

Presented on : 14.05.2013.

Registered on : 14.05.2013.

Decided on : 18.06.2014.

Duration : 1-Y.1 -M. 4-D.

IN THE COURT OF CHIEF JUDICIAL MAGISTRATE,
A M R A V A T I.

(Presided over by Jayant N. Raje)

Reg. Cri. Case No. 477/2013.

Exhibit - 138

Assistant Conservator of Forest, Dhakna,
Gugamal Wildl Life Division,
Melghat Tiger Project, Paratwada,
Tq. & Distt. Amravati.

... **Complainant.**

Versus,

1. **Madhusingh s/o Leharsingh Rathod,**
aged about 30 years, Occ.-Labour,
2. **Chintaram s/o Leharsingh Rathod,**
aged about 26 years, Occ.-Labour,
3. **Vinod s/o Premlal Pawar,**
aged about 30 years, Occ.-Labour,
4. **Sagarlal s/o Gorelal Pawar,**
aged about 50 years, Occ.-Labour,
Nos. 1 to 4 R/o Sinband (Mothakheda),
Tq. Chikhaldara, District – Amravati,
5. **Narvilal Ruchlesingh Pawar,**
aged about 50 years, Occ.-Labour,
R/o Sawalikheda, Tq. Chikhaldara,

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District – Amravati.

6. Mishrilal Jugdya Chauhan

aged about 43 years, Occ.- Rationsingh
Shop R/o Mothakheda, Tq. Chikhaldara,
District – Amravati.

... **Accused.**

Shri U.S. Deshmukh, Special Prosecutor for the Complainant.

Shri A.R. Phuse, Advocate for the accused Nos. 1 to 5.

Shri P.V. Mahalle, Adyocate for the accused No.6.

**OFFENCE PUNISHABLE U/SECS. 51(1), 51(1C) and 51(1D) OF
THE WILD LIFE (PROTECTION) ACT, 1972.**

JUDGMENT

(Delivered on 18th day of June, 2014)

Accused are prosecuted by the Assistant Conservator of Forest, Gugamal Wildlife Division, Melghat Tiger Project, Paratwada, District- Amravati, for contravention of provisions of Secs. 9, 27, 29, 30, 31, 39(3) punishable U/secs. 51(1), 51(1C) and 51(1D) of the Wild Life (Protection) Act, 1972.

2. In brief, the case of prosecution is as under :

That, Melghat Tiger Project consists of three wildlife divisions namely, Gugamal Wildlife Division, Sipna Wildlife Division and Akot Wildlife Division. There are three forest range in

Gugamal Wildlife Division. They are, Dhakna, Harisal and Chikhaldara. The entire Melghat Tiger Reserve is having area of 2029 Sq. K.M. including core forest and buffer area. The Melghat Tiger Reserve has rare wildlife, birds, Flora and Fauna. Many of the wildlife species are on the brink of extinction. The Melghat Tiger Reserve is considered to be one of the finest area in tiger conservation. Therefore, in exercise of power conferred by sub-section 1 of Sec. 35 of the Wild Life (Protection) Act, 1972, the Government of Maharashtra declared some of the area of Gugamal Wildlife Division as a Gugamal National Park vide notification dated 27th November, 1987. In view of notification dated 15th February 1994, Government of Maharashtra has declared the area of East, West and South Melghat as 'Melghat Sanctuary'. Thereafter, by notification dated 27th December 2007, Government of Maharashtra, notified the area of Gugamal National Park as a Critical Tiger Habitat.

3. On 3.3.2013, Chief Conservator of Forest and Field Director, Melghat Tiger Reserve received secret information in respect of hunting of tiger in Melghat. On receipt of such information, Chief Conservator of Forest informed the Dy. Conservator of Forest, Akot Wildlife Division about the incident. On 4.3.2013, A.C.F., Akot Wildlife Division Mr. D.G. Goswami took

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custody of accused Nos. 1 to 5 and approver Anesh Chhattarsingh Rathod and interrogated them. They disclosed that they had iron trap and other necessary accessories for poaching, supplied by one Ranjit Bhatia of Hoshiyarpur. They further disclosed that, they alongwith approver Anesh went inside the core area of forest near village Sinband, stayed there for three days, concealed spring triggered trap along forest trail used by the tiger and killed tiger. It is revealed from the disclosure statement that, incident of hunting took place in the compartment No. 1140 of Dolar Round of Dhakna Range. Therefore, investigation was handed over to Mr. V.H. Mali, A.C.F., Dhakna.

4. Mr. Mali recorded formal statement of accused Nos. 1 to 5 and approver Anesh and then directed to register the forest offence by issuing POR. Accordingly Forest Guard, Dolar, issued POR No. 10/10 and arrested the accused. Whilst in forest custody, accused Nos. 1 to 3 and approver Anesh showed their willingness to show the spot of hunting of tiger. Their statement was recorded and in pursuance of that, forest officials alongwith accused Nos. 1 to 3 and approver Anesh, reached in the core area of forest on the border of Akot Wildlife Division and Gugamal Wildlife Division, which is approximately 6 K.M. away from Gobia Camp. Accused Nos. 1 to 3 and approver Anesh pointed out the spot where they had laid a trap by

digging a pit to kill the tiger, the spot where they extracted the skin of killed tiger, the place of throwing meat, preparing food and their stay in the forest. A.C.F. Mr. Mali prepared panchanama and seized articles found on the spot. Investigating officer ascertained the spot by taking the reading through GPS. It is revealed that, alleged incident of hunting the tiger took place in compartment No. 905 of Dhakna range.

5. During the course of investigation, R.F.O., Waan visited the Malthana Shivar and seized incriminating articles from the house of accused. On the basis of information supplied by the accused Madhusingh, A.C.F. Mr. Mali seized iron trap used in commission of crime, near village Sinban. Thereafter, the property seized from the place of hunting and house of accused, was forwarded to the Director, Center Cellular and Molecular Biology, Hyderabad, for DNA report. On 10.3.2013, accused Madhusingh gave information to investigating officer Mr. Mali that, one Bhara and Bhajan of Katni (Madhya Pradesh) have acted as a middleman to conclude the deal to sell the tiger skin and bones to Ranjit Bhatia. Accused Madhusingh and Chintaram showed willingness to show the spot, where the skin of the tiger was sold to Ranjit Bhatia. Accordingly, accused took the forest official to Tukaithal (M.P.) and

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actually shown the spot where the transaction has taken place with Ranjit Bhatia. Accused Madhusingh received Rs. 1,65,000/- from Ranjit Bhatia. He distributed some amount amongst accused Nos. 2 to 5. It is disclosed by accused that, accused Vinod kept Rs.20,000/- and accused Madhusingh kept Rs.12,000/- with accused No.6 Mishrilal.

6. During investigation, it is revealed that, accused No.1 to 3 and approver Anesh hunted tiger in Critical Tiger Habitat of Melghat and sold it's body parts to one Ranjit Bhatia, at Tukaithal.

7. The complainant is serving as Assistant Conservator of Forest. In view of provisions of Sec. 50(8) of the Wild Life (Protection) Act, 1972, he is empowered to make investigation in respect of the offence committed under Wildlife Protection Act. Therefore, after completion of investigation, complainant filed present complaint u/sec. 55 of the Wild Life (Protection) Act, 1972, before the learned J.M.F.C., Court No.4, Achalpur. It was registered as Reg.C.C. No. 241/2013.

