

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 07TH DAY OF JANUARY, 2026

BEFORE

THE HON'BLE MR. JUSTICE G BASAVARAJA

CRIMINAL APPEAL NO.535 OF 2014

c/w

CRIMINAL APPEAL NO.370 OF 2014

IN CRL.A. NO.535/2014

BETWEEN:

STATE OF KARNATAKA
BY HONNALI POLICE - 577217.

...APPELLANT
(BY SRI. B. LAKSHMAN, HCGP)

AND:

1. MAHAMED RAFIQ
S/O BUDEN SAB,
AGED ABOUT 33 YEARS,
R/O CHEELAPURA VILLAGE,
HONNALI TALUK - 577217.
2. SADDAM @ SADDU
S/O KANDANA KAVI KHASIM SAB,
AGED ABOUT 25 YEARS,
R/O SASVEHALLI-NALUR ROAD,
CHEELAPURA VILLAGE,
HONNALI TALUK - 577217.
3. DADAPEER
S/O KHASIMSAB,
AGED ABOUT 26 YEARS,
CHEELAPURA VILLAGE,
HONNALI TALUK-577217.

...RESPONDENTS

(BY SRI. RAJU C.N., ADV. FOR R1 TO R3.)

THIS CRL.A IS FILED U/S.377 CR.P.C BY THE STATE PUBLIC PROSECUTOR FOR THE APPELLANT PRAYING TO MODIFY THE JUDGMENT AND ORDER OF CONVICTION AND SENTENCE DATED:4.3.14 PASSED BY THE II ADDL. DIST. AND S.J., DAVANAGERE IN S.C.NO.100/2013 - AND IMPOSEING INADEQUATE SENTENCE AGAINST THE RESPONDENT NOS.1 TO 3/ACCUSED FOR THE OFFENCE P/U/S 86 AND 87 OF THE KARNATAKA FOREST ACT AND SEC. 379 R/W 34 OF IPC & ETC.

IN CRL.A. NO.370/2014

BETWEEN:

1. MAHAMED RAFIQ
S/O BUDEN SAB,
AGED ABOUT 32 YEARS
R/AT CHEELAPURA VILLAGE,
HONNALI TALUK, DAVANAGERE DISTRICT
PIN CODE NO.571450
2. SADDAM @ SADDU
S/O KADANA KAVI KKASIM SAB
AGED ABOUT 25 YEARS
SASVERHALLI LNALUR ROAD,
CHEELAPURA VILLAGE,
HONNALI TALUK, DAVANAGERE DISTRICT
PIN CODE NO: 571 450
3. DADAPEER
S/O KHASIMSAB
AGED ABOUT 26 YEARS
CHEELAPURA VILLAGE,
HONNALI TALUK, DAVANAGERE DISTRICT
PIN CODE NO: 571 450

...APPELLANTS

(BY SRI RAJU C. N., ADV.)

AND:

STATE BY HONNALI POLICE
DAVANAGERE
REPRESENTED BY SPP,

HIGH COURT OF KARNATAKA AT
BANGALORE
PIN CODE: 560 001

...RESPONDENT

(BY SRI. B. LAKSHMAN, HCGP)

THIS CRL.A. IS FILED U/S.374(2) CR.P.C BY THE ADV. FOR THE APPELLANTS/ACCUSED NO.1 TO 3 PRAYING TO SET ASIDE THE JUDGMENT OF CONVICTION DATED 4.3.2014 PASSED BY THE II ADDL. DIST. AND S.J., DAVANAGERE IN S.C.NO.100/2013 - CONVICTING THE APPELLANTS/ACCUSED FOR THE OFFENCE P/U/S 86 AND 87 OF K.F.ACT AND SEC.379 R/W 34 OF IPC AND ETC.

