



The Court of JM 1st Class, Ramgarh

Present: Smriti Tripathi

Judicial Magistrate

20th February, 2023

District: Ramgarh

G.R. Case No. 975/2018

CNR No. JHRG030037552018

Mandu(Kujju) PS Case No. 292/2018

Informant	State (through Shivshankar Jamadar, I/C Kujju OP)
Represented By	<i>Smt. Manju Kachchap, Id. APP</i>
Accused	Kamlesh Kumar s/o Sodagar Prasad @Mahendra Prasad, male, aged about 30 years, r/o Bherwa, PS Fatehpur, District Gaya (Bihar) [A1]
Represented By	<i>Sri Manish Kumar, Id. Advocate</i>

Date(s) of Offence	08.10.2018
Date of FIR	08.10.2018
Date of Chargesheet	22.12.2018
Date of framing of charge	02.02.2019
Date of Commencement of evidence	16.02.2019
Date when Judgment is reserved	06.02.2023
Date of Judgment	20.02.2023
Date of Sentencing Order, if any	N/A

Rank of the Accused	Name of the Accused	Date of Arrest	Date of Release on Bail	Offences charged with	Whether acquitted or convicted	Sentence Imposed	Period of detention undergone during trial for purpose of s. 428, CrPC
A1	Kamlesh Kumar	24.10.2018	28.02.2019	s.414/34 of IPC, 30(2) of CM Act & 33 of IF Act.	Acquitted	None	N/A

J U D G M E N T

1. The afore-named accused person (Hereinafter referred to as "**A1**") is facing trial for charges framed u/s. 414/34 of The Indian Penal Code, 1860 (Hereinafter referred to as the "**IPC**"), s. 33 of the Indian Forest Act, 1927 (Hereinafter referred to as the "**IF Act**"). and s. 30(2) of The Coal Mines (Nationalization) Act, 1973 (Hereinafter referred to as the "**CM Act**").

PROSECUTION CASE

2. The compendious case of the prosecution, as sourced from the self-statement of SI Shiv Shankar Jamadar, I/C of Mandu(Kujju) OP, (hereinafter referred to as the "**informant**") is that on 08.10.2018 at about 3:00 AM, he received secret information, that near Kujju Diversion near Shani Mandir, illegally mined coal was being loaded on trucks by coal smugglers to sell them in the local market for profit. Upon this, he registered '*Sanah*' and proceeded towards the place of alleged incident alongwith other police personnel namely Shamshad Ansari, Suman Kumar Thakur, Ajit Kumar Mahto. After reaching there at about 3:30 AM, they saw that some persons were running away from bushy-forest area, and even after being chased, they succeeded in running away towards the forest, taking advantage of the dark night. Upon search, one truck hiding in the bushes, bearing registration no. BR27A-7699, loaded with 20 tones of illegal coal was seized in presence of two police constables namely Suman Kumar Thakur and Ajit Kumar Mehta and accordingly, seizure-list was prepared. Hence, this case was registered against A1 for illegal mining of coal, to sell it in the local market for own profit, which caused revenue loss to the CCL authority.

FROM INVESTIGATION TILL TRIAL

3. After Investigation, the Investigating Officer submitted **charge-sheet** bearing no. 201/18 dated 22.12.2018 against accused A1 for the offence u/s. 414/34 of IPC, s. 30(2) of CM Act & s. 33 of IF Act and thereafter, **cognizance** was taken under the same sections by the then court on 04.01.2019.

4. After supplying police papers to A1, on 02.02.2019 **charge was framed** u/s. 414/34 of IPC, s. 30(2) of CM Act & s. 33 of IF Act against A1 and the content of the charges was read over to him in simple Hindi to which he pleaded not guilty and claimed to be tried.

5. After closing the prosecution evidence on 18.08.2022, the material against A1 was put to him and his **statement** was recorded u/s. 313 of CrPC on 22.09.2022 in which he denied the material available against him and claimed to be innocent.