8. During the investigation, one of the accused manely Anesh Chhattarsingh Rathod was granted tender of pardon by this

Court, u/sec. 306 of the Cr.P.C. He had accepted tender of pardon and therefore, he was examined under sub-section 4 of Sec. 306 of the Cr.P.C. by the learned J.M.F.C. Court No.4, Achalpur. The offences levelled against the accused are not triable by the Court of Sessions or Special Court, therefore, the present case was made over to this Court for trial, on 18.6.2013.

9. On 5.7.2013, accused No.6 Mishrilal was produced before this Court by R.F.O. Waan. All the six accused are in jail since their arrest. Therefore, the trial in this case was expedited. This being a warrant case instituted otherwise than on police report, complainant was directed to adduce evidence u/sec. 244 of the Cr.P.C. Accordingly, complainant examined four witnesses before framing of the charge and closed the side by filing pursis at Exh. 79.

10. After hearing both the sides on the point of charge, on 18.09.2013, I passed order below Exh.1 and directed to frame the charge against the accused Nos. 1 to 6. Accordingly, on 3.10.2013, I framed charge Exh.81 against the accused Nos. 1 to 3 for contravention of provisions of Sec. 9 punishable U/sec. 51(1C) and for contravention of Secs. 27, 29, 30 and 31 punishable u/sec. 51(1) Wild Life (Protection) Act, 1972 and against the accused Nos. 4 to 6 for

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abetting the accused in committing the offence relating to hunting the tiger in contravention of Sec. 9 punishable U/sec. 51(1C) r/w. Sec. 51(1D) of the Wild Life (Protection) Act, 1972 and against the accused Nos. 1 to 6 for contravention of Sec. 39(3) punishable U/sec. 51(1) of the Wild Life (Protection) Act, 1972. The contents of the charge were read over and explained to the accused in vernacular. Accused did not plead guilty.

11. Prosecution has examined in all fourteen witnesses. I recorded further examination of accused u/sec. 313 of Cr.P.C. Their defence is of denial and false implication.

12. Following points arise for my determination and I have recorded my finding against each of them, for the reasons stated below :

POINTS

FINDINGS

- (i) Does the prosecution prove that, prior to 4.3.2013 in Compartment No. 905 of Dhakna Forest Range in Melghat Tiger Reserve, accused Nos. 1 to 3 alongwith one Anesh Chhattarsingh Rathod, have killed a tiger, a wild animal specified in Schedule- I of the Wildlife Protection Act, 1972 except as provided u/sec. 11 and 12 in contravention of Sec. 9 and

thereby committed an offence punishable u/sec. 51(1C) of the Wild Life (Protection) Act, 1972 ?

... **Proved.**

(ii) Does prosecution further prove that, on the aforesaid period and place, accused Nos. 4 to 6 abetted accused Nos. 1 to 3 and Anesh Rathod in committing offence relates to hunting of a tiger in the Tiger Reserve in contravention of Sec. 9 and thereby committed an offence punishable u/sec. 51(1C) r/w. Sec. 51 (1D) of the Wildlife Protection Act, 1972 ?

... **Not proved.**

(iii) Does prosecution further prove that, on the aforesaid period and place, accused Nos. 1 to 3 alongwith one Anesh Chhattarsingh Rathod entered in the sanctuary declared by the State of Maharashtra by notification, without permit granted u/s. 28 of the Wildlife Protection Act, in contravention of Sec. 27 and thereby committed an offence punishable u/sec. 51(1) of the Wild Life (Protection) Act, 1972 ?

... **Proved.**

(iv) Does prosecution further prove that, on the aforesaid period and place, accused Nos. 1 to 3 alongwith one Anesh Chhattarsingh Rathod destroyed, exploited or removed wildlife from a sanctuary without permit granted by the Chief Wildlife Warden in contravention of Sec. 29 and thereby committed an offence

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punishable u/sec. 51(1) of the Wild Life Protection Act, 1972 ?

...

Proved.

(v) Does prosecution further prove that, on the aforesaid period and place, accused Nos. 1 to 3 alongwith one Anesh Chhattarsingh Rathod, kindled fire in a sanctuary in such a manner as to endanger such sanctuary in contravention of Sec. 30 and thereby committed an offence punishable u/sec. 51(1) of the Wild Life (Protection) Act, 1972 r/w. Sec. 26 Indian Forest Act, 1927 ?

...

Proved.

(vi) Does prosecution further prove that, on the aforesaid period and place, accused Nos. 1 to 3 alongwith one Anesh Chhattarsingh Rathod, entered a Sanctuary in a Melghat Tiger Reserve, with weapons, i.e. Sphere, iron trap, iron big knives, without permission in contravention of Sec. 31 and thereby committed an offence punishable u/sec. 51(1) of the Wild Life Protection Act, 1972. ?

...

Proved.

(vii) Does prosecution further prove that, on the aforesaid period and place, accused Nos. 1 to 6 alongwith one Anesh Chattarsingh Rathod, sold and destroyed the wild animal, i.e. Tiger, in contravention of Sec. 39(3) and thereby you have committed an offence punishable u/sec:

51(1) of the Wild Life (Protection) Act,
1972 ?

... **Proved against accused
Nos. 1 to 3 only.**

(viii) What order ?

... **Accused Nos.1 to 3 are convicted
U/s. 248(2) of Cr.P.C. & Accused
Nos. 4 to 6 are acquitted U/s.248(1)
of Cr.P.C.**

REASONS

13. To prove the guilt of the accused, prosecution has examined fourteen witnesses. They are, P.W.1 – Mr. Dinesh Ramdas Kandale, at Exh.35, P.W.2 – Mr. Vishal Hanumant Mali, at Exh.38, P.W.3 – Mr. Datta Ganpat Goswami, at Exh.61, P.W.4 – Mr. Chandrashekhar Sarjerao Chaudhari, at Exh.70, P.W.5 – Mr. Jayant Sudhakarrao Wadatkar, at Exh. 90, P.W.6 – Dr. Shivendra Devidas Mahalle, at Exh.91, P.W.7 – Mr. Pralhad Devrao Wankhade, at Exh.94, P.W.8 – Mr. Gangaram Sanu More, at Exh.96, P.W.9 – Mr. Gaffar Khan Dalmir Khan Pathan, at Exh. 99, P.W.10 – Mr. Gajanan Vishnupant Umak, at Exh. 100, P.W. 11 – Mr. Sunil Baliram Wakode, at Exh.103, P.W. 12 – Mr. Ganesh Sampat Dabre, at Exh.105, P.W. 13 – Mr. Vijay Narayan Dave, at Exh.107 and P.W. 14 – Mr. Anesh Chhattarsingh Rathod, at Exh.119. I have heard Shri U.S. Deshmukh, Special Counsel for Forest/Complainant, Shri A.R. Phuse, learned

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advocate for the accused Nos. 1 to 5 and Shri P.V. Mahalle, learned advocate for the accused No.6. I have gone through the notes of arguments, filed on behalf of prosecution at Exh.134 and on behalf of accused Nos. 1 to 5, at Exh.136.

