

IN THE COURT OF THE SESSIONS JUDGE, DARRANG, MANGALDAI, ASSAM

Present: Sri G.Baruah,
Sessions Judge,
Darrang, Mangaldai

Reference : **Sessions Case No.118(DM) 11 (WL)**
(CR Case No.198/11)

Complainant : State

Vs

Accuseds : 1. Haren Daimari
2. Dharmeswar Basumatari

Charge: U/S-51(1) of the WL(P)Act, 1972

Date of Charge : 13.08.2013

Dates of deposition : 01.09.2012, 14.09.2012, 03.09.2013,
26.06.2013, 15.03.2014, 21.04.2014,
20.05.2014, 04.12.2014.

Date of statement U/S- 313 Cr.P.C. : 20.04.2015

Date of Argument : 07.07.2015

Date of Judgment : 21.07.2015

For the State : Sri J. Deka, Special PP.

For the accuseds : Md. H. Rahman, Advocate, Mangaldai.

J U D G M E N T

The case against the accuseds Haren Daimari and Dharmeswar Basumatary was committed for trial on 27.02.2012 by Sri A.K. Baruah, Judicial Magistrate, First class, Darrang, Mangaldai (as he was then).

PROSECUTION CASE

1. It is like a story which is unfolded during trial. There is the Rajib Gandhi Orang National Park, herein after the National Park, in the district of Darrang on the Northern bank of river Brahmaputra which is the home of several endangered animals including the one horned rhinoceros and several species of tigers. Several non-government organisation, hereinafter NGOs, including NGO Aaranyak has been working in collaboration of the Assam Forest Department for conservation of one horned rhinos and tigers. In December, 2010 the NGO Aarayank was granted permission to install camera traps in the National Park for census of tigers and accordingly the NGO Aaranyak with the help of forest staffs on 28.12.2010 and 29.11.2010 installed a total of 31 cameras in different parts of the National Park, and one of the said cameras being camera type no.30005 was installed in the National Park in a location called "Half Camp". The forest officials and the members of NGO periodically visited the areas where cameras are installed to check and ensure proper functioning of the cameras for trapping of the animals. On 09.01.2011 they visited the "Half Camp" area and examined the camera type No.30005 and on perusing the memory card they found apart from other normal photos two photographs of three persons carrying two rifles with them as on 05.01.2011. On examination of the photographs they found that the persons appearing in the photos neither belongs to members of forest staffs nor the NGO, but belongs to a group of poachers. In the meantime in the night of 09.01.2011 a female rhino was killed just within 300 meters of "Half Camp" and the horn was taken away. The forest officials had strong reason to believe that it were the persons who appeared in the photos captured by camera type No.30005 on 05.01.2011 are the poachers and they started looking for them. The forest officials and the NGO removed the said camera, transferred the relevant portion of the recording in a computer and saved the same in a USB device.
2. Though the forest officials tried to capture the persons appearing in the photographs but they could not capture them. So, the forest officials published and hanged the photos of the poachers in different parts of the district and its adjoining areas appealing the public to give information

about the poachers and also announced a cash prize of Rs.25,000.00 (Rupees twenty five thousand) only. Due to constant pressure 2 (two) of the above 3 (three) poachers appearing in the photographs namely Sri Haren Daimary and Sri Dharmeswar Basumatary @ Zebrang (the present accuseds) surrendered before the officer-in-charge, Dhekiajuli Police Station along with 2 (two) .303 rifles and 5 rounds of .303 live ammunitions. On 04.02.2011 the O/C, Dhekiajuli Police Station handed over Sri Hiren Dimary and Sri Dharmeswar Basumatary @ Zebrang along with 2 (two) .303 riffles and 5 numbers of live ammunitions along with seizure list to the forest officials.

3. The prosecution case started rolling hereinafter. On 05.02.2011 the forest officials lodged an FIR before the Chief Judicial Magistrate, Darrang, Mangaldai narrating the facts and produced the accused persons before the learned Chief Judicial Magistrate, Darrang, Mangaldai. A CR Case No.198/2011, U/S-2(16)/9/31/35/50/51 of Wild Life (Protection) Act, 1972 started and the accused persons were taken into judicial custody. The learned Chief Judicial Magistrate, Darrang, Mangaldai vide order dated 05.02.2011 directed the officer-in-charge, Dalgaon P.S. to register a separate case against the accused persons under the provisions of Arms Act. The forest officials after completing their investigation submitted offence report against the above named accused persons on 18.07.2011, U/S-2(16)/9/31/35/50, R/W Sec. 51 of the WL(P) Act before the Sessions Court, Darrang as well as before the Chief Judicial Magistrate, Darrang. The Court of Sessions Judge, Darrang vide order dated 25.07.2011 registered Sessions Case No.118(DM)2011 (WL). The CR Case No.198/2011 was transferred to the Court of the learned JMFC, Darrang for disposal and the learned JMFC, Darrang after furnishing free copy to the accused persons finding the case exclusively triable by the Court of Sessions committed the case to this court for trial. After receiving the record this Court registered the same as Sessions Case No.26 (DM)12 (W.L.).
4. While proceeding with the records my learned predecessor finding both Sessions Case No.118(DM)11 (WL) and Sessions Case no.26(DM)12 (WL) arose from the same cause of action against the same set of accuseds my

