

Presented on :15/02/2014.  
Registered on :15/02/2014.  
Decided on :10/12/2015.  
Duration :01:Y, 09:M, 25:D.

**IN THE COURT OF JOINT ADDL. CHIEF JUDICIAL MAGISTRATE,**  
**AMRAVATI.**  
**( Presided Over by Sau. S. N. Mane-Gadekar )**

**Regular Cri. Complaint Case No.164/2014.**

Exh. \_\_\_\_.

Investigation Officer,  
Assistant Conservator of Forest, Dhakna,  
Gugamal Wildlife Division, Melghat Tiger Project,  
Paratwada, Distt. Amravati, .... ..

**COMPLAINANT.**

**-- Versus --**

1. Ranjeet Mangatram Bhatia,  
Aged about 58 years, Occu: Labour,  
R/o. Hoshiyarpur (Punjab),
2. Sarju s/o. Dalia @ Surajbhan Bawariya,  
Aged about 28 years, Occu. : Labour,  
R/o. Akbarpur Barota, Sonipath, (Hariyana),
3. Dalbeer s/o. Shrichand Bawariya,  
Aged about 50 years, Occu. : Labour,  
R/o. Chulkhana, Tq. Samalkha,  
Distt. Panipat, (Hariyana). .... ..

**ACCUSED.**

**Shri. U.S. Deshmukh, D.G.P., Special Counsel for Forest/Complainant.**

**Shri.A.A.Dubey, Advocate, for the accused no.1.**

**Sau.Thakare, Advocate, for the accused no.2.**

**Shri.V.L.Navlani, Advocate for the accused no.3.**

.....

**OFFENCE PUNISHABLE UNDER SECTION 55**  
**OF WILDLIFE PROTECTION ACT R/W 200 OF CR.P.C.**

.....

**JUDGMENT.**  
**( DELIVERED ON: 10/12/2015 )**

1] Accused are prosecuted by the Assistant Conservator of Forest, Dhakna, Gugamal Wildlife Division, Melghat Tiger Project, Paratwada, Distt. Amravati, for contravention of provisions of Section 55 of Wildlife Protection Act R/W Section 200 of Cr.P.C.

2] In brief the prosecution case is as under:-

The Melghat Tiger Reserve consists of a total area including core forest and buffer area of about 2029 Sq.Km. Mtr. is divided into three divisions i.e. Gugamal National Park an area about 361.28 Sq.Km., Melghat Tiger Reserve 788.75 Sq.Km. and Tiger Project area of 526.90 Sq.Km. The total area is about 1676.93 Sq.Km.

The Dhakna Range is situated in the north side of Gugamal National Park and it is about 220 Sq.Km. The area of compartment 905 of Dhakna Range being mostly hilly and rugged forest area is not accessible to humans all the year round. The offence is taken place in compartment No.905 is a border point to the Akot Forest Division. Said area is core-Forest.

The Melghat Tiger Reserve has rare Wildlife, birds, flora and fauna. There are many wildlife species which are on the verge of extinction. The wildlife species as Tiger (*Panthera tigris*) is in the schedule-I of Wildlife Protection Act. In the food chain of wildlife animals, the tiger is at the apex stage. If for any reasons tiger does not exist, then the food chain alongwith ecological chain will be disturbed and destructed, so also in turn it shall also affect the human habitats including the urban area.

British Government early in 1876 had declared Gugamal Reserve in Melghat. In 1972 the Government of Maharashtra declared Melghat Tiger Sanctuary.

3] As per Section 21 of Indian Penal Code the Assistant Conservator of Forest is a public Servant. So the complaint filed is on behalf of a Public Servant.

As per P.O.R. No.10/2010 registered on 4/3/2013 the investigation pertaining to hunting of tiger had commenced in Gugamal Wildlife Division. After investigation a Criminal Complaint Case No. 477/2013 was filed before the Chief Judicial Magistrate, Amravati. In that complaint accused no.1 Ranjeet was shown as absconding. It was revealed that accused Madhusingh through accused Bhara and Bhajan had been in contact with accused no.1 Ranjeet. The name of accused Ranjeet had been noted as a trader while filing of Cri. Complaint No.477/2013. The accused no.1 Ranjeet had given the iron trap to hunt tiger with an intention to purchase the tiger skin and bones. It has come in the evidence of Cri. Compl. Case No.477/2013 that the accused Madhusingh and others had on the say of accused Ranjeet executed the job of hunting of tiger in Dhakna Range. Thereafter accused Madhusingh had handed over the tiger skin and bones to accused Ranjeet at village Tukaithad. In this way, accused Ranjeet was having a substantial role in hunting of the tiger in Dhakna Range and it was already noted in said criminal complaint case.