6. Thereafter, the defence was provided with an opportunity to adduce evidence on its behalf, if any but the Id. counsel for the defence submitted that he does not want to adduce any evidence. Upon his prayer, the defence evidence was closed and the matter was posted for arguments.

ARGUMENTS ADVANCES

7. The prosecution argued that the case has been supported by the witnesses beyond reasonable doubt which warrants conviction of A1. It was further submitted that A1 is the driver of alleged truck bearing registration no. BR27A-7699 who used to supply illegal coal

through his vehicle. Further, that coal is nobody's private property, rather it is a national resource and when one cannot produce relevant paper work relating to it, the presumption is that it has been stolen or illegally mined. Further submitting that the prosecution has been able to prove this presumption, prayer was made to convict A1.

8. The defence on the other hand argued that a false case has been lodged and no offence as alleged is made out from the deposition of the witnesses. It was further urged that PS Case No. is entered in the seizure list whereas the informant says that it was prepared at the spot. Further, that there is no theft report of the said coal which is available on record, and the same has been deposed by PW01. It was also submitted that this is a case wherein the allegations were that coal was also illegally mined but PW01 has deposed that no tools regarding it were recovered. It was finally argued that no one has identified A1. PW02 has rather deposed that he has no knowledge as to who was the owner and driver of the said truck and coal. Basing upon this, it was submitted that the prosecution has failed to prove the guilt of A1 beyond reasonable doubt.

POINTS FOR CONSIDERATION

9. Now, the Court will consider as to whether the prosecution has been able to substantiate the charges s. 414/34 of IPC, 30(2) of CM Act & 33 of IF Act levelled against A1 beyond reasonable doubt or not. On the bedrock of the charges framed, the prosecution case will be examined on the following touchstones for the sake of a more structured analysis:

9.1 Whether A1 shared common intention and voluntarily assisted in concealing 20 tones coal in the vehicle knowing or having reason to believe that it was stolen property?

9.2 Whether A1 extracted coal from mines illegally without having any permit order from the competent authority?

9.3 Whether A1 was carrying illegal coal; which is a forest produce, on his truck?

EVIDENCES

10. Before the court dwells to consider the points of determination as stated above, it would be apt to enlist the evidences brought in this case by all sides for the sake of brevity and proper reference, reference to only the relevant portions of which is made at relevant parts of this judgment, although they have all been perused by this court in detail. They are:

List of Prosecution/Witnesses

A. Prosecution:

Rank	Name	Nature of Evidence
PW01	Shiv Shankar Jamadar	Interested Witness [Informant]
PW02	Md. Shamshad Ansari	Official Witness [Raiding Team Member]
PW03	Suman Kumar Thakur	Formal Witness [Seizure List Witness]

PW04	Ajit Kumar Mehta	Formal Witness [Seizure List Witness]
PW05	Dharamdeo Singh	Official Witness [Investigating Officer]

B. Defence:

Rank	Name	Nature of Evidence
--- nil ---		

List of Prosecution/Defence/Material Exhibits**A. Prosecution:**

Sr. No.	Exhibit Number	Description
1.	Ext.1	Seizure list
2.	Ext.2	Written report
3.	Ext.3	Forwarding
4.	Ext.4	Endorsement
5.	Ext.5	Formal FIR
6.	Ext.P1/1/PW3	Signature on seizure list
7.	Ext.P1/2/PW3	Signature on seizure list

B. Defence:

Sr. No.	Exhibit Number	Description
--- nil ---		

C. Material Objects:

Sr. No.	Exhibit Number	Description
--- nil ---		

FINDINGS

11. *Whether A1 shared common intention and voluntarily assisted in concealing 20 tones coal in the vehicle knowing or having reason to believe that it was stolen property?; Whether A1 extracted coal from mines illegally without having any permit order from the competent authority?; Whether A1 was carrying illegal coal; which is a forest produce, on his truck?*

11.1 PW01, the informant fully corroborated the contents of his written statement forming the basis of this case. On his identification, Exts. 1-5 were exhibited. In his cross-examination, he deposed that no complaint was lodged regarding theft of the seized coal. He expressed his inability to identify the persons who fled from the spot. He was unable to describe the boundaries of the place of incident. He finally deposed that no instrument/weapon related to mining or loading the coal was recovered from the place of the alleged incident.