learned predecessor by an order dated 23.03.2012 amalgamated both the case record together in Sessions Case no.118(DM)11 (WL).

5. The prosecution has examined 4 PWs before charge and they were partly cross-examined before charge. My learned predecessor finding prima-facie materials against the accused persons farmed charge U/S-51(1) of Wild Life (Protection) Act, 1972 and on being read over and explained the said charge the accused persons pleaded not guilty and claimed to be tried. After charge the above 4 PWs were further cross-examined and discharged. Two numbers of Court witnesses were also examined. 313 Cr.P.C. statements of the accused persons were recorded. Their plea is of complete denial and stated that their signatures in the statements before the forest officials were obtained forcefully. The defence also examined one defence witness.
6. I have heard the argument put forwarded by the learned Special Public Prosecutor and of the learned defence counsel. I have carefully perused the entire case record and the evidence brought into the record, both oral and documentary. I have also scrutinised the material exhibit.
7. After going through the record and hearing the learned counsels of both sides the following point is required to be determined.

POINT FOR DETERMINATION

8. Whether the accused persons entered into Rajib Gandhi Orang National Park on 05.01.2011 at night with arms in "Half Camp" area and hunted one female rhino in the area on 09.01.2011 and taken away the horn and thereby committed any offence punishable U/S-51(1) of Wild Life (Protection) Act, 1972?

DISCUSSION, DECISION AND REASON THEREOF

9. The prosecution has examined 4 PWs in this case. The informant Md. Salim Ahmed, the Range Officer of the National Park has been examined as PW3. In his evidence PW3 deposed that on 05.02.2011 he was working in the National Park as a Range Officer. He stated on 05.02.2011 he lodged an FIR before the Chief Judicial Magistrate, Darrang against the

accused persons Sri Hiren Dimary and Sri Dharmeswar Basumatary and on 18.07.2011 he submitted a petition along with offence report to issue proves against the accused persons. He exhibited the FIR as Ext.5 and Ext.5(1) as his signature. He exhibited the letter issued to the Chief Judicial Magistrate, Darrang as Ext.6 and Ext.6(1) as his signature. He exhibited the offence report as Ext.7 containing 8 pages and Ext.7(1) as the signature of Prabin Ch. Deka. He deposed that on 09.01.2011 one rhino was killed by bullet firing by poachers at the National Park and taken away the horn. He also stated that in December, 2010 the NGO Aaranyak represented by Dr. Firoj Ahmed was given permission vide Ext.8 to install hidden cameras in the National Park for tiger census. He identified Ext.8(1) as the signature of the DFO-S.K. Daila. He stated that 31 numbers of hidden cameras were installed which was informed to the Forest Department by Dr. Firoj Ahmed vide Ext.9 and he also identified the signature of Dr. Firoj Ahmed as Ext.9(1). He also exhibited the camera installation and removal report as Ext.10 and Ext.10(1) and 10(2) as signatures of Dr. Firoj Ahmed. He stated as per Ext.10 one camera type No.30005 was installed in "Half Camp" area of the National Park on 29.12.2010 and it was removed on 22.01.2011. He stated that the cameras were periodically checked. He stated that the camera takes pictures of all moving animal. He stated on 09.01.2011 they monitored the camera type No.30005 installed in "Half Camp" area and found two photographs recorded on 05.01.2011 at 1.31.25 AM and at 1.32.44 AM showing three numbers of poachers with two numbers of rifles. He stated that photos were transferred to computer and USB device and saved. He stated that the matter was reported to the Divisional Forest Office on 09.01.2011 by him as well as by NGO Aranyak. The letter issued by NGO Aaranyak to DFO on 09.01.2011 has been exhibited as Ext.11 and Ext.11(1) as the signature of Dr. Firoj Ahmed. PW3 also exhibited the USB Device as Material Ext.1. He exhibited the photo No.5485 dated 05.01.2011 at 1.31.25 Am as M. Ext.2 and the Photo No.5564 dated 05.01.2011 at 1.32.44 AM as M. Ext.3. He stated that above photographs were sent to the DFO along with Ext.11 under the signature of Dr. Firoj Ahmed and he indentified the signatures as M. Ext.3(1). He also stated that on the basis of the above photos they tried to capture the accused