As per complainant's case accused no.1 Ranjeet was having mobile contact with accused Madhusingh. Investigating agency had kept surveillance on the CDR pertaining to accused Ranjeet. Accused Ranjeet was arrested in Andhra Pradesh on 16/12/2013. During course of investigation he has given a statement of his involvement in the said crime. In memorandum he has showed his willingness to show the spot 'where he had taken the tiger skin and bones from accused Madhusingh at village Tukaithad. On 20/12/2013 in the presence of panchas, the Investigating officer has recorded his memorandum. Accused Ranjeet has actually taken the investigating party alongwith panchas to the spot at village Tukaithad. Where he took the tiger skin and bones and had given Rs.1,65,000/- to accused Madhusingh in token

of the hunting transaction.

4] In course of investigation accused Ranjeet gave an information that he had delivered the tiger skin and bones at Akbarpur Barota to accused no.2. Accused Ranjeet had received Rs.2,50,000/- from accused no.2. Accused no.3 also helped the transaction held between accused no.1 Ranjeet and accused no.2 Sarju.

Accused Jagdish was also present but his full name and status till date is not noted. After verifying the CDR mobile record of accused no.1 Ranjeet it reveals that from 28/1/2013 till first week of February 2013 he was residing in the house of accused no.2 Sarju. As per the CDR record at the relevant time accused no.2 Sarju had talked with accused no.3 Dalbeer and accused no.4 Surajpal. In this way this role of accused no.2 to 4 in the transaction and trade of tiger skin and bones of Dhakna tiger hunting is noted.

5] Accused no.2 and 3 were arrested in P.O.R. No.32/2013. They were produced before the Chief Judicial Magistrate, Amravati. In course of investigation and as per the already noted CDR (record of their mobile phone usage) it is noted that they were know Ranjeet accused no.1.

At a single time accused no.1 to 3 were jointly in the custody of the investigating agency. As per their conduct with each other, it appeared that they had old acquaintance with each other.

Accused no.2 and 3 are engaged in the trail and trade of tiger skin and bones of Dhakna tiger hunting case.

6] The accused no.4 is in Tihar Jail in another Forest offence. In this same offence Rs.2.75 Lakh were seized from accused no.2. Accused no.4 was brought before Chief Judicial Magistrate on 22/1/2014. In course and as per his C.D.R. record of talk with accused no.2, it is noted that he was actually involved

in the trail and trade of Dhakna tiger hunting case.

Accused no.1 to 4 are involved in the trail and trade of the Dhakna Tiger hunting case. As per CDR record of their mobile phones accused no.1 to 4 were connected with each other. Accused no.1 had handed over the tiger skin and bones to accused no.2 Sarju. Therefore complainant prayed to punish all the accused for Sections 39, 40(1)(2), 44, 49(B), as per 51(1), 52 of Wildlife Protection Act.

7] All the four accused are in jail after their arrest. Accused no.4 is in Tihar Jail. So to expedite the matter as per order on dated 7/1/2015 Exh.27 by my learned predecessor a case was separated from accused no.4.

Being a warrant case instituted otherwise than on a police report, complainant was directed to adduce evidence charge. Accordingly complainant P.W.1 Vishal H. Mali examined as a witness before framing of charge.

8] After hearing both the sides on the point of charge, on 31/3/2015 my learned predecessor has passed order below Exh.1 and directed to frame the charge against accused no.1 to 3. Accordingly, on 31/3/2015 my learned predecessor framed a charge at Exh.51 against the accused no.1, 2 and 3 for contravention of provision of Sections 39, 40(1)(2), 44, 49(B) punishable under Section 51(1-A), 51(1) of the Wildlife Protection Act, 1972.

The contents of the charge were read over and explained to the accused in vernacular. Accused did not plead guilty and claimed to be tried. Prosecution has examined in all four witnesses. I recorded statement of accused no.1 to 3. Their defence is of total denial and false implication.

9] Considering the above, the following points arise for my determination. My findings thereon and reasons therefore are as follows:-

POINTS.FINDINGS.

