannot interfere with the order of acquittal even if the Appellate Court is of the opinion that the view taken by the trial Court is erroneous.

9. Admittedly, in the case at hand, accused were transporting the timber. Though, accused attempted to set up a case that timber belonged to Dolma Devi and the same was being taken to sawmill, but such fact could not be proved in accordance with law. It came in the statement of PW-6 ASI Madan Lal that accused Bihari Lal told at the spot that timber belonged to Dolma Devi and was taking it to sawmill. It has also come in the statement of PW-7 ASI Chet Ram that Bihari Lal told that he was transporting timber of Dolma Devi to sawmill. The accused attempted to set up a case that the timber belonged to Dolma Devi and same was being transported on her behalf. Learned trial Court relying upon aforesaid evidence found that no offence punishable under Section 42 of Indian Forest Act is made

High Court of H.P.

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out, however learned Additional Sessions Judge, Mandi in an appeal filed by respondent-State reversed the aforesaid finding. Rule 11 of H.P. Forest Produce Transit (Land Routes) Rules, 1978 clearly provides that forest produce cannot be transported without obtaining a pass from the concerned Forest Officer. However, the said provision is subject to two exceptions as provided under Rules 6 and 17. Under these Rules, where a right holder is transporting the forest produce within the concerned revenue estate in consequence of a grant, he is not required to affix a mark. Rule 17 exempts right holder from obtaining the pass. As per aforesaid Rules, a person is not required to have pass if he has collected forest produce in exercise of recorded rights and the forest produce is being transported within the revenue estate in which it was so collected. Further, such timber is required to bear a hammer mark and detail of the timber has to be mentioned in the permit. Before claiming the benefit of exemption, a person has to prove that transport of timber was within same revenue estate and it was being transported by the right holder as a grant of timber in his favour. However, in the instant case, careful perusal of the evidence led on record nowhere suggests that evidence was led on record by the defence to prove the plea that timber was extracted in exercise of recorded rights and was being transported within the same revenue estate. Though the accused in their statements recorded under Section 313 CrPC stated that timber was being transported within the same

High Court of H.P.

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revenue estate on behalf of Dolma Devi, but said Dolma Devi, on whose behalf the timber was being transported, was not examined. Similarly, the fact that timber was granted to Dolma Devi was not established by producing any document. Hence, the learned Additional Sessions Judge rightly interfered with the judgment passed by the learned trial Court.

10. True it is that as per law, if the timber is transported within the same forest division, no permit is required for the same, but same should also have a hammer mark. In the instant case, timber was not having any hammer mark. Similarly, there is no evidence on record to show that from which place to which place, timber was being transported. It was argued on behalf of the accused that burden was upon the prosecution to prove that timber was being transported outside the revenue division, but this Court is not persuaded to accept the aforesaid submission raised by learned counsel representing the appellant-accused. Rule 11 clearly prohibits the transport of forest produce without a permit. Rules 6 and 17 are in the nature of exceptions to the said Rule. Section 105 of the Indian Evidence Act clearly provides that burden of proving the exception is upon the accused and the Court shall presume the absence of any such circumstances. Hence, burden was upon the accused to prove that timber was being transported within the same revenue estate and the prosecution was only required to prove that timber was being

High Court of H.P.

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transported. In the instant case, PW-6 ASI Madan Lal and PW-7 ASI Chet Ram deposed that while police party had set up a naka and it signaled the vehicle bearing registration No. HP-31-3640 coming from Gohar side to stop, the vehicle was stopped and therein five persons, namely Bihari Lal, Kushal Singh, Khub Ram, Brij Lal son of Bholu Ram and Brij Lal son of Kihar Singh were present in the Jeep. These witnesses further stated that 46 scants of Kail wood were being transported in the said Jeep and there was no hammer mark on the timber. Suggestions were put to these witnesses that Bihari Lal told that scants of timber belonged to Dolma Devi and these were being transported to sawmill, however, they denied such fact. They further denied that they had visited the house of Dolma Devi to verify this fact. Having perused the cross-examination conducted upon these witnesses in their entirety, this Court finds that factum with regard to presence of all the accused in the vehicle in question was not disputed. It was also not disputed that accused were transporting the timber, rather, a suggestion came to be put that timber belonged to Dolma Devi, but as has been noticed hereinabove, no evidence was led to establish this fact. Prosecution proved beyond reasonable doubt that accused were transporting the timber in vehicle and they failed to produce any permit to transport the timber.

11. Similarly, once accused were found in possession of the forest produce, the presumption that forest produce belongs to State of

High Court of H.P.

