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Decided on : 16-04-2025
Duration : 5 years 8 months 5 days

**IN THE COURT OF THE PRL. DISTRICT & SESSIONS
JUDGE, AT: CHITRADURGA**

Present: **Sri Ron Vasudev**, *B.Com,LL.B.(Spl)*
Prl. District & Sessions Judge,
Chitradurga

Dated this the 16th day of April, 2026

Crl.A.No.49/2020

Appellant/ Accused:	Nagaraja Naik S/o Sariyi Thippa Naik, Aged about 46 years, Agriculturist, R/o Panjayyanahatti Village, Bharamasagara Hobli, Chitradurga Taluk and District.
	(By Sri. P.M.Hanumantharaya, Advocate)

/versus/

Respondent/ Complainant:	State by Karnataka Forest Department, Forest Officer, Davanagere Range,
	(Learned Public Prosecutor)

JUDGMENT

This appeal is filed U/Sec.374(3) of CrPC questioning the conviction and order on sentence in C.C.No.952/2014, rendered by II Addl.Civil Judge & JMFC, Chitradurga on 23-07-2020. Through the said judgment the trial court has convicted the appellant for the offences punishable U/Ss.24(c)(ii), 24(g), 24(gg), 24(h), 64A, 73 of The Karnataka Forest Act 1963 and sentenced him to undergo simple

imprisonment for a period of two months and to pay compensation of Rs.20,000/- to the State Government.

2. The factual matrix of the case are that the Range Officer of Davanagere range has filed charge-sheet alleging that on 04-02-2014 when the DRFO and his men were on their routine patrolling duty they found axing of 12 eucalyptus trees and sinking of a borewell in Sy.No.46 of Arasuru village, part of Bevinahalli reserve forest, behind Kumbarakatte area. On enquiry the said forest officials came to know that all the said illegal acts are done by this appellant and having drawn the mahazar there in presence of panchas, a case was registered and after investigation charge-sheet has been filed for the offences mentioned above.

3. On receipt of the charge-sheet cognizance of offences was taken by the trial court and by issuing process to the accused, on his appearance it released him on bail and upon hearing the prosecution as well as accused it framed the charge and as he pleaded not guilty, prosecution examined PW.1 to 7 and got exhibited Ex.P.1 to P.27 and during the cross-examination of PW.5 Ex.D.1 was marked and over looking the said fact once again two more documents i.e., RTCs of Sy.No.46/P9 and 46/P10 have been marked as Ex.D.1 and D.2. On closure of the prosecution side appellant was examined U/Sec.313 of CrPC and after hearing the arguments of the appellant as well as the prosecution, the trial court has convicted and sentenced him as mentioned above.

4. Now impugning the said judgment of conviction and order on sentence the appellant is before this court by urging following grounds of appeal:

that the trial court has grossly erred in holding that the prosecution has proved the charges levelled against him; that when there are no eye witnesses regarding felling of and axing of 12 eucalyptus trees and sinking of borewell by him, only basis of assumptions and presumptions the said court has found him guilt of the offences alleged; that it has over looked the fact that he is also possessing land in the said survey number; that the said Sy.No.46 is a large extent and forest department is holding major portion of it and remaining part of that land is belonging to the revenue department and it has allotted the said remaining land to several persons and also that some other part of the said survey number is a Gomala land; that it has not properly read and appreciated the cross-examination of PW.1 to 7; that it has not gone into the documents produced by the prosecution as well as the documents at 'D' series; that referring to the cross-examination of prosecution witnesses and admissions recorded in their cross-exam, he prays to set aside the impugned judgment and consequently the order on sentence.

