

GAHC010188852023



2024:GAU-AS:13052

THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)

Case No. : Crl.A./324/2023

LIPAMUNGO ODYUO AND 4 ORS
S/O LICHUMO ODYUO, L
RESIDENT OF DIMAPUR, NAGALAND.

2: SHRI ORENTHUNG JAMI
S/O PHYOBEMO JAMI

RESIDENT OF DIMAPUR
NAGALAND.

3: SHRI MHONJAN ODYUO
S/O THUNGCHI ODYUO

RESIDENT OF DIMAPUR
NAGALAND.

4: SHRI JONTHUNGO ODYUO
S/O YISAMO ODYUO

RESIDENT OF DIMAPUR
NAGALAND.

5: SHRI STEBHEM @ STEPHEN MURRY
S/O EZAN MURRY

RESIDENT OF DIMAPUR
NAGALAND

VERSUS

THE STATE OF ASSAM AND ANR.
REPRESENTED BY SPECIAL PP ASSAM

2:SHRI SUNDORSING TERON

FOREST BEAT OFFICER
LAHORIJAN BEAT KARBI ANGLONG (WEST) DIVISION
DIPHU
KARBI ANGLONG.ASSA

Advocate for the Petitioner : MR N Z LOTHAN, MR. S K GUPTA

Advocate for the Respondent : PP, ASSAM, MR B SARMAH

:::BEFORE:::

HON'BLE MRS. JUSTICE MITALI THAKURIA

Date of hearing : 28.11.2024

Date of Judgment & Order : 20.12.2024

JUDGMENT & ORDER (CAV)

Heard Mr. S. K. Srivastava, learned counsel assisted by Mr. N. Z. Lotha, learned counsel for the appellants for the appellant. Also heard Mr. B. Sarma, learned Special Public Prosecutor, Wildlife for the State respondent.

2. This is an appeal under Section 374(2) of the Code of Criminal Procedure, 1973 against the impugned judgment and order dated 07.07.2023, passed by the learned Special Judge, Wildlife, Karbi Anglong in Special Wildlife (Protection) Case No. 01/2023, arising out of C.R. Case No. 934/2017, whereby the appellants were held guilty for the offence under Section 29 of the Wildlife Act, 1972 punishable under Section 51(1) of the said Act, and the appellants were sentenced to a simple imprisonment of 1 (one) year and to pay a fine of Rs. 10,000/- (Rupees ten thousand) only each and in default simple imprisonment

for another 1 (one) month with the benefit of Section 428 Cr.P.C.

3. The prosecution case, in brief, is that on 27.05.2017, at about 6.30 a.m., a secret information was received by one Shri Sundorsing Teron, Forest Beat Officer, Lahorijan Beat Karbi Anglong (West) Division regarding illegal entry of some persons into Doldoli Reserve Forest and destruction and denudation of wildlife habitat. On the basis of the said information, a patrolling team of the Forest Department, led by Shri Longki Killing, FR-I, proceeded towards FD pillar Nos. 5 & 6 and after reaching the said place, at about 7.30 a.m., they saw 5 (five) persons, who were illegally cutting & clearing the jungle without even having permit to enter into the Reserve Forest. On being interrogation, they disclosed their names as (i) Lipamungo Odyuo, (ii) Orenthung Jami, (iii) Mhonjan Odyuo, (iv) Jonthungo Odyuo, & (v) Stebhem @ Stephen Murry, the accused/appellants herein, and from their possession, the forest team seized a Dao, Deer leg and horn of wild buffalo, which were accordingly seized by preparing seizure list and the accused persons were also arrested.

4. Thereafter, on completion of investigation, an offence report, along with remand application, was submitted by the Forest Beat Officer and on the basis of the same, the learned Magistrate/Deputy Commissiainer, Karbi Anglong registered a case, being C.R. Case No. 934/2017, and send the accused/appellants to judicial custody and subsequently committed the case to the Court of learned Special Judge, Karbi Anglong, Diphu. The learned Sessions Judge, accordingly, after considering the materials available on record and also finding *prima facie* case, framed charge against the present accused/appellants under Section 51(1) of the Wild Life (Protection) Act, 1972 in contravention of

Section 29 of Wild Life (Protection), Act.