THESE APPEALS HAVING BEEN HEARD AND RESERVED FOR JUDGMENT ON 21.11.2025 AND COMING ON FOR "PRONOUNCEMENT OF ORDERS" THIS DAY, THE COURT, DELIVERED THE FOLLOWING:

CORAM: HON'BLE MR. JUSTICE G BASAVARAJA

CAV JUDGMENT

Both these appeals arise out of the judgment, 04th March 2014, passed in SC No.100 of 2013 by the II Additional District and Sessions Judge at Davanagere (for short "the trial Court").

2. For the sake of convenience, the parties herein are referred to as per their rank and status before the trial Court.

3. Brief facts leading to this appeal are that Honnali Police submitted charge-sheet against the accused for offence punishable under sections 86 and 87 of Karnataka Forest Act and section 379 of Indian Penal Code. It is alleged by the

prosecution that on 3rd July 2012 at about 5.00 pm, upon receiving credible information about theft of Sandalwood in the land of one Nagalur Mahadevappa of Tharaganahalli, the Sub-Inspector of Police, Honnali Police Station, along with the staff, and panchas rushed to the Spot and found accused 123 engaged in cutting sandalwood blocks into small pieces and filling the same into a bag illegally and without any permit or license from the forest authorities with ulterior motive for wrongful gains by selling the same and thereby committed offence punishable under sections 86 and 87 of Karnataka Forest Act read with section 379 of Indian Penal Code. After filing charge-sheet, case was registered in CC No.267 of 2013. Thereafter, it was committed to the court of sessions which was registered as SC No.100 of 2013. The accused were enlarged on bail. Upon hearing on charges, charges were framed. The same were read over and explained to the accused in the language known to them. Accused had pleaded not guilty and claimed to be tried. To prove the guilt of the accused, the prosecution in all has examined five witnesses as PWs1 to 5 and marked five documents as per Exhibit P1 to P5 and six material objects were marked as MOs1 to 6. On closure of prosecution side

evidence, statement of the accused under section 313 of Code of Criminal Procedure was recorded. Accused have totally denied the evidence of prosecution witnesses, but have not chosen to lead any defence evidence. After hearing on both sides, the trial court has convicted the accused 1 to 3 for commission of offence punishable under sections 86 and 87 of Karnataka Forest Act and section 379 read with section 34 of Indian Penal Code and sentenced to undergo simple imprisonment for a period of 1 year 6 months and to pay fine of ₹1,500/- each, in default of payment of fine to undergo simple imprisonment for period of five months. Being aggrieved by the impugned judgment of conviction and order on sentence, appellants-accused have preferred Criminal Appeal No.370 of 2013. Being not satisfied with the imposition of sentence, State has preferred Criminal Appeal No.535 of 2014 seeking imposition of maximum sentence.

4. Sri Raju C.N., learned Counsel appearing for the Appellants/accused would submit that the trial court has committed an error in convicting the applicants for the aforesaid offences only on the basis of evidence of official witnesses. He would submit that the respondent police have not examined the owner of the land and have also not

produced the RTC extract of the land to prove the fact that in which land the respondent recovered the sandalwood pieces from the accused. He would submit that the mahazar was prepared at the police station and they have been falsely implicated in this case. Except PW1 and PW4, all are official witnesses. According to the case of the prosecution, at the time of the incident, several persons were gathered, but the prosecution has not examined the independent witness to prove the guilt of the appellants/accused. It is further submitted that though the investigating officer received the information on 3rd July 2012, he has not registered the case and has not entered the same in the general diary. Without registration of the case, the investigating officer has visited the spot and conducted seizure Panchama on 3rd July 2012 between 6.00 and 7.00 pm and seized 4 kgs of sandalwood pieces and another sandalwood pieces weighing 5 kgs, in total 9 kgs worth of ₹16,000/-. It is submitted that the investigating officer arrested the accused on spot and took them to Police Station and registered the case in Crime No.165 of 2012 against accused 1 to 3 for the offence punishable under sections 86 and 87 of Karnataka Forest Act read with Section 379 of Indian Penal Code. It is submitted that the First