5. In this background now the following points would arise for my consideration:

- 1) *Whether the appellant has shown that trial court has grossly erred in appreciating the oral and documentary evidence leading to arriving in a wrong conclusion ?*

2) *What order?*

6. I have heard the arguments of Sri.PMH, advocate for the appellant and learned Public Prosecutor for the State. Perused the file, my findings on the above points are as under:

Point No.1 - In the affirmative

Point No.2 - As per below for the following

REASONS

7. **Point No.1:-** During the argument inviting my attention to the cross-examination of PW.1 to 3 and 5 to 7, Sri.PMH advocate canvassed that, when the very own documents and oral evidence of the prosecution would show that the total extent of the said survey number is 454 acre and in the said extent the forest department holds just 322 acre and 15 guntas, in total ignorance of the same under the assumption that the entire extent of the said survey number belongs to the forest department, the trial court has proceeded to record its findings and when it is demonstrated that no survey was conducted jointly by the revenue department and forest department to identify their extents of land and when no attempt was made by the IO to identify whether the so called extent of land allegedly cultivated by the appellant is part and parcel of the forest land, case came to be registered and on the basis of such insufficient and ambiguous evidence, the trial court has come to a wrong conclusion. Thus referring to the cross-examinations of prosecution witnesses and the documents relied by the very prosecution, he canvassed that when

there is no iota of evidence to prove the involvement of the accused in the offences alleged, it is too much on the part of the said court to note that prosecution has proved the charge, thus he prayed to set aside the impugned judgment and order on sentence.

8. On the other hand learned Public Prosecutor canvassed that when the document produced by the forest department would show that it is the part of the reserve forest land, any kind of trespassing into the said land and tilling of that land and cultivating of it amounts to offence and in the case in hand when there are materials to show the involvement of this accused in the offences alleged, having properly appreciated the evidence on record, the trial court has come to a right conclusion, wherefore he prayed to dismiss the appeal.

9. Before I venture to cull out the oral and documentary evidence let in by the prosecution, it is quite necessary to know under which provisions the prosecution has proceeded against the appellant. By invoking Sec.24 of the Forest Act it alleges that in contravention of rules made by the State, the appellant trespassed into the reserve forest and he cleared the land for cultivation unauthorisedly and used that land for the purpose of cultivation and has caused damage to the forest land and altered and removed the hedges and fence put up by the forest department and thereby he has contravened Section 24(c)(ii)(g)(gg)(h) inviting the punishment U/Sec.64-A and 73 of The Karnataka Forest Act, 1963.

10. In this context I have gone through the evidence of PW1 to 3 and 5 to 7. PW.1 is then DRFO, who took lead in the raid, PW.2 is forest guard, PW.3 is daily wager in that department, PW.5 is the ranger, PW.6 is DFO and PW.7 is the village accountant. PW.4 is the forest watcher, but he has turned hostile, therefore it is not necessary to look at the testimony of this witness. As could be seen from the background of each witness, the PW.1, 2, 3 and 5 are the crucial witnesses to the prosecution. On thorough reading of the testimonies of PW.1 to 3 and 5 to 7 it is clearly demonstrated that as rightly submitted by Sri.PMH, advocate the total extent of the said Sy.No.46 of Arasuru village is 454 acre and in this regard I can straight away take to the cross examination of PW.1 recorded on page No.4. There in the middle of the said paragraph at about 11th line from the top he admitted that there is 454 acre of land in Arasuru Sy.No.46 and forest department is having 322 acres, whereas remaining land belongs to revenue department. He also conceded that 33.39 acres of land is a Government Gomala in that total extent. Further he admitted that in the said total extent of Sy.No.46, 3 acres of land has been granted to the appellant at Sy.No.46/10 and 46/P9. In addition to this I also take to the further chief of PW.5 recorded on 22.12.2017. There admitting that as per the contents of Ex.P.16 out of total extent of Sy.No.46 the forest department holds only 322 acres and 15 guntas, then on page No.4 of his cross-exam he too admitted that in the total extent of said survey number even other farmers are holding their lands. Apart from that PW.6 on page 3 of his cross-exam he too

conceded that in Sy.No.46 not only belongs to the forest department, even Government Gomala and revenue lands are situating in it. Lastly on page No.2 of his cross exam PW.7 also conceded that in the said Sy.No.46, 88 acres have been granted to the farmers from their department. The purpose of referring to the cross examination of the said witnesses, who are none other than the officials belonging to the forest department, it is shown that it is not that entire extent of 454 acres is the reserve forest land so as to imagine the commission of offences by the appellant blindly.