- 1] Does the prosecution prove that, in between period of last week of January 2013 to first week of February 2013 at Dhakna Forest Range in Melghat Tiger Reserve accused Nos.1 to 3 alongwith one Surajpal s/o Jagmohan @ Chacha sold and destroyed the Wild animal, i.e. Tiger, in contravention of Section 39 and thereby committed an offence punishable under Section 51(1-A) of the Wildlife Protection Act,1972.? Proved.
- 2] Does the prosecution further prove that, during the above said period and place accused were found in possession of dried skins of wild animal, i.e. Tiger for the purpose of sale in contravention of Sec.40(1)(2) and thereby committed an offence punishable under Section 51(1-A) of the Wildlife Protection Act,1972.? Proved.
- 3] Does the prosecution further prove that, during the above said period and place accused were found dealing in animal article, i.e. Tiger skin without license, in contravention of Sec.44 and thereby committed an offence punishable under Section 51(1-A) of the Wildlife Protection Act,1972.? ..... Proved.
- 4] Does the prosecution further prove that, during the above said period and place accused were found dealing in wild animal i.e. Tiger a Schedule-I animal articles and carried the trading of wild animal(tiger) skin and bones of schedule-I animals in contravention of Sec.49-B and thereby committed an offence punishable under Section 51(1) of the Wildlife Protection Act,1972.? ..... Proved.
- 5] What order ? ..... Accused no.1 to 3 are convicted u/s. 248(2) of Cr.P.C.

REASONS.

10] In order to prove the guilt against the accused, the prosecution has examined in all four witnesses i.e. PW-1 Vishal Hanuman Mali Exh.29, P.W.2 Yadav Shriramji Tarte Exh.57, P.W.3 Vishal Prabhakar Rao Bansod Exh.61

and P.W.4 Milind Digambar Kolwalkar Exh.73.

I heard the learned counsel Shri. U.S. Deshmukh, (Special Counsel for Forest/complainant) and learned counsel for accused no.1 Shri.A.A.Dubey, learned counsel for accused no.2 Smt.Thakre and learned counsel for accused no.3 Shri. V. L. Navlani.

11] **As to Points No.1 to 4:-** Before discussing the complainant's evidence, it is necessary to cast a light upon some relevant legal aspects.

**The Wildlife (Protection) Act, 1972** provides for the protection of wild animals and birds and for matters connected therewith or ancillary thereto. (**Here-in-after Wildlife Protection Act, 1972 will be referred as "Said Act" for brevity**).

**As per Section 9** of said Act hunting of any wild animal specified in Schedules – I, II, III and IV is prohibited except as provided under Section 11 and Section 12.

**In Section 2(16)** of said Act 'Hunting' is defined. It includes killing, poisoning, capturing, coursing, snaring, trapping, driving or baiting any wildlife.

As per the prosecutions case accused has involved in poaching and trade of poached tigers skin and bones. The wildlife species as Tiger (*Panthera tigris*) is in the Schedule-I of said Act.

In the 'Dhakna Range' the said offence of hunting of tiger is noted. As per '**Notification No.WLP-1094/ Case No.211 (Part 3)/F dated 26/4/99** Dhakna Range was noted in 'Melghat Tiger Reserve and more particularly under '**Gugamal National Park**'. As per '**Notification No.WLP 10-07/CR 297/F-1 dt. 27/12/07** is noted in critical Tiger Habitat or core areas as described under Section 51(1-C).

12] P.W.1 Vishal Hanumant Mali Exh.29 is an Assistant Conservator of

Forest, Dhakna. He is posted at Dhakna since 5/11/2012 as A.C.F. He has investigated P.O.R. No.10/10 dated 4/3/2013. Said P.O.R. was in respect of poaching and smuggling of tiger in core area Melghat. In the said P.O.R. No.10/10 six accused were arrested by him, but Ranjeet Mangatram Bhati R/o.Hoshiyarpur, Punjab means accused no.1 was absconding.

In course of investigation accused Anesh Rathod applied for making him an approver. So initially the Reg. Cri. Case No.477/2013 was tried against accused Madhusingh and five other accused. In that complaint Case No.477/2013 accused Madhusingh s/o Leharsingh Rathod, Chintaram s/o Leharsingh Rathod, Vinod Premal Pawar all R/o. Sinband Tq.Chikhaldara, Dist. Amravati were convicted on 18/6/2014 and accused Sagarlal s/o Gorelal Pawar, Narvilal Ruchlesingh Pawar, Mishrilal Judyha Chauhan were acquitted. Court has directed for a separate trial against approver Anesh Chattersingh Rathod as per Section 308 of Cr.P.C.

Later on Anesh Rathod approver was separately tried by Reg. Cri. Case No.603/2013 on 12/3/2015 and he was also convicted.