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H.P. can be safely applied and in that situation, accused rightly came to be held liable for commission of the offence. Since prosecution proved beyond reasonable doubt that the timber in question was being transported without a valid permit, no illegality can be said to have been committed by learned Additional Sessions Judge while reversing the judgment of acquittal recorded by the Court below, which had proceeded to acquit the accused under Sections 41 and 42 of the Act on the presumption that there was no requirement of permit to transport the vehicle within one revenue estate. As per rule, though there is no requirement to obtain permit for transportation of timber within one division, but the timber proposed to be transported should have been hammer marked. In the instant case, defence was not able to point out that from which place to which place timber was to be transported and that on account of fact that the transportation was to be done within one revenue estate, there was no requirement of having a permit.

12. Rule 11 of the Rules provides that no person shall transport or cause to be transported any forest produce, except kuth or forest produce obtained from poplar, eucalyptus, bamboo and mulberry by land routes without obtaining a pass from the concerned Divisional Forest Officer or any other officer if authorized. Though as per aforesaid provision of law, no forest produce can be transported without obtaining a pass from the concerned Forest Officer, but such

High Court of H.P.

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prohibition is subject to two exceptions as provided under Rules 6 and 17. No mark is required to be imprinted on any timber, which is being transported within the concerned revenue estate only by a right holder in consequence of a grant, he/she is not required to affix a mark. Similarly, Rule 17 exempts right holder from obtaining the pass. However, in the instant case, accused were unable to prove that the timber was being transported on behalf of Dolma Devi, who was never examined. Similarly, no document worth credence was produced on record to show that timber was granted to Dolma Devi. Since Dolma Devi never entered in the witness box coupled with the fact that she never made any complaint with regard to theft, if any, of 46 scants of timber, the Court below rightly acquitted the accused under Section 379 IPC, but since there is overwhelming evidence led on record to the effect that at the time of occurrence, offending vehicle was carrying 46 scants of Kail wood without there being any permit, no illegality can be said to have been committed by learned Additional Sessions Judge while reversing the judgment of acquittal recorded by the learned trial Court.

13. Though this Court sees no reason to interfere with judgment of conviction and order of sentence recorded by learned Sessions Judge, but having taken note of the fact that incident had taken place approximately 23 years back and during the afore period sword of being convicted was hanging on the head of accused

High Court of H.P.

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continuously, this Court deems it fit to consider prayer made on behalf of appellants for extension of benefit of Section 4 of Probation of Offenders Act.

14. The mitigating circumstance in this case is that approximately, more than 23 years have been passed after the incident and fifteen years have passed after passing of the judgment of conviction dated 22.7.2011 and the accused has already suffered much agony during the pendency of the appeal in the court of learned Sessions Judge as well as in High Court of Himachal Pradesh. Reliance is placed upon the judgment passed by this Hon'ble Court in ***Yudhbir Singh*** *versus* ***State of Himachal Pradesh 1998(1)S.L.J. 58***, wherein it has been held as under:

> "9. The only mitigating circumstance that appears to be there is that the time gap of about six years between the date of occurrence as well as the date of decision of this revision petitioner. During this entire period sword of present case looming over the head of the petitioner was always there. That being so, this court is of the view that instead of sending the petitioner to jail as ordered by the courts below, he is given the benefit of Section 4 of the Probation of Offenders Act. Accordingly, it is ordered that he shall furnish personal bond in the sum of Rs. 5,000/- to the satisfaction of the trial Court within a period of four weeks from today to keep peace and to be of good behavior for a period of one year from the date of execution of the bond before the court below as well as not to commit any such offence. In addition to being given benefit of Section 4 of the Probation of Offenders Act, petitioner is further directed to pay a sum of Rs. 3,000/- each to PWs Baldev Singh

High Court of H.P.

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and Dilbagh Singh injured as compensation. Shri R.K. Gautam submitted that this amount of compensation be deposited with the trial Court on or before 31.8.1997, who will thereafter pay the same to said persons."

15. In this regard, reliance is also placed upon Hon'ble Apex Court judgment ***Ramesh Kumar @ Babla versus State of Punjab 2016 AIR (SC) 2858***, wherein it has been held as under:

"7. Accordingly the appeal is allowed in part by converting appellant's conviction under Section 307 IPC to one under Section 324 IPC. On the question of sentence, it is pertinent to note that the occurrence took place in 1997. In his statement under Section 313 of the code of Criminal Procedure the appellant gave his age in 2002 as 36 years. He claimed that he and others went to the place of occurrence on getting information that his brother Sanjay Kumar was assaulted by Ramesh Kumar (Complainant). He brought his brother to Police Station and lodged a report. As noticed by trial court, parties are involved in civil as well as criminal litigation from before. High Court has noted that appellant, as per custody certificate, is not involved in any other case. In such circumstances, it is not deemed necessary to send the appellant immediately to Jail custody after about 19 years of the occurrence when he appears to be 50 years of age and fully settled in life.