5. During the trial of the case, the prosecution examined as many as 8 (eight) numbers of witnesses. However, the defence did not adduce any evidence in support of their case. The accused were also examined under Section 313 Cr.P.C. Thereafter, the learned Special Judge, vide impugned judgment and order dated 07.07.2023, in Special Wildlife (Protection) Case No. 01/2023, held guilty for the offence under Section 29 of the Wildlife Act, 1972 and convicted the accused/appellants under Section 51(1) of the said Act, and sentenced them to a simple imprisonment of 1 (one) year and to pay a fine of Rs. 10,000/- (Rupees ten thousand) only each and in default simple imprisonment for another 1 (one) month with the benefit of Section 428 Cr.P.C.

6. On being highly aggrieved and dissatisfied with the aforesaid impugned judgment and order dated 07.07.2023, passed by the learned Special Judge, Wildlife, Karbi Anglong in Special Wildlife (Protection) Case No. 01/2023, the present appeal has been preferred by the accused/appellants.

7. Mr. Srivastava, learned counsel for the appellants, submitted that all the appellants are innocent and honest people and they belong to Nagaland. The appellants have gone to the plot of land belonging to appellant No. 5- Stebhem @ Stephen Murry, which is located in the Nagaland area near Assam Border, Lahorijan side, and the title of the land and registration has already been issued by the State Government as well as by the Government Authorized Village Panchayat. They were arrested from Nagaland area, but after their arrest, they were taken inside the Assam Forest Area and lodged the case accordingly. He

further submitted that the appellants are being convicted entirely on the basis of report filed by the Assam Forest Guard as well as the Assam Police and no independent witness was examined by the prosecution. Mr. Srivastava further submitted that there are many contradictions and inconsistencies in the evidence of the prosecution witnesses, but without proper appreciation of evidence, the learned Trial Court below had passed the order convicting the accused/appellants. The complaint dated 27.05.2017 was filed by the Assam Forest Officials wherein it is alleged that the incident had taken place on 28.05.2017 and 29.05.2017 which otherwise prove that the complaint is manufactured one. More so, there is no seizure of any wood or timber or any other tree or forest products in the seizure list except it is alleged that one deer leg and one buffalo horn along with dao was recovered from the possession of the accused/appellants. Though it is alleged that one buffalo horn and deer leg were recovered from the possession of the accused/appellants, but the prosecution failed to send the same to forensic laboratory for examination to prove as to whether the recovered items are actually the deer leg or buffalo horn.

8. Mr. Srivastava further submitted that from the record, it is seen that the forest team was accompanied by Assam Police Personnel, but there is no disclosure statement as to whether the police assistance was seek for or from whom the police assistance was seek for or provide to the forest team. More so, there is no evidence to show as to whether the forest officials, who visited to the place of occurrence, was authorized by the higher officials. He further submitted that the charge was framed only under Section 29 of the Wild Life (Protection) Act, 1972 and hence, no offence could have been proved against

the appellants as they admittedly never entered into the Reserve Forest and did not destroy any part of the Reserve Forest. He also submitted that the learned Special Judge erred in ignoring that there was no seizure of any freshly cut timber, wood, forest produce etc. from the complainant to fulfill the ingredients of Section 29 of Wild Life (Protection) Act, 1972. It is a fact that in the complaint dated 27.05.2017, the offences alleged against the accused/appellants was under Section 27/29/39 of Wild Life (Protection) Act, 1972, but the learned Special Judge did not find any offence made out under those Sections and hence, the charge is framed only under Section 51(1) of the Wild Life (Protection) Act for contravening the provision of Section 29 of the said Act and convicted the accused/appellants under Section 51(1) of the Wild Life (Protection) Act, 1972 without appreciating the fact that a person cannot be convicted under Section 29 of the said Act unless he is held guilty under Section 27 of the said Act. Further, from the evidence recorded by the learned Trial Court below, it is seen that there is no evidence of any hunting or pouching or any illegal activities committed by the accused/ appellants and no cutting or felling of any valuable trees have been done by the appellants. More so, there is nothing to show that any effective incriminating materials or tools or guns were found from the possession of the accused/appellants which could be used to kill or shoot animal or to destroy the large scale of forest products. Accordingly, Mr. Srivastava submitted that the learned Trial Court below failed to consider that the prosecution could not prove its case beyond reasonable doubt and mechanically passed the impugned judgment of conviction dated 07.07.2023, which is liable to be interfered with by this Court.

