

**IN THE COURT OF THE ADDITIONAL SESSIONS JUDGE,
SONITPUR AT TEZPUR**

PRESENT : **Sri S. Das**
Additional Sessions Judge
Sonitpur, Tezpur

JUDGMENT IN SESSIONS CASE NO. 211 OF 2014
(Under Section 51 of the W.L. (P) Act, 1972)
(Arising out of C.R. Case No. 154 of 2014)

State of Assam

– Versus –

- 1.** Sri Arjun Basumatary
S/o- Sri Chandra Basumatary,
Vill- Somguri
P.O- Rangachakua
P.S- Jamuguri
Dist- Sonitpur, Assam.

- 2.** Sri Bijoy Basumatary
S/o- Sari Nabla Boro
Vill- Lakhi Pathar
P.O- Rangachukua

P.S- Jamuguri
Dist- Sonitpur, Assam.

- 3.** Sri Debeswar Pagag
S/o- Chandra Pagag
Vill- Galbil
P.S- Jamuguri
Dist- Sonitpur, Assam.

A P P E A R A N C E

For the State : Smt. R. Chakravarty
Addl. Public Prosecutor
Sonitpur District

For the Accused No. 1 and 2 : Sri Bijoy Basumatary, Advocate.

For the Accused No. 3 : Smti. Dulumoni Singha, Advocate.

Date of Evidence : 07-11-2014, 07-11-2014,
07-11-2014, 18-12-2014.

Date of argument : 08-07-2015

Date of Judgment : 22-07-2015

J U D G M E N T

Accused Arjun Basumatary, Bijoy Basumatary and Sri Debeswar Pagag have been charged for committing offence u/s 9/27/29/30/31 R/W Sec. 2 (15), 16, 36, 37, 35 (8) punishable u/s 51 of wild life Protection Act, 1972.

BRIEF FACTS :

On 27-05-2014, Sri Dilip Kumar Das, Forest Range Officer, Nameri National Park and Tiger reserve forest submitted report under provisions of Wild life Protection Act, 1972 before Learned Chief judicial Magistrate, Sonitpur to the effect that on the basis of secret information on 26-05-2014 at about 8 PM, a team consisting of 15 forest official and staff visited the house of suspect Sri Arjun Basumatary at Sumjuli forest village. The team was led by Sri Dilip Das Forest Range Officer. After interrogation the suspect Arjun Basumatary was apprehended and on further interrogation the suspect confessed that he along with Bijoy Basumatary and Debeswar Pagag were involved in hunting wild animal (deer) inside the reserve forest. He also confessed that two handmade guns used in hunting were in the possession of Debeswar Pagag and Bijoy Basumatary. On the basis of said confession and being accompanied by Arjun Basumatary the forest team visited the house of Bijoy Basumatary at Lakhpathar. But Bijoy Basumatary was found in the house of one Tarun Musahari at Lakhpathar, and he was apprehended. Bijoy Basumatary confessed before the forest official that he along with Debeswar Pagag (Debe) had kept the guns on a tree inside the Nameri National Park. On being led by Bijoy Basumatary the forest team recovered the two guns vide seizure list. After observing formalities the above named three persons were arrested and case was registered under section 9/27/29/30/31 R/W Sec. 2 (15), 16, 36, 37, 35 (8) of wild life Protection Act, 1972.

On completion of investigation offence report was submitted against the accused persons namely, Arjun Basumatary, Bijoy Basumatary and Sri Debeswar Pagag u/s 51 (1) of Wild Life Protection Act. The Ld. CJM on production of the accused persons and on receipt of offence report remanded the accused to judicial custody and furnished necessary copies to the accused and on perusal of record and after hearing both the sides committed the case to the Court of Ld. Session Judge as the offence u/s 9/27/29/30/31 R/W Sec. 2 (15), 16, 36, 37, 35 (8) of wild life Protection Act, 1972 were exclusively triable by the court of session. The Ld. Session Judge transferred this case to court for the trial.

On appearance of the accused before this court on receipt of this case on appearance of the accused this court considered the materials on record and upon hearing both the sides framed charged u/s 51 (1) of Wild Life Protection Act, 1972 and read over explain to the accused to which the pleaded not guilty.