13] P.W.1 Vishal Mali submitted that accused Madhusingh was the main poacher, disclosed the name of Ranjeet. Madhusingh also disclosed that he sold the poached tiger's skin, bones to accused Ranjeet and accused Ranjeet provided iron trap before poaching. The statement of madhusingh Leharsingh Rathod is filed by prosecution below Exh.82. Said statement is already proved and exhibited as Exh.62 in Cri.C. No.477/2013. Hence, the earlier complaint will have to be looked into as per the evidence appreciated, as the same is admissible as per Section 43 of the Indian Evidence Act. Therefore, the instant complaint against the accused Ranjeet and others being a translation of the criminal act for which the earlier accused have already been dealt under law. So the said facts are relevant to note the role of the accused in the instant case. Hence the accused Ranjeet and others are facing



trial under P.O.R. No.10/2010. On conclusion of investigation the authorised officer filed this criminal complaint under Sections 39, 40(1)(2), 44, 49(B), 51 and 52 of Wildlife Protection Act.

14] At the time of trial in complaint Case No.477/2013 accused no.1 was absconding. Thereafter complainant and his team tried to search the accused on the basis of his mobile location. In the month of December accused no.1 found in Andhra Pradesh.

The learned counsel for accused no.1 raised a point that Madhusingh did not give a description of accused Ranjeet. The complainant has not done Identification parade. Not only this but also in complaint or in evidence before charge P.W.1 has not mentioned that after arresting the accused no.1 he had verified his identity from Madhusingh Rathod. While giving answer on this point the learned counsel for the prosecution submitted that complainant was having a photograph of accused no.1 as accused no.1 was wanted in CBI Case. Complainant during cross admitted there is no document attached to the complaint that a CBI Case is going on against accused and so he was having a photograph of the said accused no.1. No doubt the prosecution could not give such type of evidence on record. But there is no rebuttal evidence from accused that he is not Ranjeet Mangatram Bhatia. The burden is shifted upon the defence to prove that he is not a Ranjeet Mangatram Bhatia and he is different person. So the point of identification of accused no.1 which is raised by defence is set aside.

15] On 16/12/2013 P.W.1 Vishal Mali arrested accused Ranjeet Bhatia and seized Mobile Handset from him. Said arrest panchnama and seizure panchnama are at Exh.30 and Exh.31. Exh.30 is proved by P.W.1 Vishal Mali. Exh.31 is a seizure panchnama of Nokia Mobile (Black colour) with battery. P.W.3 Vishal Bansod (Exh.61) acted as panch while preparing Exh.31. P.W.3

submitted that on the request of P.W.1 he became ready to act as a panch and thereafter he alongwith P.W.1, his colleagues and he himself in the official vehicle went to Vijayanagaram Taluka near Vishakapattam. On 16/12/2013 with the help of local police, P.W.1 arrested the accused no.1 from Korokonda Railway station where Forest officers seized a Nokia company black colour mobile handset from the accused no.1. Witness identified said handset which is at Article 'A'. when it was seized it was in working condition.

P.W.3 is not an employee of Forest department. He is an independent panch witness. Though he was not received any summons from the Forest department to act as a panch, does not mean that he is not a reliable witness. His address and occupation though not mentioned in Exh.31 cannot fatal the prosecution's story, when he is admitting his signature and presence as well as the contents of Exh.31. The defence could not shake his credit worthiness during cross-examination. The witness corroborates the evidence of P.W.1 Vishal Mali. Hence, accepted as a trustworthy.

16] P.W.1 submitted accused Ranjeet voluntarily agreed to show the place where deal of tiger's skin and bone took place. Accused Ranjeet gave his statement in presence of panchas namely Yadav Tarte and Aatif Hussain Exh.32 i.e. called memorandum panchnama prepared in Marathi language, but the accused's statement is recorded in Hindi language because his mother tongue is 'Hindi'. On the first page of Exh.32 one thumb impression is appearing. As per prosecution's case it is the thumb impression of accused no.1. As per Exh.32 accused no.1 told the P.W.1 in the presence of panch Yadav Shriramji Tarte R/o. Amravati and A. Z. Hussain R/o.Akot that '**He is resident of Punjab and came to the Tukaithad railway station, in Madya Pradesh and purchased tiger's skin and bones from accused Madhusingh at Tukaithad railway station**'.