As to Point No.1 :

14. Hunting of any wild animal specified in Shedule-I to IV except provided u/sec. 11 and 12, is prohibited u/sec. 9 of the Wild Life (Protection) Act, 1972. The term 'hunting' is defined in Sec. 2(16) of the Wild Life (Protection) Act, 1972, as including the killing, poisoning, capturing, cursing, snaring, trapping any wild life etc. In order to protect the species of wild life, Wild Life (Protection) Act, came to be enacted in the year 1972. The wild life is on the brink of extinction. Hunting of wild life inevitably disturb the food chain in jungle, therefore, in order to protect wild life, stringent punishment is provided for hunting of wild life. If the hunting is made in the Tiger Reserve, then punishment is more severe. Here in this case, the prosecution came with story that, accused Nos. 1 to 3 and approver Anesh killed the tiger, scientific name *Panthera Tigris*, listed in Schedule-I at Sr. No.39 appended to Wild Life (Protection) Act, 1972, in Melghat Tiger Reserve.

15. Taking into consideration the charges levelled against the accused, before dealing with the evidence of prosecution witnesses on the point of hunting, it is necessary to see whether the place where the alleged hunting has taken place, comes within Tiger Reserve. As per the provisions of Wild Life (Protection) Act, 1972, it is for the Government to make declaration in respect of Tiger Reserve, Sanctuary and National Park.

16. P.W.2 – Mr. Vishal Mali is serving as Assistant Conservator of Forest in Gugamal Wild Life Division. He made the entire investigation in this case. In his evidence, he has placed on record copy of notification issued by the Government of Maharashtra, declaring Melghat Tiger Sanctuary, at Exh.39, notification declaring Gugamal National Park at Exh.40 and notification dated 27.12.2007, declaring the entire Gugamal National Park as Critical Tiger Habitat. As per the notification (Exh.40), Compartment No.905 of Dhakna Range comes within the Melghat Sanctuary and Gugamal National Park. So far as the Tiger Reserve is concerned, explanation to Sec. 38(V) Sub-section 4 of the Wild Life (Protection) Act, 1972, lays down that, expression 'tiger reserve' includes core or Critical Tiger Habitat areas" of National Park or Sanctuary. Exh.42 is the notification issued by the Government of Maharashtra notifying the

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area of Gugamal National Park as Critical Tiger Habitat. Therefore, if it is established that, the alleged offence of hunting has taken place in the Critical Tiger Habitat, it can be said that, incident has taken place in the Tiger Reserve.

17. In order to ascertain the hunting of tiger, Schedule-I animal, I have gone through the evidence of prosecution witnesses, particularly the evidence of witness Nos. 1 to 7 and 12 to 14. The witness Nos. 8 to 11 are on the point of seizure of amount from the accused No.6 Mishrilal and their evidence will be discussed at the appropriate place in the judgment.

18. One of the argument advanced by the learned counsel for the accused Nos. 1 to 5 that, most of the witnesses are from Forest Department. They are interested witnesses and therefore, their evidence may not be relied upon. The special counsel appearing on behalf of the forest/complainant submitted that, the incident of hunting took place during night hours in core area of reserve forest. The crime is committed in such a manner that there is no possibility of witnessing the incident by any of the person and therefore, merely because the witnesses are from forest department, their evidence is not liable to be discarded. In support of his contention, he referred

the observation made in the case of *Forest Range Officer...vs.. Aboobucker and another* reported in 1989 C.R.L.J. 2030. I have gone through the cited authority. In the said decision, the Hon'ble Kerala High Court has observed that, "*Forest is an area where human activities are scanty except the clandestine adventures of poachers. The invaders of forest and wild life usually take care that their poaching techniques go unnoticed by others including wild animals. They adopt devices to keep their movements undetected. Hence, it would be pedantic to insist on the rule of corroboration by independent evidence in proof of offence relating to forests and wild life.*"

19. Here in the case at hand, the alleged incident of hunting came into light four months after it's happening in a core forest where the entry is prohibited rather the area is not accessible to human all the round. Therefore, keeping in view the observations made in the above referred decision, the available evidence is not liable to be discarded.

20. Now, we will have to see whether the evidence available on record is sufficient to reach to the conclusion that, the fact of tiger killing is established? P.W.2, 3, 4 and 7 in their evidence

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state that, accused Nos. 1 to 5 and approver Anesh disclosed that, they have killed the tiger in forest near Sindban village. P.W.2 Mr. Mali claims to have recorded the common statement of the accused Nos. 1 to 5 and approver Anesh, and P.W.3 Mr. Goswami has recorded the statements of the accused separately. Whereas, P.W.4 to 7 were present while recording the statement. According to prosecution case, accused Nos. 1 to 3 and approver Anesh, they have actually participated in hunting the tiger.

21. Approver Anesh had accepted the tender of pardon and his statement was recorded by the learned J.M.F.C. Court No.4, Achalpur and therefore, he was cited as a witness and not arrayed in the list of accused. The prosecution has examined approver Anesh as P.W.14, however, he resiled from his earlier statement. Therefore, his evidence is not useful to the prosecution. After his evidence, learned Special counsel for the complainant made application Exh.122 and certified that, in his opinion approver Anesh has either by willfully concealed anything essential or gave false evidence and not complied with the condition on which the tender was made. In such circumstances, his trial would be conducted separately u/sec. 308 of Cr.P.C. for all the offences charged against the accused Nos. 1 to 3 as per charge Exh.81. Thus, the entire prosecution case rests upon the

confessional statements made by accused Nos. 1 to 5 and approver Anesh before the Forest Officers,, particularly before P.W.3 Mr. D.G. Goswami.

22. The confession is a statement made by accused charged with an offence stating or suggesting the inference that, he committed the crime. The confession is very valuable piece of evidence and it is admissible only if making of confession appears to the Court that, it has not been caused by any inducement, threat or promise. Before the confession can be relied upon, it is necessary to see that, confession was made voluntarily and it is consistent and true.

23. P.W.3 Mr. Datta Goswami was serving as a Asstt. Conservator of Forest in Akot Wild Life Division. According to him, on 4.3.2013, as per the direction of his superior officer, he reached at the Range Forest Office, Waan. Accused Nos. 1 to 5 and approver Anesh Rathod were present there. They all have consented for recording their statements regarding hunting of tiger and accordingly he recorded statements of the six persons in presence of panch witnesses. The statements are at Exhs. 62 to 67. He further states that, from the disclosure statement of the accused, it appears that the incident of hunting of tiger took place in Dhakna Forest Range.

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Therefore, further investigation was handed over to A.C.F. Mr. V.H. Mali.

24. P.W.2 Mr. V.H. Mali stated that, on getting information he reached at Waan. He interrogated all the six persons. They disclosed about hunting of tiger and therefore, their statement was recorded at Exh.43. It appears that, statement Exh.43 is the common statement of accused Nos. 1 to 5 and approver Anesh Rathod. P.W.2 Mr. Mali further states that, on the basis of statements of accused, POR was issued. P.W.1 Mr. Dinesh Kandale proved POR No.10/10 in his evidence. His evidence is of formal nature. Prior to recording of statement of the accused by Mr. V.H. Mali, P.W.3 Mr. Goswami interrogated the accused Nos. 1 to 5 and approver Anesh and they made their individual statements before P.W.3 Mr. Goswami. The statements are recorded in presence of panch witnesses. They are at Exhs. 62 to 67. In regard to confessional statements, learned special counsel for the complainant submitted that, the confessional statement of accused No.1 to 5 and approver Anesh are recorded by P.W.3 Mr. Goswami, who is the Forest Officer and therefore, those statements are admissible in evidence, as they are not hit by Sec. 25 of the Indian Evidence Act. In support of his contention, he placed reliance on the following

judgments of Hon'ble High Court and Supreme Court.