persons but could not. He stated on 19.01.2011 the DFO vide Ext.12 asked to display the photos at prominent areas and also declared award of Rs.25,000.00 for giving information. He indentified the signature of the DFO S.K. Daila as Ext.12(1). He exhibited one of the such colour photos as M. Ext.4 and M. Ext.4(1) and M. Ext.4(2) photographs of two poachers. He stated that after postering at various places the present accused persons surrendered in Dhekiajuli P.S. with two numbers of rifles and live ammunities and the police handed over them to forest department with arms and ammunities. He identified the accused persons in the dock to be the persons handed over by the police. He also stated that the accused persons confessed that on 09.01.2011 they have killed one rhino in the National Park. He also stated that on 05.02.2011 he submitted a petition vie Ext.13 before the learned C.J.M., Darrang, Mangaldai to direct the officer-in-charge, Dalgaon P.S. to register a separate case against the accused persons under the provisions of the Arms Act and deposited the arms and the live ammunities before the Dalgaon P.S. He identified his signature as Ext.13 (1). He also deposed that the then Assistant Conservator of Forest recorded the statement of Tarun Sarma (PW1) and Md. Sahjad Ali (PW2), U/S-50 of the Act in presence of the accused persons Haren Daimari and Dharmeswar Basumatary.

10. IN HIS CROSS-EXAMINATION PW3 stated that the present accused persons were handed over to them by Dhekiajuli P.S. and he has not cited any persons from Dhekiajuli P.s. as witness in this case. He stated that no person from Dalgaon P.S. has also been cited as witness in this case. He stated that M.Ext.4 is the side view of persons. He denied that from M.Ext.4(1) and M.Ext.4(2) it is not possible to identify the faces of the persons appearing in the photographs. He stated that the accused persons were unknown to him before the occurrence. He stated that Ext.A (exhibited by defence) is the photographs of the two accused persons along with some forest officials some of whom are armed. He stated that photograph was taken at Dhekiajuli P.S. after surrender. He denied that the accused persons are not involved in poaching of rhinos and that the photos do not contain their pictures.

11. Prosecution side examined Md. Firoz Ahmed, Wild Life Biologist as PW4. In his evidence Md. Firoz Ahmed deposed that he works with the NGO Aaranyak and in 2010-11 he was working as co-ordinator of the NGO for tiger conservation initiative in Rajib Gandhi Orang National Park. He deposed that for tiger census with the permission of the DFO vide Ext.8 they installed cameras in 31 locations of the National Park. He stated some of the important locations were Half Camp, Bechimari, Satsimolu etc. he indentified the camera installation report as Ext.10 and Ext.10(1) to Ext.10(3) as his signatures. He deposed that cameras were frequently monitored and the data were shared with forest department. He stated on 09.01.2011 while examining the cameras installed at Half Camp area they found along with pictures of animals, pictures of three persons. He stated pictures were downloaded and saved in USB device. He stated that the camera installed in Half Camp area was type 30005, GPS latitude 26.35.29.4 and longitude 92.19.15.5. The camera was installed on 29.12.2010 and removed on 22.01.2011. He exhibited his report dated 09.01.2011 submitted to the DFO as Ext.11 and his signature as Ext.11(1). He stated that the cameras captured the photographs of the poachers on the night of 05.01.2011 at 1.31 AM and 1.32 AM. He indentified M. Ext.2 and M.Ext.3 as the said two photographs. (The witness also showed the pictures to the court in laptop).
12. IN CROSS-EXAMINATION he deposed that before installing the cameras there was no publicity. He stated that there were pictures of three persons, the face of one person was covered, other two not covered. He stated that after getting written permission they installed cameras in 31 locations of the National Park. He stated M.Ext.2 was taken from one side. He denied that the photographs stored in M.Ext.1 (USB Device) the persons could not be identified. He stated that from M. Ext.3 the persons could not be identified as the same is not very clear. He stated that in M.Ext.4(1) one side of the face of the person is appearing. He denied that the person appearing in M.Ext.4(2) is not distinct. He denied to depose falsely.
13. While appreciating the evince of PW3 Md. Salim Ahmed and PW4 Md. Firoz Ahmed we have found that the prosecution has brought into record