8. In view of aforesaid, in our view the ends of justice would be met by granting benefit of Probation of Offenders Act to the appellant. We order accordingly and direct that the appellant be released on executing appropriate bond before the trial court to appear and receive sentence of rigorous imprisonment for 1 (one) year when called upon to do so and in the meantime to keep the peace and be of good behaviour."

High Court of H.P.

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16. The reliance is also placed upon the Hon'ble Apex Court judgment ***Hari Kishan and State of Haryana versus Sukhbir Singh 1988 AIR (SC) 2127***, wherein it has been held as under:

> "8. The question next to be considered is whether the accused are entitled to the benefit of probation of good conduct? We gave our anxious consideration to the contentions urged by counsel. We are of opinion that the High Court has not committed any error in this regard also. Many offenders are not dangerous criminals but are weak characters or who have surrendered to temptation or provocation. In placing such type of offenders, on probation, the Court encourages their own sense of responsibility for their future and protect them from the stigma and possible contamination of prison. In this case, the High Court has observed that there was no previous history of enmity between the parties and the occurrence was an outcome of a sudden flare up. These are not showing to be incorrect. We have already said that the accused had no intention to commit murder of any person. Therefore, the extension of benefit of the beneficial legislation applicable to the first offenders cannot be said to be inappropriate.
>
> 9. This takes us to, the third questions which we have formulated earlier in this judgments. The High Court has directed each of the respondents to pay Rs.2500/- as compensation to Joginder. The High Court has not referred to any provision of law in support of the order of compensation. But that can be traced to section 357 Criminal Procedure Code Section 357, leaving aside the unnecessary, provides:-
> "357. Order to pay compensation:

High Court of H.P.

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(1) When a court imposes a sentence of fine or a sentence (including a sentence of death) of which fine forms a part, the Court may, when passing judgment, order the whole or any part of the fine recovered to be applied-

(a) in defraying the expenses properly incurred in the prosecution;

(b) in the payment to any person of compensation for any loss or injury caused by the offence, when compensation is in the opinion of the Court, recoverable by such person in a civil Court;

Xxxxxxxxxxxxxx

Xxxxxxxxxxx

Xxxxxx

(3) When a Court imposes a sentence, of which fine does not form a part, the Court may, when passing judgment, order the accused person to pay, by way of compensation. Such amount as may be specified in the order to the person who has suffered any loss or injury by reason of the act for which the accused person has been sentenced.

(4) An order under this section may also be made by an Appellate Court or by the High Court or Court of Session when exercising its power of revision.

(5) At the time of awarding compensation in any subsequent civil suit relating to the same matter, the Court shall take into account any sum paid or recovered as compensation under this Section.

11. The payment by way of compensation must, however, be reasonable. What is reasonable, may depend upon the facts and circumstances of each case. The quantum of compensation may be determined by taking into account the nature of crime, the justness of claim by the victim and the ability of accused to pay. If there are more than one accused they may be asked to pay in

High Court of H.P.

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> equal terms unless their capacity to pay varies considerably. The payment also vary depending upon the acts of each accused. Reasonable period for payment of compensation, if necessary by installments, may also be given. The Court may enforce the order by imposing sentence in default."

17. Consequently, in view of the detailed discussion made herein above, this Court finds no merit in the instant appeals and accordingly, the same are dismissed, as a result of which, judgment dated 22.7.2011 passed by the learned Additional Sessions Judge, Mandi, is upheld. However, in view of the aforesaid law as well as submissions having been made by the learned counsel appearing for the accused with regard to extension of benefit under Probation of Offenders Act and after taking into consideration the facts and circumstances of the present case, I am of the considered opinion that the accused can be granted benefit of Section 4 of the Probation of Offenders Act, 1958, subject to payment of adequate compensation, which would be determined after the receipt of the report of Probation Officer.

18. Accordingly, Registry is directed to call for the report of the Probation Officer, Mandi District Mandi, H.P., within six weeks and list this matter on **4.11.2026.**

August 22, 2026 **(Sandeep Sharma),**
manjit **Judge**

High Court of H.P.

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