P.W.2 Yadav Shriramji Tarte (Exh.57) who acted as a panch at

Exh.32 and Exh.45 deposed that on the telephonic call of P.W.1 he became ready to act as a panch. Another panch was one Hussain. After recording statement as per Exh.32 he alongwith accused started a journey of Tukaithad on the say of accused no.1 Ranjeet. They stopped their vehicle on Hill below the Nim tree. Accused no.1 had shown the place where the transaction of Tiger's skin and bone took place. Accused Ranjeet also disclosed that at that time at that place accused Madhusingh, Bhara and Bhajan came there with tiger skin and bones and he paid money at said place to the said three accused. P.W.1 thereafter on that place prepared spot panchnama, map, taken the G.P.S. reading. Said panchnama is at Exh.45.

The learned counsel for defence cross-examined this witness and gave a suggestion to him that he is deposing false, that the thumb impression of accused was taken on his statement. Witness denied the suggestion of defence that no statement was given by accused Ranjeet Bhatia therefore it was not read over to him. Witness also denied that said panchnama was prepared in the office itself and on the say of his superior office he is deposing false.

Defence urged that in Exh.45 the four boundaries of place are not mentioned. Moreover summons was not given to witness P.W.2 to act as a panch. Map is also not produced. However, all these are minor lacunas. P.W.2 acted voluntarily as a panch though he was called by P.W.1. Nothing is on record to show that he is biased and having an enemical terms with accused. Forest officers are not a police officers. So their perfections in preparing panchnamas or statement of accused cannot be expected. Minor discrepancies in that regard are very natural unless it is proved contrary. In this case the evidence of P.W.2 who is serving in government department is a satisfactory and reliable. In short, defence could not bring any material on record during the cross which will fatal the prosecution's case and it will prove that Exh.32 and Exh.45 were not prepared in presence of independent witness

as well it is not voluntarily statement of accused no.1. P.W.2 corroborates the evidence of P.W.1. Hence accepted as a trustworthy evidence.

17] P.W.1 Vishal Mali further submitted that on 22/12/2013 accused Ranjeet gave a detailed confessional statement in respect of poaching of tiger at Dhakna and trading of its skin, voluntarily. In that statement he also disclosed about the role of accused Dalbir, Jagdish, Bhara and accused Sarju. Said statement of accused Ranjeet is at Exh.33 and Exh.34.

Defence urged before Court that on Exh.33 and Exh.34 there are no signatures of panch and these are false statements and prepared which will be suitable for the prosecution. Said are false and imaginary. While supporting to this argument he has placed reliance upon a case law reported in **2012 All MR (Cri.) 2588 State of Maharashtra V/s Bhaurao Daulat Vedama and others**. In said case **Hon'ble Bombay High Court (Nagpur Bench) has held that, 'No evidence of any voluntary and truthful confessional statement as no such statement of accused were recorded in presence of any independent witness – Acquittal of accused is proper.**

But with due respect, I submit that said case law is not applicable to this case, as the facts are totally different from the present case.

The alleged statement of accused no.1 Exh.33 and Exh.34 were recorded in the presence of P.W.1 Vishal Mali, but not in the presence of any independent witness. In the said statement it is specifically mentioned that,

“मै रंजित मंगतराम भाटीया उमर ५९ साल होशीयारपुर पंजाब का रहणे वाला हू । मुझे वनअधीकारी द्वारा पुछे जानेपर मेरा सत्य बयाण देता हु । मुझे वनअधीकारीयो द्वारा यह भी समझाया गया की यह बयाण मेरे खीलाफ कोर्ट मे इस्तेमाल कीया जायेगा फीर भी मै मेरा बयाण देने को तयार हु ।”

“यही मेरा सत्य बयाण है । जो मैने बताया वही लिखा गया है और मुझे पढ के सुनाया गया इसकी तसल्ली होने पर ही मैने अंगुठा लगवाया है । यह

बयाण देणे के लीये मुझपर कोई जोर जबरदस्ती नहीं की है । यह बयाण मैंने राजी-खुशीसे नशापाणी न करते हुये दिया है । ”

“मै रंजित मंगतराम भाटीया उमर ५९ साल वनअधीकारी द्वारा पुछे जानेपर मेरा सत्य बयाण देता हु । मुझे वनअधीकारी द्वारा यह भी समझाया गया की यह बयाण मेरे खीलाफ कोर्ट मे पेश कीया जायेगा । ”

“ यही मेरा सत्य बयाण है । यह बयाण जो मैंने बताया वही लिखा गया है और मुझे पढके सुनाया गया है । यह बयाण मैंने किसीके दबाव मे ना आते हुये खुशीसे दिया है, नशापाणी न करते हुये दिया है । ”

So considering this portion, it appears that the Exh.33 and Exh.34 are voluntarily, free from any coercion P.W.1 Vishal Mali is a Forest Officer and these statements are admissible in evidence as those are not hit by Section 25 of the Indian Evidence Act.