that the NGO Aaranyak was working along with the forest department in tiger census project in the National Park during 2010-11 and with the permission of the forest department (Ext.8) hidden cameras were installed in 31 different locations of the National Park including Half Camp area. Perusal of Ext.8 shows that on 20.12.2010 the then Divisional Forest Officer, Mangaldai Wild Life Division granted permission to Md. Firoz Ahmed of Aaranyak to install 31 cameras in the National Park for tiger census. Prosecution has also brought into record the completion report submitted by PW4 to the DFO, Wildlife Division vide Ext.9 and the camera installation and removal report vide Ext.10. The prosecution has brought into the record the report dated 09.01.2011 submitted by PW4 Dr. Firoz Ahmed to the DFO, Mangaldai Wild Life division regarding capturing of two photographs by camera No.30005 of Half Camp area showing poachers on the night of 05.01.2011 at 1.31 Am and 1.32 AM, which was discovered only on 09.01.2011. The defence counsel while cross-examining the PW3 and PW4 never disputed the installation of the cameras in the National Park as well as in the Half Camp area of the National Park. The defence virtually admitted the installation of the cameras in the National Park and in Half Camp area, they only questioned the accuracy of the photographs taken by the cameras in Half Camp area and only disputed that the photographs captured by the said camera do not belong to the present accused persons.

14. PW3 Md. Salim Ahmed specifically stated that after getting the instruction vide Ext.12 for posterizing the photographs captured by the camera in Half Camp area and also announcing an award of Rs.25,000.00 for giving information of the accused persons he posterized the photographs in different areas of the district and adjoining areas and thereafter under pressure the accused persons surrendered before the police of Dhekiajuli P.S. with arms and live ammunitions. Perusal of Ext.12 shows that on 19.01.2011 the then Divisional Forest Officer, Mangaldai Wild Life Division instructed the Range Officer of the National Park (PW3) and the Beat Officer, Mangaldai Wild Life Division to display posters of the suspected poachers with cash award of Rs.25,000.00 to persons giving information. The defence has not disputed the above facts and during cross of PW3

has not denied that the accused persons have surrendered with arms and live ammunitions before the police of Dhekiajuli P.S. after the posting.

15. Prosecution examined Sri Tarun Sarma, Forester-I as PW1. In his evidence he stated that on 09.01.2011 he was working as Forester-I in Mangaldai Wildlife Division. He stated that the accuseds Haren Daimari and Dharmeswar Basumatary had surrendered before Dhekiajuli P.S. with two numbers of .303 rifles and five numbers of live ammunitions and the police handed over them to the Range Officer of the National Park Md. Salim Ahmed (PW3). He stated that they killed one female rhino in Half Camp area of the National Park and took away the horn. He stated that in this regard his statement was recorded by the Assistant Conservator of Forests in presence of both the accused persons. He identified his statements as Ext.1 and Ext.2, his signature as Ext.1(2) and the signature of accused Dharmeswar Basumatary as Ext.1(4) and the signature of accused Haren Daimari as Ext.2(3).
16. IN CROSS he stated that he has not seen the rhino being killed. He stated ACF Islamuddin Ahmed recorded the confessional statement of the accused persons. He was present at that time. He stated several guards are present and some of them were armed. The accuseds were told to speak the truth. He stated in cross that M. Ext.4 shows that picture of accused Haren Daimari . He stated Haren Daimari himself surrendered before the police with arms and ammunitions. In cross he also stated that the accused persons confessed to have killed rhino in the National Park. He denied that accuseds persons have not surrendered in the P.S. and the M. Ext.4 does not picture the accused person.
17. Prosecution examined as PW2 Md. Sahjad Ali who worked as Forester-I in Mangaldai Wildlife Division on 05.02.2011. He stated that the accuseds Haren Daimari and Dharmeswar Basumatary admitted that on 05.01.2011 they entered into Rajib Ganghi Orang National Park near Half Camp and on 09.01.2011 killed one female rhino. He informed the same to ACF in presence of the accused persons and the ACF recorded his statements. He identified his statements as Ext.3 and Ext.4 and his signature as Ext.3(2) and ext.4(2). He also identified the signatures of accused

Dharmeswar Basumatary and Haren Daimary as Ext.3(3) and Ext.4(3) respectively.