Information Report was submitted to the court on 4th July 2012 at 2:45 pm. The Investigating officer has not complied with the mandatory provisions of section 62C of the Karnataka Forest Act. The investigating officer has not produced the certificate issued by the concerned Forest Officer. In the case on hand, Exhibit P2 is the certificate issued by the Range Forest Officer who is examined as PW2. PW2 has not whispered anything as to whether he has undergone training in the examination of Forest produce or has been issued with any certificate to show that Range Forest Officer has undergone training in examination of forest produce and he is authorised by the State Government in this behalf in respect of Forest produce submitted to him for exam examination and report may be used as evidence of the fact stated in the certificate, in the court proceedings. During the course of cross-examination of PW2, he has admitted that he has obtained the certificate in this regard, but has not produced the same before the court. The learned counsel would further submit that the spot mahazar is conducted before the registration of case and hence the same is not sustainable. The seizure mahazar was conducted on 3rd July 2012 between 6.00 and 7.00 pm and the same is submitted the court along with first information report

on 4th July 2012. The investigating officer has not reported the seizure of properties to the higher officer as required under section 71A of the Karnataka Forest Act. It is further submitted that PW4-Shivakumar son of Nagalur Mahadevappa has deposed in his evidence that the land in survey No.70-1 of Tharaganahalli belongs to him which came from his father, and he has deposed that there were four sandalwood trees and further deposed that when he was at Honnali, somebody has committed theft of two sandalwood trees which he came to know only on the next day. Further, he would submit that the complainant is a public servant and he has suo-motu registered the case and investigation was conducted by the very same police official who had lodged the complaint. Therefore, in the absence of independent corroborative evidence, no conviction can be recorded in such a case. On all these grounds, it is short for allowing the appeal. In support of his submissions, he has relied on the following decisions:

1. BHANUPRAKASH AND ANOTHER v. STATE BY A.C.F. rendered in Crl.R.P.No.604 of 2004 decided on 14.07.2006;

2. SMT. ADURI AND OTHERS v. THE STATE OF KARNATAKA rendered in Crl.A. No.100123 of 2020 decided on 02.02.2021;
3. XAVIER v. STATE OF KERALA rendered in Crl.M.C.No.117 of 1997 decided on 27.03.1998;
4. MUKHTIAR AHMED ANSHARI v. STATE (NCT OF DELHI) rendered in Crl.A. No.325 of 2003 decided on 21.04.2005.
5. Sri B Lakshman, learned High Court Government Pleader appearing for the State in Criminal Appeal No.535 of 2014, submits that the trial court has erred in imposing the sentence only for 1 year 6 months for the offence punishable and sections 86 and 87 of the Karnataka Forest Act. The learned Sessions Judge has failed to consider section 6 of the Karnataka Forest Act, which states that in case of forest offence, having reference the cutting, approving or removal or damage to a sandalwood tree or any part of sandalwood tree belonging to the Government, be punishable with imprisonment for a term which may extend to 10 years and with fine which may extend to ₹1,00,000/-. Further, he submits that similarly, the section 87 of the Karnataka Forest Act also mandates that in contravention of provisions of sub-section (1) of section 87, the punishment prescribed for imprisonment for a term which

may extend to 10 years and with fine which may extend to ₹1,00,000/-. The learned High Court Government Pleader, further submits that the trial court has failed to appreciate the same while imposing the sentence, though the trial Court has recorded a categorical finding that all the accused, in furtherance of common intention, without having any permit or license from the Forest Department, have cut down two sandalwood trees standing in the land of Nagalur Mahadevappa of Tharagananahalli and thereby committed the aforestated offences. When once the guilt of theft of cutting sandalwood trees is proved, the learned Sessions Judge has no option but to convict accused by imposing maximum sentence for the aforesaid offences. Hence, it is prayed for imposing maximum sentence to the accused.

6. Having heard the arguments on both sides and perusal of materials, the following points would arise for my consideration:

1. Whether the trial court is justified in convicting the accused for the offence punishable under Sections 86 and 87 of Karnataka Forest Act read

with section 379 read with section 34 of Indian
Penal Code?