Prosecution in order to prove this case examine four witnesses in all. After closing prosecution evidence accused persons were examined u/s 313 Cr.P.C. They denied prosecution allegation and also denied that they made confession before Forest Official. However, defence adduced no evidence what so ever.

POINT FOR DETERMINATION:

That prior to 26-05-2014 you contravened various provisions of Wild Life Protection Act, 1972 by hunting Wild Animals with gun by illegally entering in to Nameri National Park and Tiger Reserve and thereby committed offence punishable u/s 51 of Wild Life Protection Act.

I have gone through the evidence on record and heard argument of both sides.

DISCUSSION, DECISION AND REASONS THEREOF :

PW 1 is Sri Raphael Das, Forester 1 Nameri Forest Range. His evidence is that on 26-5-2014 he was at Sanjuli Forest Camp as Forester 1. On that day at about 6.30 PM, he was on duty and he accompanied Range Officer Dilip das and other staff to Udal Gaon on patrolling duty. On the basis of secret information they visited the house of Arjun Basumatary and on being interrogated said Arjun Basumatary told that he along with one Bijoy and one Debe were involved in hunting wild animal inside the reserve forest. Then, they went to the house of Bijoy and on being interrogated said Bijoy confess that he had posses two handmade guns and he along with other two accused were involved in hunting wild animals then the forest team accompanied by Arjun and Bijoy went inside the reserve forest and recovered two guns kept hidden on a tree than the accused persons and guns were brought to the Divisional Forest Office. Seizure list was prepared in presence of witnesses. Ext. 1 is the seizure

list, Ext 1 (1) his signature. He also identified two guns produced in the Court. And material Ext. 1 and 2 is the guns. He also prepared sketch map. Ext. 2 Sketch map and Ext. 2 (2) his signature. M-Ext- 1 and 2 are Guns identified.

PW 2 is Dilip Kumar Das Forest Range officer Nameri National Park and Tiger Reserve. His evidence is that on 26-5-2014 he was Forest Range Officer at Nameri National Park. On that day he received information that miscreants had killed/hunted deer inside Reserve Forest and sold the flesh. He also deposed that accused Arjun Basumatary and Debeswar Pagag were reportedly involved in hunting deer. Then on the same day at about 8 PM he along with his staff went to Samuguri Koroibari Eleka. At first, they visited the house of Arjun Basumatary and on questioning said Arjun Basumatary confessed that he was involved in hunting deer by using handmade guns. On further questioning he told that the gun was in possession of Bijay Basumatary and Debeswar Pagag. Then the foresting accompanied by Arjun Basumatari went to the house of Bijay Basumatary. They found Bijay Basumatary in the house of his father-in-law. On interrogation Bijay Basumatary told that the guns were kept on a tree inside the reserve forest. Then on being shown by Bijay Basumatary the two guns were found tied to a tree. Accordingly, the guns were recovered and seized. They accused person and the guns were brought to Namari Renge Office. On 05-06-2015 Debeswar Pagag were arrested and brought to D.F.O. Office. Confessional statements of accused Arjun Basumatary and Bijay Basumatary were recorded in the Office. A case was registered against the accused persons and witnesses were examined and on completion of investigation he (PW 2) submitted offence report. The guns were produced before the court and taken in zimma vide court order. Ext- 3 is offence report. Ext- 3(1), 3(2), 3(3) his signatures. Ext- 2 is sketch map, Ext- 2(2) his signature. Ext- 4 is the application showing production of guns before C.J.M.

PW 3 Anil Kalita and **PW 4** Gyanendra Chetri both forest employee and were members of the patrolling party. They have also given similar evidence as **PW 1** and **PW 2**.

PW 3 has proved his signature in seizure list, Ext- 1, seizure list. Ext- 1(2) is his signature. He has also identified the seized guns vide M-Ext- 1 and 2. **PW 4** has also proved his signature in the seizure list. Ext- 1 seizure list, Ext – 1(3) his signature.