18. IN CROSS PW2 stated that at the time of surrender by the accused persons he was in Mangaldai. He along with 6/7 persons went to Dhekiajuli P.S. and brought the accused persons. He stated that along with the accused persons police also handed over two rifles. He stated the rifles' were again handed over to police. He stated that on the next day the accused persons were produced before the Court. In cross he also stated that on NGO namely Aaranyak installed CCTV cameras in the National Park. He stated that the accused persons were interrogated on the next day morning. He stated that M.Ext.2 is captured from one side and in M.Ext.3 only one person can be identified. He denied the suggestion that the accused persons have not killed the rhino and that they have not surrendered.
19. While scrutinising the evidence of PW1 Tarun Sarma and PW2 Md. Sahjad Ali we found that the prosecution has brought into the record that the accused persons have confessed before PW1 and PW2, which can best be termed as extra-judicial confessions, of their involvement in the killing of the rhino on 09.01.2011 in the National Park and PW1 and PW2 narrated the fact to their superior Assistant Conservator of Forests who recorded their statements to that effect. The defence while cross-examining PW1 and PW2 has not denied the confessional part of the accused persons. The defence disputed the photographs and denied that the accused persons have surrendered before the police. At the same time the defence during the first part of cross PW2 affirmed that PW2 along with 6/7 persons has brought the accused persons from Dhekiajuli after they surrendered.
20. In this case two witnesses were examined as court witnesses. CW1 Islamuddin Ahmed(retired) Assistant Conservator of Forest during 2009 to 31.03.2013 deposed that on 05.02.2011 he recorded the statements of Tarun Sarma, Forester-I and Sahjad Ali, Forester-I U/S-50(8) of WL(P) Act in the Range Office, Orang in presence of accused persons Haren Daimari and Dharmeswar Basumatary. He indentified the statements Sahjad Ali as

Ext.3 and Ext.4, his signature as Ext.3(1) and Ext.4(1) and the signatures of Dharmeswar Basumatary and Haren Daimary as Ext.3(3) and Ext.4(3) respectively. He also identified the statements of Tarun Sarma as Ext.2 and Ext.12, his signatures as Ext.2(2) and Ext.12(1) and the signatures of accused Haren Daimari and Dharmeswar Basumatary as Ext.2(3) and Ext.12(3).

21. IN CROSS he stated that he did not have any personal knowledge about the occurrence. He stated that at the time of recording the statements of the accused persons Range Officer (PW3) was not present. He stated in cross that M. Ext.2 and M. Ext.3 are photographs showing side profile of a person and it is possible to recognise the faces of those persons. He denied that the photographs do not belong to the accused persons and that their signatures were forcibly obtained.
22. CW2 was Maheswar Saikia, S.I. of Police. He deposed that on 03.02.2011 he was working as attached officer in Dhekiajuli P.S. He stated that prior to 03.02.2011 two persons were detected inside the Orang National Park on CCTV cameras and their photographs were subsequently pasted around the town being the suspected poachers and on 03.02.2011 the two poachers whose photos were pasted around the town surrendered before Dhekialuli P.S. and deposited two .303 rifles and five rounds of ammunitions. He stated that he seized the above .303 rifles and five rounds of live ammunitions vide Ext.14 in presence of two witnesses and Ext.14(1) is his signature. He stated the seizure was done on the basis of GD Entry No.53/11 dated 03.02.2011.
23. IN CROSS he stated that there was no official surrender ceremony where the persons surrendered with arms and ammunitions. He stated they were handed over to the Forest Officials. He stated he is not a weapon expert but mentioned the ammunitions to be live in Ext.14 on the basis of visual examination. He denied the suggestion that the accused persons had not deposited the two rifles and live ammunitions.
24. While going through the evidence of CW1 and CW2 we found that CW1 Islamuddin Ahmed, the Assistant Conservator of Forest only stated that he recorded the statement of PW1 Tarun Sarma and PW2 Sahjad Ali U/S-

50(8) of WL(P) Act in presence of the accused persons. There is nothing to disbelieve him. CW2 Maheswar Saikia only confirmed that the accused persons on 03.02.2011 surrendered with two rifles and five numbers of live ammunitions and thereafter they were handed over to the forest department.

25. The evidence of the PWs and of the CWs when scrutinised together we found that there is no dispute or doubt that the NGO Aaranyak was granted permission on 20.12.2010 by the Divisional Forest Officer, Mangaldai Wild Life Division vide Ext.8 to install 31 cameras in the National Park for tiger census, that there is also no dispute that cameras were installed in 31 different locations including Half Camp area on 29.12.2010 and the cameras were removed on 22.01.2011 for which information certificate along with the camera positions were informed to the authority by the NGO Aaranyak vide Ext.9 and Ext.10. There is also no dispute that on the night of 05.01.2011 at 1.31 AM and 1.32 AM the cameras of Half Camp have captured two photographs showing two poachers. Now the question is whether the photographs captured by the electronic device (i.e. camera) is admissible in evidence or not.