In the case of **Badaku Joty Svant V/s 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 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<sup>4</sup> 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 Orrisa 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.

In **Sansar Chand V/s State of Rajasthan (2010) 10 S.C.C. p.604** Hon'ble Apex Court has held 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.*

18] In the present case confessional statements Exh.33 and Exh.34 are made before P.W.1 Vishal Mali who is the Forest officer. Even the Video recording cassette of the confessional statements of accused are placed on record. The original cassette are in sealed condition at Exh.46 and Exh.47. But the accused have not raised any defence under Section 24 of the Indian Evidence Act. There is no challenge to the version that, the accused has given confessional statement with understanding that, it may be used against him. So with the due respect, I submit that the ratio laid down in 'Sansar Chand case' is also applicable to this case law. So, I come to this conclusion that Exh.33 and Exh.34 therefore are admissible in evidence. In Exh.33 the role of accused no.2 and 3 is connected with the said crime. It is also admissible in evidence of a statement by an accused against co-accused, as per the view

taken in Sansar Chand's case by Hon'ble Apex Court.

Accused no.2 and 3 also gave a confessional statements to P.W.1 on 26/12/2013 at Paratwada, Exh.35 and Exh.36. As per confessional statement of accused Dalbeer Shrichand Bawariya and Sarju Bawariya, they had involved in the trade/business of animal articles of Schedule-I of the said Act. Hence, considering the legal position, as I discussed above the statements at Exh.35 and Exh.36 are also admissible in evidence because accused no.2 and 3 also not raised any defence U/sec.24 of Indian Evidence Act and it can be used as to prove the charges against accused nos. 1 to 3.

19] P.W.4 Milind Digambar Kolwalkar Exh.73, is working as a Nodal Officer in Airtel Company. As per his evidence Tower list is used to prepare by his company. Witness produced the list of the towers installed by his company in Maharashtra, Goa and Haryana Circle is at Exh.74 to Exh.75. The list of Called Data Reports of his company for Maharashtra, Goa and Haryana Circle are at Exh.76 and Exh.77. Certificate in respect of called details in that list is at Exh.78, which is signed by the Airtel Company's Executive Chetan Patil. The witness further deposed that IMEI number of particular Mobile handset used to remain the same even though different sim card installed thereon. On the requisition of S.P. Amravati (Rural) call details of Mobile No.8295641762 was provided. A letter is at Exh.79 by which said information was sent. Mobile No.8295641762 was in the name of Sonu Badlu R/o. Haryana State. But it appears that the Investigating agency had kept surveillance on the CDR record and thereafter accused no.1 was arrested in Andhra Pradesh on 16/12/2013.

The defence cross-examined the witness and gave suggestions that call details and Tower ID details are false. However, this witness is an employee of Airtel Company and an independent witness without having any control of Forest Department and Police Department. Exh.74 to 79 all are computerized documents, Exh.78 is a Certificate.

There is no material from defence on record that Exh.74 to Exh79 all are manipulated document and prepared with an intention to prove the case against accused nos. 1 to 3. So the evidence of P.W.2 is free from any incumbrance. So accepted it as a trustworthy evidence.

20] After perusing the evidence on record it appears that accused no.1 Ranjeet had given an iron trap to accused Madhsingh. The hunting of tiger had taken place at the hand of accused Madhusingh as per pre-agreement with accused Ranjeet in the month of end of December-2012 to First two weeks of January-2013. The CDR location Exh.74 shows that accused Ranjeet had come in Maharashtra, particularly in Akot Tahsil, Paratwada, Amravati for which accused Ranjeet did not give any explanation as what purposes he came at a relevant time and date as he was noted in the respective area as per Tower ID location Exh.74. As per the statement of accused no.1 Ranjeet he had received tiger skin and bones from Madhusingh at Tukaithad railway station (accused Ranjeet had took away P.W.1 and panch at Tukaithad from Dharni, Distt. Amravati as per Exh.32) and he proceeded to M.P, Haryana Exh.75 (Haryana Circle) and had sold it to accused no.2 Sarju. Accused no.2 sold a skin to accused Surajpal and further in distribution of money accused no.3 was also noted. The Tower ID location of accused Ranjeet as per evidence of P.W.4 particularly Exh.75 clearly shows that accused no.1 Ranjeet had traveled to Tahsil Israna, Dist. Panipat, Sonipat means the accused no.1 Ranjeet was in Haryana circle as per Tower ID location from 1/8/2012 to 23/2/2013. As per Exh.33 accused no.1 Ranjeet and one Jagdish came at Tukaithad. Accused Dalbeer was also alongwith them, but due to his physical incapacity (handicap) accused Dalbir had stayed at Akot.