11. Once it is shown that the forest department as well as revenue department are holding lands in the said survey number, in order to bring home the guilt of the appellant the first and foremost point which is required to be proved by the prosecution is, the said extent of lands held by forest department and revenue department are segregated by carrying out joint survey and land in which the 12 Eucalyptus trees and borewell is sunk, allegedly by the appellant, very much forms part of the land belonging to the forest department. Unless these things are proved beyond shadow of doubt, it is not possible to hold that accused is the guilty of the offences alleged.

12. In order to find out whether such survey has been got conducted by the forest and revenue departments jointly or at least the forest department has got surveyed its own land and got it demarcated, I would refer to the cross-examination of PW.1 recorded on page No.4. There at the

last three lines he admitted that they have not got surveyed the land cultivated by the accused to find out whether it is part of their forest area. Similarly PW.5 on page No.4 of his cross-exam at about 9th line from below conceded that they have not got surveyed the extent of their forest land and the boundaries of their department land are not identified. Then on the very same page at below three lines he stated that in order to ascertain the land allegedly cultivated by accused they did not get done the survey. Then on page No.5 of his cross exam in top 3 lines he further admitted that without getting surveyed the said land it is not possible to hold that the said land belongs to the forest department. According to him based on the opinion of his subordinates he came to the conclusion that the said land is part of the reserve forest land. During his cross-exam by inviting his attention to the mahazar allegedly prepared in the said place on 04.02.2014 between 09.00 am to 12.00 noon, the defence got exhibited Ex.D.1. The very contents of Ex.D.1 would show that the whole mahazar was done on the assumption that the said illegal activities have been done by the accused.

13. It is true that one cannot expect cultivation of forest land and sinking of borewell there in presence of eyewitnesses or it would be incorrect to expect that such illegal activities have to be witnessed by any person. In a case of this nature expecting such direct evidence may not be workable. On the basis of the information collected by the neighbouring land owners or the persons who have seen the accused moving there, may be of some assistance

to prove the charge, wherefore I am not impressed upon the submission of the appellant that nobody has witnessed the axing of trees or sinking of borewell by him. My main thrust is whether prosecution is able to show that there exists a clear demarcation of the reserve forest land and that of revenue department and in the event if that is established whether it has further shown that the mahazar at Ex.P.1 and land described therein forms part of the forest land? These things being the most basic requirements, unless they are shown involvement of the accused in the said illegal activities is hardly possible to imagine.

14. As discussed above when the very official witnesses PW1, PW5, PW6 and PW7 admit that in the total extent of 454 acres of land in Sy.No.46 of Arasuru their department holds just 322 acres and 15 guntas and when they further concede that no joint survey has been done with the revenue department to get fix the boundaries of their department land, I am very much surprised how the trial court went ahead in convicting the accused.

15. As rightly canvassed by the appellant, the Ex.D1 and D2 (they ought to have been marked as Ex,D2 and D3) show holding of 1 acre of land in Sy.No.46/P9 and 2 acres in Sy.No.46/P10 of Arasuru by him. So it would be incorrect to hold that lands held by him are part of the reserve forest. It is not the case of the prosecution that in addition to the 3 acres which he holds in Sy.No.46/P9 and 46/P10 he also cultivated in the land belonging to their department as described in Ex.P1. So what I can say is that

the whole case of the prosecution is messed up and it is not able to prove the very fundamental requirements before it imagines to construct its case. In other words without laying any foundation in the form of required evidence it only proceeds on the evidence of its witnesses and unfortunately the same has been accepted by the trial court without looking into the documents which speak more louder than the oral versions of PW1 to PW3 and PW5 to PW7.