26. **Section 65-B of the Indian Evidence Act, 1872** deals with the admissibility of electronic record which reads as follows:

1. *Notwithstanding anything contained in this Act, any information contained in an electronic record which is printed on a paper, stored, recorded or copied in optical or magnetic media produced by a computer (hereinafter referred to as the computer output) shall be deemed to be also a document, if the conditions mentioned in this section are satisfied in relation to the information and computer in question and shall be admissible in any proceedings without further proof or production of the original, as evidence of any contents of the original or of any fact stated therein of which direct evidence would be admissible.*
2. *The conditions referred to in sub-section(1) in respect of a computer output shall be the following, namely-*

- (a) *the computer output containing the information was produced by the computer during the period over which the computer was used regularly to store or process information for the purposes of any activities regularly carried on over that period the persons having lawful control over the use of the computer;*
 - (b) *during the said period, information of the kind contained in the electronic record or of the kind from which the information so contained is derived was regularly fed into the computer in the ordinary course of the said activities;*
 - (c) *throughout the material part of the said period, the computer was operating properly or, if not, then in respect of any period in which it was not operating properly or was out of operation during that part of the period, was not such as to affect the electronic record or the accuracy of its contents; and*
 - (d) *the information contained in the electronic record reproduces or is derived from such information fed into the computer in the ordinary course of the said activities.*
3. *Where over any period, the function of storing or processing information for the purpose of any activities regularly carried on over that period as mentioned in clause (a) of subsection(2) was regularly performed by computers, whether-*
- (a) *by a combination of computer operating over that period,;*
 - (b) *by different computers operating in succession over that period; or*
 - (c) *by different combinations of computers operating in succession over that period; or*

- (d) *in any other manner involving the successive operation over that period, in whatever order, of one or more computers and one or more combinations of computers, all the computers used for that purpose during that period shall be treated for the purposes of this section as constituting a single computer; and references in this section to a computer shall be construed accordingly.*
4. *In any proceedings where it is desired to give a statement in evidence by virtue of this section, a certificate doing any of the following things, that is to say-*
- a. *identifying the electronic record containing the statement and describing the manner in which it was procured;*
 - b. *giving such particulars of any device involved in the production of that electronic records as may be appropriate for the purpose of showing that the electronic records was produced by a computer;*
 - c. *dealing with any of the matters to which the conditions mentioned in sub-section(2) relate, and purporting to be signed by a person occupying a responsible official position in relation to the operation of the relevant device or the management of the relevant activities (whichever is appropriate) shall be evidence of any matter stated in the certificate; and for the purposes of this sub-section it shall be sufficient for a matter to be stated to the best of the knowledge and belief of the person stating it.*
5. *For the purposes of this section-*
- a. *information shall be taken to be supplied to a computer if it is supplied thereto in any appropriate form and whether it is so supplied directly or (with or*

without human intervention) by means of any appropriate equipment;

b. *whether in the course of activities carried on by any official, information is supplied with a view to its being stored or processed for the purposes of those activities by a computer operated otherwise than in the course of those activities, that information, if duly supplied to that computer, shall be taken to be supplied to it in the course of those activities.*

c. *a computer output shall be taken to have been produced by a computer whether it was produced by it directly or (with or without human intervention) by means of any appropriate equipment.*

27. In the case in our we found that the cameras installed in the National Park were automatic cameras which captures pictures of any moving thing and the cameras were connected with GPS (Global Positioning System) monitoring and the data collected by the cameras were periodically checked, stored and shared by the NGO with the Forest Department. The above acts fulfil the conditions as mentioned in sub-section (2) of Section 65-B of Indian Evidence Act.

28. We also found that Dr. Firoz Ahmed (PW4) Wild Life Biologist who is the responsible official of the NGO Aaranyak regarding the operation of the hidden cameras in the National Park has certified vide Ext.11 dated 09.01.2011 regarding pictures of the poachers captured by the camera type No.30005 of Half Camp are on 05.01.2011 at 1.31 AM and 1.32 AM which was discovered by them on 09.01.2011 and keeping the camera in safe custody. By the said certificate cum letter of information dated 09.01.2011 the condition as required under sub-section (4) of Section 65-B of the Indian Evidence Act is also fulfilled.

29. In view of the above i have not hesitation to hold that the pictures i.e. M. Ext.2, 3 and 4 which were captured by the electronic device, i.e., the

camera and the device where the pictures were stored, i.e the USB device (M. Ext.1) are admissible in evidence.