9. Mr. Sarma, learned Special Public Prosecutor, Forest Department,

submitted in this regard that on 27.05.2017, at about 6.30 a.m., a secret information was received by Shri Sundorsing Teron, Forest Beat officer, Lahorijan Beat, Karbi Anglong (West) Division, in regards to illegal entry of some persons into the Doldoli Reserve Forest with a view to destruct the wildlife habitat. Accordingly, at about 7.30 a.m., the patrolling party reached near FD pillar Nos. 5 & 6 and saw 5 (five) persons illegally cutting and clearing the jungle and they failed to show any permit to enter into the Reserve Forest. From their possession, one Dao, Deer Leg and a horn of wild buffalo were seized by the Forest Officials and the complaint was accordingly lodged. Further he submitted that the said Sundorsing Teron, who is a Forester I and Beat Officer, is the authorized person to make complaint under Section 51(1) of the Wild Life (Protection) Act, 1972 and thus, there is no illegality in filing the complaint. More so, the recovered articles were seized in presence of the witnesses. Further he submitted that ordinarily the availability of independent witnesses cannot be expected in Reserve Forest and it is rightly observed by the learned Special Judge that the Forest Department Officials are the most natural witness in such cases and the probability of presence of independent witnesses is very less in such a cases wherein the entire incident had happened inside a Forest Reserve Area. He further submitted that all the PWs corroborated their statements to the effect that the crime scene was between 5th and 6th Border pillar of the Assam side of the Forest Reserve and the accused/appellants entered into the Reserve Forest Area only with an intention to encroach upon the forest land and accordingly, they were apprehended or arrested by the forest officials along with the police personnel. Accordingly, Mr. Sarma submitted that there is no illegality or irregularity committed by the learned Special Judge while passing the order of conviction which was passed by appreciating all the

evidences on record in its proper perspective.

10. After hearing the submissions made by the learned counsels for both sides, I have also perused the case record of the learned Court below as well as the memo of appeal along with the annexures filed therein.

11. It is seen that admittedly the complaint was filed on 27.05.2017 against the accused/appellants with the allegation of illegal entry in the Reserve Forest and destruction of forest product and wildlife habitat and on the basis of the information, the patrolling team was arranged and with the help of the local police personnel, the accused/appellants were arrested and the seizures were also made. But, from the contents of the complaint dated 27.05.2017, it is seen that the forest officials collected more evidences against the accused/appellants by visiting the site and searching all over the area on 28.05.2017 & 29.05.2017, and it is rightly submitted by the learned counsel for the appellants that how a complaint can be lodged for the evidence which were collected on 28.05.2017 & 29.05.2017 when the complaint was filed on 27.05.2017 itself. It is not a case that after the complaint was lodged, there was any subsequent development and another complaint was filed before the authority concerned after collecting more evidences on 28.05.2017 & 29.05.2017, which creates a doubt in the veracity of the prosecution case.

12. So, before arriving at any decision, let us first scrutinize the evidences of the prosecution witnesses.

13. PW-1 is the Forest Beat Officer of Lahorijan, who is also the complainant

of this case. As per him, on the day of incident, i.e. on 27.05.2017, he along with other staffs went for patrolling near Pillar Nos. 5 & 6 of the Border between Karbi Anglong and Nagaland and saw that the 5 (five) persons, i.e. the present accused/appellants, were cutting trees. Apart from that, they also constructed a temporary house using plastics and they entered into the Reserved Forest Area without any permit or licence within 300 meters of the Assam-Nagaland border. Accordingly, they were interrogated and their testimonies were also recorded and from their possession, they also seized horn of wild buffalo and a leg of barking deer etc. and accordingly they were produced before the learned Deputy Commissioner for judicial custody. Thereafter, he lodged the complaint.

14. From his cross-evidence, it is seen that he received the information in the morning hours of 27.05.2017, but he did not immediately rushed to the place of occurrence. He stated that he did not find any fire arms or similar items from the individuals and the confiscated items were not presented before the Court, though it is stated that the confiscated items included one myna birds, a deer, eight mobile phones, a PAN Card and three sets of clothing. He further stressed on the point that the incident occurred inside the boundaries of the Karbi Anglong Doldoli Reserve Forest and as a Beat officer, he lodged the complaint.

15. PW-2 was also in the patrolling team and he claimed that he witnessed 5 (five) numbers of accused persons from Naga community cutting the trees in the forest. Accordingly, he submitted the complaint and the offence report to the Court on the same day. He further deposed that he verified the identity of the accused/appellants and also recorded their statements and further confiscated the items like deer skin, a barking deer's horn, three mobile phones,

a PAN card and three daos from the possession of the accused/appellants.