16. Apart from that by producing the photographs at Ex.P.5 to P.8 and their C.D. at Ex.P.9 when prosecution wanted to demonstrate that it is the land belonging to the forest department and it has been illegally cultivated by the accused by axing 12 eucalyptus tree there, in the cross-examination the very witnesses admitted that accused is cultivating there from several years and as could be seen from Ex.P.5 to P.8 one can find the harvesting of maize crop there. So it shows that it is not in one day or in an overnight the eucalyptus trees were axed and borewell is sunk there, either by the accused or by somebody else so as to encroach or to trespass into the forest area. Instead what it proves is that over period of months the said land was cultivated either by the accused or by somebody else and even that person harvested the maize crop there.

17. It is too elementary for me to say that if a person sows a seed, the next day morning it will not sprout and the sapling will not grow in a day and yield the crop. From the day of sowing the seed till the harvesting of the

maize at least one has to sweat for 5 to 6 months, therefore the story of the prosecution that this accused trespassed into the land shown in Ex.P.5 to P8, part of the sketch produced in Ex.P4 and described in Ex.P1 etc., cannot be received in evidence and acted upon. The Ex.P4 is the sketch prepared by the men belonging to the forest department and they have shown the so called illegally encroached land by this accused in the middle of the Sy.No.46. At least while preparing that sketch it is not stated that it belongs to only 322 acres and 15 guntas held by the forest department. First of all it is not prepared by a competent surveyor and secondly there is no indication that it covers only 322 acres and 15 guntas. In the absence of such wanting materials one cannot accept the genuinity of Ex.P4. The Ex.P13 is the Village Map of Arasuru and it shows the whole extent of Sy.No.46 and existence of hillocks, other lands and streams. From the said village map it is not possible to hold that the Sy.No.46 is entirely belonging to the forest department and it is also not the case of the prosecution.

18. As per Ex.P.16 to which I made reference earlier, when the said forest department barely holds 322 acres and 15 guntas without identifying its extent no case can be imagine against anybody. I am not able to understand why the prosecution has produced Ex.P.16 to Ex.P.27 and what is the relevance of said the documents to the case in hand. Though it produced RTC of Sy.No.46 at Ex.P14, I say that it was wrong on the part of the trial court to get it marked as an exhibit. Since as evidenced by the

said piece of paper of RTC of Sy.No.46, it is having 7 pages and only page No.6 is produced in the absence of other pages, even then blindly it is exhibited by the trial court. Since it is not a complete document it cannot be looked into. Even if the said document is examined as I am repeatedly holding it shows the extent of land belonging to the forest department to the extent of 322.15 acres and not more than that.

19. In spite of all these things without touching these aspects in para 19 and onwards of its judgment may be moved by its zeal to protect the forest land, the trial court glossed over the other part of the evidence and proceeded to convict the accused. However in the light of the discussion made herein above it is proved beyond shadow of doubt that there is no case for the prosecution and evidence adduced by it is totally inadequate, consequently I have no other option except to extend the benefit of doubt to the appellant, accordingly I answer this point in the affirmative.

20. Point No.2:- In the result, I proceed to pass following:

ORDER

Appeal filed U/Sec.374(3) of Cr.P.C., is allowed.

The impugned judgment of conviction and order on sentence rendered by II Addl.Civil Judge and JMFC, Chitradurga in CC No.952/2014 on 23.07.2020 is set aside.

The bail bond and surety bond executed by the appellant stand discharged.

Office to send back the TCR along with copy of this judgment.

(Dictated to the Stenographer Grade-III, transcribed and computerized by her, corrected and signed by me and then pronounced in the open Court on this the 16th day of April 2026).

(Ron Vasudev)

Prl. District & Sessions Judge,
Chitradurga.

SG