2. Whether the Appellant-State has made out a
ground for enhancement of sentence?
3. What Order?

Regarding Point No.1:

7. I have examined the materials placed before the court. To prove the guilt of the accused, the prosecution has examined 5 witnesses as PWs 1 to 5 and marked five documents as Exhibit P1 to P5 and five material objects as MOs 1 to 6.

8. PW1- A.C. Mallikarjuna has deposed in his evidence that about 1 year 4 months back, Police have summoned him and Rajappa to the Police Station. Accordingly, they went to the police station. Police took them to the land of Nagalur Mahadevappa, where Sandalwood trees were being cut. There were three persons who were in possession of saw, axe, chopper and one bag. They seized the sandalwood billets as per mahazar Exhibit P1.

9. PW2, Devraj Kallappa, Range Forest Officer, Honnali has deposed that on 8th August 2012, he received material objects MOs1 to 3-sandalwood pieces from Sub-Inspector of Police, Honnali and on examination, he asserted the same as Sandalwood and issued certificate as per Exhibit P2.

10. PW3-Rajashekhar Police Constable, Honnali Police Station, who is said to be one of the raiding party, has stated that on 3rd July 2012, when he was in Police Station, PSI has received information at about 5.00 pm, then Head Constables 204, 149, Police Constables 94 and 731 and APC 146 along with Police Sub-Inspector, went in a government jeep to the land of Nagalur Mahadevappa at Tharaganahalli and by that time accused were cutting sandalwood pieces; they were apprehended and were enquired as to their address and seized 9 kgs of sandalwood billets, 4 sandalwood pieces, a saw, an axe and a bike bearing Registration.No.KA-27/Q-6513 under mahazar.

11. PW4-Shivakumar is the son of Nagalur Mahadevappa, claims to the owner of the land in Survey No.70-1 of Tharaganahalli, has deposed in his evidence that he had grown Coconut trees and sandalwood trees in his land. He has

also stated that on 3rd July 2012 somebody has cut two sandalwood trees in his land which he came to know only on the next day after he returned from Honnali and he has identified MOs1 and 2.

12. PW5-B.G. Kumaraswamy, Sub-Inspector of Police, Honnali Police Station has deposed as to the investigation conducted by him.

13. On perusal of materials placed before the Court, it makes clear that the accused were cutting the sandalwood tree standing in the land bearing survey No.70-1 of Tharaganahalli, which belongs to Nagalur Mahadevappa. The said Nagalur Mahadevappa has not been examined by the prosecution. Nagalur Mahadevappa has not lodged any complaint with the police as to the theft of sandalwood trees. Whether Nagalur Mahadevappa is alive or not has also not been placed by the prosecution. The prosecution has produced the RTC extract Exhibit P3, which reveals that the land in survey No.70-1 stand in the name of one Sri N.M. Shivakumar, son of Nagalur Mahadevappa and in the cultivators column, the name of Smt. Palakshama is shown. Though the land standing in the name of N.M. Shivakumar, the investigating officer has not shown the

name of Shivakumar in the charge-sheet. Additionally, the RTC extract does not reveal as to the existence of sandalwood trees in the said land. Whereas the RTC reveals that there are 50 mango trees. Though there is no reference as to the sandal trees in the land, the investigating officer has not explained anything as to why the existence of two sandalwood trees are not shown in the RTC. Even in the complaint Exhibit P4 which is suo-motu registered by the Sub-Inspector of Police, Honnali Police Station does not disclose the survey number and name of the owner of the land. When the prosecution has failed to prove the existence of two sandalwood trees in the land in survey No.70-1 of Tharaganahalli, the question of commission of theft of sandalwood tree by the accused, does not arise. Exhibit P1-seizure mahazar reveals that on 3rd July 2012, Police have conducted mahazar in presence of Sri A.C. Mallikarjuna and T Rajappa, in the said mahazar, the survey number of land is not disclosed. One of the Panch witnesses A.C. Mallikarjuna examined as PW1. He has not deposed anything against this accused in his examination-in-chief. During the course of cross-examination, he has stated that when they went to the spot, there were three persons who flicked the spot. One of the accused was apprehended. The investigating officer has not