1. Criminal Misc. Application No. 140/1993 Dr. Emerico D'souza ..vs.. State Through The Deputy Conservator of Forest (Hon'ble Bombay High Court).
2. Criminal Appeal No. 26/1964 Badaku Joty Svant..vs.. State of Mysore +1 AIR 1966 SC 1746 (Hon'ble Supreme Court).
3. Criminal Revision No. 342/1998 Matia Palei and another...vs.. State of Orissa (Hon'ble Orissa High Court).
4. Criminal Appeal No. 317/1988 Forest Range Officer ..vs.. Aboobucker and another (Hon'ble Kerala High Court).
5. Criminal Revision No. 100/1957 E.C. Richard...vs... Forest Range Officer, Mettupalayam (Hon'ble Madras High Court).

25. I have gone through the aforesaid decisions. In the case of Badaku Joty Svant..vs.. State of Mysore, the Hon'ble Apex Court, while deciding the appeal under the Sea Customs Act, it was held that, "the statement made by an accused to the Deputy Superintendent of Customs and Excise is not hit by Sec. 25 of the Evidence Act and is admissible in evidence unless and otherwise the accused successfully takes advantage of Sec. 24 of the Evidence Act.

In the case of Emerico D'souza accused was prosecuted for illegally possessing the cut wood. He was discharged

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by the trial Court on the ground that, except the confessional statement, there is no other independent evidence to involve the accused in the forest offences. Said order was set aside by the Hon'ble Sessions Court in appeal. Accused had filed revision against the order of Hon'ble Sessions Court, setting aside the order of discharge. While deciding the said revision, the Hon'ble Bombay High Court has made reference of the law laid down in the case of Badaku Joty Svant, by the Hon'ble Supreme Court and observed that, the statement made by the accused are not confession U/sec. 25 of the Evidence Act, as Range Forest Officer is not a police officer.

In the case of Matia Palei and another, the Hon'ble Orissa High Court observed that, Forest officials though invested with certain powers of police officers, are not the police officers. As such statement made before them, is not hit by Sec. 25 of the Indian Evidence Act.

The Hon'ble Kerala High Court, in the case of Aboobucker and another and the Hon'ble Madras High Court, in the case of E.C. Richard, has taken the same view. The proposition of law laid down in the aforesaid authorities, is that confessional statement made before the Forest Officers, is admissible in evidence, unless the accused successfully takes the advantage of Sec. 24 of the Indian Evidence Act.

26. Learned special counsel for the complainant submitted that, the confessional statement Exhs. 62 to 67 are made before P.W.3, who is the Forest officer and the accused has not raised any defence u/sec. 24 of the Indian Evidence Act. There is no challenge to the version that, the accused have given confessional statement with understanding that, it may be used against them and therefore, on the basis of these confessional statement, the involvement of accused Nos. 1 to 3 in the case of hunting of tiger has been established.

27. Learned advocate for the accused Nos. 1 to 5 argued that, the witnesses in whose presence the alleged statement made by the accused, they are from the forest department, P.W.3 has not followed the proper procedure to record the statement and accused have made different story in the confessional statement. Therefore, such confessional statement cannot be relied upon.

28. In the light of submission made on behalf of both the sides, I have gone through the evidence of P.W.3. P.W.3 in his evidence stated that, accused Nos. 1 to 5 and approver Anesh made statement before him and he recorded the same in presence of panch

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witnesses and obtained signature and thumb impression marks of the accused.

29. P.W.7 Mr. Pralhad Wankhade has supported the story putforth by P.W.3. He states that, P.W.3 Mr. Goswami has recorded the statements of accused Nos. 1 to 5 and approver Anesh in his presence and the statement at Exhs. 62 to 67 bears his signature as a panch witness. During cross-examination of these two witnesses, except suggestions which are denied by the witnesses, nothing is brought on record. In the cross-examination of P.W.3, accused came with defence that, their signatures or thumb impressions were obtained on the blank papers and subsequently the statements were recorded. No other material is on record to reach to the conclusion that the signatures of the accused were taken on the blank papers. It appears that the voluntary character of the confession is not challenged by the defence. Nowhere accused suggested that, they made confessional statement under threat of prosecution or promise given by the person in a authority.

30. Learned special counsel for the complainant, submitted that the burden is on the accused to prove that, the statement was obtained by threat, promise or inducement. In support

of his contention, he relied on the case of *K.I. Pavully..vs.. Assistant Collector* reported in (1997) 3 SCC 721. In the said authority, the Hon'ble Apex Court observed that, if a confession is proved by unimpeachable evidence and if it is of voluntary nature, the burden is on the accused to prove that, statement was obtained by threat, promise and if the accused able to prove the fact creating reasonable doubt that the confession was not voluntary or it was obtained by threat, coercion or inducement, burden would be on the prosecution to prove that the confession was made by the accused voluntarily.

31. Keeping in view the observation made in the aforesaid authority, we will have to see whether the accused have brought on record any circumstances or probabilities to say that their confessional statements were recorded by giving threat or promise. I have already stated earlier that, except suggestions which were denied by the witnesses, nothing is brought out in the cross-examination or no probabilities are brought on record by the defence and therefore, it can be said that, the accused could not discharge the burden to establish the fact that, their statements were not made voluntarily. P.W.3 and P.W.7 are the person working in the forest department. Nothing is on record that, they are biased and having an enmical terms with the accused. In such circumstances, the evidence of P.W.3

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and P.W.7 on the point of recording confession appears to be trustworthy.

32. When the confessional statement of the accused are found to be voluntary and the evidence of the witnesses appears to be trustworthy, it is necessary to see whether the confessional statement are true and supported by any other evidence. In order to find out the truth, I examined the confessions at Exhs. 62, 63, 64, 66 and 67 and compared with the rest of the prosecution evidence and the probabilities of the case. Exh.65 is the confessional statement of approver Anesh. At present he is not the accused in this trial. Therefore, his statement is not taken into consideration.

33. Accused No.1 in his confessional statement (Exh.62) stated in detail that, one Ranjit Bhatia gave him iron trap and training to kill the tiger in the Melghat area and also gave Rs.5,000/-. He further states that, he informed about the plan to his brother Chitaram Leharsingh Rathod, who is accused No.2 and also made prepare and joined the accused No.3 Vinod Premal Pawar and approver Anesh Chhattarsingh Rathod. Thereafter, they all entered into the forest near Motakheda. Then, Madhusingh searched the tiger track and then concealed the trap along forest trail used by the tiger. They stayed in

the forest area for three days, but for first two days they could not trap the tiger, but on third day evening tiger stepped on the concealed trap and the foot of the tiger was immediately trapped in the jaws of the trap.

34. Accused Nos. 1 to 3 and approver Anesh heard the voice of the tiger who was trying for its release. Thereafter, accused No.1 killed the trapped tiger with the help of sphere. After confirmation of tiger's death, accused Nos. 1 to 3 and approver Anesh carried the tiger to the nearby area and they skinned the tiger, detached the bones, teeth, nails and mustache and thrown the meat at the near place. Thereafter, he alongwith accused Nos. 2, 3 and approver Anesh returned towards village Sindban with tiger skin, teeth, bones, nails and mustache. Accused No.1 Madhusingh further states that, they all kept the parts of the tiger in a concealed place for about one month and then, as per the directions of Ranjit Bhatia, he alongwith his brother accused No.2 Chintaram went to Tukaithal and handed over body parts of the killed tiger to Ranjit Bhatia. He received Rs.1,65,000/- from Ranjit Bhatia. Thereafter, he alongwith his brother came to village Susarda. He gave Rs.15,000/- each to accused No. 3 Vinod and approver Anesh. Then he gave Rs.2,000/- to accused No.4 Sagarlal and Rs.1,000/- to accused No.5 Narvilal and

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and remaining amount was distributed between him and his brother Chintaram.