16. PW-3 is another forest officials who was also present in the patrolling team and he also claimed that he saw the accused/appellants while cutting the trees inside the Reserve Forest Area. They could not show any permit to enter into the Reserve Forest Area and accordingly they were searched and from their possession, three numbers of dao, one deer leg, one horn of wild buffalo, four numbers of mobile handset, one PAN Card and three Betel nuts were recovered.

17. In his cross-evidence, he stated that near to the place of arrest of the present accused/appellants, it was seen that some other persons were already had cut the trees and deforested some area, though they did not found any house etc. in that area.

18. PW-4 is also another Forest Official. He also narrated the same story and claimed that he also saw the accused/appellants while cutting the trees and accordingly they were apprehended and from their possession, three numbers of daos, one dry deer leg and one horn of wild buffalo was recovered along with four numbers of mobile phone, one PAN Card and three numbers of bags. After their apprehension, they were brought to the Forest Range and he also put his signature in the seizure list.

19. PW-5 is another Forest Guard Official/Forest Officer and he also claimed his presence at the place of incident as he was also present in the patrolling team and narrated the same story corroborating PW-4.

20. PW-6 also accompanied the patrolling team and he also corroborated PWs-4 & 5 and deposed that the accused/ appellants could not produce any permit etc. while they were interrogated and thereafter they were apprehended and the articles were seized from their possession. He stated in his cross-evidence that he had not seen the accused/appellants killing any wild animal, though they were seen cutting trees inside the jungle. He also stated that no fire arms etc. were seized from the possession of the accused/appellants except three numbers of daos.

21. PW-7 is the UBC Constable and he also accompanied the forest team at the time of patrolling and he saw the accused/appellants inside the forest area and on enquiry, they failed to produce any permit etc. and accordingly they were apprehended and the seizure list was prepared wherein he put his signature.

22. PW-8 is the another constable who also claimed to be present on the day of incident along with patrolling team and he stated that at Doldoli Reserve Forest, they found five numbers of persons, i.e. the present accused/appellants, and on being searched, three numbers of daos, one deer leg and one horn of wild buffalo and eight numbers of mobile phone etc. were seized from the possession of the accused/appellants. He also put his signature in the seizure list.

23. From his cross-evidence, it is seen that there is no dwelling house near to the place of occurrence and the five accused persons were sitting there on the

ground with dao etc. and he further stated that there is no temporary house at the place of occurrence. He heard from the forest officials that one deer leg was found from the possession of the accused/appellants, but there was no blood found on the leg of the deer.

24. So from the evidences of the prosecution witnesses, it is seen that they corroborated to each other to the extent that they have seen five accused/appellants while cutting trees inside the Doldoli Forest Area and three daos along with one deer leg and a horn of wild buffalo were recovered from the possession of the accused/appellants along with the mobile handsets and PAN Card etc. But, it is seen that no fire arms etc. were seized from their possession, nor there was any seizure of any trunk of the trees or other timber products from the place of occurrence, though it is alleged that the accused/appellants were cutting trees inside the forest area. As per PWs-1 & 2, the accused/ appellants also constructed a temporary house with the plastics, but the other prosecution witnesses did not support the PWs-1 & 2 in regards to construction of temporary house inside the forest area. Rather, from the evidence of PWs-3, 5 & 8, it is seen that there was no such temporary house found at the place of occurrence. More so, as stated above, it is the admitted fact that no fire arms etc. were seized from the possession of the accused/appellants. So, the question arises if they were found cutting trees inside the forest area, why no forest product or the trunk of the trees etc. could be seized by the forest officials while apprehending the accused/appellants from the place of incident.

25. Thus, it is seen that there are some contradictions found in the evidences of the PWs, though it is alleged by all the PWs that they saw the

accused/appellants inside the Reserved Forest Area while cutting the trees with an intention to encroach upon the forest area. It is also an admitted fact that as per PWs, the accused/appellants could not show any permit to enter into the Reserve Forest of Assam, i.e. inside the Doldoli Reserved Forest, Karbi Anglong. Thus, the main allegations against the present accused/appellants is that they entered into the Reserved Forest Area without any permission or permit and destructed the forest product and wildlife by entering into the Reserved Forest Area.

