

Gabbu Vs. the State of Madhya Pradesh

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Court : Madhya Pradesh

Decided On : Mar-22-2013

Appellant : Gabbu

Respondent : The State of Madhya Pradesh

Advocate for Pet/Ap. : Shri. R. S. Patel

Judgement :

HIGH COURT OF MADHYA PRADESH AT JABALPUR SINGLE BENCH
PRESENT : HON'BLE SHRI JUSTICE N. K. GUPTA CRIMINAL REVISION
NO.139/2013 Gabbu and another Vs. State of M.P.
..... Shri R. S. Patel,
counsel for the applicants. Shri Prakash Gupta, Panel Lawyer for the State.
.....

ORDER

(Delivered on the 22nd day of March, 2013) The applicants are convicted for offences punishable under Section 26(1)(b) of Indian Forest Act and Section 16(2) (b) read with Section 51 of the Wild Life Protection Act vide judgment dated 9.10.2012 passed by the Chief Judicial Magistrate, Khandwa in Criminal Case No.1544/2008 and the applicants were sentenced for six months rigorous imprisonment with fine of Rs.500/- and one years rigorous imprisonment with fine of Rs.1000/-. In Criminal Appeal No.209/2012 the learned IVth Additional Sessions Judge, Khandwa vide judgment dated 15.1.2013 dismissed the appeal. Being

aggrieved with the aforesaid judgments passed by both the Courts below the applicants have preferred the present revision. 2 Criminal Revision No.139 o

2. The prosecution's case in short is that on 6.3.2008 at about 10.00 p.m in the night an information was received to the Forester Vijay Kumar Chourey that some culprits were present in the Reserve Forest of Division Punasa, District Khandwa and they had also ignited some fire in the forest. Thereafter, a team went to the spot and the applicants were caught near South Beat on Block No.187. It was also found that the applicants had affixed two nets near a nala. Those nets were seized by the Forest Officer and the applicants were taken in the custody.

3. The applicants abjured their guilt. They took a specific plea that they went to the jungle in search of their own cattles. However, no defence evidence was adduced and the applicants could not show that whether they possessed some cattles or some of the cattles were missing.

4. The learned Chief Judicial Magistrate, Khandwa after considering the evidence adduced by the parties, convicted and sentenced the applicants as mentioned above. The appeal filed by the applicants was dismissed.

5. I have heard learned counsel for the parties.

6. The learned counsel for the applicants submits that the applicants are the first offenders. They did not knot about the net affixed in the jungle. They had also no knowledge about a fire which took place in the jungle. They remained in the custody for more than two months. Under 3 Criminal Revision No.139 of 2013 such circumstances, their sentence may be reduced to the period which they have already undergone in the custody.

7. After considering the submissions made by the learned counsel for the parties, it appears that the applicants do not challenge the conviction directed against them. Also there is a concurrent findings given by both the Court below relating to the conviction dependent on the facts and therefore, there is no basis by which any interference can be made in the concurrent findings of both the Courts below.

8. So far as the sentence is concerned, it is apparent that the applicants were the first offenders. However, there is no reason by which they can be given the advantage of Probation of Offenders Act. However, they could not commit hunting of any animal and therefore, their offence was not so grave. Also, they remained in the custody for more than two months and therefore, looking to the facts and circumstances of the case and the fact that the applicants were the first offenders, their sentence may be reduced to the period for which they remained in the custody by enhancement of fine amount.

9. On the basis of the aforesaid discussion, the revision filed by the applicants is partly allowed. Their conviction under Section 26(1)(b) of Indian Forest Act and Section 16(2)(b) read with Section 51 of the Wild Life Protection Act is hereby maintained but, sentence is reduced to the period which they have already undergone in the Criminal Revision No.139 of 2013 custody. No enhancement of the fine amount for offence punishable under Section 26(1)(b) of Indian Forest Act but, fine relating to offence under Section 16(2)(b) read with Section 51 of the Wild Life Protection Act is enhanced from a sum of Rs.1000/- to a sum of Rs.10,000/- for each of them. In default of payment of fine, each of the applicants shall undergo nine months rigorous imprisonment. If any fine is deposited before the trial Court then a sum of Rs.15,000/- may be provided to the Forest Department as compensation.

10. The applicants are in custody and therefore, office is directed to arrange for issuance of a supersession warrant so that the applicants may be released after deposit of the fine amount either before the trial Court or the jail.

11. Copy of the order be sent to the trial Court as well as the appellate Court along with their records for information and compliance. (N. K. Gupta) Judge 22.03.2013
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