disclosed the names of the two person who flirt the spot. Though the investigating officer has seized the sandalwood billets under mahazar-Exhibit P1, he has not mentioned the crime number in this mahazar. Only after seizure mahazar, the Inspector of Police has suo-motu registered the case in crime No.155 of 2012 and submitted first information report to the court on 4th July 2012 at 2:45 pm as per Exhibit P5. Though these properties are seized on 3rd July 2012 between 6.00 and 7.00 pm, First Information Report was not submitted to the court on the very same day and it was sent only on the next day at 2:30 pm. The delay in submitting the First Information Report has not been explained by the prosecution. Though the investigating officer has seized the sandalwood billets on 3rd July 2012, he has reported the seizure of the property to the Court on 4th July 2012 which is also reflected in PF No.119 of 2012. Accordingly, Investigating Officer has failed to comply with the mandatory provisions of section 102 of Code of Criminal Procedure. The delay in submitting seizure report to the jurisdictional Magistrate will create doubt as to the seizure of the property.

14. Further, according to the prosecution, the Sub-Inspector of Police has seized one Bajaj XCD motorbike bearing

registration No.KA-27/Q-6513 having Chassis No.MD2SJBZZPWJ48286 and engine No.JAMBPJ48773, worth ₹40,000/-. But the investigating officer has not produced the RC book or 'B' extract of the motorbike to show its ownership. During the course of cross-examination of PW5, Police Sub-Inspector B.G. Kumarswamy has clearly admitted that he has not enquired as to who was the owner of the motorbike. Even he has not collected the report from IMV. The reasons for non-production of RC book or its 'B' extract has not been disclosed by the prosecution.

15. Furthermore, the investigating officer has not complied with the mandatory provisions of section 62(3) of Chapter IX of Karnataka Forest Act, 1963. After seizure of the property, the investigating officer has not intimated the same to the concerned officer under section 71A of the Karnataka Forest Act. The investigating officer has also failed to submit the report soon after the seizure of the property as required under Section 102 of Code of Criminal Procedure and also section 62 of Karnataka Forest Act which is admitted by the PW5. Investigating officer has not mentioned the Crime number in the seizure mahazar. Viewed from any angle, I do not find any cogent, convincing or corroborative legal evidence to prove

the guilt of the accused. Evidence placed before the court is not sufficient to come to the conclusion that the accused have committed the commission of alleged offence. Accordingly, the prosecution has failed to prove the case beyond all reasonable doubt that the accused have committed the offence punishable under Sections 86 and 87 of Karnataka Forest Act read with Section 379 of Indian Penal Code. Hence, I answer point No.1 in the negative.

Regarding Point No.2:

16. While answering Point No.1 this Court has held that the prosecution has failed to prove the guilt of the accused beyond all reasonable doubt. Hence, question of enhancing the sentence does not arise. Accordingly, I answer Point No.2 in the negative.

Regarding Point No.3:

17. For the foregoing reasons and discussions, I proceed to pass the following:

O R D E R

- i) Criminal Appeal No.535 of 2014 preferred by the State is dismissed;

- ii) Criminal Appeal No.370 of 2014 preferred by appellants/accused is allowed;
- iii) Judgment of conviction and order on sentence dated 04th March 2014, passed in SC No.100 of 2013 by the II Additional District and Sessions Judge at Davanagere is set aside;
- iv) Appellants/accused are acquitted of the offences under Section 86 and 87 of Karnataka Forest Act read with Section 379 read with Section 34 of Indian Penal Code;
- v) Fine amount, if any, deposited by the appellants/accused shall be returned to them in accordance with relevant Act and Rules;
- vi) Registry to send the copy of this judgment along with trial court records to the concerned Court.

**Sd/-
(G BASAVARAJA)
JUDGE**

Inn