26. It is seen that initially the accused/appellants were sent for judicial custody wherein the case was forwarded and registered under Sections 27/29/39/57 of the Wild Life (Protection) Act, 1972. However, the offence report was submitted under Sections 39/56/57 *read with* Section 26 punishable under Section 51 of the Wild Life (Protection) Act, 1972. But the learned Special Judge found the accused person guilty under Section 29 of the said Act and accordingly punished the accused/appellants under Section 51(1) of the Wild Life (Protection) Act, 1972. It is also an admitted fact that the deer leg or the horn of the wild buffalo, which were alleged to have been seized from the possession of the accused/appellants, were not sent to FSL for examination to determine as to whether the articles which were seized from the possession of the accused/appellants were the animal article or trophy. However, the learned Special Judge convicted the accused/appellants only under Section 51(1) of the Act as found guilty under Section 29 of the said Act.

27. For ready reference, Section 29 of Wild Life (Protection) Act, 1972 read as under:

"29. Destruction, etc., in a sanctuary prohibited without a permit. -No person shall destroy, exploit or remove any wild life including forest produce from a sanctuary or destroy or damage or divert the habitat of any wild animal by any act whatsoever or divert, stop or enhance the flow of water into or outside the sanctuary, except under and in accordance with a permit granted by the Chief Wild Life Warden, and no such permit shall be granted unless the State Government being satisfied in consultation with the [National Board] that such removal of wild life from the sanctuary or the change in the flow of water into or outside the sanctuary is necessary for the improvement and better management of wild life therein, authorises the issue of such permit:

Provided that where the forest produce is removed from a sanctuary the same may be used for meeting the personal bona fide needs of the people living in and around the sanctuary and shall not be used for any commercial purpose."

28. Thus, Section 29 of the Wild Life (Protection) Act, 1972 speaks about the destruction or damage of the forest property or sanctuary or exploit of wild life etc. But the Section 27 of the said Act speaks about the restriction on entry in sanctuary.

29. As per Section 27(1) of the Act, no person other than (a) public servant on duty, (b) a person who has been permitted by the Chief Wild Life Warden or the authorized officer to reside within the limits of the sanctuary, (c) a person who has any right over immovable property within the limits of the sanctuary, (d) a person passing through the sanctuary along a public highway, and (e) the dependants of the person referred to in clause (a), clause (b) or clause (c), shall enter or reside in the sanctuary, except under and in accordance with the conditions of a permit granted under Section 28. But, here in the instant case, it is seen that the charge was framed only under Section 51(1) of Wild Life (Protection) Act, 1972 for contravening the provision of Section 29 of the said

Act. However, there is no mention about contravention of Section 27 of the said Act, which speaks about unauthorized entry in the Reserve Forest. So, how a person can be convicted under Section 51(1) of Wild Life (Protection) Act in contravention of Section 29 of the Act without any unauthorized entry in contravention of Section 27 of the said Act.

30. So, from the discussions made above, it is seen that there was no seizure of any forest product or timber etc. from the possession of the accused/appellants, except 3 (three) numbers of daos and other articles like PAN Card, Aadhar Card, mobile handset etc. More so, the evidences of PWs also contradicted to each other in regards to any temporary house at the place of incident. In the same time, it is also seen that the seized articles were also not sent to FSL for examination. Furthermore, as discussed above, the offence report is submitted on 27.05.2017 on the basis of further investigation which was carried out on 28.05.2017 & 29.05.2017, which also creates reasonable doubt in the veracity of the prosecution case as the question arises as to how the offence report can be submitted on 27.05.2017 if the investigation was further carried out on 28.05.2017 and 29.05.2017. Further the question also arises as to why the burnt debris of tree etc. were not seized in connection with this case if during investigation those were found available at the place of occurrence.

31. Thus, in view of the entire discussions made above, this Court is of the opinion that the prosecution could not prove its case beyond reasonable doubt and it is found that there is no cogent and reliable evidence to prove the case against the accused/appellants beyond all reasonable doubt. Accordingly, the

appeal stands allowed. The judgment and order dated 07.07.2023, passed by the learned Special Judge, Wildlife, Karbi Anglong in Special Wildlife (Protection) Case No. 01/2023, stands set aside. The appellants are acquitted of all the charges.

32. Send back the case record of the Trial Court along with a copy of this judgment and order.

33. In terms of above, this criminal appeal stands disposed of.

JUDGE

Comparing Assistant