30. During our earlier discussion we have found that evidence has brought into the record that after copies of M. Ext.4 with cash award of Rs.25,000.00 announced for any information about the poachers appearing in the poster the present accuseds Sri Haren Daimari and Sri Dharmeswar Basumatary surrendered before Dhekiajuli P.S. on 03.02.2011 with two numbers of .303 rifles and five numbers of live ammunitions. The above fact has been confirmed by CW2 Maheswar Saikia who was working as attached officer on 03.02.2011 at Dhekiajuli P.S. and seized the two numbers of .303 rifles and five live ammunitions vide seizure list Ext.14. During cross-examination the defence apart from suggesting that the accused persons did not surrender before the police of Dhekiajuli P.S., has not been able to shake the prosecution case. M. Ext.2, 3 and 4 reflect the face of the accused persons and after posting of M.Ext.4 at different places the accused persons under pressure surrendered before the police. The accused Haren Daimari in his 313 Cr.P.C. statement stated that he was picked by police from the road and accused Dharmeswar Basumatary in 313 Cr.P.C. statement stated that police picked him from Dhansirighat. But during cross-examination of prosecution witnesses as well as CW2 the defence nowhere put any such suggestion. So, it is clear that the said plea was a afterthought on behalf of the defence which cannot be believed.
31. The defence has examined one Pinku Boro as DW1. He deposed that he is a party worker of AIUDF political party and he did not know anything about the case. He stated went to the police station to see the accused persons with one Rajib Boro who is the brother-in-law of accused Dharmeswar. He stated that he heard from Rajib Boro that the accused persons were picked up by police from the road. IN CROSS he stated that in Ext.14 it is written that two .303 rifles and five live ammunitions were seized but at the time of taking his signature it was blank.
32. A careful study of DW1 reveals that he did not know anything about the case. He went to the P.S. with one Rajib Boro from whom he heard that

the accused persons were picked up by the police from the road. Defence has not examined Rajib Boro from whom DW1 heard about the case. As such Dw1 is nothing but a hearsay witness and cannot be taken into account.

33. From the foregoing discussions we have found that the prosecution has been able to prove beyond all reasonable doubt that on the night of 05.01.2011 the accused persons Haren Daimari and Dharmeswar Basumatary have entered into the Half Camp area of the National Park with arms and live ammunitions and on 03.02.2011 they under compelling circumstances have surrendered before the police with two numbers of .303 rifles and five numbers of live ammunitions.
34. Another question that has been raised is whether the accused persons killed the female rhino on 09.01.2011 at Half Camp area?
35. During the course of argument the learned Special PP submitted that the accused persons have confessed their involvement in the killing of the female rhino on 09.01.2011 and took away the horn before the forest officials PW1-Tarun Sarma and PW2-Sahjad Ali. The learned Special PP submitted that it amounts to extra-judicial confession. Moreover, the statement of PW1 and PW2 were recorded U/S-50(8) of WL(P) Act by the then Assistant Conservator of Forest which is admissible in trial. On the other hand the learned defence counsel submitted that there is no direct evidence against the accused persons regarding their involvement in the killing of the rhino on 09.01.2011. The learned defence counsel submitted that the circumstantial evidence is also not complete against the accused persons.
36. As per Section 50(8) of the WL(P) Act notwithstanding anything contained, in any other law for the time being in force, any officer not below the rank of an Assistant Director of Wild Life Preservation or an officer not below the rank of Assistant Conservator of Forest authorised by the State Government in this behalf shall have the powers, for purpose of making investigation into any offence against any provision of this Act, to receive and record evidence. Section 50(9) of the Act provides: Any evidence recorded under clause (d) of sub-section (8) shall be admissible

in any subsequent trial before a magistrate provided that it has been taken in the presence of the accused person.

37. PW1-Tarun Sarma and PW2-Sahjad Ali in their evidence deposed that the accused persons confessed before them that they killed one female rhino on 09.01.2011 and took away the horn. They stated that they have narrated the facts before the Assistant Conservator of Forests and their statements were recorded by the then Assistant Conservator of Forests CW1-Islamuddin Ahmed. CW1-Islamuddin Ahmed deposed that he recorded the statement of PW1 and PW2 of Section 50(8) of WL(P) Act. He also indentified the statements as Ext.2 and Ext.12 of PW1-Tarun Sarma and Ext.3 and Ext.4 of PW2-Sahjad Ali. He also stated that the statements were recorded in presence of the accused persons and indentified the signatures of accused Haren Daimari as Ext.2(3) and Ext.4(3) and the signatures of Dharmewar Basumatary as Ext.3(3) and Ext.12(3).
38. During evidence it is also brought into the record that the accused persons altogether took the stand that their signatures were forcefully taken in papers. It has also come into the record that statements were recorded in presence of forest guards, some of whom are armed. Though recording of statements U/S-50(8) of WL(P) Act is legally admissible if taken in presence of the accused persons, in this case it appears that statements were taken in presence of armed guards. So there is doubt regarding the voluntariness of statement given by the accused persons which could be termed as extra-judicial confession.
39. Apart from the above we found that during trial the prosecution has not exhibited the confessional statements of the accused persons. It shows that the prosecution does not rely on the confessional statement of the accused persons. We also found that prosecution did not exhibit the necropsy examination report of the female rhino which was alleged to have been killed by the accuseds. The accused persons have entered into the National Park on 05.01.2011, the rhino was killed on 09.01.2011. The prosecution did not adduce any evidence to show that the accused persons during these four days were inside the National Park. Moreover,

there is no conclusive proof that the female rhino on 09.01.2011 died due to bullet injuries fired from .303 rifles.