APPRECIATION OF EVIDENCE :

From the discussion of the evidence on record it appears that **PW 1, 2, 3 and PW 4** all forest personnel. They were the members of patrolling party led by PW 1 the Range Officer Nameri Forest Range. All the witnesses have un-equivocally stated that on 26-05-2014 on getting secret information regarding sale of meat of deer at Samjuli area they raided at the house of accused Arjun Basumatary. They have also stated that Arjun Basumatary confessed before them that he along with accused Bijay and Arjun Pagag were involved in hunting wild animal inside the Nameri Forest Range by using handmade guns. It is also in the evidence of PWs that the Forest team on being shown by the accused persons recovered two handmade guns kept on a tree at Samjuli Jungle. Then the guns were seized vide seizure list, Ext- 1. Further it is found from the evidence that the guns were produced before Ld. C.J.M. Sonitpur along with the accused persons. The PWs have also identified the seized guns in the court.

Defence cross examined all the PWs. But nothing useful has been elicited from the witnesses. It has been attempted to show in the cross examination that the accused persons were resident of village adjacent to reserve forest and they have been arrested on suspicion.

I have carefully considered the evidence on record. I find that the PWs have corroborated each other regarding the involvement of the accused persons in hunting of Wild Animal inside the reserve forest. It is not in dispute that the forest team on 26-05-2014 conducted operation to nab culprits involved in illegal hunting of Wild Animals. They conducted the operation based on information and accordingly they have been able to apprehend the culprit and also recovered guns possessed by them.

The Ld. Defence counsel while arguing the case before me vehemently submitted that the recovery of the guns on the basis of confessional statement of the co-accused and the confessional statement of the accused persons itself are not admissible in evidence. It is also submitted that the forest personnel are the investigator in this case and they have made the search and recovery without following the procedure required under the law. It is also submitted that all the witnesses are interested witness and on the basis of their statement the conviction could not be proper. The Ld. Counsel for the defence relied upon the decision rendered in Md. Moinul Haque Vs/ State of Assam (2012 CrI. L J 3996) regarding Law in respect to search and seizure.

In the case in hand also the forest Officials have consistently and in a convincing manner deposed about the occurrence as well as search and seizure. It is in the evidence of the PWs that the accused persons confessed/admitted that they hunted Wild animal with guns inside the Reserve Forest. I find the evidence of the PWs acceptable.

In my considered opinion in the facts and circumstances of the case the leading to discovery of the guns is in tune with Sec. 27 of Evidence Act. The seizure has been proved by the witnesses and the material Exhibit Guns were produced and identified in the court.

I have very carefully scrutinized the materials on record and I have also given my anxious thought to the facts and circumstances of the case. In this regard I may refer to the observation made by Hon'ble Supreme Court in Girija Prasad (deal) by LRS Vs/ State of M.P (2007) 7 SCC 625, where in para 24, 25 and 26 it has been held as under.

"24. In our judgment, the above proposition does not lay down correct law on the point. It is well-settled that credibility of witness has to be tested on the touchstone of truthfulness and trustworthiness. It is quite possible that in a given case, a Court of Law may not base conviction solely on the evidence of Complainant or a Police Official but it is not the law that police witnesses should not be relied upon and their evidence cannot

be accepted unless it is corroborated in material particulars by other independent evidence. The presumption that every person acts honestly applies as much in favour of a Police Official as any other person. No infirmity attaches to the testimony of Police Officials merely because they belong to Police Force. There is no rule of law which lays down that no conviction can be recorded on the testimony of Police Officials even if such evidence is otherwise reliable and trustworthy. The rule of prudence may require more careful scrutiny of their evidence. But, if the Court is convinced that what was stated by a witness has a ring of truth, conviction can be based on such evidence.

25. *It is not necessary to refer to various decisions on the point. We may, however, state that before more than half-a-century, in the leading case of [Aher Raja Khima v. State of Saurashtra](#), AIR 1956 SC 217, Venkatarama Ayyar, J. stated:*

The presumption that a person acts honestly applies as much in favour of a police officer as of other persons, and it is not judicial approach to distrust and suspect him without good grounds therefor. Such an attitude could do neither credit to the magistracy nor good to the public. It can only run down the prestige of the police administration. (emphasis supplied)

26. *In [Tahir v. State \(Delhi\)](#), (1996) 3 SCC 338, dealing with a similar question, Dr. A.S. Anand, J. (as His Lordship then was) stated:*

Where the evidence of the police officials, after careful scrutiny, inspires confidence and is found to be trustworthy and reliable, it can form basis of conviction and the absence of some independent witness of the locality to lend corroboration to their evidence, does not in any way affect the creditworthiness of the prosecution case.”