35. The confessional statement made by accused No.2 Chintaram and accused No.3 Vinod are supporting the confessional statement made by accused Madhusingh. There is no inconsistency in their confessional statements recorded at Exhs. 62, 63 and 64. It is seen from the statement of these three accused that, accused Nos. 1, 2, 3 and approver Anesh in the middle of December, 2012 entered into the core area of Gugamal National Park, which is notified as a Critical Tiger Habitat and killed the tiger.

36. In the case of *Sansar Chand...vs..... State of Rajasthan* reported in (2010) 10 Supreme Court Cases 604, the Hon'ble Supreme Court has observed that there is no absolute rule that an extra judicial confession can never be the basis of a conviction, although ordinarily an extra judicial confession should be corroborated by some other material. In view of the observation made by the Hon'ble Supreme Court, we will have to see whether in this case there is some corroborative material. P.W.2 Mr. V.H. Mali stated in his evidence that, on 6.3.2013, accused made statement before him and showed their readiness to point out the spot where the

tiger was hunted. He recorded statement at Exh.46 and then he alongwith accused Nos. 1 to 3 and approver Anesh and others, proceeded towards northern side of Gobia Camp as shown by the accused and reached on the border of Akot Wild Life Division and Gugamal Wild Life Division, which is approximately 6 K.M. away from Gobia Camp. He further states that, accused Nos. 1 to 3 and approver Anesh pointed out the spot where the iron trap was laid and tiger was killed and other spots where accused skinned the tiger, thrown the meat of the tiger, prepared their food and place of their stay.

37. According to P.W.2 Mr. V.H. Mali, on the place of hunting, one pit was seen and there was two pieces of nails like tiger nails. They have ascertained the location of the spot with the help of GPS and as per the spot shown by the accused, it is seen that, the incident of hunting has taken place in Compartment No. 905, Boripati round of Dhakna Range. Thereafter accused showed the spot which was at the distance of 50 meters from the place of hunting, where the accused removed the skin and bones of the tiger in the Nalla. There blood stained stone, blood stained earth and hairs of the tiger were found. Said spot was also in Compartment No. 905. Thereafter, accused took him little ahead and pointed out the spot, where the meat

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of the tiger was thrown . On the said spot, blood mixed decomposed meat was seen. The veterinary doctor, who accompanied him, examined the meat on the spot and accordingly gave his report.

38. P.W.2 Mr. Mali further stated that, as per the report of the doctor, meat found on the spot was of the animal, who died prior to one and half month. He further states that, then the accused showed the spot where they stayed for three days. It is seen on the said spot that, the place was clean and one tobacco pouch was lying there. Then accused Nos. 1 to 3 and approver Anesh pointed out the spot where they cooked their food. P.W.2 Mr. Mali states that, he found one stone oven, burnt wood, coal and ash. P.W.2 Mali further states that, the articles found on the places, they were seized by Mr. Choudhari, R.F.O., Dhakna. The photographs were taken and Surveyor took the GPS reading. P.W.2 Mr. V.H. Mali further states that, as it was evening time, it was difficult to come out from the dense forest in a dark, therefore, he alongwith accused and others came at Gobia Camp and prepared panchanama in presence of panch witnesses, which is at Exh.47. The evidence of P.W.2 Mr. Mali is supported by P.W.5 Mr. Jayant Wadtkar, who is the independent witness.

39. P.W.5 Mr. Jayant Wadatkar does the work for conservation of wild life and research work in Melghat area. He fully supported the testimony made by P.W.2 Mr. Mali and stated that panchanama (Exh.47) is prepared in his presence and it's contents are correct. In his cross-examination, except suggestions which are denied by the witness, nothing is brought on record.

40. P.W.6 Dr. Shivendra Mahalle also supported the version of P.W.2 Mr. Mali. According to Dr. Mahalle, on 6.3.2013, he alongwith Dr. Jawarkar, Dr. Kadu, Forest Officers and four accused, reached in forest area. He made the minute observation of the pieces of meat found on the spot shown by the accused and considering the growth of mogattes on the pieces of meat, he reached at the conclusion that, those pieces of meat might be of an animal died prior to one and half month to two months. Accordingly, they three Veterinary doctors prepared Necropsy examination report and handed over to the forest officers. Said report is at Exh.92.

41. P.W.12 Mr. Ganesh Dabre, who has taken GPS reading and prepared the map (Exh.106) also supported the story putforth by A.C.F. Mr. V.H. Mali. P.W.13 Mr. Vijay Dave is working as Museum Assistant in Tiger Project at Paratwada. From his evidence it is seen that, on 6.3.2013, he snapped photographs (Exhs.

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108 to 115) of the spots shown by the accused.

42. On the point of seizure, the evidence of P.W.2 Mr. Mali is corroborated by P.W.4 Mr. Chandrashekhar Chaudhari, who is working as Range Forest Officer of Dhakna range. He stated in his evidence that, on 6.3.2013, he seized tiger nails, hair of tiger, blood mixed earth, decomposed meat and other articles as per panchanama Exh.77. P.W.5 Mr. Jayant Wadatkar is the panch witness on seizure panchanama Exh.77. He supported the testimony of P.W.4 Mr. Chaudhari.

43. It is seen from the evidence of P.W.3 Mr. D.G. Goswami that, on 6.3.2013, he alongwith panch witnesses visited the house of the accused at Sinband and Malthana and seized some incriminating articles from their houses as per panchanama (Exh.68). P.W.7 Mr.Pralhad Wankhade is the panch witness on panchanama Exh.68. He supported the version of Mr. Goswami. P.W.2 Mr. V.H. Mali also states in his evidence that, on 8.3.2013, accused Madhusingh has made statement before him leading to discovery and in pursuance of that, he seized one iron trap produced by accused Madhusingh from the place between Ranigaon and Susarda and he seized the same under seizure panchanama Exhs. 48 and 49. P.W.2 further states that on 9.3.2013, he obtained finger nails of accused

Nos. 1 to 5 and approver Anesh from the Rural Hospital, Achalpur. On 10.3.2013, he sealed the seized articles as per panchanama (Exh.50). It is seen from the evidence of P.W.4 Mr. Chaudhari that on 10.3.2013, he forwarded seized articles for DNA analysis as per letter (Exh.78). As per the said letter (Exh.78) in all fifteen articles were forwarded for DNA analysis.

44. It is seen from the record that, Investigating Officer has not forwarded the iron trap seized from accused No.1 Madhusingh, for obtaining report. . Therefore, the seized trap will not be used as a corroborative piece. The prosecution has placed on record the DNA Report alongwith list Exh.54. Said report is issued by the Scientist, Center for Cellular and Molecular Biology, Hyderabad. The said report comes within the purview of Sec. 293 of Cr.P.C. and it may be used as evidence in this trial. Therefore, said report is marked as Exh.137. It appears from the said report that, out of fifteen samples, eleven samples were found negative, two samples were not suitable for isolation and two samples at Sr.No. 5 i.e. nail cuttings of approver Anesh and at Sr. No.13, blood fluid on soil, were found to be positively of tiger origin and both the specimens were from a single female tiger.