As per RCC No.477/2013 the accused Madhusingh vide memorandum panchnama had already lead the investigating party in Tukaithad railway station and had expressed that he had a deal of tiger skin



and bones with accused no.1 Ranjeet. The confirmative facts the Investigating officer being the said person in RCC No.477/2013 and the instant case whether it could be said that he was knowing this fact as per evidence gathered from accused Madhusingh. So now the fact stated under Section 29 of the said Act by Madhusingh would be admissible or not. To verify this fact it is necessary to go through the judgment of **Hon'ble Supreme Court of India of State of Maharashtra V/s Damu Shinde and others reported in 2000(6) S.C.C. p.269.** In this judgment while dealing with the similar situation in at para no.35 to 37 it is held that the Section 27 is discovery of the facts and it does not comprehend recovery of object. It is further held that different comprehend the place from which the object was produced and the knowledge of the accused about it. It can be all confirmation by subsequent events. In this matter a dead-body was recovered earlier in time and later on the accused had revealed the said spot, hence taking note of this legal position the memorandum panchnama given by accused no.1 Ranjeet at Exh.32 is admissible in evidence. So also on this point that the place was already known to the investigating party and the relevant position of law is not challenge. So the said statement under Section 27 of the said Act is clearly admissible in evidence. It is also clear that accused no.1 Ranjeet had visited Tukaithad railway station as per the settled deal with accused Madhusingh. The electronics evidence Exh.74 to Exh.78 has been proved as per Section 65-B of Indian Evidence Act. As per Section 57 of Wildlife Protection Act there is a presumption in which once it is established that the person was in possession of any animal articles and other animal parts etc. it shall be presumed that such person is in unlawful possession unless contrary is proved by the accused and it would be burden upon the accused to prove his innocence.

21] Like another trade or business the articles of tiger skin or any part of tiger cannot get easily available in open market. Accused no.1 to 3 were

engaged in illegal business. The place of hunting was situated in very core area. The accused no.1 to 3 had done their business of destroyed, sale and purchase of animal articles very confidentially. The physical appearance and behaviour of all accused are such that no one can entertain them and perhaps in civil area they may be neglected. So they can easily gets chance to perform their illegal activities. When they are arrested, the skin and bones of tiger were already sold by accused Sarju to one businessman from Delhi (as per Exh.33 the statement of accused no.1) and the Investigating officer could not seize the property from accused no.1 to 3. Therefore, it does not mean that trade of selling and purchasing of articles never happened and whatever stated by accused no.1 to 3 in their statements (Exh.33 to Exh.36) are totally false. Now considering the nature of this trade/crime, I think that the oral evidence of prosecution, the CDR record, VCD (all are electronics evidence admissible in U/sec.65 of Evidence Act), statements of accused no.1 to 3 are sufficient and reliable evidence to prove the offences against accused no.1 to 3.

22] As per Section 39 of the said Act in which it is mentioned in Sub-section 1 and Sub-section 2, who hold in possession any animal articles a Government property should report the same within 48 hours to the authority.

So far as Section 41 is, every person who is in possession of animal articles of Schedule-I animal shall declared his possession within 30 days, so far as Section 42 after commencement of this Act no person shall receive, keep, sell or offer for sale animal articles. (As Animal skin of Schedule-I without the previous permission of the authority is expressed). In Section 44 it is mentioned, subject to the provisions of Chapter V-A, no person shall except under in accordance with a license shall carry business on the commencement of this act shall make an effective application of the animal articles to the respective authority is expressed. In Section 49-B that there is a prohibition of carrying on the business or deal in animal articles. (Subject to

the other provisions of this Section.)

23] So with this discussion, I come to this conclusion that the accused Madhusingh after hunting the tiger skin and bones were handed over to accused no.1 Ranjeet and it is proved that it has been traded for money and it also appears that accused no.2 and 3 were also involved in the said deal with accused no.1 Ranjeet and all of them have been traded only for money. Thereafter the skin and bones were sold to Surajpal by accused no.2. In this way accused no.1 to 3 destroyed, sold, possessed and traded illegally the said government property i.e. tiger skin and bones and they acted in contravention of Section 39, 40, (1)(2), 44, 49-B of the Wildlife Protection Act, 1972. For that they are liable to punish under Section 51(1-A) and Section 51(1) of the Wildlife Protection Act, 1972. Therefore, I stopped this judgment for hearing of accused no.1 to 3 on the point of sentence.