Here I may discuss the relevant provisions of the Wild Life Protection Act, 1972.

This is a case under Wild Life Protection Act which is a special legislation for protection of Wild Animals Birds and plants and for matters connected therewith or ancillary or incidental thereto with a view to ensuring the ecological and environmental security of the country.

Sec. 9. Of the Act prohibits hunting of Wild animal specified in schedule I, II, III and IV. Sec.27 of the Act imposes restriction on entry in sanctuary. Sec. 31 Prohibities entry into sanctuary with weapons. Sec. 51 provides for penalties for contravention of any of the above provisions under the Wild Life Act.

Reverting to the facts of the case we find that the forest official on the relevant date found that the accused persons were involved in the poaching of wild animals by using guns. The recovery from the guns from inside the reserve forest by the forest officials on the basis of the statements of the accused persons would show that the accused persons entered in to the Nameri reserve forest with weapon without any authority in violation of Sec. 31 of the Wild Life Protection Act. It is clear from the evidence on record that though the accused persons were not caught red handed, there is no doubt that the accused persons were involved in the alleged offence of poaching of Wild Animals.

Considering the evidence in its entirety I find that prosecution has been able to prove that the accused persons illegally entered in to Nameri reserve forest and Tiger reserve with illegal weapons and also hunted wild animals particularly swamp deer (animal mentioned in schedule I) violating provision 9, 27 and 31 of Wild Life Protection Act, 1972.

In view of what has been discussed above I find that prosecution has been able to prove offences against the accused persons punishable u /s 51 of Wild Life Protection Act, 1972 beyond all reasonable doubt.

Sec.51. - Penalties. – (1) Any person who [contravenes any provision of this Act [(except Chapter V – A and Section 38- J)]] or any rule or order made there under or who commits a breach of any of the conditions of any license or permit granted under this Act, shall be guilty of an offence for a term which may extend to [three years], or with fine which may extend [to twenty- five thousand rupees] or with both :

[Provided that where the offence committed is in relation to any animal specified in Schedule I or Part II of Schedule II or meat of any such animal or animal article, trophy or uncured trophy derived from such animal or where the offence relates to hunting in a sanctuary or a national Park or altering the boundaries of a sanctuary or a National Park, such offence shall be punishable with imprisonment for a term which shall not be less than three years but may extend to seven years and also with fine which shall not be less than ten thousand rupees.

THE WILDLIFE PROTECTION ACT (ASSAM AMENDMENT) 2009 amended the Section 51 of WL(P) Act, 1972, which provides :-

"..... 2. In the principal Act, in Section 51, in sub-section(1),

(i) In the first proviso, -

(a) In between the words "hunting in" and "a sanctuary" the words "or outside the boundary of" shall be inserted.

(b) For the words "three years", "seven years" and "ten thousand", the words "seven years", "ten years" and "fifty thousand" respectively shall be substituted....."

In the instant case, I find that Prosecution has been able to prove beyond all reasonable doubt that the accused persons committed offence in contravention of u/s 9, 27 and 31, punishable u/s 51 of the W.L (P)Act, 1972.

ORDER

In the result, I find the accused persons Arjun Basumatary, Bijoy Basumatary and Sri Debeswar Pagag guilty u/s 51 of Wild Life Protection Act, 1972. Accordingly, they are convicted.

Heard the accused persons on the point of sentence. They pleaded for mercy. Considering the gravity of offence I am not inclined to give the accused persons benefit either u/s 360 Cr.P.C. or under the provisions of probation of offenders Act. Accordingly, the accused persons are sentenced to undergo Rigorous Imprisonment for seven (7) years each and to pay fine of Rs. 50,000/- each in default Rigorous Imprisonment. for 1(one) year each u/s 51 (proviso 1) of Wild Life Protection Act, 1972. Seized Guns be confiscated to the state in due course of law.

Set off the period of detention.

Free copy of Judgment be given to each accused free of cost.

Send copy of Judgment be given to District Magistrate Sonitpur, as provided U/S of 365 Cr.P.C.

Given under my hand and seal this 22nd day of July 2015.

(S. DAS)

Additional Sessions Judge,
Sonitpur :: Tezpur