11.2 PW02 also supported the prosecution case but deposed that as they had not seen the person fleeing away, he cannot identify him. In his cross-examination, he

deposed that he has no information about the alleged incident as he was assisting the raiding party as per the instruction of in-charge Kujju OP. In para 6 he clearly deposed that he has no information relating to the alleged truck and its driver and that the seized coal was not weighed before him.

11.3 PW03 also corroborated the statements of PW02 and PW01 and the contents of the FIR. However, he also deposed that he could not identify the person who ran away that day as he did not arrest him. In his cross-examination, he deposed that he put his signature on the seizure-list at the place of the alleged incident as per the instructions of his senior official PW05. Further, that the seized coal was not weighed before him and that no instrument/weapon was seized from the place of the alleged incident and he did not see anyone there.

11.4 PW04, in addition to what PW03 deposed, deposed in his cross examination that there was only one truck at the place of the alleged incident and that he has deposed the weight of the seized coal by estimation. He also deposed that he had no knowledge as to regarding what he was signing the seizure-list.

11.5 PW05 deposed that the alleged occurrence took place on 08.10.2018 while he was posted at Kujju OP as an ASI and the then Kujju OP in-charge told him about the alleged incident and on the basis of this information, he alongwith other police personnel proceeded towards place of the alleged incident and saw some miscreants hiding behind the bushes who succeeded in fleeing away on account of the darkness and searched the alleged truck on which about 20 tons of coal was loaded but, no valid paper pertaining to the said coal could be found and no one appeared to produce the relevant papers. He then deposed the formal details of the investigation carried out by him. He then deposed that upon verification through of the documents pertaining to the seized coal, it was found that the invoice was forged and the same was not issued by the owner of Maa Kamakhya Traders namely Viraj Kumar and he also said that his GST No. was being used falsely for transporting coal. In his cross-examination, he deposed that on 08.10.18 at about 10:00 AM, he, alongwith other police personnel proceeded towards place of the alleged incident. He also deposed that no complaint was registered in any police station regarding the seized coal or truck and that no instrument was found at the place of the alleged incident. Also, that no independent witness was made a witness except the police officials. Finally, that he did not see anything at the place of the alleged incident except the said truck and that he has no knowledge by whom the said truck was brought to the concerned police station.

11.6 Thus, going through the prosecution evidence as a whole, it transpires that the

prosecution witnesses have overall supported the prosecution case. However, none of them have claimed to identify A1. The Investigating Officer, deposing as PW05 has deposed that it was when A1 surrendered before the court, as his truck was seized, Chargesheet was submitted against him. apart from this, there is not a single shred of evidence linking A1 to this case. There is nothing on record showing that the seized coal was indeed found on the truck which was seized or that it is illegal in nature. The documents of which PW05 has deposed which he states are forged, have also not been exhibited.

12. Thus, regard had to the materials placed before this court and the discussion made above, this court is of the considered opinion that the prosecution has failed to establish that A1 committed the alleged offence and has thereby failed to substantiate the charges u/s. 414/34 of IPC, 30(2) of CM Act & 33 of IF Act. Hence, A1 is hereby **acquitted** in this case. A1 as well as his respective bailors stand discharged from the liabilities of their respective bail bonds.

(Dictated and corrected)

Pronounced by me in open court

Sd/-

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(Smriti Tripathi)

JO Code: JH02021

JM 1st Class, Ramgarh

Ramgarh, dated the 20th February, 2023

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