Date:10/12/2015.

(Sau. S. N. Mane-Gadekar )  
Jt. Adl. Chief Judicial Magistrate,  
Amravati.

24] I heard the learned counsel for the prosecution. It is the submission of the learned counsel for the prosecution that it is the rarest of rare case. Accused no.1 is a Trader and he is indulging in smuggling of animals articles which is the Government property. So maximum punishment be given to the accused. On the other hand, the learned counsel Shri.Dubey for accused no.1 submitted that accused no.1 is above 50 years old, his widowed daughter is also depends upon him, so lenient view be taken. The learned counsel for accused no.3 Shri.Navlani submitted that accused no.3 is a handicap person, so kindly consider his physical incapacity. The learned counsel for accused no.2 Mrs.Thakare, is absent when called. However, accused no.2 personally

submitted that he is innocent.

While considering the submission of all accused, I should not forget the words which are used in Sansar Chand case by the Hon'ble Apex Court. It has held that - **“Preservation of Wild Life is important for managing ecological balance in the environment and sustaining the ecological change. Poaching of Wild Life is an organized International illegal activity which generated amount massive of money for the criminals”**. As per the report of the Interpol India is now major source market for this trade.

After verifying the evidence on record, it is my opinion that accused nos.1 to 3 have chosen this illegal trade to satisfy their need of money, without fear of law, morality and intentionally. To show any sympathy to them, means to stand against the existence of whole humanity and environment. So they are not liable for any leniency, rather they are liable for strict penalty as mentioned by Hon'ble Apex Court in the Sansar Chand case. So I think the following order will meet the ends of justice. Hence, I proceed to pass the following order.

### **ORDER**

1] The accused no.1 namely Ranjeet Mangatram Bhatia, R/o.Hoshiyarpur (Punjab), accused no.2 namely Sarju s/o. Dalia @ Surajbhan Bawariya R/o. Akbarpur Barota, Sonipath, (Hariyana) and accused no.3 namely Dalbeer s/o. Shrichand Bawariya, R/o.Chulkhana, Tq.Samalkha, Distt.Panipat, (Hariyana) are hereby convicted under Section 248(2) of the Code of Criminal Procedure, as under.

2] Accused nos. 1 to 3 are convicted for contravention of Section 39 punishable U/Sec. 51(1-A) of the Wild Life (Protection) Act, 1972. They are sentenced to suffer Rigorous Imprisonment for Seven Years each and to pay a fine of Rs.10,000/- (Rupees Ten Thousand) each. In default of payment of fine

amount, the defaulting accused to undergo further Simple Imprisonment for Six month.

3] Accused nos. 1 to 3 are further convicted for contravention of Sec.40(1)(2) punishable U/sec.51(1-A) of the Wild Life (Protection) Act, 1972. They are sentenced to suffer Rigorous Imprisonment for Seven Years each and to pay a fine of Rs.10,000/- (Rupees Ten Thousand) each. In default of payment of fine amount, the defaulting accused to undergo further Simple Imprisonment for Six month.

4] Accused nos. 1 to 3 are further convicted for contravention of Sec.44 punishable U/sec.51(1-A) of the Wild Life (Protection) Act, 1972. They are sentenced to suffer Rigorous Imprisonment for Seven Years each and to pay a fine of Rs.10,000/- (Rupees Ten Thousand) each. In default of payment of fine amount, the defaulting accused to undergo further Simple Imprisonment for Six month.

5] Accused nos. 1 to 3 are further convicted for contravention of Sec.49(B), punishable U/sec.51(1) of the Wild Life (Protection) Act, 1972. They are sentenced to suffer Rigorous Imprisonment for Seven Years each and to pay a fine of Rs.10,000/- (Rupees Ten Thousand) each. In default of payment of fine amount, the defaulting accused to undergo further Simple Imprisonment for Six month.

6] All the sentences are run concurrently.

7] Accused no.1 to 3 are in jail from their arrest till today. Hence, set off be given under Section 428 of Cr.P.C.

- 8] Seized property be preserved for the trial to be conducted against accused no.4 namely Surajpal s/o Jagmohan @ Chacha.
- 9] Copy of judgment be given to the accused no.1 to 3 free of costs.
- 10] Judgment dictated and pronounced in open Court.

Amravati.  
Date:10/12/2015.

(Sau. S. N. Mane-Gadekar )  
Jt. Addl. Chief Judicial Magistrate,  
Amravati.