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45. Learned special counsel for the complainant submitted that, on the basis of memorandum of accused, the place where the tiger has been hunted is discovered. Further, the articles were found on the place shown by the accused and they are found to be of a tiger. The accused had knowledge of the place where relevant fact as per their knowledge was discovered. The memorandum Exh.47 is recorded jointly in the name of accused Nos. 1 to 3 and approver Anesh and it cannot be faulted on that ground. The seized property was kept in the custody of the forest officials in a sealed condition and it was forwarded to C.C.M.B. Hyderabad for DNA analysis. These documentary evidence is sufficient to reach to the conclusion that the confessional statements made by the accused are true. Shri A.R. Phuse, learned Advocate for the accused Nos. 1 to 5 contended that, the alleged confessional statements of the accused Nos. 1 to 3 are isolated piece of evidence, not receiving any sort of corroboration from any sources and therefore, entire case of complainant collapses.

46. Having considered the rival contention of both the sides, we will have to see whether discovery of the fact is at the instance of accused. The discovery to be made admissible u/sec. 27 of the Indian Evidence Act, must be based on the information given

by the accused. According to P.W.2 Mr. V.H. Mali, accused Nos. 1 to 5 and approver Anesh made statement before him. Exh.46 appears to be a memorandum statement and Exh.47 is the panchanama. It appears from the statement (Exh.46) that, whilst in forest custody, accused made statement before Mr. Mali and showed willingness to show the spot of incident. In pursuance of the statement of accused, the place where the incident has taken place was discovered. It is true that, the common statement is recorded by the investigating officer. It appears from the statement that, said statement is in respect of accused Nos.1 to 3 and approver Anesh, because as per the confessional statement of accused Nos. 4 and 5, they have not participated in hunting of tiger. Investigating officer has not recorded separate statement of the accused and instead of that, he recorded joint statement. A joint statement of accused are not per-se inadmissible in evidence and can be considered if the discovery made in consequences thereof affords a guarantee about the truth of the statement.

47. It appears from the statement Exh.46 that, there is no signatures of the panch witnesses. It is a mistake on the part of the investigating officer, however, the forest officers are not the professional investigators and therefore, such minor flaws in the

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investigation will not fatal to prosecution to discard entire case, because in such cases after detection of crime, the investigating officer has to collect the material to prosecute the accused in respect of the offence. Learned special counsel for the complainant submitted that, the articles i.e. blood mixed soil discovered by the accused has been found by the C.C.M.B. to be of tiger and therefore, accused had knowledge of place, where relevant fact as per their knowledge was discovered.

48. Learned special counsel for the complainant, has placed reliance on the case in between *Pulukuri Kottaya and others..vs.. Emperor* reported in AIR (34) 1947 Privi Council 67. I have gone through the said cited authority. As per this ruling, "fact discovered" within the meaning of Sec. 27, cannot be found to the object produced in pursuance to the statement of the accused. Said concept is wide enough to include the place/spot as well, where from such object is discovered. Here in the case in hand, accused Nos. 1 to 3 and approver Anesh disclosed the spot of incident. Thus, led the forest agency up to it, where various articles like decomposed meat, blood stained stone, blood stained earth were found. These articles were forwarded for DNA analysis and the report discloses that the blood stained earth found to be of a female tiger. That spot itself is a

discovery and best corroborative piece of evidence.

49. One of the accomplice Anesh Chhattarsingh Rathod, who had accepted tender of pardon was actually participated in the commission of crime as per confessional statement of accused Nos. 1 to 3. He underwent the DNA sampling of his nails and DNA Report (Exh.137) gave finding that, his nails were having element of DNA of same female tiger, which were found on blood stained earth. Approver Anesh has not supported the prosecution, a separate trial would be conducted against him. The fact remains that, scientific evidence increases the probabilities of involvement of accused in this crime.

50. Extending the discussion further on this aspect, it is necessary to mention here that, through DNA report (Exh.137) expresses 'Negative' or 'inconclusive' opinion about many things like pieces of meat, hair etc. found on the spot of incident, the fact remains that, the report clearly discloses that, the soil collected from the spot is having blood element of a tigress and approver Anesh was found to have carrying the traces of same tigress body in his nail. The incident in question came into light four months after it's happening. In the passage of time many important pieces of evidence on spot are likely

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to get washed away. In this view of matter, I do not attach any importance to 'negative' or 'inconclusive' opinion expressed in the DNA report regarding certain things. Therefore, I am of the view that, corroborative evidence on all the angle of case cannot be insisted. Therefore, case propounded by the complainant strikes a judicial mind as probable.

51. It is pertinent to note here that, the confessional statement made by accused Nos. 1 to 3 before P.W.3 Mr. D.G. Goswami, found to be voluntarily and there is no reason to disbelieve the version of P.W.3 Mr. Goswami. The confessional statements are proved as corroborated by discovery of place of incident. Said incident has taken place in the Compartment No. 905 of Dhakna range in Gugamal National Park. In view of the notification (Exh.42) area of Gugamal National Park is notified as a Critical Tiger Habitat and the Tiger Reserve including Critical Tiger Habitat area of National Park. In such circumstances, it can be said that, the offence relates to hunting of tiger took place in Melghat Tiger Reserve. Tiger, scientific name *Panthera Tigris* is specified in Schedule-I appended in the Wild Life (Protection) Act, 1972 and it is not the case of accused that, permission u/sec. 11 or 12 of the Wild Life (Protection) Act, 1972 was granted to them. Therefore, I hold that, in the middle of

December, 2012, accused Nos. 1 to 3 have committed an offence of hunting of tiger, punishable u/sec. 51(1C) of the Wild Life (Protection) Act, 1972. Hence, I answer point No.1 as proved.

As to Point No.2 :

52. Accused Nos. 4 to 6 are charged for abetting accused Nos. 1 to 3 and approver Anesh for committing the offence relates to hunting of tiger in the Tiger Reserve. Sec.51(1D) of the Wild Life (Protection) Act, 1972, provided same punishment as provided u/sec. 51(1C) of the Wild Life (Protection) Act, 1972, for the offence of abetment. In order to constitute the abetment, the abetter must be shown to have intentionally aided the commission of crime. Now, we will have to see whether there is evidence to say that, accused Nos. 4 to 6 aided or instigated accused Nos.1 to 3 and approver Anesh to commit the crime. On 4.3.2013, accused Nos. 4 and 5 were arrested alongwith accused Nos.1 to 3 and approver Anesh. Their confessional statements were recorded by P.W.3 Mr. D.G. Goswami. While deciding point No.1, this Court has held that the confessional statements made by the accused are voluntary one.

53. The confessional statements of accused Nos. 4 and 5 are at Exhs. 66 and 67. It appears from the confessional statement of

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accused Nos. 1 to 3 that, accused Nos. 4 and 5 never instigated or aided them in committing the crime of hunting. Accused Nos. 1 to 3 in their confessional statement, stated that, after receipt of Rs.1,65,000/-, accused Madhusingh had given Rs.2,000/- to accused Sagarlal and Rs.1,000/- to accused No.5 Narvilal. Accused Nos. 4 and 5 in their confessional statement, had disclosed the fact of receipt of amount from Madhusingh. However, mere receipt of amount from Madhusingh itself, is not sufficient to establish the fact of abetment. There must be intention of the abetter to make some act to aid or facilitate the commission of offence. It is seen from the confessional statement of accused Nos. 4 and 5 that, they were not knowing about hunting of tiger. Accused Nos. 4 and 5 have received the amount innocently without knowledge about the offence being committed and therefore, merely on the ground of receiving the amount, it will be very difficult to say that, they have abetted the principal offender in committing the offence.