40. In view of the above I am of the view that prosecution has failed to prove that the accused persons have killed the rhino on 09.01.2011 in the National Park.
41. In our earlier discussions we have already found that the prosecution has proved beyond all reasonable doubt that the accused persons Haren Daimari and Dharmeswar Basumatary entered into the Half Camp area of the National Park on 05.01.2011 with arms and live ammunitions and thereby violated Section 31 of the WL(P) Act, 1972 which is punishable U/S-51(1) of the WL(P) Act.
42. Accordingly the accused persons Haren Daimari and Dharmeswar Basumatary are convicted U/S-31 of the WL(P) Act, 1972, R/W Sec.51(1) of the said Act.

Hearing on the Point of Sentence U/S-235(2) Cr.P.C.

43. I have heard the accused persons on the point of sentence as per provision of Section 235(2) of the Cr.P.C. The accused person Haren Daimari at the time of hearing on the point of quantum of sentence has stated that he is a daily wage earner. He has eight dependents and his wife is also suffering from illness and as such he may be viewed leniently by this court. The other accused person Dharmeswar Basumatary has submitted that he has his wife and two children as well as his mother to look after and he is ready to pay the fine if imposed.
44. The accused persons have entered into the National Park at the dead of night with arms and live ammunitions which shows their clear intention to hunt animals. Generally rhinos are hunted down and their horns are cut at the nose and they are left bleeding to die. These are the aggravating circumstances appearing against the accused persons. The offence committed by the accused persons does not deserve any leniency in my view and the punishment should be such to deter the intending offenders. As such , in my view, if the accused persons Haren Daimari and Dharmeswar Basumatary are directed to undergo rigorous imprisonment

for 2 (two) years and to pay a fine of Rs.25,000.00 (Rupees twenty five thousand) only each, in default to undergo further rigorous imprisonment of 3 (three) months would meet the ends of justice.

ORDER

45. In view of the foregoing discussions the accused persons Sri Haren Daimari and Sri Dharmeswar Basumatary are convicted U/S-31 of WL(P) Act, R/W Sec.51(1) of the said Act and they are directed to undergo rigorous imprisonment for 2 (two) years and to pay a fine of Rs.25,000.00 (Rupees twenty five thousand) only each, in default to undergo further rigorous imprisonment of 3 (three) months.
46. The accused persons shall be entitled for benefit U/S-428 Cr.P.C.
47. A free copy of the judgment and order be furnished to the accused persons immediately as required U/S-363(1) Cr.P.C.
48. A copy of this judgment and order be also furnished to the District Magistrate as per Section 365 Cr.P.C.
49. The case is disposed of on contest.

Given under my hand and seal of this court on this 21st day of July, 2015

(G. Baruah)
Sessions Judge,
Darrang, Mangaldai

APPENDIX:
Prosecution witnesses:

- | | |
|------|------------------|
| PW1: | Tarun Sarma |
| PW2: | Sahjad Ali |
| PW3: | Salima Ahmed |
| PW4: | Md. Firoz Ahmed |
| CW1: | Islamuddin Ahmed |
| CW2: | Maheswar Saikia |

PROSECUTION EXHIBITS:

- Ext.1 : Statement of Dharmeswar Basumatary.
Ext.2 : Statement of Tarun Sarma
Ext.3 : Statement of Sahjad Ali
Ext.4 : Statement of Sahjad Ali
Ext.5 : FIR
Ext.6 : Letter to C.J.M.
Ext.7 : Offence report
Ext.8 : Permission Letter
Ext.9 : Letter to DFO
Ext.10 : Installation of camera
Ext.11 : Letter to DFO
Ext.12. : Letter to Range Officer
Ext.13 : Application to the C.J.M.
Ext.14 : Seizure list.
M. Ext.1 : USB device
M. Ext.2 : Photo of accused
M. Ext.3 : Photo of accused
M. Ext.4 : Postering of the accuseds.

Defence Witnesses:

- DW1 : Sri Pinku Boro

Defence Exhibits:

- Ext.A : Photograph.

Given under my hand and seal of this Court on this the 21st day of
July, 2015.

(G. Baruah)
Sessions Judge,
Darrang, Mangaldai

Certified that the judgment
is typed to my dictation and
corrected by me and each page
bears my signature.

(G. Baruah)
Sessions Judge,
Darrang, Mangaldai

Transcribed and typed by

(P.K. Kalita)
Stenographer