54. So far as the accused No.6 is concerned, the allegations against him are that, accused Vinod and accused Madhusingh kept some amount with him. P.W.2 Mr. V.H. Mali states in his evidence that, accused Vinod made statement before him that, he has kept the amount of Rs.20,000/- received by him by selling the

skin of tiger, with accused Mishrilal. He further states that, on 5.4.2013, accused Mishrilal disclosed before him that, accused Madhusingh has given Rs.12,000/- to him. The statement made by P.W.2 Mr. V.H.Mali is not supported by any other cogent and convincing evidence. P.W.8 to 11 are the witnesses on seizure of amount from accused Mishrilal. P.W.9 Mr. Gaffar Khan, the forester deposes that, on 16.3.2013, he alongwith panch witnesses Mr. Musale and Mr. Kasdekar and Police Patil P.W.8 Mr. Gangaram More, reached at the house of accused No.6 Mishrilal, at Motakheda and seized Rs.20,000/- from him and prepared seizure panchanama Exh.97 at Golai. P.W.8 Mr. Gangaram More has supported the version of P.W.9 Mr. Gaffar Khan on the point of seizure. P.W.11 is the another forest official, who on 28.4.2013, seized the amount of Rs.12,000/- from accused No.6, Mishrilal in presence of panch witnesses as per seizure panchanama Exh.101 and 102. P.W.10 Mr. Gajanan Umak, Forest Guard, is the panch witness on the panchanama Exhs. 101 and 102. He supported the version of P.W.11 on the point of seizure.

55. The accused has denied the seizure of amount from him. However, the evidence of P.Ws.8 to 11 clearly establishes that the amount of Rs.20,000/- and Rs.12,000/- was seized from accused

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No.6 Mishrilal. It has come on record that, accused Mishrilal runs a fair price shop at village Motakheda. Therefore, if amount of Rs.20,000/- and Rs.12,000/- was found in his possession, in absence of other evidence, it is very difficult to say that, said amount is received by him from accused Madhusingh and Vinod. Moreover, statement of Mr.V.H. Mali does not find support from the confessional statement of accused No.1 Madhusingh and Vinod. There is nothing in their statement regarding giving amount to Mishrilal. As per the confessional statement of Vinod, he received amount of Rs.15,000/- after selling tiger skin and according to prosecution case, he has given Rs.20,000/- to Mishrilal. The story putforth by P.W.2 in this regard does not appear to be trustworthy. The evidence in regard to involvement of the accused No.6 Mishrilal, is not convincing and reliable. Therefore, I have no hesitation to hold that, prosecution has failed to prove that, accused Nos. 4 to 6 in any way abetted accused Nos. 1 to 3 in committing the crime of hunting of tiger in a Melghat Tiger Reserve. In such circumstances, I answer point No.2 as 'not proved'.

As to Points No.3, 5 and 6 :

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All the three points are correlated to each other and therefore, they are clubbed together to avoid the repetition. In view of

the provisions of Sec.27 of the Wild Life (Protection) Act, 1972, no person other than the person described in clause (a) to (e) of Sec. 27, shall enter or reside in the Sanctuary. In view of the provisions of Sec.30 of the Act, kindling the fire in the sanctuary is prohibited and the entering in the sanctuary with any weapon, is also restricted as per Sec.31 and if there is contravention of all these provisions, penalty is provided in Sec.51(1) of the Wild Life (Protection) Act, 1972.

57. In view of the notification Exh.41, Melghat Sanctuary is declared by the Government of Maharashtra and as per notification Exh.40, Gugamal National Park is declared by the Government of Maharashtra and Dhakna range comes within the said National Park. In view of the provisions of Sec.35(8) of the Wild Life (Protection) Act, 1972, provisions of Sec.27, 28, 30 to 32 may apply in relation to National Park as they apply in relation to Sanctuary. Here in this case, the entire prosecution case is revolving around the confessional statements of accused Nos. 1 to 3. From the confessional statement of accused Nos. 1 to 3, it appears that, they entered into the dense forest with an intention to kill the tiger, they stayed in the forest area for three days, they cooked their food by kindling the fire and they killed the tiger by using iron trap and sphere.

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58. As per sec. 2(35) of the Wild Life (Protection) Act, 1972, weapon includes traps and any instrument of destroying, injuring or killing any animal. Accused Nos.1 to 3 have no prior permission and they are not the person specified in clause(a) to (e) of Sec. 27. Therefore, they were prohibited from entering into the forest. Accused cooked food by kindling the fire in a Sanctuary and National Park. Such kindling of fire is definitely endanger to Sanctuary and therefore, on the basis of confessional statement of accused Nos. 1 to 3, which found to be made voluntary, it can be held that, they have contravened the provisions of Sec.27, 30 and 31 and thereby committed an offence punishable U/sec. 51(1) of the Wild Life (Protection) Act, 1972. Hence, I answer points No. 3, 5 and 6 as 'proved'.

As to Point No. 4 :

59. The next charge against the accused Nos. 1 to 3 is in respect of causing destruction in a Sanctuary without permit. In view of the provisions of Sec. 29 of the Act, destruction, exploitation or removal of any wild life including any forest produce, is prohibited except the permission granted by Chief Wild Life Warden. Here in this case, the accused Nos. 1 to 3 have hunted the wild life, i.e. tiger, specified in Schedule-I and thereby caused destruction of wild life

and thus violated the provision of Sec.29 punishable U/sec. 51(1) of the Wild Life (Protection) Act, 1972. Hence, I answer point No.4 as 'proved'.

As to Point No. 7 :

60. Last charge against the accused Nos. 1 to 6 is in respect of destroying the government property in contravention of Sec.39(3) of the Wild Life (Protection) Act, 1972. In view of provisions of clause(a) of sub-section(1) of Sec.39 of the Act, wild animal hunted in contravention of any of the provisions of the Wild Life (Protection) Act, 1972 shall be the property of State Government. Sub-section 3 of Sec. 39 lays down that, no person shall without permission in writing of the Chief Wild Life Warden or Authorized Officer -

- (a) acquire or keep in his possession, custody or control, or
- (b) transfer to any person whether by way of gift, sale or otherwise, or
- (c) destroy or damage such government property.

61. Here in the case at hand, accused Nos. 1 to 3 alongwith approver Anesh, are involved in actual hunting. It is alleged that, they have sold the bones and skin of the killed tiger to one Ranjit Bhatia at Tukaithal. P.W.2 Mr. V.H. Mali stated in his

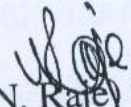
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evidence that, accused Madhusingh and Chintaram pointed out the spot, where they sold the bones and skin to Ranjit Bhatia. Even in the confessional statement, accused Nos. 1 to 3 made disclosure of the said fact. The investigating agency has proceeded against one Bhara and Bhajan, who allegedly acted as a middle men and Ranjit Bhatia, to whom the skin and bones were sold. Separate complaints have been filed against them and the cases are pending before this Court. Accused Nos. 1 to 3 in their confessional statements stated about their involvement in acquiring and selling the body parts of the tiger. The body parts of the hunted tiger is a government property and accused Nos. 1 to 3 acted in contravention of Sec. 39(3). There is no evidence that, accused Nos. 4 to 6 have played any role in selling the body parts of the killed tiger. No offence can be said to be proved against the accused Nos. 4 to 6. However, evidence available on record, clearly shows that accused Nos.1 to 3 have contravened the provisions of Sec.39(3) punishable U/sec. 51(1) of the Wild Life (Protection) Act, 1972. Hence, I answer this point as 'proved' against accused Nos. 1 to 3.

61. Before parting with the judgment, I cannot prevent myself from recording the words of appreciation for Shri U.S. Deshmukh, learned Special Counsel appearing for the complainant,

Shri A.R. Phuse, learned counsel for the accused Nos. 1 to 5 and Shri P.V. Mahalle, learned counsel for the accused No.6 who ably assisted as well as co-operated this Court in completing the trial of Under Trial Prisoners expeditiously and thus rendered valuable services in the justice delivering system.

62. In view of my aforesaid discussion and findings on the point under consideration, I hold that the accused Nos.1 to 3 have committed the offences by contravening the provisions of Sec.9, 27, 29, 30, 31 and 39(3) punishable U/secs. 51(1) and 51(1C) of the Wild Life (Protection) Act, 1972. Hence, I stop here, to hear the accused on the point of sentence.


(J.N. Raj) 18.6.2014
Chief Judicial Magistrate,
Amravati.
Dt/- 18.06.2014.

63. I have heard accused No.1 Madhusingh, accused No.2 Chintaram and accused No.3 Vinod, their learned advocate Shri A.R. Phuse and Shri U.S. Deshmukh, learned Special Counsel appearing on behalf of the complainant on the point of sentence. It is submitted by the accused that, their financial condition is very poor

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and they are having small kids, the entire family is depending upon them. Therefore, lenient view may be taken while awarding the sentence. Learned advocate for the accused submitted that, accused Nos. 1 to 3 are the first offenders and considering their age, minimum punishment be awarded. As against it, it is submitted by Shri U.S. Deshmukh, learned Special Counsel for the complainant that, accused have hunted a tiger in a Tiger Reserve. The nature of the offence is serious one and therefore, maximum punishment be awarded.

64. Having considered the submissions made on behalf of both the sides, we will have to take into account the nature of the offence, character of the offender. It is contended that, accused are the first offenders, however, it has been established that, accused entered into core area of forest with an intention to kill the tiger, they stayed in the jungle for three days and succeeded in hunting the tiger. The offences proved against the accused are not only serious and grave, but it has wide and long term adverse effect and ramification on the very Eco system. The incident of hunting projected great challenge to the very safety of the humanity. Since the said act of hunting inevitably disturb the food chain in jungle and thereby intruding of carnivorous in the human habitat. In view of this matter, the incident of hunting of tiger cannot be taken in lighter vein.

Accordingly, I am of the firm opinion that, the benefit of provisions of the Probation of Offenders Act, cannot be extended to the accused, as they are not below the age of twenty-one years and they deserve reasonable and substantive punishment as provided by law. With this, I proceed to pass the following order.

ORDER

1. Accused No.1 namely **Madhusingh s/o Leharsingh Rathod**, accused No. 2, **Chintaram s/o Leharsingh Rathod** and accused No.3. **Vinod s/o Premlal Pawar**, All R/o Sinband (Motakheda), Tq. Chikhaldara, District – Amravati, are hereby **convicted** U/sec. 248(2) of the Code of Criminal Procedure, as under.
2. Accused Nos. 1 to 3 are **convicted** for contravention of Sec.9 punishable U/sec. 51(1C) of the Wild Life (Protection) Act, 1972. They are sentenced to suffer **Rigorous Imprisonment for Five Years, each** and to pay a fine of **Rs.50,000/-** (Rupees Fifty Thousand) each. In default of payment of fine amount, the defaulting accused to undergo further **Simple Imprisonment for One Year**.
3. Accused Nos. 1 to 3 are further **convicted** for

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contravention of Sec.27 punishable U/sec. 51(1) of the Wild Life (Protection) Act, 1972. They are sentenced to suffer **Rigorous Imprisonment for One Year, each** and to pay a fine of **Rs.1,000/-** (Rupees One Thousand) **each**. In default of payment of fine amount, the defaulting accused to undergo further **Simple Imprisonment for One Month**.

4. Accused Nos. 1 to 3 are further **convicted** for contravention of Sec.29 punishable U/sec. 51(1) of the Wild Life (Protection) Act, 1972. They are sentenced to suffer **Rigorous Imprisonment for One Year, each** and to pay a fine of **Rs.1,000/-** (Rupees One Thousand) **each**. In default of payment of fine amount, the defaulting accused to undergo further **Simple Imprisonment for One Month**.

5. Accused Nos. 1 to 3 are further **convicted** for contravention of Sec.30 punishable U/sec. 51(1) of the Wild Life (Protection) Act, 1972. They are sentenced to suffer **Rigorous Imprisonment for One Year, each** and to pay a fine of **Rs.1,000/-** (Rupees One Thousand) **each**. In default of payment of fine amount, the defaulting accused to undergo further **Simple Imprisonment for One Month**.

6. Accused Nos. 1 to 3 are further **convicted** for contravention of Sec.31 punishable U/sec. 51(1) of the Wild Life (Protection) Act, 1972. They are sentenced to suffer **Rigorous Imprisonment for One Year, each** and to pay a fine of **Rs.1,000/-** (Rupees One Thousand) each. In default of payment of fine amount, the defaulting accused to undergo further **Simple Imprisonment for One Month.**
7. Accused Nos. 1 to 3 are further **convicted** for contravention of Sec.39(3) punishable U/sec. 51(1) of the Wild Life (Protection) Act, 1972. They are sentenced to suffer **Rigorous Imprisonment for One Year, each** and to pay a fine of **Rs.1,000/-** (Rupees One Thousand) each. In default of payment of fine amount, the defaulting accused to undergo further **Simple Imprisonment for One Month.**
8. All the substantive sentences shall run concurrently.
9. Accused Nos. 1 to 3 are in jail since 04.03.2013 till to date. Set off for the period already undergone by them, be given, in substantive sentences U/sec. 428 of the Code of Criminal Procedure.
10. Accused No. 4 namely Sagarlal s/o Gorelal Pawar, R/o Sinband (Motakheda), Tq. Chikhaldara, District -- Amravati, accused

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No.5. Narvilal Ruchlesingh Pawar, R/o Sawalikheda, Tq. Chikhaldara, District – Amravati and accused No.6. Mishrilal Jugdya Chauhan, R/o Mothakheda, Tq. Chikhaldara, District – Amravati are hereby acquitted u/sec. 248(1) of the Code of Criminal Procedure, of the offence U/sec. 9 punishable U/sec. 51(1D) r/w. Sec. 51(1C) and for the offence punishable U/sec. 39(3) r/w. Sec. 51(1C) of the Wild Life (Protection) Act, 1972.

11. Accused Nos. 4 to 6 are in jail. They be set at liberty forthwith, if not required in any other offence.

12. Separate trial against approver Anesh Chhattarsingh Rathod, follows as per Sec. 308 of the Code of Criminal Procedure.

13. Seized property be preserved for the trial to be conducted against approver Anesh Chhattarsingh Rathod.

14. Copy of this judgment be supplied to the accused Nos. 1 to 3, free of costs.

Date: 18.06.2014.

Amravati.

सदस्यमत
जि. नं. 1518/14
सहायक अधिकांक
मुख्य न्याय दंडाधिकारी
न्यायालय, अमरावती
दि- 28-6-2014

(J.N. Raje) 18.6.2014
Chief Judicial Magistrate,
Amravati.

तपासना - रजि. सा. 2014/2014